Foreign Market Access Report:

2007

Ministry of Commerce
People’s Republic of China
Foreword

The year of 2006 witnessed a continued rapid growth of China's foreign trade. According to the Chinese Customs, China's foreign trade volume totaled US $1760.69 billion in 2006, representing an increase of 23.8% over 2005 and registering the fifth year in a row with a growth rate over 20%. Among it, export reached US $969.08 billion, up by 27.2%, and import reached US $791.61 billion, up by 20%. China enjoyed a trade surplus of US $177.47 billion in 2006, up by 74%. China's ranking in terms of trade volume rose to the third in the world.

Engineering contracts completed by Chinese companies abroad realized a turnover of US $30 billion in 2006, up by 37.9% over the same period of the previous year. Newly signed engineering contracts reached a volume of US $66 billion, up by 123%. Completed labor service cooperation contracts realized a turnover of US $5.37 billion, up by 12.3%, and newly signed contracts US $5.23 billion, up by 26.3%. Approximately 351,000 Chinese workers and professionals were expatriated, representing an increase of 77,000 people. Design and consulting services abroad realized a turnover of US $330 million, up by 45.4%, and newly signed contracts US $410 million, up by 14.8%. In 2006, Chinese non-financial investment abroad reached US $16.13 billion, up by 31.6%.

With the rapid growth of China's economy and foreign trade, some of our trading partners and industry groups in those countries are increasingly using various trade and investment barriers against Chinese products in order to protect their domestic industry and home market. According to Ministry of Commerce(MOFCOM), a total of 25 countries and regions initiated 86 anti-dumping, countervailing, safeguard and product specific safeguard investigations against Chinese products in 2006, representing an increase of 37%. The total value involved in these cases was US $2.05 billion; The US also initiated 13 Section 337 investigations against Chinese products, in addition to other barriers to trade such as TBT measures and abuse of IPR protection. The impact of these barriers on China's economy and foreign trade is noteworthy. Chinese companies will have to face an increasingly challenging environment in international trade and investment.

The Foreign Market Access Report 2007(Report) is compiled by MOFCOM in the aim of enabling Chinese enterprises and relevant organizations to better understand the trade and investment regimes, policies and practices of China's main trading partners as well as situations of global markets so that Chinese enterprises can take a more positive role in international competition. Meanwhile, the Report is compiled in the aim of maintaining a fair and just international trade and investment environment by expressing the concerns of the Chinese government and industries pursuant to WTO rules, and relevant provisions of the Foreign Trade Law and the Regulation on the Administration of the Import and Export of Goods.
I. Coverage of the Report

Based on trade statistics provided by Chinese customs, and information provided by relevant Chinese government agencies and enterprises, the Report covers 25 trading partners of China, including Algeria, Argentina, Egypt, Australia, Brazil, Russia, the Philippines, Kazakhstan, the Republic of Korea, Canada, Kenya, Malaysia, the United States, Mexico, South Africa, Nigeria, the European Union, Japan, Saudi Arabia, Thailand, Turkey, New Zealand, India, Indonesia and Vietnam. China's export to these trading partners accounted for about 68.3% of China's total export in 2006.

II. Sources of information and content

The Report is based upon information compiled within Chinese central government agencies, local competent authorities for foreign trade, Chinese Commercial Counselor's Offices abroad, trade associations and enterprises. However, views and complaints of enterprises and trade associations in the Report do not necessarily represent those of the government.

Information presented in the Report on each trading partner covers mainly three areas, bilateral economic and trade development, trade and investment regime of a given trading partner and barriers to trade and investment.

Due to the constraints of technical methods and information availability, the Report, wherever possible, has evaluated the adverse impact of some of the barriers on China's foreign trade and overseas investment. The Report has not evaluated the consequent lost or to be lost trade and investment opportunities.

III. Definition and classification of barriers to trade and investment

According to Article 3 of the Trade Barriers Investigation Regulation, promulgated on Feb.2, 2005, trade barriers are defined in the Report as government imposed or government supported measures or practices that satisfy one of the following:

- inconsistent with or failing to fulfill the obligations provided in any economic and trade treaties or agreements of which both the given trading partner and China have concluded or acceded to;
- which results in one of the following negative trade effects:
  - imposing or threatening to impose obstacle or restriction on the access of
Chinese products or services to the market of the given trading partner or the market of any other trading partner;

- causing or threatening to cause impairment to the competitiveness of Chinese products or services on the market of the given trading partner or the market of any other trading partner.

- imposing or threatening to impose obstacle or restriction on the products or services of the giving trading partner or any other trading partner exporting to China.

Trade barriers are defined in the Report mainly according to WTO agreements as the majority of China’s trading partners are WTO members. In case of non-WTO members or a given trade barrier not covered by WTO agreements, bilateral or plural lateral agreements or established international trade practices will be taken as references.

The Report classifies foreign trade barriers into fourteen different categories as follows:

- Tariff and tariff administrative measures, e.g., tariff peak and unjustified practices in tariff quota administration;

- Import restrictions, e.g., unjustified import ban and import licensing;

- Barriers to Customs procedures, e.g. procedural obstacles in customs clearance, unjustified charges on imports;

- Discriminatory taxes and fees on imported goods;

- Technical barriers to trade, e.g., unjustified technical regulations and standards applied to imported products, complicated certification and conformity assessment procedures;

- Sanitary and phytosanitary measures, e.g., unnecessarily strict quarantine requirements and procedures applied to imported products;

- Trade remedies, e.g., unfair anti-dumping measures imposed on imported products, insufficient transparency in investigation procedures of trade remedy, in particular the abusive application to Chinese enterprises of measures designed for non-market economy;

- Government procurement, e.g., insufficient transparency, violation of
most-favored-nations clause;

- Export restrictions, e.g., extraterritorial legislation that restricts or impedes trade between third countries, and unjustified export control measures in the name of national security;

- Subsidies, e.g., subsidies inconsistent with WTO rules that artificially stimulate exports of particular domestic products;

- Barriers to trade in services, e.g., unjustified restrictions on access of foreign services;

- Inadequate intellectual property right protection, e.g., inadequate intellectual property protection on imported products

- Unjustifiable protection of intellectual property right e.g., restrictive measures on imported products in the name of intellectual property protection;

- Other barriers, i.e. measures or practices with trade distorting effects other than above categorized.

Barriers to investment are defined in the Report mainly according to WTO rules and relevant multilateral, plural lateral and bilateral agreements. Hereby, barriers to investment in the Report refer to government imposed or government supported measures, satisfying one of the following:

- inconsistent with a multilateral/plural-lateral agreement of which both the given trading partner and China are among the signatories, or a bilateral investment protection agreement signed between the given trading partner and China; or failing to fulfill obligations provided in a multilateral/plural-lateral investment agreement of which both the given trading partner and China are among the signatories or a bilateral investment agreement signed between the given trading partner and China.

- imposing or threatening to impose unjustified obstacle or restriction on Chinese capital’s access to or withdrawal from the market of the given trading partner; or

- causing or threatening to cause impairment to the interest of commercial entities with Chinese investment in the given trading partner.

The Report classifies barriers to investment into three different categories as follows:

- Barriers to the access of investment, e.g., unjustified restrictions on access of
foreign capital, and in case of WTO members, failure in fulfilling its commitment to open certain sectors to foreign investment;

- Barriers to operation, e.g., unjustified restrictions on the operation of foreign invested enterprises in their production, supply, sales, human resources management, finance, logistics, etc.;

- Barriers to withdrawal of investment, e.g., restrictions on the withdrawal of foreign investment or the transfer of profits of foreign invested enterprises from the host-country.

Besides, the WTO General Agreement on Trade in Services (GATS) takes commercial presence as trade in service. However, in practice, supply of services by commercial presence is usually accompanied or completed by investment. Therefore, certain investment restrictions on commercial presence can be regarded as either barriers to trade in services or barriers to investment. In view of harmonizing the categorization in the Report in line with the GATS, investment restrictions on commercial presence are classified as barriers to trade in services.

The comments in the Report are based on the information we have received, so it doesn’t necessarily mean that the trade partners covered in the Report don’t maintain any barriers to trade and investment of other unmentioned categories.

Others

The Chinese Government respects and maintains the trade and investment system as advocated by WTO, and would develop partnership with all the WTO members and other parties based on the principle of friendly mutual benefit, mutual development. It is advocated that trade disputes and common concerns should be tackled with respective parties through multilateral and bilateral consultation and dialogue in order to jointly create and maintain an fair and justified international trade and investment condition and international economic order.

Algeria

1 Bilateral trade relations

According to China Customs, the bilateral trade volume between China and Algeria reached US $2.09 billion in 2006, up by 18.2%, among which China's export to Algeria was US $1.95 billion, up by 38.7%, while China's import from Algeria was US $140 million, down by 60.7%. China had a surplus of US $1.81 billion. China mainly exported mechanical appliances and accessories thereof, machinery and electronic products, vehicles and parts and accessories thereof, iron and steel products, clothing and accessories thereof, rubber and articles thereof, footwear, ceramic products, plastic and products thereof. China mainly imported from Algeria mineral fuels, plastic and products thereof, cork and articles of cork, copper and articles thereof, raw hides and skins(other than furskins) and leather.

According to the Ministry of Commerce(MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by Chinese companies in Algeria had reached US $5.13 billion and the volume of completed labor service cooperation contracts was US $150 million.

According to MOFCOM, Chinese non-financial direct investment in Algeria, approved by or put on record in MOFCOM, was US $62.48 million in 2006. Algeria investors invested in 3 projects in China in 2006, with a contractual investment of US $10.31 million and an actual utilization of US $6.58 million.

2 Trade and investment regime

The administration system of trade and investment in Algeria is mainly regulated by the Customs Law, the Investment Law, the Trade Law, the Business Law, the Trademark Law, the Phytosanitary and Sanitary Control Regulations, the 2005 Supplementary Finance Act, and the Capital Investment Company Act. In Algeria, the main authorities governing trade include the Ministry of Trade, the Algerian Customs, the Algerian National Tax Bureau and its subordinate agencies and the Algerian Business Registration Center. The main authorities governing investment in Algeria include the National Investment Development Agency(ANDI), the National Investment Council(CNI) and the Ministry for Participation and Investment Promotion(MPPI).

2.1 Trade administration and its development
2.1.1 Tariff system

In 2006, the Algerian Customs continued to apply three levels of basic tariff rates: 5%, 15% and 30%. The 5% rate is levied on all raw materials, pharmaceuticals and equipment for investment approved by ANDI, while the 15% rate is imposed on semi-finished products, dried vegetables and low emission cars, and the 30% rate on finished products.

According to the 2001 Complementary Finance Act, a temporary additional duty (DAP) has been imposed on nearly 500 import items since 2001 for the purpose of protecting domestic industry. The measure was removed completely in January 2006 through gradual rate decrease over 5 years.

In 2006, the Algerian government made some adjustments to tariffs on certain products: the tariffs on computer hardware and software products were lowered to 5%; the tariffs on imported petrol, lubricate and other refined oil were imposed at a level of 12.5 thousand dinar (about US $209) per ton.

2.1.2 Import administration

Algeria pursues a free trade policy in import administration, but not in areas involving security order, human and animal health, environmental protection, protection of animals and plants, and cultural heritage. In addition, Algeria prohibits the importation of pork, and plants genetically modified for reproduction.

Algeria opened its pharmaceutical market in 2005. However, to encourage investment in pharmaceutical industry, the Algerian Ministry of Health stipulates that the import and sales permit of pharmaceutical products obtained by either local or foreign registered importers will be revoked if the importers don’t invest in the production of pharmaceutical products within the two years after acquiring the permit.

In order to regulate the import of gold products, the Algeria government fully liberalized its restrictions on the import of gold in 2005, allowing private corporations to deal in gold. In the same year, to accelerate Algeria’s entry into the WTO, the Algerian government passed a resolution of lifting the ban on the import of wine products, expressing that it is to carry out laws which meet with the international commitments and requirements for the import and export of wine products.
In a move against fraudulent operators, the Algerian government now requires all importers to pay a fee of 10,000 DA (about US $167) for each importing transaction. Specifically, the importer is required to pay this amount to the tax authorities in order to obtain banking facilities. This procedure will allow the tax authorities to monitor and identify all importers and ensure that their dealings are open and legal.

In 2006, the Algeria government promulgated a new act which requires that importers should specify in Arabic in their import declarations the origin of the product, name and address of the manufacturer, expiry date and ingredients, otherwise their products will be considered as counterfeit or smuggled ones.

2.1.3 Export administration

In 2006, Algeria took a series of measures to encourage the exportation of non petroleum and non gas products in order to change the current situation of sole reliance on exports of petroleum and natural gas products. At the same time, Algeria simplified registration procedure for business enterprises, with a view to encouraging exportation. In 2006, the Algeria government strengthened efforts to better serve business enterprises, crack down on informal markets and protect the rights and interests of consumers, which are considered as the major tasks in foreign trade. Through the promulgation of the Consumption Law, the Food Trademark Law and the Customs Supervision Law, the government has reinforced efforts to combat behaviors which endanger the safety of trade and business or the rights and interests of consumers.

2.2 Investment administration and its development

Foreign investment is encouraged in Algeria. During the Rehabilitation Program of 2005—2009, a series of reforms have been or will be carried out by the government to attract foreign investment for the purpose of promoting its national economic recovery.

2.2.1 The 2006 Supplementary Finance Act

The Algeria government promulgated the 2006 Supplementary Finance Act on July 15, 2006, which serves as an amendment to the Finance Act. Major changes affecting investment include: (1) taxation: corporate profit tax is lowered from 30% to 25%, reinvestment profit tax from 15% to 12.5%, and value added tax return cycle is advanced to the same month; (2) Industrial Land: at present, the main way adopted by
the government is Franchised Management i.e. first, transferring land use rights to investors in the form of franchised management, and then, allowing investors to purchase land ownership on the completion of the project. Specific implementation measures are still under discussion.

2.2.2 Amendments to the Investment Law

In 2006, Algeria published amendments to the Investment Law, making amendment and supplement to the Investment Law of 2001. The new act provides several preferential policies to investment and divides the preferential policies into three categories, whose main points are as follows:

(1) Providing preferential policies to all legitimate investment projects

It is applicable to all legitimate investment projects. After applying with and getting approved by ANDI, any investment project during the implementation period can enjoy tax favors such as duty exemption on imported goods directly involved in the investment implementation, VAT exemption on goods and services directly inputted in the investment, whether imported or purchased on the domestic market, transfer tax exemption for all real estate purchases made for the specific purpose of the investment. In the 3 years after the official start of operation (which needs the proof of tax department), investment projects can be exempt from taxation on Corporate Profits (IBS) and Tax on Professional Activity (TAP).

(2) Preferential policies for investment projects in zones under special state support

Such kind of investment projects are eligible for the following favors during the implementation period: transfer tax exemption for all real estate purchases made for the specific purpose of the investment; customs duties exemption on imported goods directly involved in the investment implementation; application of the fixed registration fee at the reduced rate of 0.2% for corporations and capital increases; After an evaluation made by the Agency the expenditure related to the infrastructure works required for the investment shall be partially or totally covered by the government; After the official start of operation (which needs the proof of tax department), investment projects are eligible for the following favors: Exemption for a period of ten years of effective activity from taxation on Corporate Profits (IBS) and Tax on Professional Activity (TAP); Exemption for ten (10) years, from the date of purchase, from land tax on real estate which is directly involved in investment; Granting additional incentives intended to improve and/or facilitate investment, such as the carry forward of losses and depreciation.
(3) Preferential policies for investments with a particular interest for the development of the national economy

After representatives of ANDI and investors have negotiated and signed relevant agreements, the preferential policies approved by CNI for investment projects of this category are as follows: At the implementation period (5 years at most), investment projects can be exempt from all taxes on goods and services directly inputted in the investment, whether imported or purchased on the domestic market, from the fixed registration fee on transferring real estate involved in investment and on publishing legal notice for it, from fixed registration fee for corporations and capital increases, and from land tax on real estate which is directly involved in investment. After the official start of operation (which needs the proof of tax department), investment projects can be exempt for a period of ten (10) years from taxation on Corporate Profits (IBS).

In addition, the new act has also shortened the time of response which ANDI makes to investors who apply for preference. Except investments with a particular interest for the development of the national economy, ANDI makes response within 72 hours to preferential applications at the implementation stage of the investment and within 10 days to those at the operation stage. According to the resolution of CNI, additional incentives can be granted to such investment.

2.3 Administrative measures related to trade and investment and their development

To promote the reforming of the financial system, the Algerian government has promulgated a series of laws and regulations since 2005, such as the Regulations on Real Time and Emergency Capital Trading System, the Regulations on Checks and Other Means of Payment, and the Regulations on Secure Payment. According to these regulations, in 2006, the Algeria government further accelerated the reform of its financial system. Large value payment systems and real time capital trading systems in the charge of ministerial level representatives of Algerian financial reforms and the Central Bank of Algeria respectively were fully launched. With the support of the World Bank, the real time and emergency capital trading system of the Algerian Central Bank was officially opened in 2006. National People’s Assembly of Algeria considered and passed the Insurance Law in 2006, with a view to protecting the interests and rights of the insured, strengthening the supervision over insurance companies and maintaining a normal financial order.

In a move against tax evasion and money laundering and in order to further regulate financial operation, the Algerian government requires that, since September 1, 2006,
large commercial transactions equal to or more than 50,000 dinar (about $ 835) shall be paid by checks or credit cards. Offenders will be fined 50,000 to 500,000 dinar.

2.4 Measures against specific products

2.4.1 Prohibition of exporting scrap metals

According to the Algerian government, the smuggling in the export of such products is serious, so are the thefts of railway tracks, electrical copper wires and cables. Most of the exported scrap metals after an offshore processing are reimported at a higher price. Considering the adverse effects of the scrap metal trade on Algeria’s national economy, the Algerian Ministry of Commerce put an official ban on the export of scrap metal in 2006.

2.4.2 Petroleum and natural gas

According to the Hydrocarbons Law which was promulgated in 2005, Algeria further opened such sectors as oil and gas exploration, exploitation, refining, transportation, storage and distribution to foreigners in 2006. Meanwhile, Algeria abolished the provisions of sales restrictions in oil and gas supply contracts to encourage foreign enterprises to invest and participate in the exploitation of oil and gas resources in Algeria.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

The average tariff rate of Algeria is 18.7%. High rates, at a level of 30%, are applied to food, beverages, tobacco, and consumer goods. Since 2002, Algeria has applied three levels of basic tariff rates, i.e. a 5% rate is levied on raw materials, while a 15% rate is imposed on semi-finished products and a 30% rate is on finished products. As a result, tariff escalation is common in Algeria.

3.2 Import restrictions

The Algerian Ministry of Health stipulates that the import and sales permit of
pharmaceutical products obtained by either local or foreign registered importers of pharmaceutical products will be revoked if the importers don’t invest in the production of pharmaceutical products within the two years after acquiring the permit. Although this policy is to encourage investment in pharmaceutical products, the action of tying trade and investment together compulsorily has actually restricted the export and sales of pharmaceutical products to Algeria. The Chinese side expresses concern over this issue.

3.3 Barriers to customs procedures

3.3.1 Time-consuming customs clearance

According to a survey on 51 countries conducted by the World Bank, which has ranked these countries on the basis of the length of time needed for customs clearance, Algeria ranked No.1, with the longest 23 days. The delay of customs clearance can affect the exportation of seasonable and perishable goods to Algeria. The Chinese side expresses concerns over this matter.

3.3.2 Unreasonable regulations on return or transshipment of port-stranded goods

According to the regulations of the Algerian customs, to return or transfer goods originally intended for exportation to Algeria, a certificate of rejection from the consignee needs to be presented, without which no person (neither the owner nor the exporter) is entitled to return or transfer the goods. If an exporter makes delivery to an Algerian importer after receiving a certain amount of down payment or advance payment and the importer rejects the goods or is unable to pay the rest of the amount in a timely manner when the goods arrive at port, and refuses to write a certificate of rejection, neither the owner nor the exporter of the goods is entitled to return or transfer the goods. The imports will be confiscated and put on auction by the Algerian Customs after a period or sold to the importer at a lower price before confiscated. Such requirement is unfair to foreign exporters. Chinese enterprises have encountered this problem on several occasions and have suffered severe economic losses. The Chinese side expresses concern over this issue, and hopes that Algeria will soon remove the requirement so as to protect the justified interests of exporters.

3.3.3 Unreasonable taxation

The Algerian government now requires all importers to pay a fee of 10,000 dinar (US $167) for each importing transaction. Specifically, the importer is required to pay this amount to the tax authorities in order to obtain banking facilities. This procedure
is intended to ensure that each deal is under the supervision of the taxation bureau and is conducted in a legitimate way. In fact, the Algerian government does not have to use forced payment of fees in order to put import under supervision. Also, the setting of the fee rates lacks reasonable grounds. The Chinese side expresses concern over this issue.

3.4 Technical barriers to trade

In September, 2006, the Algerian Ministry of Water Resources stipulated a sanitary technical guide to the new construction of water projects and national water network rehabilitation projects with a view to leading relevant governmental departments, project contractors and owners to carry out their construction in accordance with relevant domestic and international standards to avoid rework of pavements due to the misconnection of water pipe network. The sanitary technical guide stipulates the standards for project materials and parameter standards for water collecting pipes and their joints and soil. However, this guide fails to specify the parameters for relevant standards. It only indicates that suitable parameter standards will be provided in future project bids. China hopes that the Algerian side will, in the principle of transparency, make public at an early that the parameter standard cited in the technical guide and adopt relevant international standard to avoid unfair treatment to foreign corporations.

3.5 Sanitary and phytosanitary measures

Algeria has further raised its tolerance of aflatoxin in imported peanuts since 2006, stipulating that the amount of aflatoxin in peanuts is limited to 4PPB and bellow. According to the standards of the Codex Alimentarius Commission, the tolerance of aflatoxin content in peanuts ready for human consumption should be not more than 15PPB. Algeria’s new standard is higher than the international standard. China expresses concern over this issue.

3.6 Barriers to trade in services

When inviting bidders for open tenders, especially for major equipment procurement tenders, the Algerian government usually requires that foreign bidders should provide financing plans or they should do business or make investment with their own money. In addition, the Algerian government gives local companies bid prices 15% lower than those of foreign companies, and foreign bidders are not granted national treatment.
According to the Central Bank of Algeria, in engineering projects, the contractor’s performance bond to the owner must be issued by Algerian local banks. Therefore, foreign contractors, whose original banks do not have branches in Algeria, have to apply to local banks for bonds, which increase the cost of foreign corporations in Algeria.

3.7 Visa

It is a very lengthy and complicated procedure for foreign workers to obtain a working visa of Algeria, which takes 2 or 3 months. The trouble in obtaining visa makes it hard for Chinese salesmen and after sales service technicians to make timely visits to Algeria, and therefore has affected China’s export of equipment to Algeria. Besides, because of the shortage of local skilled workers, visa difficulties have created a shortage of skilled workers to foreign invested enterprises in Algeria. Chinese corporations have suffered procrastination of projects owing to the delayed arrival of technicians due to the lengthy visa procedures.

4 Barriers to investment

4.1 Applying for starting companies

Algerian commercial law is very complex. Many foreign investors are confused and can only rely on local lawyers or agents to ensure that all procedures and rules are followed. Besides, due to complicated procedure, starting a business in Algeria takes an average of 24 days.

4.2 Controls on foreign exchanges

Algeria imposes controls on foreign exchanges, setting many restrictions to the payment and transference of foreign exchanges. Foreign investors are allowed to remit their profits through strict identification and repatriation procedures, and acquiring the permission of profit remitting needs a very long period. Thus, enterprises have to have a stronger cash flow capacity and this has increased burdens on required capital for investment. The Chinese side expresses concern over this.

It is required in Algeria that foreign enterprises which deal in petroleum engineering services or research projects have to pay 24% service tax when they transfer project funds overseas. This measure has increased operating cost of foreign enterprises.
4.3 Long-term residence permits

In the past, according to relevant Algerian laws, foreign shareholders who set up companies in Algeria and their spouses could apply for 2-year residence permits which can be renewed. While now, some police offices in Algeria claim that new regulations have been promulgated, which stipulate that only corporate representatives and their spouses can get 2-year residence permits and require that foreigners provide original materials submitted two years ago to get their permits renewed before they become invalid, otherwise no renewal shall be granted.

4.4 Others

Foreign workers in Algeria are required to pay a variety of fees in accordance with Algerian laws, such as social security, which amounts to 48% of the total salary. As Chinese workers usually return to China after working in Algeria for one or two years, they are unable to enjoy those benefits. Such required fees have increased costs to foreign enterprises and affected their competitiveness.
Argentina

1. A Brief Introduction to the Bilateral Trade and Investment

According to the statistics of China Customs, the total bilateral trade volume between China and Argentina in 2006 amounted up to US $5.7 billion, with an 11.3% increase compared with last year, among which China’s export to Argentina was reported a 51.3% increase over last year to US $2 billion while import from Argentina a 2.6% decline to 37 billion dollars compared with last year, and China had an unfavorable trade balance of US $17 billion. Products China exported to Argentina mainly included motor cycles, bicycles with donkey engine, automatic data processing equipment and components, video recording and reproducing apparatus, organic compound and inorganic compound, air pumps and vacuum pumps etc. Products imported from Argentina included soy beans, soybean oil, petroleum and crude oil, copper ore sand and concentrate, seamless steel pipes and leathers etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by Chinese companies in Argentina had reached US $280 million, and the volume of completed labor service contracts had reached US $93.16 million.

According to MOFCOM, China’s total nonfinancial foreign direct investment (FDI), approved by or filed with MOFCOM, reached US $560,000 in 2006. Argentina investors invested in 19 projects in China in 2006, with a total contractual investment of US $18.43 million and an actual utilization of US $6.86 million.

In 2006, approved or recorded by China Ministry of Commerce, the total volume of China’s nonfinancial investment in Argentina was US $560,000.

Besides, according to the statistics of China Ministry of Commerce, Argentina invested projects in China recorded 19 in 2006, with contracted investment amounting to US $18.43 million, including US $6.86 million paid up capital.

2. A Brief Introduction to the Trade Investment Regime

2.1 Legislation on trade and investment

Argentina’s trade-related legislation mainly consists of its Customs Regulations, and acts and decisions governing export refunds, bonded zones imports, trade remedies, and commodity inspection.
Argentina’s legislation governing investment mainly includes Executive Order No.1853/1993 issued in 1993, Foreign Investment Act No.21382 promulgated under the said Executive Order. Besides, investment related legislations also include the Constitution of Argentina, the Business Association Law No. 19550, the Mining Industry Investment Law and the Forestation Investment Law, etc.

2.2 Trade Administration and Its Development

2.2.1 Tariff regimes

Argentina’s import tariffs are classified into Ordinary Custom duties and Special Custom duties, with the latter applied mainly to the imported goods from the member countries of the free trade area within MERCOSUR. Only the Ordinary Customs duties are applied to imports from China at present.

In 1994, member countries of MERCOSUL formulated Common External Tariff in the light of MERCOSUL Committee’s Resolution No.22/92. Except for automobiles which were levied 35% tariff and a limited number of goods from some specific countries, a great majority of the imported goods subject to the Common External Tariff are levied an ad valorem tax ranging from 0% to 20%, with the average tariff at about 11%.

According to the MERCOSIUL Committee’s CMC 38/05 Decision, Before Dec.31, 2008, products under 100 8-digit tariff numbers from the NCM member countries will be exempted from the CET every year. Besides, the tariff numbers will be adjusted very six months, and 20% of the exceptional tariff numbers can be adjusted at most.

In addition, a 21% VAT and a 9% additional VAT are levied on various imports. (Both are imposed on the basis of the CIF prices of the import commodity, and VAT must be paid before the dutiable commodity passes the customs. After selling out the said commodity, the importer may have the amount of the pre-paid tax deducted from the total amount of taxable VATs.)

2.2.2 Import Administration

Argentina’s import licenses are categorized as automatic import license and non automatic license, and are supervised by the Office of Industry, Commerce and small and Medium Companies. The No. 24425 Acts of Argentina contains some stipulations concerning the Non-automatic License system, and the National Foreign Trade Management Directorate is responsible for verifying and issuing the license.
The automatic licenses currently administered include the Sworn Declaration of Product Composition (DJCP) and the Prior Automatic Import License (LAPI). Procedures for the DJCP are manual and its applications are submitted to the Directorate of Imports under the Undersecretariat for Trade Policy and Management. And the LAPI is the first computerized import license processed by the MARIA Computer system in Argentina.(SIM).

Products subject to the DJCP license mainly cover textiles and Clothing industry. And those subject to LAPI include footwear parts, paper in reams and rolls, textiles (cotton and synthetic yarns), components and spare parts of the agricultural machinery, telephone accessories, cardboard boxes, wood furniture (bedroom furniture and cupboards), dried egg yolks and canned peaches etc.

In 2006, products subject to Argentina's non-automatic license included: footwear, paper, bicycles, washing machines, toys, tires and inner tubes and motorcycles.

Argentina banned the import of worn garments, used tires, modified auto parts, second-hand or repaired medical apparatus. Besides, prior governmental approval shall be obtained for the importation of cotton seeds, potatoes to be used as seeds, fresh fishes, vegetables, dry nuts, hard nuts, drummed apples, poultry, eggs, salted fishes, dried fishes, pesticides, stuff for husbandry, foodstuffs, pharmaceuticals, explosives, firearms, ammunitions, plants and related products, tobacco and glucide.

Quotas must also be obtained for importing automobiles while pulp, paper products and certain selected goods are subject to provisional import quotas.

2.2.3 Export Administration

Argentina's No.23101 Acts establishes the export promoting regime to encourage the medium and small companies to enter international market and to reduce the cost of exported products with high additional values. The 755th Article of Custom Act No.22415 stipulates that the National Executive Authority has the right to reduce taxes for the exported products.

To promote the export of wheat flour and its byproducts, Argentina started to reduce or exempt the VAT of wheat processed products as from Oct.21, 2006. The National Office of Agricultural and Commercial Control under the Secretariat of Agriculture, Livestock, Fishery and Alimentation is responsible for the registration of "the Flour
Production Items’. The exporter should register in the National Office of Agricultural and Commercial Control the amount of the wheat flour and its byproducts to be exported, and every year the first 2 million tons of the overall national output will be exempted from VAT. The National Office of Agricultural and Commercial Control and the Federal Administration of Public Revenue are responsible for normalizing the application procedure of wheat flour production.

To propel its foodstuff to enter the world market, the Secretariat of Agriculture, Livestock, Fishery and Alimentation has launched the quality inspection mark ‘Argentina Natural Choice’ and established Argentine Food Prize. The Secretariat is responsible for the registration of the mark which will be conferred onto the food processors who have reached the relevant quality standards. The quality inspection system will urge enterprises applying for the said quality mark to draft quality control manuals in terms of the quality standards of each product. This quality control measure also includes a third party hearing system, and the Secretariat of Agriculture, Livestock, Fishery and Alimentation will supervise the implementation of this measure and grant gratis the right of using the quality inspection mark.

On Oct.3, 2006, the Secretariat of Agriculture, Livestock, Fishery and Alimentation of Argentina and the General Administration of Quality Supervision, Inspection and Quarantine of People’s Republic of China signed the ‘Agreement on Phytosanitary Requirements on Argentine Exported Tobacco Leaves to China’, in the light of which, the tobacco leaves Argentina exports to China must comply with relevant regulations.

2.2.4 Trade Remedies

Argentine No. 24425 Act had integrated some relevant treaties of GATT 1994 into its legislations and the NO.1326 Act promulgated on Nov.10, 1998 has incorporated ‘WTO Anti-dumping Agreement’ into Argentina’s trade legislations.

On Sept.12, 2006, Argentina’s Ministry of Economy and Production promulgated Act No.1219/2006 which applies to countries of non-market economy or those transferring to market economy. The Act concerns how to determine such problems as the normal values and price comparability of the products imported from above said countries in the anti-dumping investigation. As for the products imported from the non-market economy countries or from those transferring to market economy, the normal values should be determined on the basis of the domestic sales prices of the third country of market economy or of the prices of the like products exported by the third country to other countries (including Argentina).

Parties involved may state their opinions on the selected third country within ten days
after the authoritative department publishes the investigation announcement on Argentina’s ‘Official Bulletin’.

2.2.5 Other related regimes

Argentina and Brazil reached an agreement in July 2006, deciding to establish the non-USD regime for bilateral trade settlement and to adopt gradually a mutual currency for bilateral trade settlement, so as to pave the way for the establishment of the future common currency of NCM. As the first step, the technical personnel from the central banks of both countries will conduct respectively the technical research for this and draw up specific proposals.

2.2.6 Trade Investment Administration

The Ministry of Economy and Production is in charge of Argentina’s foreign trade, and its subordinate Secretariat of Industry, Commerce and Small and Medium Companies is responsible for the enactment of the disciplines and surveillance over the implementation thereof. Under the Secretariat there is an Office of Under Secretary of Foreign Trade that deals with the routine affairs involved in foreign trade. Argentina’s national customs is also an enforcement body of the regulations and policies governing foreign trade. The Ministry of Foreign Affairs is in charge of the negotiations on economic and trade affairs between governments, while the subordinate Directorate of International Economic Negotiation participates in the specific negotiations.

With respect to the foreign investment administration, the Secretariat of Industry, Commerce and Small and Medium Companies is also responsible for the implementation of the Foreign Investment Law. The subordinate Investment Promotion Agency mainly functions to identify trade opportunities in different sectors and regions, to provide and publish information on investment, and to promote investment in Argentina in collaboration with other relevant countries and its provincial administrations.

2.3 Investment Administration and Its Development

Argentine government encourages foreigners to invest in such industries as automobile and auto components manufacturing, mining, forestry, software development, ecological petroleum.

Argentina’s reserve of the mining resources ranks No.6 in the world, 70% of which remains undeveloped. To invite more foreign investment in mining industry, Argentina has promulgated particularly the No.24196 ‘Mining Investment Law’, to establish a 30-year guarantee of fiscal stability for new projects and to ensure the
extension of existing projects.

To propel the development of forestry, Argentina has promulgated Act No.25080/1999, namely ‘Law of Forestry Investment’ to encourage the investment in forest cultivation. The law establishes a fiscal stability for a period of 33 years for investors.

Act No.24942 has set up a new mechanism for encouraging investment and adopted measures such as the accelerated depreciation for machinery, equipment and infrastructure works to incorporate them into cost and the policy of refunding VAT for the imported goods destined for use in investment projects.

Foreign investors have the same rights and obligations as the Argentine nationals in economic activities and may adopt any kind of investment forms permitted by Argentine laws, such as companies, partnership with limited liability, branches, joint ventures, temporary partnership or temporary associates, etc.

Foreign companies may invest without prior approval and may have unrestricted access to economic activities of all sectors except important military field and places, which includes industry, mining, agriculture, commerce, finance, service and other economic activities related with production or exchanging of products or services, and are free to withdraw the capital and remit it to other countries.

2.4 Administration Regime Related with Trade Investment and Its Development

The Secretariat of Industry, Commerce and Small and Medium Companies under the Ministry of Economy and Production is in charge of implementing the policy concerning the non-automatic license for importing motorcycles. The Secretariat is responsible for the applying procedure of the license, interpreting the license measures and providing accurate details, besides, it also holds the responsibility for adjusting the products covered by the tariff list.

2.5 Management measures for Specific Products

On Aug.30, 2006, the Ministry of Economy and Production issued Resolution No.689/2006 concerning the import of motorcycles. The new Resolution imposes a restriction on the imported motorcycles in the form of non-automatic license and applies mainly to motorcycles with the volume of the air cylinder below 50cc, below or at 125cc or over125cc and other motorcycles.

3 Barriers to Trade

3.1 Tariffs and Tariff Administrative Measures
In 2006, Argentina’s average tariff rate was about 10.4%, that for agricultural products 9.9%, and that for non-agricultural products 10.5%. The tariff for about 430 products under the 8-digit tariff numbers was 35%, and besides, Argentina levies 0.5% statistics fee for most imported products.

3.2 Import Restrictions

From Oct, 2005 to Oct. 2006, Argentina applied the non-automatic license to toys, footwear and motorcycles. It is understood that apart from the said products, the non-automatic license is also applied to washing machines, carpets, paper for printing and firearms and ammunitions. The complicated applying procedure for this kind of license and its short term of validity (60 or 90 days only) bring importers huge inconvenience and result in some instability to the export of related products.

3.2.1 Toys and Footwear

On Apr. 30, 2006, Argentina government proclaimed the new measures for protecting domestic footwear and toy manufacturing industries, requiring that importers must apply to the Argentine Government for license when importing footwear and toys from China and Brazil, the validity period of which is not stable. Products subject to the new measure also include the ones Argentina does not produce domestically. As a result, the import of these products will not create any competition to Argentina’s domestic industries or hinder these industries’ development. Meanwhile, the period allowed by the new measure for the application of import licenses has been found too short for importers to complete all the relevant procedures.

3.2.2 Motorcycles

On Aug 30, 2006, the Ministry of Economics and Production proclaimed Resolution No. 689/2006 under the pretext of the overgrowing importation, deciding to adopt non-automatic license for the import of motorcycles. The new Resolution applies mainly to four kinds of motorcycles which respectively have the volume of the air cylinder below 50cc, below or at 125cc or over 125cc and other motorcycles.

Since Argentina imports the four kinds of motorcycles mainly from China, the Chinese side has expressed concern over the influence of the implementation of the resolution on the Chinese motorcycle exports to Argentina.

3.2.3 Other Measures

In Sept. 2005, Argentina signed an agreement with Brazil, deciding to adopt a pre-judging measure against products from China. According to this agreement, the two
countries will exchange information about the imports from China and will oblige the technical panel to study and decide what measures to take to restrict the import of related products.

3.3 Export Restrictions

Argentina Government requires that all the exports of agricultural products must be registered and will be priced referentially in terms of the registrations of the very day. On Dec.20, 2006, Argentina promulgated Resolution No.775 concerning the termination of the registration of corn export. On Jan.11, 2007, the Argentine Ministry of Economy issued Resolutions No. 9 and 10, declaring to impose an additional 4% export duty on soybeans, soybean oil and other selected products.

3.4 Barriers to Customs Procedures

In order to fight against low priced customs declarations, the Argentine Federal Bureau of Public Revenue(AFIP) amended in August 2005 the standards for the evaluation of imports. According to the new standards, the customs declaration made at or below 80% of the standard value shall be subject to a punitive additional VAT and an income tax ranging from 3% to 5% and from 7% to 10% respectively. The new standard value of such products as textiles, toys, footwear, household electrical appliances is calculated at 200% of the original reference value.

In 2006, Argentine Federal Tax Bureau requires that the declaration of such products as fabrics, clothing, footwear and toys imported from China, Taipei China, Malaysia, Central America and the South area of Brazil should be conducted at the 14 specially designated customs established at Buenos Aires, Mar Del Plata, Rosario before they enter Argentine market. If the designated products from the above mentioned countries and regions are declared at other customs, they must go through ‘the Special Red Channel’ for more detailed examination.

3.5 Technical Trade Barriers

On Jun. 12, 2006, Argentina declared two Regulations, namely ‘the MERCOSUR Draft Resolution: Technical Regulations on the Verification of the Net Weight of Marches and Toothpicks’ and ‘the MERCOSUR Draft Resolution: Technical Regulations on the Net Weight of the Pre packed Products’, which stipulate specific rules and regulations for verifying the net weight of matches and toothpicks which are sold pre packed, and synergized the current several articles concerning the net weight of the pre packed products into one single technical regulation.
On Sept. 27, 2006, Argentina issued ‘the Fifth Section of Argentine Food Code: Rules for Food Labeling and Advertising’, which proposes to add the following content in Article No. 233 of the Said Rules for Food Labeling and Advertising, ‘Labels for foods permitted by Argentine Food Code(foodstuff, addictives, raw materials, drinks) should be displayed in a conspicuous spot and printed in the font size no smaller than 1mm according to the regulations of the registration department, which should also carry the national food registration number issued by authoritative organization printed on the relevant license or the food registration number issued by the National Bureau of Agricultural and Foodstuff Quality and Sanitation’.

3.6 Sanitary and Phytosanitary Measures

Argentina promulgated ‘Amendment No. 1340 of Argentine Food Code’ on Sept 26, 2006 to replace ‘Article No. 1340 of Argentine Food Code’, which defines the microbial norms the special foodstuff must confirm to. The execution standards of these norms vary with products.

3.7 Trade Remedies

According to the statistics of WTO, the number of anti dumping investigations initiated by Argentina between 1995 and 2005 ranks No. 4 among all the member countries, totally 204 cases, accounting for 7.2% of all the anti dumping investigations launched by members within the same period. Among these, the number of anti dumping investigations against China accounts for 23% of all the cases launched by Argentina in the period, ranking No. 1 of all the nations being investigated. By the end of 2005, of the 41 final judgments of the anti dumping cases, 34 cases were adjudicated as anti dumping, accounting for a percentage as high as 82.9, even higher than those in America(73.2%), EU(65.1%) and South Africa(81.0%).

From 1991 to 2006, Argentina called for 52 trade remedies investigations against China, of which 48 were anti dumping investigations, accounting for 92.8%. By the end of 2006, five safeguard measure investigations launched by Argentina related to Chinese products, of which 3 cases involved light industry products, and the other 2 concerned fabrics and automobile respectively.

The product and industry scope where Argentina conducts anti dumping investigation against China is being expanded incessantly. By the end of 2006, industries involved had included light industries, textiles, machinery and automobiles, metal products, chemicals, metallurgy, electronics, building materials and pharmaceutical.
By the end of 2006, the anti-dumping cases being effectively executed by Argentina altogether involved 57 kinds of products, of which 15 related to China, accounting for 26.3%.

(1) Anti-dumping

(a) New Cases Initiated in Year 2006

On Sept. 5, 2006, Argentine Undersecretariat of Trade Policy and Management issued No. 287 Resolution, which declared that Argentina would apply the anti-dumping investigation procedure to such products as glasses, mugs, and pots originally made in China and Brazil.

(b) The Progression of the Anti-dumping Cases Initiated in Year 2005

The primary ruling by the Office of Unfair Competition under the Undersecretariat of Trade Policy and Management ascertained that the dumping profit margin of Chinese furfural and products was 78.46%, and that for furfural alcohol was 12.15%. But the primary ruling by Argentine Foreign Trade Committee that was responsible for industry injury investigation ascertained that these said products did not jeopardize Argentine national industries and the case was concluded with no measures taken. But the Austin seamed stainless steel pipes and products originally made in China will be subject to a provisional lowest import price restriction (FOB) of US $4.54 per kilo for 4 months. Argentine Office of Unfair Competition also ruled that the dumping profit margin of the China-made manual screwdrivers was 189.47%, but similarly, Argentine Foreign Trade Committee ascertained that the involved products did not result in any injury to the domestic like industries and concluded the case without taking any measures. Additionally, Argentina adopted a provisional restrictive measure to the anti-dumping case of China-made tapelines and imposed the lowest FOB price of USD 1.97 per piece on this product, which went into effect from Oct. 25, 2006 and will be valid for 4 months.

(c) The Anti-dumping Review

The products involved in Argentina’s anti-dumping review against China in 2006 included Celphos, thermos flasks, microwaves, spokes and capped spokes used in tires of bicycles and motorcycles, new inflated rubber tires used in bicycles, ball bearings, playing cards and air conditioners, etc. The results and progressions of these cases are as follows: keep the lowest restrictive import price for the Celphos at USD 13.26 per kilo, which will be valid for five years as from Jun. 15, 2006; keep the lowest restrictive import price initiated by the Argentine former Ministry of Economy and Production on Dec. 3 2002 for the ball bearings of 30mm—120mm originally
made in China, namely the lowest CIF price ranging from USD 17.66 to USD 49.97 per kilo, with a five year validity period as of May 30, 2006; the evidence collecting for the anti dumping review investigation against spokes and capped spokes used in tires of bicycles and motorcycles and new inflated rubber tires used in bicycles imported from China has been completed, and the anti dumping review procedure for Chinese playing cards, air conditioners and microwaves has been prolonged.

On Oct.12, in the light of relevant Argentine resolutions, the Undersecretariat of Trade Management and Policy launched the review investigation procedure for the anti dumping case against thermos flasks originally made in China, and announced that this case will be investigated with America as the substitute country for defining the related normal value. The product involved was the glass liner with the capacity below or at 2.5 liter and the review investigation is still in process now.

(d) The Status of Economy market


(e) Time Limit for Submitting the Pleading Documents

When processing the anti dumping investigation, Argentine government requires that involved companies submit pleading documents to the Office of Unfair Competition under the Undersecretariat of Trade Management and Policy within 45 days, and submit questionnaires within 30 days. Materials and answered questionnaires involved should be translated into Spanish by public translators and will be double attested by Argentine Consulate in China and Argentine Ministry of Foreign Affairs. This procedure greatly increases the difficulty for Chinese companies to defend themselves and hinders these companies pleading process.

(2) Safeguard Measures:

On Jun.8, 2006, Argentina launched safeguard measure investigation against the write once discs in the light of Resolution No.2006/158 enacted by the Secretariat of Industry, Commerce and Small and Medium Companies, and the case is still in process presently.
(3) Argentina’s Commitment to the Promises in the No. 7 Appendix of the Protocol on the Accession of the People’s Republic of China.

In the process of China’s negotiation about the accession, Argentina proposed to set up restrictions to China’s textiles and garments, non-sports shoes and toys and promised to annul the quota restrictions for the said products before Jul.31, 2002, and to grant a five-year transitional period to gradually slash the current specific duties. On Dec.12, 2001, Argentina translated the timetable settled jointly with China about the levying methods for the specific duties and lessening year by year the lowest specific import duties (DIEM) for some Chinese products into Resolution No.825/2001 of Argentine Ministry of Economy. Currently it is implementing the duty reducing scheme and will employ the 35% ad valorem duties as of Jan.1 2007.

3.8 The Barriers to Trade in Service

Argentina has made the commitment to allow foreign suppliers of non-insurance financial services to take all forms of commercial presence and to provide substantially full market access and national treatment to foreign suppliers of non-insurance financial services. But currently, Argentina has established some loaning restrictions to the businesses initiated by foreign bank branches based on local paid in capital instead of parent bank’s capital. This effectively removes the rationale for foreign banks to establish branches and initiate business activities.

There are nationality restrictions for some internal shipping, private security, and education providers.

4 Barriers to Investment

The Resolution made by the Parliament of Argentine city Lujn decided to stop issuing the business license for small-sized supermarkets by the end of 2006.
Australia

1 Bilateral trade relations

According to China’s Customs, the bilateral trade volume between China and Australia in 2006 reached US $32.95 billion, up by 20.9%, among which China’s export to Australia was US $13.63 billion, up 23.2%, while China’s import from Australia was US $19.32 billion, up 19.3%. China had a deficit of US $5.69 billion, an increase of US $560 million compared with that of last year. China mainly exported mechanical appliances, electromechanical products, electrical appliances, audiovisual equipments, clothing and knitwear, seats and furniture, entertainment products, crude oil, plastics, suitcases and bags, tires, etc. Major imported products of China from Australia included mineral products, artificial corundum, aluminum oxide and aluminum hydroxide, base metal and articles thereof, textile materials such as wool and cotton, raw skins of sheep, bovine and equine animals, cereal, etc.

According to the Ministry of Commerce (MOFCOM), by the end of 2006, the aggregate turnover of engineering contracts completed by Chinese companies in Australia stood at US $460 million, and the volume of the completed labor service contracts reached US $160 million.

According to MOFCOM, China’s direct investment in non-financial sectors in Australia, approved by or registered with MOFCOM in 2006, totaled US $87.58 million. Australian investors invested in 629 projects in China in 2006, with a contractual volume of US $2.1 billion and an actual utilization of US $550 million. By the end of 2006, Australia had accumulatively invested in 8,130 FDI projects in China with a contractual volume of US $16.84 billion and an actual utilization of US $5.03 billion.

2 Introduction to trade and investment regime

In 2006, the Australian Government implemented a host of measures including tariff concession and trade facilitation to promote foreign trade and further improve the market access for foreign investors.

2.1 Recent changes in trade administration

2.1.1 Tariff policy

2.1.1.1 Average tariff level and its trend of development

The overall tariff level in Australia is fairly low with the simple average applied tariff
of about 3.53%. The percentage of duty free lines is 47.64%, and over 86% of tariff rates are at 5% or lower. Tariff rates for such products as textiles and clothing, footwear, and the Passenger Motor Vehicles (PMV) remain on the high side. At present, tariff rate for PMV and parts is 10%, which will be finally reduced to 5% by 2010; for textiles and clothing, tariff rates range from 5% to 17.5%, which are expected to drop to 10% by 2010 and 5% by 2015; Tariff rate for footwear is 10%, which will also be reduced to 5% by 2010.

2.1.1.2 Tariff administration

In 2006, Australia reviewed the Customs HS coding. The review, taking place every five years, removes some subheadings that are hardly in use in international trade and adds some for new items. The review is intended to accommodate industrial changes and scientific development. The review in 2006 proposed amendments to 1200 subheadings, involving 20% of headings.

The reviewed Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006 was submitted to the Australian Senate, and the final amendment is effective as of January 1, 2007. Like the review in 1996 and 2002, the legislative body has claimed that best efforts would be made to maintain the present import tariff rates and preferential tariffs for trading partners.

2.1.1.3 Import linkage tax

Pursuant to the Customs Tariff Act of Australia, imported products are subject to General Sales Tax (GST), in addition to import duties. For imported wine and luxury cars, there are Wine Equalization Tax and Luxury Car Tax. Wine Equalization Tax is levied on wine, vegetable wine, apple wine, sherry, honey wine, and rice wine, and Luxury Car Tax is levied on a motor vehicle that is designed to carry a load of less than two tons and fewer than nine passengers.

2.1.2 Import administration

Regarding import administration, the Australian Government has revised AQIS Import Permit Procedures, introducing two new systems that came into force as of July 31, 2006. The new systems allow the importers to submit Import Permit applications electronically. At present, the systems are applicable to all commodities except live animals.

2.1.3 Export administration

On September 7, 2006, Australia published the Agriculture, Fisheries and Forestry Legislation Amendment (Export Control and Quarantine) Act 2006. This legislation has enhanced export administration over agricultural, fisheries, and forestry products by further regulating the exportation of restricted products and intensifying punishment on offenses.
2.1.4 Trade remedy measures

The Australian Customs are responsible for the investigation and implementation of trade remedy measures. In 2006, Australia reviewed the anti-dumping legislation, the purpose of which was to adopt certain facilitation measures, streamline submission procedures, and reduce the high expenses incurred by domestic firms for information collection after filing a complaint with relevant authorities, so as to make the access to the anti-dumping system more convenient or desirable for applicants. The facilitation measures to be implemented include: the arrangement of designated officers by the Customs to help the SMEs understand the anti-dumping system, providing the applicants with simpler, and fool-proof application guides, and providing easy access to information during the investigation process.

2.1.5 Other related policies

As indicated in the 2006—2007 Budget of Australia, the Government of Australia conducted certain reforms on the existing tax system in 2006. One of the reform measures gives enhanced assistance to the wine industry under the wine equalization tax (WET) producer rebate scheme. The maximum amount of WET rebate each wine producer may claim in each financial year will increase to AUS $500,000, compared to the current threshold of AUS $290,000. This measure is effective as of 1 July 2006.

2.1.6 Relevant institutional changes

On 10 October 2003, New Zealand and Australia signed an Agreement to establish a Joint Therapeutics Products Agency (JTPA) to regulate all therapeutic products, including over-the-counter and prescription medicines and medical devices, in the two countries. The JTPA started to operate as of 1 July 2006.

2.2 Investment administration and its development

The Australian Government has maintained the policy of encouraging foreign investment, but still runs a system of examination on foreign investment. The notification thresholds remain unchanged for investors from countries other than the US.

On 12 October 2006, the Australian Senate approved the new media framework by a majority vote, clearing the hurdle on foreign ownership of media industries that had been in place for 20 years. Previous media laws bar foreign companies from controlling more than 15% of an Australian television company and more than 25% of a newspaper publisher. Besides, the new laws are also designed to ease cross media restrictions which ban a company from owning television, radio and newspapers in the same area.
2.3 Trade and investment related administrative measures and their development

2.3.1 Trade related technical regulations

(1) The Australian Quarantine Inspection Service (AQIS) changed the packing requirements for imported fertilizers. The new measure requires imported fertilizers be packed at the place of production, in new packaging and in units of 100 kg or less. The changes, involving items under Chapter 31 and certain sections of Chapter 28, became effective from 1 September 2006.

(2) In August 2006, Australia published the draft assessment reports on Proposal P295 and Proposal P230, considering mandatory fortification with folic acid and iodine respectively. The proposals announced that Australia would consider mandatory fortification of bread with folic acid and the substitution of non-iodised salt with iodised salt in bread. The above measures are expected to be effective as of August 2007 and October 2007 respectively.

(3) In August 2006, Australia promulgated a series of vehicle standards, regarding emission standards and safety requirements, among which the standards on heavy vehicle emission control system came into force in January 2007.

2.3.2 Sanitary and phytosanitary measures

(1) In March 2006, Food Standards Australia New Zealand (FSANZ) released the draft assessment report on Primary Production & Processing Standard for Dairy, including scientific analysis of the safety of milk and milk products, management practices available to ensure the safety of milk and milk products, and draft Standard to be incorporated into the Australia New Zealand Food Standards Code. The draft Standard requires primary producers of milk and milk products, dairy transport and processing businesses to have a food safety program with appropriate documentation. The Standard is intended to consolidate existing regulatory measures into a national standard focusing on prevention and results, so as to support the safety production of dairy products.

(2) Food Standards Australia New Zealand (FSANZ) published five final assessment reports in May, August, and December 2006, for applications which seek to amend the Maximum Residue Limits for various agricultural and veterinary chemicals in the Australian New Zealand Food Standards Code. The proposed amendment considers aligning MRLs in the Code with the MRL Standards in other countries. Among the applications, assessment report for Application A586 involves the MRLs for antibacterial tilmicosin in imported and domestic honey. The relevant amendments are expected to be officially adopted in 2007.

2.4 Product specific administrative measures

(1) To reduce the propagation of some imported Colocasia esculenta (taro) for human consumption so as to lower the risk of entry of relevant quarantine pests and diseases
into Australia, Biosecurity Australia decided in July 2006 to suspend the importation of fresh Colocasia esculenta for human consumption from all countries, especially Colocasia esculenta var. antiquorum (wild taro). According to the emergency measure, the current Import Permit for fresh taro will be repealed and reissued, and only transit goods may use the current permit. The measure will remain effective until the result of the review on pests and diseases related to fresh taro is released.

(2) At the suggestion of the Department of Labor, Australia amended the Customs (Prohibited Products) Regulations, inserting chrysotile asbestos into the list of restricted imports. Although Australia adopted import and export restrictions on asbestos back in 2003, there has been no definite requirement regarding chrysotile asbestos. The amendment regulations 2006 officially put chrysotile asbestos under import prohibition. The amendment went into effect on 15 July 2006.

(3) In August 2006, the AQIS released the information amending conditions for the importation of live freshwater ornamental finfish into Australia. The amendment requires the competent authority of the Government of the exporting country endorse each page of the health certificate, and shipping invoice, or packing list, using an official stamp. These requirements came into effect from 1 October 2006.

(4) In December 2006, Biosecurity Australia issued an import risk analysis report assessing the quarantine risks associated with importing prawns and prawn products into Australia. The report proposes restrictive measures regarding the importation of prawns and prawn products, requiring country or zone disease freedom, removal of the head and shell and testing for white spot syndrome virus (WSSV), YHV and IHHNV, or a high level of processing for uncooked prawns. The prawns cooked on shore are subject to strict quarantine control, which requires relevant evidence stating that the prawns have been cooked at a temperature of 85°C.

(5) At the end of April 2006, the AQIS published the new requirements for feathers and manufactured articles containing feathers. Under the new requirements, the importation of feathers must be accompanied by a Government Veterinary Certificate issued by the exporting country, stating that the feathers in the product have received the following treatments prior to export: gamma irradiation, ethylene oxide treatment, boiling or steam sterilization achieving core temperature of at least 100°C for a minimum of 30 minutes, heat treatment with temperature of 120°C for a minimum of 30 minutes, or washed thoroughly in detergent followed by formaldehyde fumigation for 4 hours. Feathers without the required certificate are not allowed to pass the Customs.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak
Pursuant to the Schedule of Tariff Concessions, Australia further lowered the tariff rates for PMVs and PVM parts, textiles, clothing and footwear in 2006. However, the reduced rates still range from 5 to 17.5%. As these items are China’s major exports to Australia, the tariff peak has directly affected the exportation of Chinese products to Australia.

3.1.2 Discriminatory import duties and fees

The Government of Australia levies Wine Equalization Tax (WET) and Luxury Car Tax on imported wine and luxury cars. These constitute discriminatory taxes on the above imported products, especially the WET of 29%, levied before a General Sales Tax (GST). Therefore, on the importation of wine worth AUS $1000, a WET of about AUS $350 shall be paid in addition to the import duty of 5%. The WET has greatly affected the wine imports and in fact protected the domestic wine industry.

3.2 Import restriction

At the suggestion of the Department of Labor, Australia amended the Customs (Prohibited Products) Regulations in 2006, officially put chrysotile asbestos under import restriction. The amendment went into effect as of 15 July 2006. Currently, there has been no conclusion worldwide on the potential effect of chrysotile asbestos on human health. The mandatory import restriction on chrysotile asbestos imposed by the Australian Government lacks scientific justification. China, as a large exporter of asbestos, expresses concern over the matter.

3.3 Technical barriers to trade

While all technical regulations in Australia are mandatory, technical standards are categorized into mandatory and non-mandatory standards. In practice, there are differences between the Federal Government of Australia and State/Regional Governments regarding legislation and administration, and this has, to some extent, made it difficult for the Chinese products to enter the Australian market.

3.3.1 Machinery and Electronic products

Machinery and electronic products from China are regulated by Safety Certificate Standard in Australia. Pursuant to the current requirements, 63 types of machinery and electronic products are subject to safety certification before they are sold in Australia. The certification period, calculated from the moment of inspection of the product upon its arrival in Australia, could take 2 to 3 months, even if the product passes the inspection on all indicators at one time. If the product fails to pass certain inspections, it is required to be re-inspected after being improved, in which case the certification process takes longer. The lengthy certification period and expensive cost involved have exerted extra burden on Chinese exporters of machinery and electronic products. According to rough statistics, China’s export of machinery and electronic products...
account for 40% of China’s total exports to Australia. The Australian market access for machinery and electronic equipment has significant impact on China’s export interest.

3.3.2 Good manufacturing practice (GMP) for medicinal products

It is required by Australian laws that all manufacturers that supply medicines to Australia should pass Australia’s GMP accreditation. Obtaining a GMP certificate is the primary condition for foreign suppliers of medicine to Australia, but the fee for GMP accreditation in China is expensive, generally above RMB100,000. This has become the major obstacle to the applications by Chinese firms for GMP accreditation, and exerted certain negative effect on China’s export of medicine to Australia. Up to now, fewer than 20 Chinese firms have been accredited.

3.3.3 Mandatory fortification with folic acid and iodine

In August and October 2007, Australia will enforce mandatory fortification of bread with folic acid and the substitution of non-iodised salt with iodised salt in bread. While the Chinese side appreciates the measures taken by Australia to improve people’s health, mandatory fortification of bread with folic acid and iodine is not in line with the international practice. After all, most of the countries in the world don’t have such mandatory requirements, and Australia has not been able to prove by sufficient scientific evidence the urgency of such mandatory fortification. The requirements fail to meet the legitimate objective principle as prescribed in the WTO/TBT Agreement and will prove to be an unnecessary obstacle to international trade. The Chinese side suggests that Australia recommend the above requirements instead of making them mandatory.

3.4 Sanitary and phytosanitary measures

3.4.1 Quarantine and inspection standards

The Government of Australian maintains very tough sanitary and phytosanitary quarantine and inspection standards. While these standards do serve the purpose of ensuring biological security of Australia, they also successfully restrict the entry of foreign animals and plants into Australia and provide maximum protection for its domestic agricultural market.

(1) In December 2006, Australia issued an import risk analysis report on prawns and prawn products. The report proposes that appropriate risk management measures be taken regarding importing prawns into Australia. Currently, the media of Australia together with prawn producing states such as Queensland, West Australia, and Northern Territory are very concerned about WSSV associated with uncooked prawns and prawn products, requiring that the Federal Government take measures to restrict the importation of uncooked prawns and prawn products. Australia imports about
24,000 tons of uncooked prawns every year. If the Australian side adopts restrictive measures, importers will have to bear expensive fees for the testing of WSSV, leading to an increase in import cost. Besides, there are no inspection facilities available to conduct the extra testing required by the new measures. The Chinese side expresses concern over the new measures which are going to affect normal trade activities.

(2) The new requirements issued by Australia for import of solid wood packaging go beyond the International Standard for Phytosanitary Measures No. 15: Guidelines for Regulating Wood Packing Material in International Trade(ISPM15). In addition to ISPM15 requirements, Australia has maintained some of its domestic standards, such as freedom from bark, methyl bromide fumigation at 48 grams per cubic meter for 24 hours, and the timber at time of treatment being no greater than 200mm in diameter in the smallest plane. The required fumigation treatment period is much longer than 16 hours as specified under the ISPM15 standard. As Australia is one of the major destinations of Chinese wood packaging products, the Chinese side hopes that Australia seeks compliance with the relevant international standards regarding wood packaging by following the principle of necessity under the WTO/TBT Agreement.

(3) On 28 August 2006, Food Standards Australia New Zealand(FSANZ) published final assessment reports on Application A574 and Application A582 which seek to amend the Maximum Residue Limits for agricultural and veterinary chemicals in the Australian New Zealand Food Standards Code. The Chinese side hopes that FSANZ will base the amendments to the Food Standards Code on sufficient risk analysis and respect the current international standards.

(4) On 15 August 2006, the Australian Quarantine Inspection Service(AQIS) changed the packing requirements for imported fertilizers, effective from 1 September 2006. The changes, involving items under Chapter 31 and certain sections of Chapter 28, require imported fertilizers be packed at the place of production, in new packaging and in units of 100kg or less. The new requirements came into force only half a month after they were published, which didn’t leave exporters with enough time to make relevant changes and led to a loss of benefits on the part of exporters.

(5) At the end of April 2006, the AQIS published the new requirements for feathers and manufactured articles containing feathers. Under the new requirements, the importation of feathers must be accompanied by a Government Veterinary Certificate issued by the exporting country, stating that the feathers in the product have received required treatments prior to export; otherwise, consignments will not be allowed through the Customs. The above requirements became effective immediately after they were published, and no transitional period was given. As a result, some of feathers and articles containing feather from China were detained at the ports of Australia, and relevant Chinese exporters incurred losses.

3.4.2 Quarantine and inspection methods

The AQIS normally conducts inspection over imported food through sampling. If the
imported food is found not in conformity with the current regulations and standards in Australia, the owner of the consignment may either make some improvements, lower the grade, transit, or destroy the goods. If improvements are made, the owner of the consignment may apply for a reinspection. The consignment will be released if the food passes reinspection. Nevertheless, the AQIS will still issue a Holding Order in accordance with the Imported Food Control Act 1992 on the food. The rate of inspection for foods subject to a holding order is 100%. The holding order will remain in force until five consecutive shipments of the food achieve passes. China is one of the largest receivers of the holding order. Products to which the holding order applies include algae, shell fish, fish chips, spring rolls, dehydrated vegetables, fruit jelly, plum cookies, creamy apple chips, preserved peaches, and soup ingredients.

3.5 Trade remedy measures

Up to the end of 2006, Australia has initiated a total of 46 anti dumping investigations against Chinese products, 3 being initiated in 2006. Currently, Australia imposes anti dumping duties on 8 Chinese products, including glass(clear float and plain float), steel shelving kits, sodium metabisulfite, Dichlorophenoxy acetic acid(2, 4 D), hot rolled steel plate, silicon, sodium hydrogen carbonate, preserved mushrooms, and preserved pineapple. Australia ranks the 7th place among countries that have initiated anti dumping investigations on China in terms of the total number of cases. In 2006, 3 new investigations were initiated against China, showing a rising tendency compared with 2 in 2005.

3.6 Subsidies

(1) As indicated in the 2006—2007 Budget of Australia, the Government of Australia has conducted certain reforms on the existing tax system. One of the reform measures gives enhanced assistance to the wine industry under the wine equalization tax(WET) producer rebate scheme. The maximum amount of WET rebate each wine producer may claim in each financial year will increase to $500,000, compared to the current threshold of $290,000. This measure became effective as of 1 July 2006 and has significantly enhanced the competitiveness of Australian wine in both the domestic and the international market to the disadvantage foreign products of the same kind.

(2) The automotive industry is a sector to which the Australian Government gives priority support. Within the next 10 years from 1 January 2006 to 31 December 2015, the Australian Government will channel AUS $4.2 billion into the Automotive Competitiveness and Investment Scheme(ACIS) to support the sustainable growth of its automotive industry. The fund is divided into three parts, direct subsidy, production bonus, and R & D investment fund. Direct subsidy for the period between 2006 and 2010 is AUS $2.8 billion. R & D fund is to be delivered through 3 open bids in 2006, 2007, and 2008, with an investment amount of AUS $50 million each bid. The Scheme has weakened the competitiveness of Chinese automobiles in Australia.

3.7 Other barriers
Although well received in Australia, traditional Chinese medicine hasn't obtained the legal status in full, and therefore isn't included in the Australian national medicare insurance system. If a patient chooses to take traditional Chinese medicine, the cost involved is not covered by the insurance system as in the case of western medicine. Besides, traditional Chinese medicine has to be registered in Australia before being sold, with a very expensive registration fee. Owing to the above reasons, the retail prices of traditional Chinese medicine are greatly raised, weakening its competitiveness in the Australian market.

4 Barriers to investment

4.1 The examination on investment

It is required in Australia that foreign investment should be examined if the investment exceeds the prescribed threshold or the investment is in sensitive sectors. The predominant criterion of foreign investment examination is “Australian National Interest”. But it is considered that the “Australian National Interest” criterion is enabling excessive discretionary power, and certain examination and approval procedures lack transparency, which has impeded the access of foreign capital to Australia. Moreover, the Government of Australia has prescribed for detailed examination requirements and restrictive measures regarding the investment in such sensitive sectors as real estate for housing purposes, urban land, civil aviation, airports, sea transportation, telecommunications, banking, media services, and tourism.

4.1.1 Media services

Although the new media laws adopted by Australia in 2006 remove ownership restrictions on foreign investment in various media services, foreign investment in the sector is still subject to examination.

4.1.2 Telecommunications

The largest telecommunications service provider in Australia is Telstra, and 51.8 of the shares of Telstra was originally held by the Australian Government. In 2006, Australia privatized the equity that was owned by the Government. However, aggregate foreign ownership of Telstra is restricted to 35% of the privatized equity and individual foreign investors are only allowed to acquire a holding of no more than 5% of the privatized equity.

4.1.3 Civil aviation

Individual foreign acquisition of QANTAS is limited to 25% and total foreign ownership is limited to 49%, among which the ownership by foreign airlines of QANTAS is limited to 35%. For foreign investment in international routes, foreign
acquisition of any Australian international aviation operator is limited to 49%.

4.1.4 Airports

A case by case examination must be conducted on foreign proposals for acquisitions of airports in Australia. Foreign ownership is limited to 49% and a 5% limit is applied to foreign ownership of airline routes and cross ownership between Sydney airport (including Sydney West) and Melbourne, Brisbane, and Perth airports.

4.1.5 Real estate

Regarding a foreign acquisition of real estate that is either developed, to be developed, or located within a scenic spot, the foreign investor is required to apply to the Foreign Investment Review Board. The examination process is extremely strict, and all applications tend to be rejected with only a few exceptions. This has greatly impeded foreign investment from entering the real estate business of Australia.

4.2 Visa issues

Ever since 2006, the Opposition Party as well as trade unions in Australia has been complaining that foreign labors have taken away jobs from local workers, and reduced the wages, welfare, and safety and insurance standards of local workers. As a result, the Immigration Department of Australia once froze the application for working visas. Now working visa is subject to strict review and administration. It is informed that it now takes 2 to 3 months, or even 10 months in certain cases, for the personnel working in Chinese firms in Australia to get the working visa. The complicated visa processing procedure has wasted the time and energy of Chinese personnel working in Australia and affected the normal traveling of business people. It is also likely to cause a loss of trade opportunities, and adversely affect the development of trade.
The overview of Sino-Brazilian trade and investment

According to the statistics from the Chinese Customs, the total bilateral trade volume between China and Brazil reached 20.3 billion US dollars, up by 37%, among which China's export to Brazil was US $7.38 billion, up by 52.9%; while China's import from Brazil was US $12.92 billion, up by 29.3%. China's trade deficit with Brazil was US $5.54 billion. China's main exports to Brazil were mechanical parts, integrated circuit, microelectronic modular assembly, automatic data processors and their parts, transformer, static converter, induction coil, cable telephone, telegraph equipment, yarn and textile products, and instruments. The main imports from Brazil included soy beans, iron sand and its ore concentrate, crude oil, sodium hydroxide wood pulp or sulfate wood pulp, feather, timber and soybean oil.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by Chinese companies in Brazil had reached US $540 million, and the volume of completed labor service contracts had reached US $19.11 million.

According to MOFCOM, China's total non-financial foreign direct investment (FDI), approved by or filed with MOFCOM, reached US $9.75 million in 2006. Brazil investors invested in 27 projects in China in 2006, with a total contractual investment of US $100 million and an actual utilization of US $55.6 million. By the end of 2006, Brazil investors had invested in a total of 411 FDI projects in China with a contractual investment of US $630 million and an actual utilization of US $200 million.

Major reforms in trade and investment regulations

The Trade regulatory system and its development

There is not a comprehensive trade law in Brazil. Its main import measures have been included in the Import Regulations while export measures in the Export Regulations.

The tariff system

In 1994, according to the No. 22/94 resolution of the common market commission, the member states of the Southern Common Market stipulated a common tariff standard to the external markets. Currently, except the 35% tariff for auto industry and...
a limited number of country specific exceptions, the Common External Tariff (CET) for most products regulated by the common tariff system ranges from 0—20% with the average tariff at 11%.

In 2006, the average tariff in Brazil was 10.6%. According to the CMC38/05 resolution, before December 31, 2008, each member state of the CMC can exempt 100 products (with the 8 digit tariff number) from the tariff regulation of the CMC with the adjustment to be made every six months and no more than 20% of the exemptible products to be adjusted.

According to the CMC 39/05 resolution, special tariff will be applicable to the information and communication products (BIT). The average tariff of the 398 BIT products with the eight digit tariff number will be 1.326%. The average tariff for 10 products in the category of automatic data processing equipment and parts, hubs, carrier communication equipment of cable telephone and cable digital communication equipment will be at 12%. The tariff of most of the rest 88 products will be zero. The Brazilian Foreign Trade Commission decided respectively on February 24, March 20, May 5, June 9 and August 25 in 2006 to bring the tariff of certain imported IT products to 2% from the original rate ranging from 12%—18%.

According to the No.15 decree issued by the Brazilian Foreign Trade Commission, the average tariff of the commodities (the materials for industrial manufacturing) under the 1,199 eight digit tariff number was 10.65%. In 2006, the Brazilian Foreign Trade Commission stipulated on February 24, March 21, May 5, June 9, July 5, July 27 and August 25 respectively that the import tariff of certain commodities should be brought down to 2% from the original rate ranging from 14%—20%. In addition, the Brazilian Foreign Trade Commission decided on August 9, 2006 that the import tariff of some product parts would be reduced to 2% from the original rate ranging from 14%—20%.

From January 1, 2006, Brazil started to exempt the completed industrial products tariff that was originally imposed on some capital goods and IT products. These products are: (1) farming tractors, steam boiler spares, steam turbine spares, pump spares, non electrothermal furnaces used at works or laboratories, machines for manufacturing leather products and machinery used in metallurgy, coking and foundry, (2) software of the original CD or DVD copies for information processing machines (with VA products and other software excluded), (3) invoice making machines.

2.1.2 Import administration
The majority of imports to Brazil are subject to import licensing, which includes automatic and non-automatic import licensing.

The automatic licensing is administered upon those non-trade restrictive imports. The submission of license application and the customs declaration can be made at the same time. The process is simple and the license, if approved, will be issued automatically. Non-automatic licensing is administered upon those commodities or imports that are under the control of the Government. The products that are subject to non-automatic import licensing include: products that should be quarantined or should be tested by special quality control measures; high-tech products and products that will exert a major impact on the local industries along with the products that are under the strict control of the government like defense products. The application for non-automatic license is complicated, requiring various documents and certificates to be counter-signed by the authorities concerned. The application form shall generally be submitted before shipment, or before customs declaration in some cases. The Secretariat of Foreign Trade (DECEX) under the Ministry of Development, Industry and Foreign Trade is responsible for examination of the application for non-automatic import licenses. In general, the validity of non-automatic import licenses is 60 days. The non-automatic licensing is under the direct administration of the Secretariat of Foreign Trade (DECEX) under the Ministry of Development, Industry and Foreign Trade. After receiving the applications of the import and the documents forwarded by the Brazilian banks, the Secretariat of Foreign Trade (DECEX) under the Ministry of Development, Industry and Foreign Trade will check and examine the information and documents provided by the importers. Then these documents will be forwarded via the web of Brazilian foreign trade to the departments and scientific institutions concerned for counter-sign. The counter-sign is conducted through the web, which facilitates the applicants tracking the approval procedures. After the counter-sign, based upon the opinion of all the departments concerned and the status quo of Brazil’s foreign trade, the Secretariat of Foreign Trade (DECEX) under the Ministry of Development, Industry and Foreign Trade will examine and approve the non-automatic license. If approved, the result will be forwarded without delay via the web of Brazil’s foreign trade to the Brazilian Customs.

In 2006, Brazil altered some parts of the decree SECEX14 which was enacted on November 17, 2004 and announced the alteration concerning the import licensing on “The Official Bulletin”.

On April 17, 2006, Brazil issued the No.7 Decree, stipulating that within a year upon the announcement of the decree, Brazil will impose a 40,000 ton quota on imported sartin. The decree further explained that within the 6 months after the decree taking effect, the quota would be 20,000 ton. The unused quota can be allocated to the remaining 6 months. The executive office of foreign trade and the special agricultural secretariat were responsible for the issue of supplementary remarks concerned with
the decree, specifying the standards of quota allocation.

2.1.3 Export administration

The Brazilian government stipulated that from 2006, small exporters with an export volume within US $20,000 will be allowed to proceed export formalities through “the registration system for simplified export procedures”.

Brazil employs licensing system on export products. In 2006, Brazil stipulated that 1,649 products under the 10 digit tariff number should apply for export license. They mainly included: some live animals and plants including nuts and fruits, certain mineral fuel, mineral oil and distilled products, some products in chemical and other relative industries such as inorganic acid and non metallic organic oxide, non metallic halid, radioactive element, radioactive isotope and their compound; certain types of organic chemical elements including polyyne sulfuration, nitration and nitrosification ramification, natural or synthetic alkaloid, arsoniumsalt, ether, ester, and their ramifications; certain amide, oxo compound and amide; some medicines, wood and timber products, nuclear reactors, boiler, machinery and mechanical parts, vehicles and their parts, aircraft, aeroplanes and their parts, weapons, ammunition and their accessories.

2.1.4 Trade Remedy System

The responsibilities that fall upon the Secretariat of Trade Protection (DECEX) under the Ministry of Development, Industry and Foreign Trade are as follows: investigating into the cases of dumping and subsidies, offering advice on the implementation of the safeguard measures concerning antidumping investigation and subsidies, participating in the discussions of the WTO on the measures and implementation of the trade protection agreement, attending international negotiations on trade protections and investigating into the cases of the third country imposing trade protection measures against Brazilian exporters and offering assistance and support to other governmental departments in protecting the interest of the Brazilian exporters.

2.2 The investment administrative system and its development

In Brazil, the laws and regulations concerning investment are: The Foreign Capital Law, the Labour Law, etc. The Foreign Capital Law 4131/1962 is a major law governing foreign investment in Brazil. The 55762/1965 decree is the supplementary specification of the Foreign Investment Law.

Foreign investors must complete registration through the Brazilian Central Bank RDE IED registration system within 30 days of making investment. In Brazil, the areas that forbid or restrict foreign investment are: activities concerning nuclear
development, newspaper, television, the ownership and management of radio communication web, health service, border trade, postal and telecommunication services, domestic licensed aviation service and space industry.

All foreign investments in Brazilian financial institutions are subject to the approval of the Brazilian government. The government is responsible for judging if the investment is in line with the nation’s interest. In general, foreign investments are not entitled to special preferential measures of the Brazilian government. The only exception is the reduction or exemption of customs tariff for imported capital goods for production.

According to the Brazilian law, the foreign employees in enterprises cannot exceed 33% of the total number of staff. Only when the shortage of professionals in Brazil occurs can enterprises employ a higher proportion of foreign staff. Foreigners who work in Brazil must acquire the visa issued by the Foreign Ministry of Brazil.

Since the Brazilian Monetary Commission enacted policies on the encouragement of foreign investment in the capital market, Brazil has been engaged in the completion and improvement of this policy. Brazil’s encouragement measures include:(1) expanding the scope of qualified foreign investors to include not only the originally approved institutional investors but also any investors living in foreign countries.(2) Streamlining registration procedures by combining the registrations that had to be conducted respectively with the Securities Regulatory Commission for investment and the Federal Taxation Administration for legal entity into a single online registration with the Securities Regulatory Commission only. As a result, the time needed has been shortened from the original 30 days to no more than 24 hour. In November 2005, the Brazilian government launched the online registration and started to sell government public bonds.(3) fixed return securities and unfixed return securities will be convertible and will no longer be regarded as outbound profit remittance.

2.3 The administrative measures on trade and investment

2.3.1 In 2006, Brazil issued new measures of foreign exchange management, allowing exporters and natural persons to deposit revenues from exports in financial institutions in foreign countries. The retention ratio will be set and adjusted by the National Monetary Commission. The initial ratio is approximately 30%; According to the new policy, the capital retained in foreign countries can only be used for fulfilling the obligations of the company, such as paying off the company’s debts or purchasing the import of raw materials. In the meantime, the company should submit to the federal tax bureau the explanation on how the capital is used. The temporary financial circulation tax on foreign capital will be exempted, which by itself will save the cost
of Brazilian exporter by 200 million Reals(approximately 80 million US dollars) each year. To be granted the right for paying profits and stock dividend in foreign countries, all foreign investment made in Brazilian before December 31, 2004 must register at the Central Bank of Brazil if this has not been performed before. US dollars will not be the only currency allowed to pay duty free products, Reals can be used at all frontiers, however, the purchase restriction will still be the amount equal to 500 US dollars.

2.3.2 The Brazilian Foreign Trade Web will be the only approved registration system for foreign trade administration. Through the Foreign Trade Web, Administrative authorities like Secretariat of Brazilian Foreign Trade under the Ministry of Development, Industry and Foreign Trade, General Taxation Bureau under the Brazilian Treasury Ministry and the Brazilian Central Bank administer all stages of the integrated management on import business from import license approval to the levy of tariff. All imports procedures must be conducted through the web. The Brazilian Foreign Trade Web offers links to importers, customs brokers, carriers, warehousing agencies and financial institutions in addition to administrative offices of foreign trade.

2.3.3 The restructuring of Competent authorities

Foreign Trade Commission is the top foreign trade policy making body in Brazil. The Civil Affairs Office of the Brazilian Presidential Palace, Planning, Budget and Supply Department, the Ministry of Development, Industry and Foreign Trade, the Foreign Affairs Ministry are the major administrators governing the foreign trade sector. Ministry of Finance, the Ministry of Agriculture, and Ministry of Supply are partly involved in the administration of foreign trade. Subordinate to the Ministry of Finance, the Federal Taxation Administration is responsible for Brazil’s customs affairs, including making and implementing customs policies, imposing duties, and conducting customs supervision.

The Brazilian Industry and Development Bureau is responsible for making policies in the regard of industrial development. Under the leadership and supervision of the Ministry of Development, Industry and Foreign Trade, this bureau is composed of the Approval Commission, the Inspection Commission and the Executive Body.

2.3.4 In December 14, 2006, the president of Brazil signed the Law on Micro and Small Enterprise, which will make the policy of granting small enterprises favourable tax rates come into effect on July 1, 2007. The Law mandates that the governmental authorities should implement computerization for proceeding enterprise registrations. The time needed to process enterprise tax certificate should not exceed two days. It also stipulates that, in principle, it should take no longer than 15 days to launch a trading company. Currently, it takes approximately 39 days to complete the required formalities for opening a new company. The law has already been implemented in the States of Sao Paulo, Rio De Janeiro, Minas Gerais, Rio Grande do Sul, Paraná. Depending on the situations in different places, the remaining 21 states will also, with
reference to the implementation of the above mentioned states, implement the law, offering favourable terms to small and medium sized enterprises.

2.3.5 On January 15, 2007, Vice president of Brazil signed a decree, allowing Brazil to open its reinsurance market. The decree eliminated the market dominance of Brazilian state owned companies in the reinsurance industry by allowing companies with headquarters both in Brazil and in foreign countries to be qualified reinsurance operators. However, in the mean time, to safeguard the interest of the Brazilian companies, the decree mandates that within three years of the enactment of the law, state owned Brazilian reinsurance companies and other Brazilian operators should enjoy a market share of 60% in the reinsurance industry in Brazil. This percentage will be reduced afterwards. The decree took effect one day after signing.

2.4 Administrative measures on specific commodities

To restrict the import of garlic, the Brazilian Foreign Trade Commission decided on March 7, 2006 that the import tariff will be raised from 14% to 35%.

3 Trade Barriers

3.1 Tariff and tariff administrative measures

Despite Brazil’s reduction of import tariff on certain types of commodities and food, the import tariff rates for bulky agricultural goods, dairy products, sugar and wine vinegar are still high. Tariff for some products even exceeded 20%.

3.2 Import restrictions

The Brazilian Foreign Trade Commission stipulates that all the importers should register on its web. The registration procedures are complicated with a minimum capital requirement attached. The registration fee is required for each import application if it is submitted through this registration system.

The non-automatic import licensing system governs a wide range of products, including 3,000 types of imports (with the eight-digit tariff number). The approval procedures are complicated due to the fact that imports under different categories should be approved by 16 different departments and institutions, which has made it difficult for exporters to comprehend the non-automatic licensing in Brazil. Although the Ministry of Development, Industry and Foreign Trade has publicized the product categories for non-automatic licenses, the detailed information concerning the requirement for non-automatic licenses and the reasons for declining non-automatic license applications has not been made available.
Currently, among all the Chinese exports to Brazil, the products subject to non-automatic licensing are: garlic, mushroom, the majority of chemical products, raw materials and completed products for pharmaceutical purposes, animal and plant products, tyres, textiles, glass products, porcelain container for household use, lockset, electric fans, electric calculators, magnets, motorcycles, bicycles, toys, pencils, etc.

3.3 Barriers to customs procedures

According to the Brazilian Law, importers should sign a maritime transportation insurance contract with a Brazilian insurance company if the goods are imported by sea. The average insurance premium is 1.5% of the import price, which far exceeds the international standard of 0.3%, thus offsetting the advantage on the price of the imported goods.

3.4 Technical barriers to trade

Currently, products under 68 categories are subject to compulsory licensing and 198 optional licensing. Brazil approves the inspection and certification by the institutions concerned in exporting countries.

In 2006, the technical trade measures issued by Brazil involves: angle iron, absolute ethyl alcohol fuel, aquiferous ethanol fuel, asphalt, asphaltic sand, asphalt stone, natural asphalt, petroleum asphalt, cementing compound made of mineral asphalt, quick-drying painting asphalt, asphalt mix, machinery for filtered and purified water, freezing equipment, household air conditioner, etc.

On January 20, 2006, the Brazilian National Administrative Office of Petroleum, Natural Gas and Biofuel reported to the WTO the drafts of two technical regulations governing mineral products, which respectively set standards for the quality of absolute ethyl alcohol fuel, aquiferous ethanol fuel, asphalt, asphaltic sand, asphalt stone, natural asphalt, petroleum asphalt, cementing compound made of mineral asphalt, quick-drying painting asphalt and asphalt mix.

On March 8, 2006, The Brazilian National Institute of Measuring, Standardization and Industrial Quality Control issued the draft of the No. 44 Decree governing the quality specifications for thermo compressed angle iron. The draft of technical regulation specified the quality standards of thermo compressed angle iron for power transmission tower, which included its chemical component, difference allowance of size, and surface defect. This regulation also covers products of non-stainless steel like alloy steel, angle iron, proximate matter and parts.
3.5 Sanitary Measures for Animals and Plants

Brazil requires strict quarantine measures for animals, plants, meat, fish, dairy products, processed food and beverages. The import of certain types of plants such as wheat for special purposes and tomato seeds is forbidden. Apples, pears, plums, nectarines, peaches, tangerine, strawberries and nuts must be inspected by the Plant Hygiene and Quarantine Bureau and acquire the plant hygiene certificate. The additional statements concerning fruit plantation, processing and transport are also needed. In addition, the Plant Hygiene and Quarantine Bureau must be informed of the import before shipment.

On January 10, 2006, The Brazilian Health Inspection and Supervision Administration released a category of approved food additives entitled Food Addictive List, specifying the function types of food additives, different types of approved food additives and their scope and condition of use. Only the food additives listed in the category can be used for food production. Moreover, their use must be in accordance with the scope and condition set by the relative regulations. The category didn’t use the Food Law Commission’s approved standards in the classification, use scope and conditions of additives.

In 2006, The Brazilian Health Inspection and Supervision Administration amended the residue limit on 21 types of agricultural chemicals in a variety of agricultural products, some of which are not in line with the international standards or even surpass standards of developed countries. For example, Brazil’s upper residue limit on mold inhibitor in melons is 0.01 mg/kg, while by the stipulation of the Food Law Commission, while its residue limit is 0.5 mg/kg in cucumbers, 2mg/kg in sweet melons. Another example is that residue limit of clethodim in melons is 0.05mg/kg by Brazilian standards; while it is 2 mg/kg in the USA.

On September 21, 2006, The Brazilian Health Inspection and Supervision Administration released the Draft Resolution on Food Packaging, Coating, Containers, Covers and Equipment, specifying the requirements for metal packaging, Coating, Containers, Covers for food and ingredients alongside requirements on production, transport, sales and storage of food processing equipment. If the ink, paint or enamel on the surface are not in immediate contact with food or consumers’ mouths, they will not be subject to the restrictions of the technical regulation. The resolution is supposed to take effect in May 2007.

In March 2006, Brazilian Agriculture Ministry issued three regulation drafts on fruits, which involve pears, apples, unshelled fresh or dried almonds. They also specified the
standards and minimum quality requirements for the above mentioned products. Brazil didn’t inform other WTO member states of the assessment period for the above mentioned regulations, neither did Brazil provide a transitional period.

3.6 Trade Remedies

Since the first launch of anti dumping investigation against China, Brazil has conducted 31 anti dumping investigation into cases concerning 11 types of Chinese products including electric machinery, hardware, light industrial products, textiles, food, etc. Among all the cases, 11 were filed in 2006.

Brazil is one of countries that most frequently take advantage of the dispute solving mechanism to file trade lawsuits. In 2006 alone, Brazil launched 23 anti dumping investigations. Among them, 11 were against Chinese products and four were anti dumping investigation review of Chinese imports.

3.6.1 Anti dumping

In 2006, Brazil conducted 11 anti dumping investigations against. The products concerned are: combs, amplifier, spectacle frames with or without glasses, sunglasses, Christmas trees, ornamental balls for Christmas, aluminum coated light sensing plate, iron, bicycle chains and spokes, SDS aiguilles, manually operated sliding wheels, etc. In 2006, Brazil also review anti dumping investigation on new bicycle tires, garlic, locks and desk fans that were made in China.

3.6.1.1 Market Economy Status

In 2005, in the anti dumping reviews against Chinese products, the price of most products were still set with reference to a surrogate country. The details are as follows: lockage(Mexico), garlic(Argentina), SDS+ aiguilles(Germany), new bicycle tires(Argentina), manually operated sliding wheels(Japan), desk fans(Columbia), Christmas trees and ornamental balls(Argentina), sunglasses(Brazil set the price for Chinese sunglasses exported to Brazil with reference to the price of France made sunglasses exported to Finland.), Spectacle frames(Brazil set the price for Chinese frames exported to Brazil with reference to the price of Italy made glass frames exported to South Africa.). On September 28, 2006, in the official communiqué, Brazil announced the information on the anti dumping investigation into China made manually operated sliding wheels. In the anti dumping investigation, based upon the price of the same products imported into Chile from Japan, Brazil set the unit price of Chinese manually operated sliding wheels at 88.06 US dollars; while 12.44 US dollar/piece was regarded as the actual FOB price in China thus creating a disparity in price of 75.62 US dollars.
On November 24, 2006, Brazil released in its official communiqué the information on lodging anti dumping investigation against SDS+ aiguilles with Chinese origins. In this case, based upon the export quotation of Germany, Brazil set the price of the Chinese export at 10.57 US dollars per piece and the FOB price for Chinese export at 1.66 US dollars per piece. The price difference reached 8.90 US dollars/piece after statistical adjustment.

On December 14, 2006, Brazilian Ministry of Development, Industry and Foreign Trade decided to lodge anti dumping investigation review against fresh or frozen garlic with Chinese origin. During the investigation procession, the products concerned were levied an anti dumping tax of 0.48 US dollars. During the investigation review, ignoring China’s market economy state, Brazil set the value of Chinese garlic at 9.39 US dollars per 10 kg and the actual FOB price at 4.94 US dollars/10kg, thus ruling that the anti dumping margin of Chinese garlic was as high as 90.1%.

In the case of anti dumping investigation of Christmas trees, with reference to Argentina, Brazil set the normal price at 32.68 US dollars per thousand trees and the export price to Brazil at 14.5 US dollars per thousand trees, creating a price disparity of 18.2 US dollars per thousand trees after statistical adjustment.

In the case of China made sunglasses, with reference to the export price of France made sunglasses to Finland, Brazil set the normal price of the Chinese sunglasses export at 457.24 US dollars/kg FOB and the actual export price from China at 3.60 US dollars. After the statistical adjustment, the price disparity reached 453.64 US dollar/kg. In the anti dumping investigation into spectacle frames with or without glasses, based on the price of Italian export to South Africa, Brazil set the normal price of Chinese export at 560.97 US dollars/kg while ruling that, with the chosen statistics, the price of Chinese spectacle frames exported to Brazil was 8.83 US dollars/kg. The price difference was as big as 552.14 US dollars/kg.

Generally, the information released in the official Gazette can be summarized as follows:

1. According to Decree 1602 issued in 1995, Brazil still regarded China as a non market economy state and used the export price of a third country as the normal price of Chinese export.

2. The choices of substitutive countries were randomly made with reference to both
developing countries such as Columbia and Argentina and developed countries such as Japan, France and Germany. The labour cost in Japan, France and Germany is high and the cost for production materials is also higher than that in China. There was a departure from reality if the price of Chinese exports is settled with reference to export price in these developed countries. It was inaccurate and irresponsible to judge that Chinese export had posed harm to the Brazilian industries. This can be best manifested in the cases of sunglasses and spectacle frames with and without glasses.

3. Brazil made judgment on normal prices with no discretion. In the case of review on desk fans, the sales invoice in the domestic market and price quotation of a Columbian electronic appliance manufacturer called Grupo SEB were chosen as the statistic source. Based upon these documents, the average price of electronic desk fans in the domestic Columbian market was calculated. The normal value of Chinese desk fans was worked out after freight, insurance premium and import tax were added during statistical adjustment. In the case of China made SDS+ aiguilles, Brazil only referred to the price quotation of one single German company before setting the normal value of Chinese SDS+ aiguilles at 10.57 US dollars/piece. The decision was made without conducting analysis and comparison, thus lacking reliability and accuracy.

China and Brazil signed the Memorandum of Understanding and cooperation in Trade and Investment between People’s Republic of China and Federal Republic of Brazil as early as in 2004. Brazil officially admitted China’s market economy status in the memorandum but failed to amend the laws concerned, neither did Brazil rectify the mistakes in imposing anti-dumping measures against China, all of which led to material damage to the legitimate interest of China.

3.6.1.2 Other Unjustified Acts

After Brazil lodged the anti-dumping investigation against products of Chinese origin, Brazil demanded that all the parties concerned should designate legal representatives to the Brazilian investigative body within 20 days after the release of the announcement. After the issued of investigation forms to the parties involved, the investigative body required the submission of the form in Portuguese within 40 days. If not written in Portuguese, the Portuguese version with the approval of the Brazilian Law must be attached. Within 40 days, the companies involved not only need to prepare documents but also the translated version approved by Brazil, the cost of which is tremendously high, thus increasing the cost for companies to respond to the suit.

3.6.2 Safeguard measures

Since 1996, Brazil started to impose safeguard measures on toy imports. Seven years
after its implementation, on December 31, 2003, the Brazilian Government decided to extend its validity period by one year to the end of 2004. When the validity expired, Brazil decided to extend it by another one year and a half. From January 1, 2005 to June 30 2006, apart from the 20% Southern Common Market Tariff on imported toys, Brazil levied another additional tariff of 8%. After the expiry of the approved WTO rules, which stipulated developing country’s 10 year maximum duration of trade protectionism, Brazil still safeguards the toy industry proposing trade protective measures. Currently, Brazilian enterprises are not able to provide the domestic consumers with toys of same quality that are priced at 5—10 Reals (approximately 2—4 dollars), which not only led to harm to Chinese toy exporters but also, to a greater extent, to the Brazilian consumers.

In 2006, the Chinese and Brazilian governments held negotiations on the trade issues of the toy sector. On behalf of China’s toy industry, the Chinese Chamber of Commerce on Import and Export of Light Industrial Products and Handicrafts teamed with China Toy Association negotiated with the representative of the Brazilian toy industry Brazilian Toy Association. The outcomes of the negotiation are as follows:

1. China and Brazil signed Protocol of Statistics Cooperation between the Ministry of Commerce of People’s Republic of China and the Ministry of Development, Industry and Foreign Trade of the Federal Republic of Brazil. According to the Memorandum signed at the beginning of 2006, the establishment of a coordinating group of statistics will be approved and work group meetings will be held on a regular basis.

2. China and Brazil representatives of toy industry signed Sino-Brazilian Agreement on Trade specifications in Toy Sector. According the agreement, based on the findings of the statistic work group, the toy associations in both countries will make mutual decisions on the capital quota of China’s toy export to Brazil.

3.6.3 Special Safeguard Measures

In 2005, the Brazilian President signed two bills of special safeguard measures against Chinese products. The special safeguard measure against Chinese textiles is to be valid until 31 December 2008, and that against other Chinese commodities valid until 11 December 2013. According to the bills, the Brazilian government shall process the application for special safeguard measures filed by enterprises or industries within 30 days by negotiating with relevant Chinese parties with a view to reaching agreements on avoiding or mitigating injuries possibly caused to related Brazilian sectors. If the negotiations lead to no agreements, Brazil is to conduct investigations. On February 9 2006, the Chinese and Brazilian government reached an agreement in Beijing on the restrictions of increase for Chinese textile export to Brazil. The agreement covers 76 types of products under 8 major categories, which amount to 60% of the total export from China to Brazil. The agreement will be valid for 3 three years, taking effect on April 3, 2006, expiring on December 31, 2008. The eight categories involved are: silk,
synthetic fibre, synthetic fibre cloth, velvet, T-shirt, pullover, cardigan, overcoat, jacket and embroidery.

3.7 Government procurement

In Brazil, Law 8666(1993), which covers most government procurement other than informatics and telecommunications, requires non-discriminatory treatment for all bidders. However, the law’s implementing regulations allow consideration of non-price factors giving preferences to certain goods produced in Brazil and stipulating local content requirements for eligibility for fiscal benefits. Decree 1070(1997), which regulates the procurement of information technology goods and services, requires federal agencies and parastatal entities to give preferences to locally produced computer products based on a complicated and non-transparent price/technology matrix.

In addition, the Brazilian government, non-profit hospitals and other departments are inclined to favour the non-transparent practice of purchasing products manufactured in Brazil in government outsourcing. Limitations on foreign capital participation in procurement bids reportedly impair access for potential foreign service providers in the energy and construction sectors.

3.8 Export subsidies

1. The Government of Brazil offers a variety of tax, tariff, and financing incentives to encourage production for export and the use of Brazilian-made inputs in domestic production. To support the expansion of Brazilian companies and the development of modern business strategies, Brazil’s National Bank for Economic and Social Development (BNDES) provides favourable financing services for companies that purchase or lease new machineries as an incentive for the purchase of domestic facilities and machinery.

2. Preferential policies like providing production loans to family farms and offering extension on pay-off period of loans are the main farming subsidies in Brazil.

3.9 Barriers to trade in services

3.9.1 Audiovisual services

The Brazilian government mandates that foreign ownership of cable companies should be limited to 49 percent, and the foreign owner should have its headquarters in Brazil and have had a presence in the country for the prior 10 years. Foreign cable and
satellite television programmers are subject to an 11 percent remittance tax; however, the tax can be avoided if the programmer invests 3 percent of its remittances in co生产 of Brazilian audio visual services.

Law 10610(2002) limits foreign ownership in Brazilian media to 30 percent, including the print and “open broadcast”(non cable) television sectors. Open television companies also have a regulation requiring that 80 percent of their programming content be domestic in origin.

3.9.2 Banking and other financial services

Brazil has not yet ratified the Financial Service Agreement Under the WTO. Brazil is potential South America’s largest insurance market. However, foreign investors are not allowed hold the majority of shares in solely Brazil funded banks, the insurance industry or other financial institutions, nor are they allowed to hold over 1/3 of the shared with voting entitlement unless it is special approved by the President of Brazil with a view to safeguarding the national interest. Before 2006, Brazil maintained a government owned reinsurance monopoly through the Brazil Reinsurance Institute. If Brazilian shipping companies wish to effect marine insurance with foreign insurers, they must submit information to IRB indicating that the foreign insurance policy is less expensive than that offered by Brazilian insurers.

3.9.3 Postal and telecommunication services

In the telecommunication sector, only companies registered in Brazil are allowed to offer mobile phone and satellite transmission service. The federal government of Brazil maintains a monopoly in the ordinary mail sector. The companies approved by the Brazilian government can operate express delivery in Brazil.

4 Barriers to investment

4.1 The World Bank and International Finance Corporation’s Assessment of Brazil’s investment environment

Standard & Poor’s, an international credit rating institution gave Brazil’s investment environment a credit ranking of speculative level(BB). Among the major emerging market economies, this ranking is in the low range, three levels lower than the investment level (BBB).

In September 2006, the World Bank and the International Finance Corporation jointly released the 2007 Annual Report on World Trade Prospect, which pointed out that Brazil achieved no material improvement in its trade environment with a ranking at No.121 among all the 175 countries and regions assessed. In Sao Paulo, it takes 152 days for a limited liability company to start its operation after the completion of 17
formalities. This item by itself is ranked 149 among all the 155 major cities. To establish a warehouse in Brazil, 460 days and more than 19 procedures are needed (including applying for license and approval, publicizing the project as stipulated by the relative regulations, receiving inspection and waiting for the utility facilities to be completed) This is twice the average time needed in the South American region.

4.2 On Brazil’s taxation

Brazil’s tax level is one of the highest in South America with taxes in 58 different categories, which is far more than that of the US and twice that of Mexico. Take import for example, the cost of import after taxation is often 1.8—2 times of its CIF price. Heavy taxation, the huge variety and complication of tax categories as well as the conflict and contradiction between one another has posed problems to foreign investors.

Brazil’s taxation system is very complicated with federal tax, state tax (all together 44 types) and city tax according to the different administrative region and their weight in the total tax are 63.5%, 23.5% and 13% respectively. The taxes are levied and administered at different level by the government. In addition, enterprises must also pay for various types of social expenditure.

In Brazil, taxes amount to 71.1% of the gross profit a year in a medium-sized enterprise. It takes 2600 hours annually to pay taxes, which is 5 times the average level in Latin America and 13 time that of APEC member states.

4.3 Others

Brazil does not allow foreign investors to invest in nuclear, health care, pension funds, ocean fishing and postal services areas. Foreigners residing outside Brazil are not allowed to purchase land in Brazil. Foreigners living in Brazil are subject to quantitative restrictions when buying land. Land at the Brazilian frontiers are not open for sales to foreigners. Foreign enterprises are allowed to buy farming land for purposes like farming, industrialization, but the purchase is subject to the approval of the agriculture department of the Brazilian government. Short loans within 90 days into Brazil are subject to a 5% financial trading tax. Loans for over 90 days can be exempted from this tax.

In the regard of investment entry, Brazil still sets restrictions in many areas on foreign investors. Exploration and mining of mineral resources is allowed only when the foreign investor is approved or authorized by the federal government and is in line
with the Brazilian national interest. Meanwhile, it must be an enterprise established by a Brazilian or a company with its administrative organization and headquarters in Brazil. The government monopolizes the exploration, mining, refinery, import and export, marine and pipeline transportation of hydrocarbon. However, except for nuclear projects, the government approves these projects to be contracted by state owned or private companies.

In the regard of road transport, foreign capital is not allowed to exceed 20% of the voting shares. The foreign funded enterprise must be in the form of shareholding companies and can only issue bearer share. In railway transport, foreign investors can only have 20% of the non voting share if they were established in Brazil after November 7, 1980. Companies can operate railway transport only when the citizens from the seven member states of the International Railway Transport Agreement and the Latin America Integration Association hold half of the capital with voting rights in the company.

Foreign investors that have not set up corporate and representative offices, or don’t exist in any commercial form are not allowed to invest in aviation. Brazil only allows a small amount of foreign capital in aviation enterprises. The shares held in civil aviation by foreign capital should not exceed 20%. Only Brazilian citizens and enterprises with offices and premises in Brazil are allowed to fly the Brazilian national flag.
1 Bilateral trade relations

According to China’s Customs, the bilateral trade volume between China and Canada in 2006 reached US $23.18 billion, up by 20%, among which China’s export to Canada was US $15.52 billion, up 33.1%, while China’s import from Canada was US $7.67 billion, up 2.1%. China had a surplus of US $7.85 billion. China mainly exported electromechanical products, electrical appliances, audio visual equipments and components and accessories thereof, clothing and accessories, furniture, iron and steel products, toy, plastics and products thereof, automotive vehicles and components thereof, footwear, etc. Major imported products of China from Canada included fertilizers, paper pulp, iron ore, cereals and cereal flour, nickel and products thereof, plastics and products thereof.

According to the Ministry of Commerce (MOFCOM), by the end of 2006, the aggregate turnover of engineering contracts completed by Chinese companies in Canada stood at US $180 million, and the volume of the completed labor service contracts reached US $84.33 million.


2 Introduction to trade and investment regime

In Canada, laws related to Customs and tariff administration mainly include Customs Act 1985 and Customs Tariff Act 1997, and the Canada Border Services Agency (CBSA) is the primary authority that is responsible for enforcing the above laws.


Canadian laws related to investment mainly include Investment Canada Act 1985, Investment Canada Regulations 1985, and Companies Act 1985. Industry Canada and Department of Canadian Heritage are responsible for implementing these laws.
and regulations.

Laws and regulations affecting inspection and quarantine mainly consist of Food and Drugs Act, Marking of Imported Goods Order, Consumer Packaging and Labeling Act, Precious Metals Marking Act, Hazardous Products Act, Meat Inspection Act, Fish Inspection Act, Health of Animals Act, and Wild Animal and Plant Trade Regulations. Major related authorities are Health Canada and the Canadian Food Inspection Agency (CFIA).

2.1 Trade administration and its development

2.1.1 Tariff policy

2.1.1.1 Tariff administration

The Customs Tariff was made by the Canadian Department of Finance, based on the relevant multilateral and bilateral agreements. The CBSA is in charge of levying duties, a right to which all provinces are not entitled. To date, Canada imposes mainly the Most Favored Nations (MFN) tariff and the General Preferential Tariff (GPT). Besides, there are ordinary customs duties, the Least Developed Country Tariff (LDCT), the Caribbean Commonwealth Countries Tariff (CCCT), the Australia and New Zealand Tariffs, and tariffs under the preferential FTA tariff treatments such as the United States Tariff (UST), Mexico Tariff (MT), Chile Tariff (CT), Costa Rica Tariff (CRT), and the Canada Israel Tariff (CIAT).

The domestic market of Canada is highly liberalized, average tariff level comparatively low. The import duties for most of the raw materials are either zero or very low. Nevertheless, tariff escalation still exists for certain imports. Besides, some agricultural products are subject to Tariff Quota (TRQ) administration in Canada.

On top of import duties, additional duties are levied on distilled beverages, fruit beverages (fermented), beer, and malt beverages.

2.1.1.2 Amendments to the Customs Coding

In June 2004, the World Customs Organization (WCO) adopted amendments to the Harmonized Commodity Description and Coding System (HS) that became effective as of January 1, 2007. The amendments involve deleting, adding, and changing over one thousand subheadings. As a signatory to the HS Convention, Canada is obliged to implement the amendments as of January 1, 2007. Therefore, Canada has released the updated 2007 Customs Tariff.

2.1.2 Import administration

2.1.2.1 Import control
The Export and Import Permits Act serves as the major legal basis for Canada to monitor exports and imports. The Import Control List (ICL) of the Export and Import Permits Act consists of a list of products put under control, including military goods and firearms, Chemical Weapons Convention items, poultry, eggs and dairy products, meat products, textiles and clothing, certain iron and steel products, etc.

2.1.2.2 Prohibited imports

Canada prohibits the importation of the following goods: any live specimen of the mongoose family, certain live birds of the starling family, and any non-game bird other than used for purposes of public entertainment; aigrettes, egret plumes, and certain other feathers; base or counterfeit coins; reprints of Canadian copyrighted works; goods manufactured or produced wholly or in part by prison labour; smoke screen apparatus for use on motor vehicles; used or second-hand motor vehicles (other than imported from the United States); white phosphorus matches; firearms, prohibited or restricted weapons, prohibited devices and components or parts; materials which are deemed to be obscene, treasonable, seditious, or written materials, film, video or other visual representations that are pornographic and depict scenes of violence. Besides, the importation of any species of puffer fish of the family Tetraodontidae or live freshwater mitten crab of the genus Eriocheir is prohibited in Canada.

2.1.3 Export administration

2.1.3.1 Export control

The Canadian Government exercises export control over certain products, which are listed in the Export Control List (ECL) and the Area Control List (ACL). Under a bilateral arrangement with the United States, export permits are not required for most ECL items when shipped to a final destination in the U.S. or its territories. However, all items listed in Groups 3 and 4 as well as some other items listed in the ECL require individual export permits.

In August 2006, amendments were made to the Canada’s Export Control List, resulting in a number of additions, deletions, and clarifications and changes to some technical parameters. Additions of controls include: specially designed components of machine tools; numerically controlled machine tools using a magnetorheological finishing (MRF) process; spray cooling; physics based simulation software; direction finding equipment; inertial equipment for azimuth, heading or north pointing, fuse setting devices for ammunition; military lighter than air vehicles; Global Navigation Satellite Systems jamming equipment; a Nuclear Technology Note and a General Software Note; radial ball bearings; hydrazinium nitroformate; the list of Australian Group materials; spraying and fogging systems; plant pathogens. Hybrid computers have been removed of control.
In July 2006, the Government of Canada issued an order amending the Area Control List (ACL), deciding to add Belarus to the ACL. Once the order is formally adopted, export permits must be obtained for goods to be exported to Belarus.

2.1.4 Trade remedy measures

Special Import Measures Act is the major legal basis for Canada to take anti dumping and countervailing measures. The CBSA and the Canadian International Trade Tribunal (CITT) are jointly responsible for anti dumping and countervailing investigations. The CBSA mainly accepts applications for anti dumping or countervailing investigations and decide if a case should be established or not. Then it is in charge of investigating the case to determine if the alleged dumping or subsidizing exists, and the margin of such dumping or subsidizing if it exists, based on which the CBSA then imposes an anti dumping or a countervailing duty. The CBSA is also in charge of initiating anti dumping and countervailing reinvestigations. The CITT assumes the responsibility for establishing if the dumping or subsidizing of imported goods is causing material injury or threat of material injury to the Canadian industry, or material obstruction to the establishment of the domestic industry of Canada. The tribunal is responsible for conducting public interest investigations and for initiating sunset reviews.

Made in 1984, the Canadian law on safeguard measures is contained in the International Trade Tribunal Act. The CITT is responsible for safeguard investigations where the Tribunal conducts investigations based on the applications filed by domestic manufacturers of similar products or products in direct competition with the imported goods, and then reports the results of the investigations to the Cabinet meeting through the Department of Finance. It is the Cabinet meeting that makes the final determination as to whether safeguard measures are to be taken and what measures are to be taken to protect the domestic industry.

2.2 Investment administration and its development

Investment Canada Act is the major law governing foreign investment. Any foreign investment in Canada falls under either cultural businesses or non cultural businesses. Industry Canada is responsible for promoting and reviewing foreign investment in non cultural businesses while the Department of Canadian Heritage is responsible for reviewing investment in cultural businesses.

With very few exceptions, foreign investors enjoy full National Treatment status in Canada. For the establishment of a new Canadian business that is not reviewable, a prior notification is to be made to the Government of Canada, no later than 30 days after the implementation of the investment. Nevertheless, the investment may be reviewed if an Order in Council directing a review is made and a notice is sent to
the investor within 21 days following the receipt of a certified complete notification.

The relevant authority, usually the Minister, has 45 days to determine whether or not to allow the investment, but the Minister can unilaterally extend the 45-day period by an additional 30 days. Further extensions are permitted if both the investor and the Minister agree to the extension. Pursuant to the Investment Canada Act, a foreign investment is reviewable if it reaches or exceeds the specified threshold. The threshold is CAN $5 million for a direct acquisition, and over CAN $50 million for an indirect acquisition. However, the threshold for WTO member investors has been relaxed. The threshold for 2006 has been increased to CAN $265 million, which means any direct acquisition of a Canadian business by WTO member investors below the new threshold is not reviewable and only requires filing with the Government of Canada. The exception for the four policy sectors which are governed by the CAN $5 million and CAN $50 million thresholds remains unchanged for all investors. Those sectors are uranium, financial services, transportation services and cultural businesses.

Investments in Canadian cultural undertakings which may result in foreign ownership or a controlling stake in these undertakings are reviewed by the Department of Canadian Heritage. These cultural undertakings include: publishing, distributing, and selling books, magazines, newspapers and periodicals; making, distributing, selling or exhibiting films or video products; making, distributing, selling or exhibiting musical records or audio-visual products; direct or indirect publishing, distributing, or selling magazines or reader-dependent periodicals, that are invested by non-Canadian investors.

2.3 Legislation on trade and investment and its development

2.3.1 Amendment to Radio Standards Specification

In April 2006, Industry Canada adopted the Amendment to Radio Standards Specification 119 (RSS119). The revised RSS is Radio Standards Specification 119, Issue 7, Land Mobile and Fixed Radio Transmitters and Receivers Operating in the Frequency Range 27.41—960 MHz. RSS 119 was updated to include requirements for land mobile and fixed equipment operating in the 220—222 MHz band, revising the emission mask for the 800—900 MHz range and the spurious emission limits (using the radiated measurement method) for receivers, removing the requirements for Data Modem Certification, and reformat and update RSS 119.

2.3.2 Proposed Amendments to the Seeds Regulations
In September 2006, Canada introduced a bill to amend the Seeds Regulations. The proposed legislation has prescribed for detailed requirements for the testing, inspection, quality and sale of seeds, and it also included changes to the seed standards within the grade tables in Schedule I of the Regulations as well as changes to specific packaging and labeling requirements for seeds. The amendment is expected to take effect within the next five to eight months after the bill is introduced.

2.3.3 Proposed Amendment to the Transportation of Dangerous Goods Regulations

In October 2006, the Canadian Government published the Proposed Amendment to the Transportation of Dangerous Goods Regulations, further expounding relevant requirements for the transportation of dangerous goods. The Proposed Amendment is intended to bring Canada’s TDG Regulations into line with internationally recommended standards and current requirements.

2.3.4 Regulations to reduce air emissions and greenhouse gases (GHGs)

On November 3, 2006, Canada published a Notice of Intent to Develop and Implement Regulations and Other Measures to Reduce Air Emissions. The Notice of Intent describes the plan the government has regarding the development and implementation of measures to control both air pollutants and GHGs from human activities (including industrial, transportation, and product sources), regulations and other measures on indoor air quality, and Energy Efficiency Act. Besides, different action plans are to be made regarding the transportation and industrial sectors, and indoor air quality.

2.3.5 Amendment to the Energy Efficiency Regulations

On November 15, 2006, the Canadian Government formally announced the Amendment to the Energy Efficiency Regulations. The Amendment mainly includes the improvement of energy efficiency test method for central air conditioners and heat pumps (lower than 19kW), raising the bar on the energy efficiency standards for three types of industrial and commercial air conditioners, requirements for adjusting the energy efficiency standards for beverage vending machines and commercial freezers and refrigerators, and enhancing relevant administration, including the efforts to ensure the consistency between the English version and French version of the Regulations.

The Amendment has clearly specified that the new energy efficiency standards shall come into force on January 1 and April 1, 2007 for beverage vending machines and commercial freezers and refrigerators respectively and other changes shall become
effective as of the date when they are published.

2.3.6 Proposed amendment to the Ozone Depleting Substances Regulations

In December 2006, Canada published the Proposed Amendment to the Ozone Depleting Substances Regulations 1998. According to the Proposed Amendment, transfer of bromomethane is allowable within a specified time period between companies that are exempt from the prescribed requirements, under circumstances that are deemed necessary or urgent. The Proposed Amendment also encourages the use of alternatives and allows sectors to make efficient use of bromomethane under the above circumstances granted as an exemption by the Canadian Government. By doing so, the amendment seeks compliance with the international obligations under the Montreal Protocol.

2.3.7 Notice of revision of the requirements for low speed vehicles

In December 2006, Canada issued the Notice of Publication of Revision 1 of Technical Standards Document No.500, Low Speed Vehicles. Pursuant to section 12 of the Motor Vehicle Safety Act and sections 16 and 17 of the Motor Vehicle Safety Regulations, the Department of Transport has revised Technical Standards Document (TSD) No.500, Low Speed Vehicles, which specifies general requirements for slow moving vehicles. TSD No. 500, Low Speed Vehicles, reproduces U.S.Federal Motor Vehicle Safety Standard No.500 of the same title and is incorporated by reference in section 500 of the Motor Vehicle Safety Regulations.

Revision 1 of TSD No. 500 was registered on December 9, 2006 and will become enforceable as of June 9, 2007.

2.3.8 Updated wood packaging import requirements

As of July 2006, the CBSA has started the full implementation of the new wood packaging import requirements known as the Guidelines for Regulating Wood Packaging Material in International Trade (the International Standard for Phytosanitary Measures (ISPM) No.15). The ISPM No.15 requires that wood packaging be either heat treated or fumigated with methyl bromide and marked with an internationally recognized International Plant Protection Convention (IPPC) mark before entry into Canada. Shipments found to contain wood packaging that do not meet Canadian import requirements will be ordered removed from Canada and are the responsibility of the importer or person in care and control of the regulated article (s).
In August 2006, the Government of Canada adopted Phytosanitary Requirements to Prevent the Entry of Phytophthora ramorum to prevent the introduction of sudden oak death into Canada. Included in the List of Plant Genera regulated for Phytophthora ramorum are Nerium, Distylium, Manglietia, Parakmeria, and Ilex, etc.

In September 2006, the CFIA amended the Egg Regulations on the Canada Gazette, making necessary requirements for an egg station operating under a Hazard Analysis and Critical Control Points (HACCP) system. The amendments include the grading, packing, marking and inspection requirements for shell eggs, the requirements for the registration and operation of egg stations and the interprovincial and import/export requirements for the trade of shell eggs.

Pursuant to the Canada Agricultural Products Act and Food and Drugs Act, the CFIA conducts a national Chemical Residue Sampling Program to monitor chemical residue levels on domestic and imported fresh fruits and vegetables. The Pest Management Regulatory Agency at Health Canada registers the use of agricultural chemicals and establishes acceptable levels in food by setting maximum residue limits (MRL). On October 3, 2006, the CFIA published the Compliance List of products and companies where violations of chemical residues were detected.

In October 2006, the Government of Canada issued the Proposed Import Conditions for TSE in Small Ruminants, separating Canada’s import policies, conditions and procedures pertaining to bovines, small ruminants and cervids.

The Government of Canada adopted Regulations Amending the Patented Medicines (Notice of Compliance) Regulations (“PM(NOC) Regulations”) and Regulations Amending the Food and Drug Regulations.
Amending the Food and Drug Regulations, which came into force on October 5, 2006. Regulations Amending the PM (NOC) enables low cost, generic versions of innovative drugs to enter the market immediately following the expiry of relevant patents, while also providing due protection to these drugs. Under Regulations Amending the Food and Drug Regulations, new and innovative drugs will receive a guaranteed minimum period of market exclusivity of eight years. These regulations will also provide a further six months of market exclusivity to innovative drugs that are the subject of pediatric studies.

2.4 Product specific administrative measures

2.4.1 The importation of tropical lumber

Starting from October 24, 2006, no license is needed for the importation of tropical lumber, and lumber with a tropical status is exempt from treatment, though a valid plant health certificate or plant hygiene certificate for re-exportation must be attached. In addition, the status of six wood species has been changed from tropical into non-tropical, involving Cedrela mexicana, Cocos nucifera, Intsia bijuga, Pterocarpus rohrii, etc. When importing any of the above non-tropical lumber, a valid import license together with a plant health certificate or a plant health certificate for re-exportation is required to make sure that the lumber has undergone heat treatment where each piece of wood has attained a minimum core temperature of 56 °C for at least 30 minutes and achieved a moisture content of less than 20%.

2.4.2 Import requirements for agricultural products

In Canada, major regulations governing the importation of agricultural products are Processed Products Regulations, Fresh Fruit and Vegetable Regulations, Licensing and Arbitration Regulations, etc. Certain agricultural commodities are subject to regulatory requirements, such as import documentation, licensing, etc. For the importation of certain fruits and vegetables such as apples, apricots, blueberries, cabbage, cantaloupes, carrots with tops removed, cauliflower, a license should be obtained, and the minimum grade must be complied with for the products falling under the jurisdiction of the Fresh Fruit and Vegetable Regulations.

For certain products, an inspection certificate is necessary, indicating Canadian minimum requirements for quality, labeling, and packaging are met. These products include: 1) apples, onions, and potatoes from the United States, which require a USDA inspection certificate; 2) apples, onions, and potatoes from other countries, which require an inspection certificate issued by the Canadian Food and Inspection Agency.
2.4.3 Export requirements for certain agricultural products

There is no grade requirement for the exportation for most fresh vegetables and fruits with the exception of apples, onions and tomatoes which shall meet different grade requirements when shipped to the United States and other countries.

The following products must be inspected and accompanied by an inspection certificate, including onions, potatoes, and field tomatoes to the United States and Puerto Rico.

2.4.4 Requirements for the outer label of cosmetics

In order to minimize risks related to the use of cosmetics, Health Canada tabled new regulations regarding cosmetics that as of November 18, 2006, the outer label of cosmetic products sold in Canada must list all the ingredients in the product. Besides, each ingredient must be listed only by its INCI name, a system that is adopted by many countries such as the United States, the European Union, and Japan. The new requirements are to be phased in over a two year period.

2.4.5 Proposed Regulations on Asbestos Products

In November 2006, Canada published the Proposed Regulations on Asbestos Products. The new regulations are to put together 5 separate items dealing with asbestos and asbestos products that currently fall under Part I of Schedule I to the Hazardous Products Act and the contents of the items will remain the same.

2.4.6 Proposed amendment to the Motor Vehicle Safety Regulations and Motor Vehicle Tire Safety Regulations

On December 13, 2006, the Government of Canada announced the proposed amendment to the Motor Vehicle Safety Regulations and Motor Vehicle Tire Safety Regulations 1995. Under the proposed amendment, Technical Standard Documents 110 and 120 are to be introduced into Items 110 and 120 of the Motor Vehicle Safety Regulations, regarding the tire selection and rims for vehicles with GVWR equal to or under 4, 350 kg (10, 000 pounds) and for vehicles with GVWR above 4, 350 kg (10, 000 pounds) respectively. Apart from that, amendments have also been made to Standard 101 of Schedule IV of the Regulations, Location and Identification of Controls and Displays to add two signal apparatuses for the tire pressure monitor.
system and one indicator. At the same time, the proposed amendment also includes relevant revisions to the Motor Vehicle Tire Safety Regulations 1995. Mandatory enforcement of the amendment will start from 1 September 2008.

2.4.7 Organic Products Regulations

In January 2007, Canada rolled out the new Organic Products Regulations, which are intended to govern the use of a new logo for organic products sold in Canada. Under the new regulations, products sold in Canada with the Canada Organic logo, be they domestically made or imported, will have to meet the new regulatory requirements. The Canada Organic logo will be permitted for use only on those food products certified as meeting the revised Canadian standard for organic production and that must contain at least 95% of organic ingredients. For food products containing over 70% of organic ingredients, the percentage will have to appear on the label.

2.4.8 Resumption of China’s Ya pear exports to Canadian

On March 22, 2006, the Canadian Food Inspection Agency (CFIA) decided to resume the importation of Ya pear (Pyrus bretschneideri) from Hebei Province of China, putting an end to the two year suspension on Ya pear imports from China.

In the beginning of 2004, following the suspension of Ya pear imports from China by the United States, Canada also suspended the importation of all pears from China including Ya Pear and Asian Pear (Pyrus pyrifolia), based on the discovery of an exotic fungal disease (Alteraria sp.). As a result, the Chinese Ya pear farmers and exporters incurred heavy economic losses. After the resumption of China’s exports of Asian pear in October 2004, the Workplan between the CFIA and AQSIQ on Export Phytosanitary Requirements for Ya Pears was signed, lifting the suspension of the importation of Ya pears from the provinces of Hebei and Shangdong.

2.4.9 New measures respecting live birds and avian influenza


The enhanced import measures include: 1) The live poultry must have been inspected by a certified veterinarian within 24 hours of shipment; 2) There must be
evidence that the imported poultry were kept in a country or zone free from Highly Pathogenic Notifiable Avian Influenza since they were hatched or for the past 21 days before shipment; 3) the bird being imported must not have been vaccinated against avian influenza. Under normal circumstances, Canada allows for a quarantine period of 30 days for imported animals. However, under the new measures, a representative sample of the shipment (60 birds) will be tested 21 days after entering the approved quarantine location and negative results must be available prior to the release of the birds.

2.4.10 Guidelines for the Use of Food Additives and/or Processing Aids Intended for Fresh Fruits and Vegetable

In June 2006, the CFIA published the Guidelines for the Use of Food Additives and/or Processing Aids Intended for Fresh Fruits and Vegetable. The document also provides guidance on the labeling of prepackaged fresh fruit and vegetable products. Permitted food additives and their allowable areas of use and maximum levels of use are listed in the Tables of Division 16 of the Food and Drug Regulations.

As food additives are considered to be ingredients in a final prepackaged product, added ingredients must be included in the list of ingredients and accompanied by nutrition facts table (with the exception of wax coating compounds).

2.4.11 Wine standard

According to the amendments made to the Food and Drug Regulations in June 2006, definitions of wine are revised, maximum levels of use for new ingredients and food additives are laid down, and there is an increase in the maximum level of volatile acidity in wine from the current 0.13% to 0.24%.

2.4.12 Interim Marketing Authorization regarding orange juice fortified with calcium, with or without vitamin D

In October 2006, Health Canada issued an Interim Marketing Authorization regarding orange juice fortified with calcium, with or without vitamin D, permitting the addition of calcium, with or without vitamin D, to orange juice, or orange and tangerine juice sold, in fluid, concentrated, or reconstituted forms.

2.4.13 Tough inspection and quarantine measures respecting salted duck eggs and egg products

The CFIA announced in December 2006 that the Agency would take steps to subject
imported salted duck eggs and egg products to strict examination. Up to now, there has been no discovery of Sudan dyes in salted duck eggs that were domestically produced.

According to relevant policies, salted duck eggs may be imported if a person produces a certificate signed by a government of the country of origin, stating that all eggs in the shipment have been inspected and found to be free from avian influenza and visible surface dirt prior to processing.

2.4.14 Interim Marketing Authorization for the use of calcium disodium EDTA or disodium EDTA in canned food products

In January 2007, Canada issued the Interim Marketing Authorization for the use of calcium disodium EDTA or disodium EDTA as a sequestering agent in a variety of standardized canned food. Under the Authorization, the maximum level of use of calcium disodium EDTA is 365 p.p.m. while the maximum level of use of disodium EDTA is 165 p.p.m.

3 Trade barriers

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak

Canada still maintains high tariff rates over certain products and this has proved to be a major obstacle to the export of textiles, especially clothing, to Canada. For instance, the tariff rate for wool and artificial fiber is 16% while tariff rates for clothing range from 17.5% to 21%. Besides, the Government of Canada also maintains quite high tariff rates on ice hockey protective devices, such as helmets, shin guards, shoulder pads, elbow pads, face protectors, and belts. Helmets are subject to a tariff rate of 8.5%; skates, including related protective devices, 18%; and shin guards, shoulder pads, elbow pads (other than used in football), and protective devices covering thighs and bottoms, 15.5%.

3.1.2 Tariff escalation

In Canada, tariff escalation is quite prominent in food, beverages, tobacco, textiles and leather products. Though coco beans are duty free, import duty on coco powder is around 6%. Natural mineral water is subject to a zero tariff rate, but an 11
% import duty is imposed on mineral water added with sugar or flavor. While unprocessed tobacco is duty free, rolled cigars with tobacco and cigarettes are subject to import duties ranging from 4% to 12.5%. Wool and animal hair when not carded or combed enjoy the zero tariff rate, but an import duty of 8% is levied on semi-processed products such as yarn of wool or of fine animal hair (carded or combed). Tariff rates on some woven fabrics rise to a level between 12% and 14%. For raw hides and skins of bovine or equine animal, while most of the products are subject to a zero tariff rate and some are subject to the maximum rate of 3%, the tariff rates on articles of leather escalate to a level between 7% and 15%.

3.1.3 Tariff quota

Tariff quota administration is maintained by Canada over some agricultural products, mainly including eggs and egg products, natural dairy products, ice cream, yogurt, turkey and turkey products, beef, chicken and chicken products, etc. The tariff rate over access commitment on imported milk is 243% with the collected tariff not lower than CAN $2.82 per kilo. For other dairy foods for smearing, the tariff over access commitment is as high as 313.5% and that on meat and edible offal of the poultry (fresh, chilled or frozen) as high as 154.5% and 238% respectively.

3.2 Import restriction

The Government of Canada exercises certain import restrictions on the importation of alcoholic beverages. The importation and inter-provincial distribution of alcoholic beverages are governed by the Importation of Intoxicating Liquors Act, which vests the provinces with the discretion to regulate the sale, importation and inter-provincial distribution of liquors. At present, the provincial liquor boards (PLB) in the 10 provinces of Canada are the sole authority to exercise that right.

The PLBs adopt discriminatory measures against imported beverages. These measures include mandatory markups on imported beverages higher than those on domestic products of the same kind, differential listing and delisting measures (under which the PLBs determine the brand names of the imported beverages or the distribution channels of various kinds of distilled liquor and beer), restricting private delivery and retail outlets, and minimum and maximum price requirements. The Chinese side is of the opinion that the above measures adopted by the Government of Canada are not in conformity with the MFN Principle of the WTO and have constituted an obstacle to the entry of foreign alcoholic beverages into the Canadian market.

3.3 Technical barriers to trade
3.3.1 Packaging requirements for fresh fruit and vegetables

For the importation of fresh fruits and vegetables in packages exceeding certain standard package sizes, the Canadian importers are required to demonstrate that there is an insufficient supply of the product in the domestic market to obtain an exemption from the requirements. The restriction has a negative impact on the export of bulk apples and potatoes to Canada.

Detailed requirements for the size of the container are laid down in the Fresh Fruit and Vegetable Regulations. For apples, apricots, peaches and pears to be sold in the Canadian market, they shall be packaged in a container where the net weight of fruits in the container shall not exceed 200 kg net weight, and for apples of mixed kinds, container shall not exceed 20 kg. Besides, for prepackaged beets, carrots, onions, potatoes and rutabagas, repackaging containers will have to comply with the container requirements before they are allowed to be sold. The Regulations also prescribe for detailed container weight and label requirements regarding fruits and vegetables marketed in combination with other kinds of fruits and vegetables. The above requirements, far too complicated, have caused unnecessary trouble for the exporters in the arrangement of packaging for the products.

3.3.2 Labels and marks

3.3.2.1 Basic labeling requirements

For imported products to be sold in Canada, the information stating country of origin is required to appear in either English or French on the principal display surface of the package. There are different standards regarding consumer packages and wholesale packages, and the use of recyclable materials for packaging is encouraged. Pursuant to the requirements of the Consumer Packaging and Labeling Act, weight and volume of the products shall be indicated on the label. For prepackaged food, the labeling policy of Canada requires that such information as product identity, net weight, dealer’s name and principal place of business, list of ingredients be clearly marked on the container of prepackaged food. If the shelf life of the product is no more than 90 days, date of expiry shall be clearly indicated. Regarding fresh fruits and vegetables, product identity, weight, place of origin, name and address of the packaging company shall appear on the container and the produce must comply with the standards on pesticide and sterilization prescribed in the relevant Canadian regulations. Furthermore, the Canadian Government has issued a notice of the legislative initiative to enhance nutrition labeling regulations, requiring not only the content of calories but also 13 key nutrients such as calcium and iron be indicated.
on the container of the food.

3.3.2.2 Labels and tags for filled products

According to the Textile Labeling Act and relevant requirements dealing with labels, each label shall show in either English or French the following four categories of information, including the identity of the dealer or the code of the Canadian importer, country of origin, fiber content, and care instructions. In addition, there are special labeling requirements for filled textile products such as cotton and down filled coats. Though no requirements are made under the Textile Labeling Act regarding fiber content of the fillings, Quebec, Ontario, and Manitoba have special provincial labeling requirements for each filled clothing or stuffed toy. Besides, manufacturers of the said products are also required by provincial regulations to register with relevant provincial authorities with a registration fee of CAN $ 400. To comply with the provincial requirements, the producers find it difficult to finish registration during the production process or prior to shipment. It could also lead to a delay in shipment, which would increase the cost of exporters.

3.3.2.3 Emission standards

On November 3, 2006, Canada published a Notice of Intent to Develop and Implement Regulations and Other Measures to Reduce Air Emissions. The Notice of Intent describes the plan the government has regarding the development and implementation of measures to control both air pollutants and GHGs. While the Chinese Government applauds the measures Canada has taken for the purpose of environmental protection, the Chinese side suggests that relevant technical standards and regulations be made based on international standards and due consideration be given to the realities of the developing countries so as to avoid unnecessary restrictions on normal trade activities.

3.4 Sanitary and Phytosanitary measures

3.4.1 The inspection of meat

The importation of meat products is subjected to strict inspection in Canada. First, meat products may only be imported from countries where the meat standards are recognized by Canada; second, an additional label is required under the Meat Inspection Act for containers carrying imported meat; third, a certificate of origin as required by the Animal Disease and Protection Act and a certificate of inspection as
required by the Meat Inspection Act should also be provided, in addition to the compliance with the labeling requirements as specified in the Meat Inspection Act. Meat and meat products, aquatic products, plants and seeds, fresh fruits and vegetables are also subjected to Customs inspection to see whether they comply with other hygiene and grading standards.

3.4.2 The inspection of fish products

Pursuant to the Fish Inspection Regulations, all exports of fish and fish products are subject to free sampling for sensory, content, label, and container integrity evaluation. When an imported fish product fails to pass certain inspection, the name of the product and the kind of inspection will be listed by the inspector on the Import Alert List, and all subsequent importation of this product from the same producer will be subject to the same kind of inspection.

For canned fish, documentation must precede or accompany the first shipment from each processor for each type of canned fish, and a copy is maintained in Canada by the importer. For subsequent shipments of the same product, such documentation must be available to the importer and to CFIA on request. This documentation must show an adequate thermal process approved by a recognized thermal process authority, and it must also show adherence to seam specifications required.

Although the all aluminum pop top can, commonly used in the world, does ensure the container integrity and quality, it is not as strong as alloy aluminum can. Therefore, the all aluminum pop top can, when going through container integrity inspection by the CFIA, tend to crack and fail the inspection as it can’t bear the same kind of strength as the alloy can. As a result, producers of food contained in the all aluminum pop top can got listed in the Import Alert List and their exports to Canada affected.

3.4.3 Caffeine containing beverages

Pursuant to the Food and Drug Regulations, the addition of caffeine to cola type beverages is restricted in Canada. As a result, some of the carbonated drinks have no access to the Canadian market, and only decaffeinated drinks are allowed to be sold. It is said that the restriction was made based on the assumption that caffeine has ill health effect on children. However, the review made by Health Canada in 2003 of the potential health effect of caffeine on children hasn’t drawn a final conclusion. The Chinese side holds the opinion that such restriction is not in line with the WTO/SPS Agreement and suggests that new standard regarding the use of caffeine be made.
3.4.4 Wood packaging

On August 1, 2006, Canada adopted D 98 08 (6th Revision): Entry Requirements for Wood Packaging Materials Produced in All Areas Other Than the Continental United States. This directive requires wood packaging entering Canada from all areas except the continental US must be treated and certified in accordance with the International Standard for Phytosanitary Measures (ISPM) #15. While appreciating Canada’s adoption of international standards, the Chinese side hopes that Canada can explain the reasons for granting special treatment to the US so as to avoid discrimination among trading partners.

3.5 Government procurement

Although Canada is one of the signatories to the Government Procurement Agreement (GPA), it is also one of the signatories that have very limited commitments under the Agreement. Canada has not covered any portion of its provincial procurement market. Besides, sectors involving communication devices, transportation equipment, basic telecommunication services, fishing and maintenance are also excluded from Canada’s commitments under the GPA.

The provincial governments of Canada give priority to small businesses regarding government procurement. Besides, there are also preferential policies for small businesses, such as favorable prices, special procurement programs reserved for small businesses, or certain percentage of bonus for small businesses channeled through quota system. Therefore, priority is often given to small businesses even though the prices they bid are relatively high.

In addition, most of the provinces offer various kinds of favorable terms to local or provincial manufacturers and service providers by giving them favorable prices or by limiting bidding opportunities. The Canadian Space Agency (CSA) requires that a maximum of 70% of the purchase of satellite be made by Canadians.

3.6 Trade remedy measures

Canada has initiated altogether 13 anti-dumping investigations against Chinese exports since 1995 and there was one new investigation in 2006. On June 8, 2006, the CBSA initiated an anti-dumping and countervailing investigation respecting certain copper pipe fittings from China, the fourth anti-dumping and countervailing investigation against Chinese exports following outdoor barbecues, carbon steel and stainless steel fasteners, and laminate flooring. On October 20,
2006, a preliminary determination was made by the CBSA, imposing a provisional anti-dumping duty of 39% and a countervailing duty of 17% on two Chinese enterprises from Zhejiang, and an anti-dumping duty of 116% and a countervailing duty of 67% on non-cooperative companies.

3.7 Subsidies

3.7.1 Agriculture Policy Framework

The Canadian Government developed a comprehensive agricultural strategy in 2003, cited as the Agricultural Policy Framework (APF). The APF is made up of the following five elements: Business Risk Management, Food Safety and Quality, Science and Innovation, Environment, and Renewal. Under Business Risk Management, there are two programs, namely, the Canadian Agricultural Income Stabilization (CAIS) Program, and Production Insurance. The two programs are intended to provide the farmers with various kinds of protection and subsidies when they incur losses. While Production Insurance offers financial protection against crop losses due to uncontrollable weather such as hailstone, drought, flood, and diseases, the CAIS Program offers protection against losses not covered by Production Insurance, such as low prices, plummeting prices or a comprehensive drop in farmers’ income due to an increase in input cost. CAIS is delivered federally in some provinces including British Columbia and Saskatchewan, and provincially in Alberta, Ontario, Quebec, and Prince Edward Island.

3.7.2 Wheat board

Authorized by the Federal Government of Canada, the Canadian Wheat Board (CWB) is a state-owned marketing agency for western Canadian wheat and barley growers. All export credits of CWB are guaranteed by the federal government through different programs. Besides, the federal government provides guarantee to CWB’s operation on loans at an interest rate lower than that of private companies.

Although CWB’s monopoly over the export and pricing of wheat and barley in western Canada does not violate the relevant WTO rules, the Canadian side hasn’t treated imported grain products as equal to domestic products. For instance, the CWB has been receiving favorable charges respecting rail transportation. The Chinese side expresses concern over the inconsistency of the above policy with the WTO rules.

3.8 Barriers to trade in services
Despite a comparatively long history of trade in services, Canada still imposes restrictions on the market access to service sectors like telecommunications, financial services, and educational services.

3.8.1 Telecommunications

According to the Telecommunications Act, a direct acquisition of a business that owns or operates a transmission facility by a foreign investor shall not exceed 20%, and an indirect acquisition shall not exceed 33%, with aggregate foreign ownership not exceeding 46.7%.

3.8.2 Banking

According to the relevant Canadian regulations, no less than 75% of the banking sector shall be owned by Canadians. Besides, Canada still imposes restrictions on foreign access to retail banking. In this case, a foreign financial institution needs to file an application with the Office of the Superintendent of Financial Institutions and is only allowed to operate upon approval.

3.8.3 Insurance

There are certain restrictions regarding foreign access to the insurance sector in Canada. Foreign capital owners are subject to the investment threshold review. Some provinces of Canada still maintain the examination of foreign companies that wish to invest in these provinces. Life insurance companies are not allowed to conduct business other than life insurance. Foreign insurance companies are limited to commercial insurance, reinsurance, and retransfer services. In British Columbia, Saskatchewan, and Manitoba, consumers are required to buy the minimum auto insurance from provincial underwriters. Additional insurance is taken out with government and private underwriters. In Quebec, personal accident is underwritten by the provincial government while auto and property insurance are underwritten by private insurers. In provinces other than Quebec, the above insurance is underwritten by private insurance companies, which are subject to strict regulatory control regarding premium and the term of the insurance policy.

3.8.4 Legal services
In Canada, there are specific requirements for foreign counselors and lawyers, and the legal profession is subject to stringent regulatory control. Foreign counselors (only limited to the practice of foreign laws and public international laws) should indicate the nature of the business in the form of sole proprietorship or partnership. In Prince Edward Island, Ontario, Alberta, and Newfoundland, permanent residence status is one of the registration requirements for lawyers. However, in Quebec, a lawyer must be a Canadian citizen. The legal profession in Canada is governed by the laws, rules and regulations of the provincial and regional authorities or law societies under provincial legislative bodies. The 13 provinces and territories of Canada have their own rules and codes of conduct. To conduct legal affairs in Canada, one must register in one of the 10 provinces or 3 territories.

3.8.5 Construction services

Construction services are subject to licensing control in Canada. The profession of architecture is regulated by the provincial governments, and an architect is required to be licensed with the architectural association of the province or territory. Licensing requirements differ between the provinces (territories), and it is the responsibility of the Committee of Canadian Architectural Councils (CCAC) to coordinate provincial associations and regulations including licensing. First of all, applicants of a license must obtain a certificate of certification. Permanent license holders are required to be local residents in New Brunswick, Newfoundland, and Nova Scotia.

Foreign architects may practice with a one year project license.

3.8.6 Cultural sectors

Pursuant to the Investment Canada Act, the publication, distribution, and sale of books invested by foreigners shall be consistent with the Canadian national cultural policies, and bring “net benefit” to Canada. Besides, direct acquisition of an existing Canadian book company by a foreign investor is prohibited in Canada.

Canadian policies prohibit foreign acquisitions of Canadian controlled or Canadian owned film distribution firms. Foreign investors are not allowed to establish a new film distribution company unless the Canadian importer has the global distribution right or is the major investor of the company. Indirect or direct acquisition of a foreign distribution firm operating in Canada is only allowed if the investor undertakes to reinvest a portion of its Canadian earnings.

3.8.7 Broadcasting services
The Canadian Radio television and Telecommunications Commission (CRTC) is not only responsible for implementing the Broadcasting Act, but also vested with the authority to draft relevant rules and regulations. The CRTC requires that for Canadian conventional, over the air broadcasters, Canadian programs must make up 60% of television broadcast time overall and 50% during prime hours (6 p.m. to midnight). It also requires that 35% of popular musical selections broadcast on radio should qualify as “Canadian” under a Canadian government determined point system. For direct to home (DTH) broadcast services, a preponderance (more than 50%) of the channels received by subscribers must be Canadian programming services.

Under present CRTC policy, in cases where a Canadian service was licensed in a format competing with that of an authorized non-Canadian service, the CRTC could revoke the license of the non-Canadian service, if the new Canadian applicant so requested. To ensure “Canadian control”, the CRTC further prescribes that a company is not allowed to have the operational license or have the license renewed unless the Canadian ownership of the company is above 80% or more than 4/5 of the members of the Board are Canadians.

3.8.8 Commercial air services

Foreign acquisition of a Canadian airline is limited to 25%.

3.8.9 Fishery

Foreign acquisition of a Canadian firm with a commercial fishing license is limited to 49%.

3.8.10 Real estate

There are restrictions in Prince Edward Island, Saskatchewan, and Nova Scotia on the sale of real estate to any person or any organization outside the province.

3.9 Other barriers

3.9.1 Protracted process for the approval of new drugs
The Biologics and Genetic Therapies Directorate (BGTD) under Health Canada has been rather slow in approving new drugs. The protracted review process has obstructed new drugs from entering the market.

3.9.2 Lengthy period for the approval of veterinary drugs

In Canada, the approval process for veterinary drugs is conducted by the Health Product and Food Agency under Health Canada, through the Veterinary Drugs Directorate (VDD). New veterinary drugs are subject to stringent examination of VDD. According to the VDD policy, manufacturers have to accept a review period of 180 days after the submission. As the review period is too long, manufacturers are unable to keep in pace with other markets when they launch new drugs in Canada.

4 Barriers to investment

Though Canada gives national treatment to foreign investors with few exceptions, it is also one of the few OECD members that still conduct reviews regarding investment. While recognizing the importance of foreign investment to economic growth, the Government of Canada still puts in place quite a few restrictions on non-Canadian investors, requiring that foreign investment bring net benefit to Canada.

Different provinces tend to have different restrictions on foreign investment, but the restricted sectors mainly cover the purchase of land and financial services under provincial regulation. Provincial government policies respecting culture, labor relationship, and environmental protection may become elements restricting foreign investment.

In 2006, the Federal Conservative Government of Canada came up with a plan to prevent foreign acquisitions and foreign national investment that will pose potential threats to Canada. It was commented that this policy was mainly intended for the acquisitions made by Chinese enterprises. Though the Canadian side has emphasized that the policy was not made against China, the Chinese side holds the view that the policy runs counter to the spirit of the WTO and will have negative impact on the economic and trade relations between the two countries.
Egypt

1 Bilateral trade and investment

According to the China Customs, the bilateral trade volume between China and Egypt in 2006 reached US $3.19 billion, up by 48.8% year on year, among which China’s export to Egypt was US $2.98 billion, up by 53.9% year on year, while China’s import from Egypt was US $220 million, up by 2.7% year on year. China had a surplus of US $2.76 billion. China mainly exported to Egypt garments and clothing accessories, cotton, long staple chemical fiber, plastics and products thereof, organic chemical products, mechanical apparatus and parts, motive power machines and equipment, iron and steel products, vehicles and parts. China’s main imports from Egypt included cotton, textile yarn and knitted products thereof, long staple chemical fiber, carpets and other floor covers made of textile materials, iron and steel, mechanical apparatus and parts, plastics, metals, mineral materials and products thereof.

According to the Ministry of Commerce of the People’s Republic of China (hereinafter referred to as MOFCOM), the accumulated turnover of completed engineering contracts by the Chinese companies in Egypt amounted to US $1.03 billion in 2006. The volume of completed labor service cooperation contracts was US $9.57 million.

According to MOFCOM, approved by or registered with MOFCOM, China’s direct non-financial foreign investment reached US $12.5 million in Egypt in 2006.

Statistics of MOFCOM show Egypt invested in 15 projects in China in 2006 with a contractual investment of US $16.05 million; the actual utilization was US $1.27 million. By the end of 2006, Egypt had accumulatively invested in 72 projects in China with a contractual investment of US $75.44 million and an actual paid-up capital of US $14.73 million.

2 An overview of trade and investment regime

investigations.


The competent authorities responsible for nationwide trade and investment affairs is the Ministry of Foreign Trade and Industry of Egypt with the affiliated organization of General Organization for Import and Export Control(GOIEC) being in charge of the inspection of all import commodities. Affiliated to GOIEC, the Administrative Bureau of Countries of Origin is responsible for doing research on trade preferential arrangement and non-tariff barriers, publishing information, issuing certificates of origin, and conducting business administration of the sections in charge of countries of origin in different departments. The Central Department of International Trade Policies in the Ministry of Foreign Trade and Industry is responsible for countervailing, special safeguard measures and anti-dumping issues.

The main functions of the General Authority for Industrial Development include formulating and implementing the plan and policy of deepening domestic industrialization, increasing the local content of raw materials in production, and increasing the added value of Egyptian products gradually. Its terms of references also include setting the prices of land for industrial use in each province and industrial zone, implementing the industrial policies made by the Ministry of Foreign Trade and Industry, encouraging investment, providing convenience for investors, improving the investment environment of the industrial zones together with the General Authority for Investment and Free Zones, and making and publishing the specifications and standards for each industrial project.

The Ministry of Investment of Egypt is in charge of foreign investment policies, coordinating the departments relevant to investment and providing services of dispute settlement for investors. The affiliated organizations include Capital Market Authority(CMA), General Organization for Insurance Control and the General Authority for Investment and Free Zones. Affiliated to the Supreme Committee of Investment, the General Authority for Investment and Free Zones(GAFI) is the executive body of the Ministry of Investment, managing foreign investment projects and free zones, taking the responsibility of formulating and amending the Investment Law, improving foreign investment environment, examining and approving foreign investment projects, providing administrative and consulting services, and providing information overseas.

2.1 Legislation on trade and investment and its development

2.1.1 Tariff regime
To facilitate trade liberalization, Egypt has made further adjustments to its tariff regime. The Presidential Decrees of 300/2004 and 410/2004 reduced the weighted average tariff rates of commodities from 14.6% to 8.9%, and the ad valorem duties from 27% to 6%.

2.1.2 Import administration

Article 6 of the Customs Law stipulates that the assembling industry (processing trade) can enjoy a tariff reduction of 10% to 90% when importing parts and components based on the different proportions of local contents. That is to say, the higher the proportion of local contents, the more the reduction of tariffs.

According to Decree No. 32/2006 on Amending the Executive Regulations to Implement Import and Export Law No. 118/1975 as well as Inspection and Control Procedures of Imported and Exported Goods, textile labels printed in the Arabic language must be sewed and fixed to every piece of garments, bedding, carpets, and embroideries (hosiery and imports for medical care and industrial protection purposes excluded), indicating the types of textiles used, places of manufacturing and the importers.

Pursuant to the Decree on Amending Some Provisions in the Executive Regulations of the Import and Export Law, as of 15 March 2005, for all the commodities enjoying Customs preferential policies according to the agreements signed between Egypt and other countries in the world and all the products subject to anti-dumping duties, Customs clearance can be made only when the certificates of origin of the consignments in question include the names of the producers and the commercial trademarks. Meanwhile, all the supporting documents relating to the export to Egypt should include the final invoice, the name of the producer, the address, the telephone number, the fax number and the email address. Packed products should be marked with places of manufacturing, names of producers and trademarks in the Arabic, English or French languages. The Decree does not apply to those products already dispatched, paid for or the products whose L/C already opened prior to this date.

2.1.3 Export administration

In accordance with Decree No. 32/2006 on Amending the Executive Regulations to Implement Import and Export Law No. 118/1975 as well as Inspection and Control Procedures of Imported and Exported Goods, only those industrial products
manufactured by registered industrial enterprises with licenses are permitted to export. Handicraft products, handicrafts and ferry boats for tourists are excluded.

2.2 Legislation on investment and its development

There is no specific law governing foreign investment in Egypt. Foreign investors may choose to invest in Egypt either under the Companies Law or the Investment Guarantees and Incentives Law, depending on the types of incentives sought and the areas in which the investment is to be made. Investment can be made through joint ventures, limited liability companies, partnerships and “inland investments”. Unlike the Companies Law which applies to all investment, the Investment Guarantees and Incentives Law applies to domestic or foreign investment in certain specified activities or sectors.

Eleven free zones of Alexandria, Cairo and Suez, etc. as well as 12 new cities and forty industrial zones have been set up nationwide in Egypt. Enterprises located in these special zones enjoy a series of preferential policies, which include:(1) Taxes on industrial and commercial income or corporate profit tax are exempted;(2) Enterprises registered before June 2005 in new cities and industrial zones enjoy a ten year holiday of income tax, while those established after June 2005 are subject to 20% tax;(3) Imported materials and equipment(autoes excluded) for investment projects are subject to a unified tariff rate of 5%;(4) Enterprises invested in free zones enjoy life long tax exemption if their products are for export and tariffs on raw materials are imposed if their products are for the domestic market. Commodities in and out of free zones are imposed of 1% administration fee or an annual tax of 1% according to the value added to the project per annum. Service projects are subject to 3% turnover tax;(5) 10% income tax is imposed on investment projects in special zones.

Applications for purchasing land for investment projects should be made to the Investment Authority which is responsible for recommending land, yet the Ministry of Agriculture takes the responsibility of examining and approving of land for agricultural purpose. Land use for tourism projects is under the authority of the Ministry of tourism and land for industrial purpose should be approved by provincial governments or the committees of industrial zones. In the Suez Special Economic Zone, the administrative committee of the special economic zone is responsible for it. In some private new industrial zones, the developers are in charge of land sale.

2.3 Legislation on trade and investment and its development

In April 2006, Egypt issued the new law on land taxation, imposing new regulations on real estate tax and tax on agricultural land. The tax rate on land was reduced from
14% to 10% based on the rental value.

The new stamp tax regulation issued by the Egyptian Ministry of Finance took effect in September 2006. The new regulation removed some stamp taxes on certain projects and reduced some rates of stamp taxes to encourage deposit and investment as well as to reduce the tax burden on enterprises.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak

In Egypt, import duties vary from 2% to 40% on different imports of raw materials, spare parts, primary feeding materials, and durable products based on the different degrees of processing. However, high tariffs are maintained on some products including alcoholic drinks, tobacco and passenger cars with displacement exceeding 2000cc.

3.1.2 Tariff escalation

Egypt’s tariff structure clearly reveals a pattern of positive escalation, with average tariffs of 4.8% on raw materials, 10.6% on semi-manufactured goods, and 28.2% on fully processed goods.

3.2 Import restrictions

Pursuant to the relevant regulations of the Ministry of Health of Egypt, natural products, vitamins, and food supplements are prohibited from importation into Egypt in their finished form. The only way these items can be marketed in Egypt is through a local manufacture under license, or by sending ingredients and premixes to a local pharmaceutical firm to be prepared and packed in accordance with the specifications of the Ministry of Health. Only local factories are allowed to produce food supplements and import raw materials to be used in the manufacturing process.

Egypt also prohibits the importation of used and refurbished medical equipment and suppliers. The ban does not differentiate between the most complex computer-based
imaging equipment and the most basic of suppliers.

Passenger vehicles may be only imported within one year after the year of production. Egyptian regulations do allow investors to import a vehicle for private use without restriction on the year of manufacture, provided that an approval is obtained from the Chairman of General Authority for Investments and Free Zones (GOIEC).

3.3 Technical barriers to trade

Some articles of 67/2006 concerning laws protecting the consumer’s rights passed by the Egyptian People’s Congress will have serious impact on the import of certain products. Article 3 stipulates that manufacturers and importers should have the products marked with relevant information in Arabic according to the Egyptian standards or any other regulations.

Strict quality standards are imposed on imported goods in Egypt. At present, the Egyptian national standards are established by the Egyptian Organization for Standardization and Quality Control (ESO) in the Ministry of Foreign Trade and Industry. Verification of compliance of domestic goods is the responsibility of different agencies including the Ministry of Health, the Ministry of Agriculture and, for imported goods, however, the Ministry of Foreign Trade and Industry. The Chinese side is concerned about the possible differential treatment by different organizations dealing with the compliance assessment for imported goods and domestic products. Egypt requires the ISO standards, European Standards, American Standards, Japanese Standards, British Standards, German Standards and CAC Standards should apply in case there are no domestic technical standards or mandatory standards for certain products. The Chinese side hopes to consult the Egyptian government to reach agreement on the application of the Chinese national standards.

Egypt exercises quality inspection on imported batteries and tires based on different specifications according to the regulations on the administration of the quality of industrial products. Sometimes the department concerned requires the submission of batteries and tires exceeding the quantity necessary for quality inspection. Delay in Customs clearance to products that have passed the quality control also happens sometimes (about one month). All these have added burdens to the importers. In addition, Egypt requires the capacity of the battery should exceed 98% while most other countries require 95%.

Extremely rigid testing requirements are imposed on the imported leather for boots in Egypt. Egypt requires the water absorbing rate of natural leather used for vamp be
lower than 45% within two hours, lower than 55% within 24 hours and coefficient of wear less than 45%. The natural and synthetic vamp should undergo elastic resistance testing, requiring no tear after 10,000 times of testing. However, these requirements are only applicable to imported products. In addition, as the Egypt Customs imposes high fees on the import of shoes, the importer should pay an extra US $88 per ton and the analysis fee of US $58. The Chinese side is concerned about the discriminatory treatment to the imported goods.

3.4 Sanitary and phytosanitary measures

Food imports to Egypt face a number of extremely rigid and burdensome labeling and packaging requirements. Imported food labels must indicate: name of producers or factories and business name; country of origin, name of commodity, class and type; name and address of the importer; date of manufacturing and shelf life; preparing and manufacturing methods; ingredients and their proportions; methods and conditions of storage; net content and gross weight; additives and preservatives, etc. However, some requirements are not applicable to domestically produced goods. The Chinese side is concerned about it.

Ministerial Decree 38/2006 issued on February 20, 2006 bans the importing of live birds, their meat and product, but one day old grandparent chicks(broiler and layers chicks) in conformity with the following conditions are excluded:(a) Applying of GOVS conditions for importation of one day old grandparent chicks(broiler and layers chicks);(b) The importation must be from countries free from any contagious and infectious diseases including avian influenza according to the current health status pronounced by the responsible international organizations;(c) The imported birds must not be vaccinated against avian influenza and have no antibodies for this disease;(d) The imported birds will not enter the country in case of alteration of the health status of country of origin at the time of arriving of the consignment at Egyptian ports. Immediately after arriving of chick consignment, it will be quarantined under observation of GOVS and samples should be collected for laboratory tests which will be done in the Animal Health Research Institute according to the international approved laboratory tests. The consignment will be released after negativity has been proved by the test results. On July 11 of the same year, Ministerial Decree 766/2006 lifted the ban mentioned in Ministerial Decree No. 38/2006, allowing the import of the frozen poultry, pasteurized eggs powder, dried eggs, frozen eggs and processed poultry meat products applying of GOVS conditions for importation of these products and the importation must be from countries free from any contagious and infectious diseases, especially free from avian influenza.

On 13 July and 16 November 2006, Egypt issued Ministerial Decrees 640/2006 and 1128/2006 respectively, allowing importation of one day old turkey chicks and one day old young ducks under the following conditions of applying of GOVS
conditions for importation of one day old turkey chicks and one day old young ducks and the importation must be from countries free from any contagious and infectious diseases according to the current health status pronounced by the responsible international organizations. The imported birds must not be vaccinated against avian influenza and have no antibodies for this disease. The imported birds will not enter the country in case of alteration of the health status of country of origin at the time of arriving of the consignment at Egyptian ports. Immediately after arriving, the chick, layer and young duck consignment will be quarantined under observation of GOVS and samples should be collected for laboratory tests which will be done in the Animal Health Research Institute according to the internationally approved laboratory tests. The consignment will be released after negativity has been proved by the test results. The Chinese side hopes that Egypt will follow scientific evidence and make risk analysis, further lifting bans on importing birds and bird products.

On 17 July 2006, Egypt decided to withdraw all the conditions concerning the identification of sex stipulated in the beef import law. Meanwhile, based on national treatment, sex identification conditions continue to apply to live animals for slaughter.

On 17 July 2006, Egypt approved the import of food for pet animals (dogs and cats) containing poultry meat and by products. The said food for pet animals should be in conformity with the following conditions: (1) The importation must be from countries and regions free from any contagious and infectious diseases; (2) The consignment should be attached with certificate of heat treatment, veterinary sanitary certificate and certificate of origin; (3) Immediately after arriving, the consignment will be quarantined and samples should be collected for laboratory tests to ensure that the consignment is free from any contagious and infectious diseases, especially free from avian influenza.

On September 20, 2006, GOVS of Egypt permitted the import of boneless frozen beef from regions in China free from any contagious and infectious diseases according to OIE code and GOVS conditions. The importation must be from slaughterhouses approved by GOVS at the presence of Egyptian veterinary. The Chinese side welcomes the relaxation of restrictions on importing Chinese beef products and hopes that Egypt will be further aware of the strict administration of products of animal origin on the Chinese side so as to promote the healthy development of bilateral trade.

On 9 March 2006, Egypt issued Measures for the Administration of Export Honey or Honey bees to Egypt, stipulating consignment of honey and honey bees from or to Egypt should be compliant with the standards established in the Ministerial Decree No. 1600/2005.
Egypt levies 5% ad valorem duties and 10% excise tax on the imported frozen fish. According to the relevant stipulations on importing frozen fish, foreign exporters should provide the following documents: certificate of place of production, certificate of sanitation, radiation free certificate, and certificate of freezing. These certificates should be notarized by the chamber of commerce of the country of production and the Egyptian embassy in the country in question. Other technical requirements include the imported goods should be packed in polyethylene bags and then put in cartons of regulated size attached with the information of the regions where the fish was caught, the type of fish, and net weight after unfreezing.

3.5 Trade remedy measures

3.5.1 An Overview

By the end of 2006, Egypt had initiated a total of 15 cases against Chinese products regarding trade remedy measures, of which 13 are anti-dumping cases while two are related to safeguard measures in the areas of machinery and electronics, light industry, chemical industry and hardware and minerals. No new anti-dumping investigation was initiated in 2006.

In March 2006, the final ruling of the anti-dumping sunset review on electrical machinery originally made in China was awarded by the anti-dumping bureau of Egypt, maintaining the prevailing anti-dumping measures and continuing to levy 67% to 73% of anti-dumping duties on the electrical machinery originated in China.

In June 2006, Egypt decided to start the investigation into the anti-dumping mid-term review of copper core lock for doors and windows originated in China.

In September 2006, the Ministerial Decree 613/2006 of the Minister of Foreign Trade and Industry was issued, officially announcing the levying of anti-dumping duties on ordinary fluorescent lights which are either originated in or exported from India, Thailand, China, Indonesia and Vietnam. The decision took effect on 22 August 2006 and would last for five years. The rate of anti-dumping duties for China is 35%.

In November 2006, Egypt ended its anti-dumping investigation into ball point pens and felt tip color pens originated in or imported from China. The investigation results show that the Chinese products in question constituted dumping with margins of 94% and 63% respectively and had constituted injury to the Egyptian domestic industry. The Egyptian Minister of Foreign Trade and Industry issued a decree in
January 2007, deciding to levy anti-dumping duties for five years on ballpoint pens originated in or imported from China, each at US $0.0185.

3.5.2 Full market economy status


Egypt declared that it acknowledged China’s full market economy status and would treat Chinese enterprises fairly in trade remedies. This has played an important role in creating a fair and harmonious trade environment for the economic and trade cooperation between China and Egypt and promote mutually beneficial and reciprocal cooperation in a wider range among the enterprises of the two countries.

3.6 Barriers to trade in services

3.6.1 Insurance

The Egyptian government lifted the restriction on foreign investors holding controlling shares of Egyptian private insurance companies and eliminated the regulation on foreigners not being allowed to hold managerial positions in insurance companies. The government allows foreigners to hold 100% ownership of insurance companies.

3.6.2 Transportation

Transportation services of Egypt are being liberalized. Pursuant to the Law of 1998, private concessions can operate maritime transportation service including carrying and delivering of goods, providing supply to ships, ship repair and container businesses. Private concessions can also provide services at airports, but private ownership of airports is not permitted.
3.6.3 Tourism

Before 2005, investment in the Egyptian tourism industry could enjoy a tax holiday of ten years during which period tax is exempted. After the tenth year, companies should pay 40% tax. The new tax regulation cancelled the tax holiday and reduced the tax rate to 20%.

3.6.4 Construction

Foreign ownership is still restricted. Foreign businessmen can only establish joint venture construction companies and their ownership cannot exceed 49%. Non Egyptian staff cannot exceed 10% in the company.

4 Barriers to investment

The duration of working visa to Egypt is rather short while the procedures are rather cumbersome. This has negatively affected the normal operation of the investment projects by our country. In its 79/2006 decree, the Egyptian Ministry of Human Resources and Immigration revised the cost of issuing and renewing working visas for foreign nationals. The fee for applying for working permits before 20 March 2006 was US $ 175 per person and was raised to US $ 210 per person afterwards.

The commercial sector of Egypt is not open to foreign investment. Foreign investment in military products, tobacco industry, alcoholic drinks and investment in Sinai should be examined and approved by the competent authorities. Operation in the areas of publication of newspapers and journals, satellites and remote sensing, companies affiliated to research institutes are subject to approval by the Council of Economic Ministers. Opening supermarkets and franchise stores should be examined and approved by the special committee. Besides, Egyptians should hold the majority of shares in import and export companies and in joint ventures with a purpose of reclaiming desert. Egypt does not have any restrictions on investment in other fields.
India

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and India in 2006 reached US $24.86 billion, up by 32.9%, among which China's export to India was US $14.58 billion, up by 63.2%, and China's import from India was US $10.28 billion, up by 5.2%. China had a surplus of US $4.3 billion. China mainly exported to India electrical machines, organic chemicals, mineral fuel, mineral oil and products thereof, mulberry raw silk, special woven fabric, and etc. China mainly imported from India ore, steel, iron, organic chemicals, plastics and plastic products, jewelry, cotton, and etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), by the end of 2006, the turnover of completed engineering contracts by the Chinese companies in India reached US $2.02 billion in 2006, and the volume of completed labor service cooperation contracts was US $20.7 million.

According to MOFCOM, in 2006, the amount of foreign direct investment in India by Chinese funded non-financial enterprises, approved by or put on record in MOFCOM, reached US $2.38 million. Indian investors invested in 60 projects in China in 2006, with a total contractual investment of US $130 million and an actual utilization of $52.39 million.

2 Trade and investment regime

2.1 Trade administration and its development

The government of India administers trade mainly according to the Foreign Trade(Development and Regulation) Act, 1992 and the Foreign Trade(Regulation) Rules, 1993.

2.1.1 Tariff system

Laws governing Customs and customs administration mainly include the Customs Act, 1962 and the Customs Tariff Act, 1975. The Customs Act, 1962 is one of the major laws of India governing its import and export tariff and regulating its customs valuation. The Customs Tariff Act, 1975 stipulates in detail customs classification, applicable tariff rates and specific tariff collection measures.

Most tariffs in India are ad valorem duties. The Ministry of Finance of India adjusts the tariff rates every year in its annual budget. In the Budget 2006—2007, some tariff peaks have been reduced, and adjustments have been made to import duty on certain
2.1.1.1 Reduction of import tariff peak

In the 2006—2007 fiscal year, the average tariff of India for non-agricultural products has been reduced to 12.5%. With a few exceptions, the tariff peak for non-agricultural products is lowered from 15% to 12.5%. The ad valorem duty on textile, fabric and garment is lowered from 15% to 12.5%.

2.1.1.2 Product enjoying lower import duties

Import duties on most products have been reduced. Import duty on all man-made fibers and yarns is reduced from 15% to 10%, and on alloy steel, stainless steel and other alloy from 10% to 7.5%. Import duty on marble, granite, cement and asbestos is reduced from 15% to 12.5%, while on the other mineral products from 15% to 5%. Duty on inorganic chemicals is reduced from 15% to 10%.

Tariff rates for 10 anti-AIDS drugs, 14 anti-cancer drugs, 4 life-saving drugs, and 3 medical kits and equipment are reduced to 5%. These drugs are also exempt from excise duty and surtax.

Duty on natural gas and petroleum products is reduced from 10% to 5%, among which duty on petroleum products is reduced from 15% to 10%. Customs duty on naphtha, natural gas, propane and butanes falling under heading 2, 711 is being reduced from 10% to 5%.

Customs duty on non-edible grade oils (other than crude palm oil), falling under 1,507 to 1,515, having 20% FFA when imported for manufacture of soaps, industrial fatty acids and fatty alcohols by a manufacture having a plant for splitting up of such oils into fatty acids and glycerols, is being reduced from 20% to 12.5%. In addition, duty on imported palm oil is also reduced from 80% to 70%.

2.1.1.3 Products subject to higher import duties

A few products are subject to increased import duties. Duty on natural honey is raised from 30% to 60%. Vegetable oils and their fractions, partly or wholly hydrogenated, inter-esterified, elaidinised (whether or not refined but not further prepared) (including vanaspati, bakery shortening, etc.) falling under 1516 20 is being reduced from 30% to 80%.

2.1.1.4 Tariff concessions under the Asia-Pacific Trade Agreement

To carry out the third round of tariff concessions under the Asia-Pacific Trade Agreement, China has reduced tariffs on products under over 1700 tariff headings from India and four other countries since September 1, 2006. Likewise, certain chemical products, wooden articles, plastic products, leather, textiles, metal products,
and machinery and electronics of Chinese origin can enjoy preferential tariff rates when exported to these five countries.

2.1.2 Import administration

The Foreign Trade Policy 2004—2009 is the major policy governing foreign trade in India. Since it took effect in September 2004, the Ministry of Commerce and Industry has revised the policy every year to adjust its foreign trade policy and strengthen administration of foreign trade. In April 2006, the Indian government made another amendment and updating to the Foreign Trade Policy 2004—2009, and used it as its foreign trade policy in 2006—2007. This trade policy has prescribed detailed rules in the areas of general provisions on imports and exports, incentive measures, tax exemption programs, capital goods export promotion schemes, Export Oriented Unit (EOU) schemes, Electronic Hardware Technology Park (EHTP) schemes, Software Technology Park (STP) schemes or Bio Technology Park (BTP) schemes, special economic zones, free trade zones and bonded warehouses, and deemed exports.

Generally speaking, no restriction is imposed on the exportation and importation of most products except those restricted and prohibited by ITC (HS). However, according to the special rules on importation of capital goods contained in the adjusted trade policy, all second hand products except second hand capital goods shall be subject to licenses, certificates, permits, or authorization for import. For instance, second hand personal computers and laptops, photocopiers, air conditioners, diesel generators, and manufactured goods will only be allowed for import against licenses. However, import of refurbished or reconditioned spare parts is free from control.

2.1.3 Export administration

2.1.3.1 Export ban

India announced in July 2006 to ban the exportation of sugar, lentil and wheat.

2.1.3.2 Removal of export duty on agricultural and sea products

In May 2006, the Parliament of India passed a bill to remove export duty on agricultural and sea products, covering coffee, tobacco, fragrance and flavor material, flowers, fruits, vegetables, Indian scented rice or Basmati scented rice, animal products, processed agricultural products, and sea products. This measure will lower export price of pertinent agricultural and sea products by 0.5%.

2.1.3.3 Export incentive policy

The newly revised trade policy has continued to provide incentives in 2006 to the export of products from sectors that India traditionally enjoys competitiveness, such as agriculture, handicraft industry, handloom, jade, jewellery, leather and shoe making.
The Indian government has also stipulated various incentive measures such as import and export promotion schemes and tax reduction or exemption to promote exports by export-oriented enterprises, special economic zones and software technology parks. For instance, the Special Economic Zones Act 2005 came into force as of February 10, 2006, providing one-stop services and preferential policies to exporters located in special zones.

Special agencies have been set up in order to promote export. There are 11 export promotion councils established under the Ministry of Commerce and Industry, each responsible for the promotion of a particular group of products, projects and services, and 9 established under the Ministry of Textile, responsible for exploring overseas markets and promoting textile exports. Specific measures include:

1) Market Access Initiative (MAI) Scheme

MAI scheme is intended to provide financial assistance for medium term export promotion efforts with a focus on a country and product, such as market studies, setting up showroom or warehouse, sales promotion campaigns, international departmental stores, participation in international trade fairs, brand promotion, registration for pharmaceuticals and testing for engineering projects. Each of these activities can receive financial assistance from the government ranging from 25% to 100% of total cost.

2) Market Development Assistance (MDA) Scheme

MDA scheme is intended to provide financial assistance for a range of export promotion activities implemented by export promotion councils, and industry and trade associations on a regular basis every year. Assistance under MDA is available for exporters with annual export turnover up to Rs 10 crores (approximately US $ 2.22 million). These include participation in trade fairs, buyer-seller meetings aboard, export promotion seminars, and etc.

3) Duty Free Replenishment Certificate (DFRC)

DFRC is a part of India's duty drawback schemes. It is issued to a merchant exporter or export producer for the importation of inputs to be used in the manufacture of export goods without payment of basic customs duty and special surtax. However, such inputs shall be subject to the payment of additional customs duty equal to the excise duty at the time of importation. DFRC can bring a minimum of 25% tax remission benefits to exporters except for certain gems and jewellery and high value added products. DFRC shall be issued only to eligible products determined by the Directorate General of Foreign Trade (DGFT) according to established criteria. DFRC scheme shall be available to exports up to April 30, 2006, no matter whether their raw materials are imported or homemade.

4) Duty Free Import Authorization
Except for the products excluded by the DGFT in the form of Public Notice, India has started to issue duty free import authorization since May 1, 2006 to allow duty free importation of inputs which are to be used in the manufacture of export product (making normal allowance for wastage), and fuel, energy, catalyst, and etc. which are consumed or utilized in the course of manufacture to obtain the export product. The Authorization shall be issued to products and enterprises identified by DGFT on the basis of Standard Input and Output Norms (SION). The import entitled to the Authorization shall be limited to the quantity indicated in the SION. Prohibited items shall not be imported and shall not enjoy the duty free import authorization.

2.1.4 Trade remedies

The Customs Tariff Act, 1975 has been amended to prescribe provisions on safeguard measures. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 and the Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 have specified procedural aspects of safeguard measures. Section 9, 9A and 9B of the Customs Tariff Act, 1975 as well as the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 constitute the legal basis for anti-dumping investigations and the imposition of anti-dumping duties. The Directorate General of Anti-Dumping and Allied Duties (DGAD) under the Ministry of Commerce and Industry is in charge of anti-dumping investigations.

2.2 Investment administration and its development

Governing laws on foreign investment in India include the Reserve Bank of India Act, 1934, Industrial Policy, 1991, the Foreign Exchange Management Act, 1999, the Companies Act, 1956, and the Income Tax Act, 1961. In addition, other regulations have prescribed detailed provisions governing foreign exchange management, such as the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, the Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000, and the Foreign Exchange Management (Insurance) Regulations, 2000. There exist two procedures for approving foreign direct investment in India, automatic approval and government examination and approval. The Indian government authorizes the Reserve Bank of India (RBI) to handle foreign investment eligible for automatic approval in accordance with the automatic approval procedure. Other foreign investment projects subject to government examination and approval are reviewed by the government upon the recommendation of the Foreign Investment Promotion Board (FIPB).

2.2.1 Current Foreign Direct Investment policy

2.2.1.1 Sectors prohibited for foreign direct investment
India adjusted its policy to foreign direct investment in 2006. Sectors prohibited for foreign investment has been reduced compared with 2005, including only retail trade (except Single Brand Product retailing), nuclear industry, gambling and betting, and lottery business.

2.2.1.2 Sectors subject to prior government approval

Foreign investment in the following circumstances requires prior government approval: projects stipulated in Press Note 1(2005 series); and where more than 24% foreign equity is proposed to be inducted into items reserved for small and medium sized enterprises.

2.2.1.3 Requirements for foreign investment sensitive sectors

Annex to Press Note 4(2006 series) has listed requirements for foreign investment in the following sensitive sectors: broadcasting, banking, aviation, national defense, insurance, investment, telecommunications, and etc. In addition to cap on foreign equities, there are also special requirements for approval procedures and industrial licenses.

2.2.1.4 Solely foreign funded projects on automatic route

In sectors not listed in Press Note 4(2006 series), foreign direct investment is permitted up to 100% on the automatic route subject to sectoral rules or regulations applicable.

2.2.2 Major measures to attract foreign capital

India has made great efforts to attract foreign investment in recent years by easing up examination and approval procedures. The Foreign Investment Promotion Board (FIPB) issue public notices to explain new investment polices or clarify previous polices.

2.2.2.1 Press Notes on Foreign Direct Investment Policy 2006 and clarification

Since enlarging foreign investment proportion in private banks and telecommunications in 2005, the government of India has publicized Press Notes on Foreign Direct Investment Policy 2006 No.1 to No.4, further easing the policies regarding foreign investment. In July 2006, India made further clarification on Press Note 4(2006 series).

2.2.2.1.1 Press Note 1(2006 series)

Press Note 1(2006 series) issued in January 2006 has prescribed rules on foreign direct investment in Up linking TV Channels. Foreign investment up to 49% is permitted for setting up hardware, Up linking TV channels, HUB, and etc., subject
to the Broadcasting Laws and Regulations and relevant rules.

The Indian government decided to allow foreign investment in the Up linking of TV Channels in December 2005. To be specific, a) Foreign investment up to 49% would be permitted with prior approval of the government for setting up Up linking HUB/Teleports; b) Foreign investment up to 100% would be allowed with prior approval of the government for Up linking a Non news and Current Affairs TV Channel; c) Foreign investment (including investment by Foreign Institutional Investors (FIIs)) up to 26% would be permitted with prior approval of the government for Up linking a News and Current Affairs TV Channel.

2.2.2.1.2 Press Note 2(2006 series)

The Indian government publicized on January 1, 2006 Press Note 2(2006 series), a clarification of Press Note 2(2005 series) regarding foreign investment in townships, housing, built up infrastructure and construction development projects. Press Note 2(2005 series) allows foreign investment up to 100% in hotel and tourism sector under the automatic route. It is clarified that Press Note 2(2005 series) shall not apply to Special Economic Zones; neither shall it apply to establishment and operation of hotels and hospitals which shall continue to be governed by Press Note 4(2001 Series) and Press Note 2(2000 series) respectively. Regulations on Special Economic Zones are contained in Special Economic Zone Act 2005.

2.2.2.1.3 Press Note 3(2006 series)

Guidelines for Foreign Direct Investment in Retail Trade of “Single Brand” Products are stated in Press Note 3(2006 series) in February 2006. Foreign investment up to 51% is allowed with prior government approval in retail trade of “Single Brand” products which would be subject to the following conditions: products to be sold should be of a “Single Brand” only; products should be sold under the same brand internationally; “Single Brand” product retailing would cover only products which are branded during manufacturing.

2.2.2.1.4 Press Note 4(2006 series)

Foreign direct investment policy was further reviewed in Press Note 4(2006 series) issued in February 2006. The provisions on foreign direct investment are as follows:

a) To permit under the automatic route foreign direct investment up to 100% for: distillation and brewing of potable alcohol; manufacture of industrial explosives; manufacture of hazardous chemicals; manufacturing activities located within 25 kms of the Standard Urban Area limits which require Industrial License under the Industrial(Development and Regulation) Act 1951; setting up Greenfield airport projects; laying of Natural Gas or LNG pipelines, market study and formulation and investment financing in the petroleum and natural gas sector; cash and carry wholesale trading and export trading; power trading subject to compliance with
Regulations under the Electricity Act 2003; and processing and warehousing of coffee and rubber.

b) To increase foreign direct investment caps to 100% and permit it under the automatic route for: coal and lignite mining for captive consumption; setting up infrastructure relating to marketing in Petroleum and Natural Gas sector; and exploration and mining of diamonds and precious stones.

c) To allow under automatic route non residents acquisition of shares in a company held by Indian residents, subject to sectoral policy on foreign direct investment.

2.2.2.1.5 Clarification on Press Note 4(2006 series)

On July 12, 2006, the Ministry of Commerce and Industry made a clarification to its policy on foreign direct investment in agriculture and real estate outlined in Press Note 4(2006 series).

a) Foreign investment up to 100% is permitted under the automatic route in the under mentioned activities: floriculture, horticulture, development of seeds; animal husbandry; pisciculture; aquaculture; cultivation of vegetables; mushrooms under controlled conditions and services related to agro and allied sectors.

b) Foreign investment up to 100% with prior government approval is permitted in tea plantation subject to the conditions of divestment of 26% equity of the company in favor of an Indian partner and Indian citizen within a period of five years; and prior approval of the State Government concerned in case of any future land use change.

c) Except the above two, foreign investment is not allowed in any other agricultural sector or activity.

2.2.2.2 Items reserved for small scale industries (SSI)

The Indian government attaches great importance to the protection of small scale industries by reserving items for them. Enterprises with over 24% foreign equities shall obtain prior government approval before entering into these items. In March 2006, 69 new items were added, covering the sectors of planting and machinery, involving an amount of US $220,000 to US $1.1 million. Together with the existing 71 items, there are now 140 items reserved for SSI.

2.3 Trade and investment related administration and its development

2.3.1 The Plant Quarantine Order, 2006

In 2006, the Ministry of Agriculture successively promulgated four Plant Quarantine Orders, 2006, seeking to further rationalize the provisions regarding the importation of certain plants and plant products into India for which country specific,
commodity specific and item specific pest risk analysis has been undertaken. This will help increase the import of plants and plant materials which till date are not permitted under the aforesaid Order. The new list of plants and plant materials includes 18 new items under Schedule VI and VII of the Order.

2.3.2 Prevention of Food Adulteration Rules (PFA) 2006

From January to December in 2006, the Indian government made several amendments to the Prevention of Food Adulteration Rules, including amendment to clause(i) of Rule 32 to exempt wines and liquors and alcoholic beverages containing 10% or more by volume of alcohol from declaration of best before date for consumption. The government also specified the definitions and standards of quality with respect to spices and condiments, and revised the use of some food additives, maximum limits of aflatoxin and metallic contaminants in certain food items including use of wax for coating on fruits. Manufacturers of food and soft drinks shall declare on the package the name of ingredients that exceed 2% of the product's weight or volume (including vitamin and mineral) in respect of their composition by weight or volume, as the case may be. Any food containing any allergenic and/or hypersensitive ingredients such as egg and peanut shall bear warnings on package. Tobacco and nicotine shall not be used as ingredients in any food products. Every non-fruit product shall be mentioned in clear, conspicuous and easily readable manner, marked on the label as “NON FRUIT PRODUCT”, and the container containing such product shall not have pictures of fruits. The Rules shall come into force on August 20, 2007.

2.3.3 Prohibiting import of livestock and their products from HPAI countries

The Ministry of Agriculture has decided that beginning from August 3, 2006, for a period of six months, relevant products from Highly Pathogenic Avian Influenza (HPAI) countries are prohibited to be imported, including domestic and wild birds including captive birds (excluding poultry); unprocessed meat and meat products from avian species including wild birds; semen of domestic and wild birds; live poultry; one day old chicks, ducks, turkey and other newly hatched avian species; meat and meat products from avian species including wild birds; hatching eggs; eggs and egg products; feathers; live pigs and pig meat products; pathological material and biological products from birds; products of animal origin intended for use in animal feeding or for agricultural or industrial use.

2.3.4 Draft guidelines on imports and exports of biological control agents

The draft guidelines promulgated by the Ministry of Agriculture on July 18, 2006 have prescribed the detailed requirements and procedures for importation and exportation of biological control agents and other beneficial organisms. The purpose of these guidelines is to facilitate scientific research and commercial use of biological control agents and beneficial organisms, with a view to minimizing the possible adverse effects on human health and environment. The guidelines took effect on October 30, 2006.
2.3.5 The Drugs(Prices Control) Amendment Order 2006

On December 7, 2006, the Department of Chemicals and Petrochemicals under the Ministry of Chemicals and Fertilizers promulgated the Drugs(Prices Control) Amendment Order 2006, in which definitions of Maximum Retail Price(MRP) inclusive of all taxes and the mandatory labelling requirements of MRP for all medicines are prescribed. This amendment has become effective on domestic drugs since October 2, 2006, and will become effective on imported drugs as of March 1, 2007.

2.3.6 Visa procedure

In October 2006, the Indian government revised the examination and approval procedures for business and working visa application from Chinese nationals, and shortened the duration of workflow from three months to two weeks. The simplification of visa procedures helps Chinese technicians to work in India. However, issuance of visa to technical personnel is still subject to security inspection and verification of technical qualification and professional background to ensure that the work they perform in India is beyond the ability of local Indian technicians.

2.4 Regulations on specific products

2.4.1 Packaging and labeling requirements for tobacco products

The Ministry of Health and Family Welfare formulated packaging and labeling rules for tobacco products in August 2006. It is stipulated in the rules that health warnings shall be required for tobacco products. At least 50% of package areas or major display areas shall contain clear health warnings. The place and direction of warnings in various shapes of tobacco package are also prescribed. Tobacco without health warnings is forbidden for sale. Health warnings shall appear on all retail packages and outer packages. The language of health warnings shall be the same as that on the package, and two languages or more are not allowed on package. This rule came into force on February 1, 2007.

2.4.2 Drugs and Cosmetics Rules

The Indian government revised the Drugs and Cosmetics Rules 1945 in October 2006, and renamed it as the Drugs and Cosmetics Rules 2006. Good Laboratory Practices(GLP) is added to the new Rules.

3 Barriers to trade

3.1 Tariff and tariff administration

3.1.1 Tariff peak
The Indian government lowered the import duty on a considerable number of products in 2006, but its overall tariff rate is still at a fairly high level. Tariff peak for agricultural products is particularly noteworthy. In addition, India imposes high import duty on petroleum products, cars, motorcycles, and finished steel products. The tariff rate for imported motorcycles is as high as 100%.

The tariff rates for agricultural products remain high according to the Customs Tariff, 2006—2007 issued by the Ministry of Finance. The import duty on instant coffee, tea, roasted chicory, other roasted coffee substitutes, food preparations such as yeast, soy sauce, tomato sauce, and chilly sauce, mineral waters, aerated waters and Soya milk drinks is 30%. The import duty on durum wheat and wheat of seed quality is 100%, on rice, grain sorghum, palm oil, and palm oil concentrates 80%, on colza oil and crude sunflower seed oil 75%, on essence sunflower seed oil 85%, on corn of seed quality 70%, and other corn 60%. The import duty on custard powder, food flavoring material, and diabetic foods is as high as 160%.

In addition, the Indian government also levies 1% customs handling fee on all imports. The Indian government continues to impose a two percent education fund assessment on all sales, both imported and domestic. Tariffs imposed are calculated on the basis of product value plus additional charges, which artificially adds to the cost of exporters and impedes the entry of foreign products into India.

3.1.2 High tariff on wine products

Despite of the enormous potential in wine market, India imposes high customs tariff on alcoholic beverage and restricts the entry of foreign wine products into India. The tariff rate for beer made from malt, sparkling wine, port and other red wines, and sherry and other white wines is 100%, whilst that for distilled wine, concentrates of alcoholic beverages, brandy, and whiskey is 182%.

Besides, foreign wine products are restricted by such discriminatory tariff rates as federal additional duty, in addition to which, some states imposes discriminatory tax and fee, or import and sales restrictions on imported colored wine. For instance, Maharashtra imposes no tax or fee on local colored wine, but 28% additional duty on the imported, while Tamilnadu completely forbids the sales of imported colored wine in its territory. The combination of additional duty and discriminatory tax and fee increases the general taxes for imported wine, and impedes wine products of relevant enterprises to enter India.

3.2 Import restrictions

India has abolished many restrictions on the importation of capital goods. Provided that the residual life of products is over five years, end user can import secondhand capital goods without license. Refurbished or reconditioned computer spare parts can only be imported if an Indian Chartered Engineer certifies that the equipment retains at least 80 percent of its residual life.
India still stipulates restrictive and trade distorting conditions for the importation of all types of vehicles. For instance, the government of India requires special licenses for importing motorcycles. However, import licenses for motorcycles are granted only to foreign nationals including those permanently residing in India. In addition, the application procedure is unduly complicated and lacking in transparency. In fact, there is no Chinese enterprise that has been granted such licenses.

India retains the Negative Import List, which can be roughly classified into the following three categories: (1) banned or prohibited items (e.g. tallow, fat, and oils of animal origin); (2) restricted items which require an import license (e.g. livestock products, certain chemicals); (3) canalized items (e.g. some pharmaceuticals, bulk grains) importable only by government trading monopolies.

3.3 Barriers in Customs procedures

India applies discriminatory customs valuation criteria to import transactions. Customs valuation price is usually higher than transaction price of imports and exports, thus unable to reflect the true value of transactions, and effectively increasing tariff rates and becoming an instrument to control import. Moreover, Indian Customs requires extensive documentation, which leads to frequent processing delays and inhibits the normal operation of trade.

India applies a reference price to the import of soybean oil. The reference price is the basis upon which India assesses its 45% customs duty. When it rises above the transaction price, the effective rate of duty may also increase above India’s 45% WTO bound tariff. The Indian government reportedly reviews reference prices every 15 days and adjust them accordingly. Although the reviews are done periodically, India hasn’t formally defined this procedure, making it non transparent and unpredictable.

It is required in India that motor vehicles shall be imported through only three specific ports and only from country of manufacture.

In 2004, Indian Customs began to require registration to replace certificate for imported boric acid. However, the Ministry of Agriculture and other competent authorities have not published the criteria and procedures for obtaining this documentation. Imports of boric acid are, therefore, effectively blocked.

3.4 Technical barriers to trade

3.4.1 Textile labeling

India places strict requirements on textile labeling, including mark of manufacturer, ingredients of product, color, letter format and symbol format of labels. Labels on garment shall give clear information as to the name and address of manufacturer, product description, classification number, length, product care, packaging date,
product contents in percentage, and etc. In trade practices, complicated labeling regulations usually lead to delay in customs clearance and exert negative impact on the sales of seasonal textile articles and garments.

3.4.2 Compulsory import certification system

The Bureau of Indian Standards (BIS) is responsible for assessing product conformity. Up to now, it has granted 20,000 certificates, 860 of which to imported products. The conformity assessment conducted by BIS is mostly on a voluntary basis, but some products are subject to compulsory certification. India promulgated in July 2006 the Pneumatic Tyres and Tubes for Automotive Vehicles (Quality Control) Order, 2006. This order pertains to bringing automotive tyres and tubes under mandatory certification which is necessary for securing safety of people. To comply with this requirement, all manufactures of these products shall be required to obtain certification from BIS. Hitherto, 159 products require compulsory import certification issued by BIS, and only with the certification will the Customs allow import of the products into India. Among the 159 products, there are food preservatives and additives, milk powder, infant dairy products, dyestuff, steel, cement, electric appliances, and dry batteries. India imposes unduly harsh conditions on certification, and does not give the Harmonized System Code (HS Code) of products under control, thus identification of products subject to compulsory certification is usually decided by the Customs. Exporters or manufactures need a representative in India to obtain certification, and products with certifications remain to be inspected. BIS has 38 offices across the country to grant certification, conduct inspection, and charge relevant fees. Applicants shall pay US $300 fees to BIS, as well as travel expense and allowance to the inspection team. Having obtained certification, they are also required to pay an annual fee of $2,000 for using certification mark. When the sales volume reaches US $1 million, 1% of the invoice value shall be charged; when the sales volume reaches US $1—1.5 million, 0.5% of the invoice value shall be charged; when the sales volume exceeds US $1.5 million, 0.2% of the invoice value shall be charged.

The Chinese side holds that the procedures of compulsory import certification system are complicated and costly, and have caused undue burdens to foreign manufacturers and increased export cost for Chinese enterprises.

3.4.3 Lack of transparency in notification

India is lacking in transparency, when performing notification obligation stipulated in TBT and SPS agreement of the WTO. For instance, in May 2006, India notified the WTO of four technical regulations regarding the noise limits and emission standards of generators: Noise Limits for generator sets run with diesel, Emission Standards for new diesel engines(up to 800 kilowatt) for generator applications, Noise Limits for generator sets run with petrol or kerosene, and Emission Standards for new generator sets(up to 19 kilowatt) run on petrol and kerosene GSR 682(E). The Chinese side has noticed that the above mentioned technical standards came into implementation
before notification, and that India usually leaves inadequate time for comments, which obviously violates the provisions in TBT agreement concerning transparency and the TBT provision that “Before adopting a standard, the standardizing body shall allow a period of at least 60 days for the submission of comments on the draft standard by interested parties within the territory of a Member of the WTO.”

3.4.4 Certification negotiation

India is negotiating with many countries regarding mutual authentication of certification. India has respectively signed agreement on mutual authentication with Cuba, Israel, Mauritius, Turkey, Armenia, Bhutan, Nepal, Ukraine, and Singapore, and is negotiating with Germany, Sri Lanka, Pakistan, Afghanistan, Thailand, and Bengal in this regard. The Chinese side hopes to conduct consultations with India on mutual authentication of certification in order to reach an agreement in this regard and promote the development of Sino–Indian bilateral trade.

3.5 Sanitary and phytosanitary measures

The government of India made several amendments to the Prevention of Food Adulteration Rules in 2006, and the Chinese side expresses concern on some of these amendments. In May 2006, the Indian government announced that genetically modified (GM) products could only be imported at the approval of the Genetic Engineering Approval Committee (GEAC), and importers should label the ingredients of GM products. In July 2006, the Indian government announced that the rules governing GM food including bean oil would be postponed for implementation until the end of the fiscal year (March, 2007). The rules require that importers of GM food should obtain customs clearance through appointed government departments.

India made another amendment to the Prevention of Food Adulteration Rules on July 18, 2006. It is proposed to have a provision for establishment of Food Recall System. With this provision, no person shall by itself or by any person on its behalf, manufacture for sale or store, sell, distribute or exhibit for sale any article of food which is pre–packed unless it has in place a system and procedure to recall the article of food or any ingredient or any substance placed in the market which is adulterated or misbranded or injurious to health.

On December 8, 2006, the Ministry of Health and Family Welfare promulgated the Prevention of Food Adulteration Rules (8th edition), stipulating Maximum Residue Limits of insecticides on certain food items. It is hoped that several amendments to the Prevention of Food Adulteration Rules, 2006 may draw close attention from relevant enterprises exporting food and processed food to India.

3.6 Government procurement

India is not a signatory to the WTO Agreement on Government Procurement and lacks transparency in specific practices and procedures. The Indian government is
inclined to protect its state owned enterprises (SOE) by granting preferential policies and giving preferences to any SOE that makes an offer 10% less than the target price. As a result, there have been few foreign firms that have won Indian government procurement contracts. The Indian government adjusts its government procurement policy every three years. The next round is due in March 2008.

3.7 Trade remedies

India has initiated a total of 93 anti dumping investigations against Chinese products since 1995, nine of which occurred in 2006. Except the investigation that was suspended because the petitioner dropped the charge, four were imposed provincial anti dumping measures, and seven were imposed final anti dumping measures. These investigations involve chemical, machinery, automobile, and pharmaceutical industries, and products including penicillin industrial salt, ductile iron pipes, Vitamin A Palmitate, compact disc recordables, Flat Base Steel Wheel, Poly Vinyl Chloride, Phosphoric Acid Technical grade and Food grade, Persulphates, presensitised positive offset aluminium and presensitised positive offset aluminium ps plates, Among which the preliminary ruling on the compact disc recordables from China decided to impose a US $ 0.094 anti dumping duty per article.

Among WTO members, India ranks No.1 with regard to the imposition of anti dumping measures, and No.2 with regard to the initiation of anti dumping measures. 47.3% of its anti dumping cases are against China. Among developing countries, India initiates the most cases against China. The Chinese side expresses great concern on this practice by India.

It is noteworthy that in recent years, India has taken a negative role in granting Chinese enterprises market economy status. Till 2004, nine Chinese responding enterprises won market economy status in six anti dumping cases. But afterwards, India takes a negative attitude to the applications submitted by Chinese enterprises for market economy status. In 14 cases awarded final rulings since 2005, India has granted market economy status to none of the responding enterprises. There is a lack of in India’s anti dumping investigations against China. The Chinese side will seek serious and prudent negotiations in this regard.

3.8 Subsidies

Many of India’s current export promotion policies do not comply with the WTO Agreement on Subsidies and Countervailing Measures, including the duty remission scheme, target plus scheme for export promotion (exporters would be entitled to duty free credit based on incremental exports substantially higher than the general annual export target), Served from India scheme, Vishesh Krishi Upaj Yojana (Special Agricultural Produce Scheme) introduced to boost exports of agricultural products such as fruits, vegetables, flowers and minor forest produce and their value added derivatives, and Duty Entitlement Pass Book scheme (DEPB). It is estimated that the
annual expenditure on export promotion policy reaches Rs 450 billion (approximately US $10 billion). The Chinese side expresses concerns over the possible distorting effect of these export promotion policies.

3.9 Barriers to trade in services

3.9.1 Insurance

Under rules of the Insurance Regulatory and Development Authority (IRDA), India’s insurance market is open to private participation. However, foreign equity is limited to 26% of paid up capital. In as early as 2004, the Indian government announced its intention to amend the IRDA law to increase that cap to 49%. But the policy has remained unchanged.

3.9.2 Banking

Foreign banks may operate in India through one of the three channels: branches, wholly owned subsidiary, or up to 74% ownership in a private Indian bank. Most Indian banks are government owned, controlling 80% of the banking system. Foreign direct investment, foreign institutional investment, or portfolio investment and investment by non-resident Indians are liberalized from the 49% cap to the 74% cap. At least 26% of the paid up capital of the private sector banks shall be held by resident Indians. Foreign investment in state owned banks remains capped at 20%. Foreign investor voting rights are capped at 10% in private banks, and only 1% in state owned banks. The banking sector of India still needs further liberalization.

3.9.3 Accounting service

According to relevant Indian regulations, only graduates of an Indian university can qualify as professional accountants in India. Foreign accounting firms can practice in India if their home country provides reciprocity to Indian firms. Internationally recognized firm names may not be used, unless they contain the names of proprietors or partners, or a name already in use in India. Due to the above restrictions, foreign accountants may not be equity partners of the Institute of Chartered Accountants of India (ICAI).

3.9.4 Construction and engineering

Many construction projects in India are offered on a nonconvertible rupee basis. Only government projects financed by international development agencies permit payments in foreign currency. Foreign construction firms are not awarded government contracts unless local firms are unable to perform the work. Foreign firms may only participate through joint ventures with Indian firms.

3.9.5 Legal services
The India Bar Council is entitled to denying applications from foreign law firms for setting up practices in India. It imposes strict restrictions on activities of foreign law firms, which sharply curtails the participation of foreigners in India's legal services market.

Foreign investment is not permitted in legal service sector. International law firms are also not authorized to open offices in India. Anyone wishing to practice law shall enroll as a member of the Bar Council. If that person happens to be a foreign national, he/she must belong to a country that allows Indian nationals reciprocal rights to practice in their country. Foreign services providers may be engaged as employees or consultants in local law firms, but they cannot sign legal documents, represent clients, or be appointed as partners.

3.9.6 Telecommunications

The Indian government has taken positive steps towards liberalization of telecommunications. For instance, in 2005, foreign equity limits were raised from 49% to 74%. India allows private participation in the provision of all types of telecommunications services, but concerns remain regarding its apparent inclination to provide protection to government-owned telecom operators.

The Indian government retains a significant ownership stake and interest in major telecommunications firms, all of which formerly enjoyed monopoly status in their areas of operation. For instance, the government holds a 26% interest in the international carrier, VSNL, a 56% interest in MTNL, and a 100% interest in BSNL. VSNL adopts restrictive measure on international submarine cable access and landing stations in India.

The Indian government has rejected the entry of Chinese companies into its telecommunication sector under the pretext of possible threat to national security. In March 2005, a Chinese company submitted to the Foreign Investment Promotion Board a US$60 million investment plan of establishing new production base in India and expanding the business scope of its Indian subsidiary. However, the application had received no approval by the end of 2006.

The Indian government prevented a Chinese company from expanding its presence in India in June 2006 under the pretext of security concern. India's largest telecommunication operator BSNL held a public invitation for tender valued at US$4.8 billion in June 2006 to expand its GSM mobile network. Five companies including a Chinese company attended the bidding. Before the invitation for tender, BSNL had set stringent restrictions on bidders, requesting that one third of the equipment bid for the tender will have to be manufactured in India. All the five companies are technically qualified, but the Chinese company was the first to be excluded, for the reason of its Chinese origin. An American Company was also eliminated, since it would purchase from Chinese company several projects if awarded the tender. The Chinese side expresses great concern over these incidents,
and hopes that the Indian government will abide by the non-discrimination principle of the WTO to ensure fairness and transparency in bidding procedures so as to avoid the recurrence of such incidents.

3.9.7 Distribution services

The retail sector in India is closed to foreign investment, except for single-brand retail stores, which are opened to up to 51% foreign investment.

3.9.8 Broadcasting and television

The government of India permits foreign direct investment of up to 49 percent in cable networks. Total foreign investment in “direct to home” (DTH) broadcasting has been restricted to 49 percent, with a foreign direct investment ceiling of 20 percent on investments by broadcasting companies and cable companies. News channels are permitted to have up to 26 percent foreign equity investment. Operational control of the editorial content must be in Indian hands. The Indian government has also announced restrictive minimum capitalization requirements. In addition, all pay television content providers are required to make their content available to all cable and satellite television system operators.

4 Barriers to investment

Most sectors in India are open to foreign investment. But up to the present, India continues to limit or prohibit foreign investment in politically sensitive sectors. Foreign investors suffer from restrictions in the fields of retailing, financial services, telecommunications, and broadcasting. According to report of the World Bank Report on Investment Safety, India’s investment climate ranks the 173rd out of 175 countries in this regard. The interest of foreign investors in India remains to be enhanced.

In the recent two years, the Indian government has frequently restricted Chinese enterprises to invest in India under the pretext of security concern, which has greatly impeded the normal investment and trade between China and India. In 2006, the National Security Council was reportedly planning to formulate the National Security Exception Bill, requiring comprehensive security inspection on the investment from sensitive countries and regions, such as China (Hong Kong, Macao and Taiwan included), Pakistan, and Bengal, and proposing to put several Chinese companies into security sensitive list. The Indian government has also enlarged the list of investment sectors involving potential safety hazard, and added medicine and pharmaceutical industry, data processing, metallurgy, IT hardware, petroleum and natural gas exploration, petroleum and natural gas pipeline, and petroleum refinement as sensitive sectors. In the past, only Pakistan and Bengal were listed as sensitive countries involving potential safety hazard, and only port, aviation, telecommunications, and Internet services were listed as sensitive sectors. Up to now, several Chinese companies have suffered from investment obstacles in India.
The above practices in India have not only discouraged Chinese enterprises from exploring the Indian market, but also impaired the interest of the Indian business community. The Chinese side believes that political, economic and trade relations between China and India have maintained strong growing momentum in recent years. An all-round strategic partnership oriented towards peace and prosperity has been formed between the two countries. As India is energetically developing its infrastructure, to which Chinese companies have a wealth of experiences, especially in the building of airports, ports, roads, bridges, power plants and telecommunications, and are able to provide quality products and services at competitive prices, there is enormous space for mutually beneficial cooperation between China and India. It is hoped by the Chinese side that those irrational and improper practices and policies can be changed in order to create a favorable environment for Chinese enterprises to conduct economic and trade activities in India.
Indonesia

1 Bilateral trade relations

The ASEAN was the 5th largest trading partner of China in 2006. According to China’s Customs, the bilateral trade volume between China and ASEAN in 2006 reached US $160.84 billion. The bilateral trade volume between China and Indonesia totaled US $19.06 billion, up 13.5%, among which China’s export to Indonesia was US $9.45 billion, up 13.2%, while China’s import from Indonesia reached US $9.61 billion, up 13.9%. China had a deficit of US $160 million. Major exports from China to Indonesia included petroleum oils and oils obtained from bituminous minerals other than crude, iron and steel, machinery, electromechanical products, electrical appliances, audiovisual equipment and components thereof, automobiles and spare parts, chemicals, textile materials such as woven fabrics of cotton and filaments, alliaceous vegetables, apples and pears, etc. Major imported products of China from Indonesia included petroleum oils and oils obtained from bituminous minerals, coal and other minerals, electronic equipment and auxiliaries, electromechanical products, electric and electronic products and components thereof, organic chemicals, rubber, wood and articles of wood, paper and paperboard, palm oil and its fractions, etc.

According to the Ministry of Commerce (MOFCOM), up to the end of 2006, the aggregate turnover of engineering contracts completed by Chinese companies in Indonesia reached US $2.06 billion, and the aggregate volume of completed labor service cooperation contracts was US $250 million.

According to MOFCOM, China’s direct investment in non-financial companies in Indonesia, filed with and approved by MOFCOM in 2006, stood at US $35.88 million.

According to MOFCOM, Indonesians invested in 115 projects in China in 2006, with a contractual investment of US $470 million, and an actual utilization of US $100 million.

2 Introduction to trade and investment regime

Major Indonesian laws governing trade and investment include Trade Law of 1934, Customs Law, Law regarding Authentication of Agreement Establishing the World Trade Organization, and Law regarding Industrial Affairs. Other laws related to trade consist of Law concerning State Treasury, Law concerning Prohibition of Monopoly Practice and Unfair Trade Competition, Law concerning Foreign Investment, and Law concerning Domestic Investment, etc.

2.1 Trade administration and its development
2.1.1 Tariff policy

While most imported products are subject to ad valorem duty, certain products such as rice and sugar are subject to specific duties in Indonesia.

There are two types of import duties in Indonesia, the MFN Tariff Rate and the Preferential Tariff Rate. According to the Framework Agreement on Comprehensive Economic Cooperation between China and ASEAN, starting from 2007, tariff rates for all imports from China will be reduced to 8%, and the current MFN rate of 5% will drop to zero as of 2009. By 2010, China and Indonesia shall have made progressive reductions on tariffs with most of the products duty free.

2.1.2 Major import administrative policies

The Indonesian Government requires certain imports to go through import licensing procedures, classified as automatic and non-automatic licensing. Nine categories of goods are subject to automatic licensing, including CFC, methyl bromide, hazardous goods, alcoholic beverages and their immediate raw materials containing alcoholic substances, industrial salts, ethylene and propylene, explosives and their immediate materials, wastes and scraps, and used clothing. Six categories of goods subject to non-automatic licensing include Cloves, textiles, iron and steel, synthetic lubricating oil, sugar, and agricultural hand tools.

At the same time, the Indonesian Government conducts quota and license administration over automatic and non-automatic licensing. Quota system applies only to imports of alcoholic beverages and their immediate raw materials containing alcoholic substances. Import quotas are allocated only to appointed domestic companies. Import licenses for industrial salts, ethylene and propylene, explosives, motor vehicles, wastes and scraps, and hazardous goods are reserved for qualified companies, which shall only use any of these imported goods solely for their own production. Licenses to import synthetic lubricating oil, artificial sweeteners and agricultural hand tools are issued only to approved importers.

2.1.3 Major export administrative policies

Indonesia bans the exportation of certain live fishery products, rubber of low quality, rubber materials, crude leather of reptiles, ferrous scrap/waste (except if originating in Batam Island), round wood and wood chips, CITES protected wild animals and natural plants, and urea. Besides, all exports to Israel are prohibited.

Indonesia exercises export control by dividing exports into two types, “supervised” exports and “regulated” exports. Export approval requirements must be met for “supervised” products, including certain live bovine animals, live fish, palm nuts/kernels, lead and bauxite ores/concentrate, petroleum oils, urea fertilizer, crocodile leather, unprotected wild animals and plants, unprocessed silver/gold, and
waste/scrap of metals, etc. Indonesia also conducts licensing and quota administration over regulated exports, involving coffee, textiles and clothing, rubber, plywood or similar laminated wood, teakwood, and mixed rattan and semi prepared rattan.

2.2 Investment administration

Indonesia bans domestic and foreign investment in businesses in the following 9 sectors: cultivating and processing of marijuana and the like; collection/utilization of sponge; harmful chemicals, chemical weapons, weapons and related components; cyclamate and saccharine; alcoholic drinks; casino and gambling facilities; air traffic system providers, ship certification and classification inspections; management and operation of Radio Frequency Spectrum and Satellite Orbit Monitoring Stations; and mining of radioactive minerals.

Foreign investment is prohibited in the following 8 areas: germ plasm cultivation; concession for natural forests; contractors in the field of lumbering; taxi/bus transportation services; small scale sailing; trading and trading supporting services; media services; motion picture production industry.

Conditions are attached to businesses between foreign and domestic capital in the following 8 areas: building and operation of seaports; electricity generation, transmission and distribution; shipping; processing and provision of potable water for public use; atomic power plants; medical services; basic telecommunications; regular/non regular commercial airliners.

2.3 Major competent authorities

The Ministry of Industry and Trade (MIT) is the competent authority for trade administration. The Customs under the Ministry of Finance administers imports and exports in accordance with the policies made by the Ministry and existing laws.

The Agency for Agriculture Quarantine (AAQ) under the Ministry of Agriculture is responsible for carrying out animal, fish, and plant quarantine.

Indonesia’s Investment Coordinating Board (BKPM), directly responsible to the President of the Republic of Indonesia, is mainly in charge of assessing and formulating national investment policy, coordinating and promoting foreign investment.

3 Barriers to trade

3.1 Technical barriers to trade

All the imported medicines must be registered with the Food and Drug Authority Balai Pengawas Obat dan Makanan (BPOM) before they are processed or sold in Indonesia. There are two types of registration procedures: one for traditional medicine,
the other is for chemical medicine. Different requirements are made with regard to different procedures. The registration of chemical medicine should be made by the Indonesian sales agent or wholesaler appointed by the manufacturer of such medicine in the exporting country. If the medicine is to be produced in Indonesia, an application is to be submitted by an appointed Indonesian medicine manufacturer, and the manufacturer of the exporting country has no right to make the application. Such measure deprives the manufacturer from the exporting country of the right to register the medicine and tends to hurt the interests of export enterprises.

On 24 November 2006, Directorate General of Agriculture and Chemical Industry of the Indonesian Ministry of Industry issued the Draft decree on Mandatory Indonesia National Standard for Safety Glass of Vehicle, covering SNI 15 0048 2005 Tempered Safety Glass of Vehicle and SNI 15 1326 2005 Laminated Safety Glass of Vehicle, and the Draft decree on Mandatory Indonesia National Standard for Cement, covering SNI 15 0129 2004: White Cement, SNI 15 0302 2004: Portland Pozzolan Cement, SNI 15 2049 2004: Portland Cement, SNI 15 3500 2004: Portland Mixed Cement, SNI 15 3758 2004: Masonry Cement, SNI 15 7064 2004: Portland Composite Cement. The above 8 mandatory national standards specify term and definition, type, quality requirements, sampling, testing method, acceptance, marking and packaging requirements for safety glass and cement. Pursuant to the requirements of the decree, all safety glass and cement, imported or produced within the country, shall comply with the above mandatory national requirements, and producers and importers of the above items must have Product Certificate for using SNI Marking. The product certificate on SNI marking shall be issued by a Product Certification Body which has been accredited by National Accreditation Body of Indonesia namely Komite Akreditasi Nasional(KAN) through: 1. testing of the conformity of the quality of the product against SNI requirements; 2. audit on the application of QMS SNI 19 9001 2001/ISO 9001 2000 or its revision; 3. testing of the conformity of the quality and audit of QMS periodically. The testing and audit of QMS can be subcontracted to testing laboratories and QMS certification bodies within Indonesia which have been accredited by KAN or accredited by accreditation body which has signed Mutual Recognition Arrangement(MRA) with KAN. Directorate General of Agriculture and Chemical Industry, Ministry of Industry is the institution that is responsible for the implementation of the decree and shall provide with technical guidance of the decree. The Chinese side is of the opinion that the above decree only recognizes the testing and audit conducted by the accredited bodies within Indonesia, and subjects the importers to repeated audits, which exert an extra burden on importers. It is hoped that Indonesia will follow the principle of mutual recognition in the WTO/TBT Agreement and conduct negotiations with China on a MRA, whereby the conformity assessment results implemented by Chinese testing bodies will be recognized and accepted by Indonesia.

3.2 Sanitary and phytosanitary measures

On 29 May 2006, the Indonesian Agency for Agricultural Quarantine issued the Draft
Decree of the Minister of Agriculture concerning Requirements of Wood Packaging and Plant Quarantine Action to Imported Wood Packaging Material into Republic of Indonesia, prescribing for the definition of wood packaging, general and special requirements for wood packaging, plant quarantine actions, list of plant quarantine pests in wood packaging, types of treatments and marking on wood packaging, and packing declaration.

On 17 August 2006, the Agency for Agricultural Quarantine, Ministry of Agriculture issued the Draft Decree of Minister of Agriculture concerning Inspection and Quarantine Action on the Importation of Pathologic Substance and/or Veterinary Drug Materials. The draft decree specifies some requirements on the importation of pathologic substance and/or veterinary drug materials, including certificate issued by authorized agency from country of origin, designated point of entry, and quarantine actions.

3.3 Barriers to trade in services

Some of the service sectors in Indonesia have been liberalized while others haven’t.

3.3.1 Financial and banking services

Currently, there are 8 exclusively foreign owned banks in Indonesia. After the Asia Financial Crisis in 1998, the Indonesian Government started to impose restrictions on foreign banks regarding the opening of their branches in Indonesia, requiring a registered capital of Rp3 trillion (over US $300 million). Paid-in capital requirements for companies with a foreign joint venture partner are twice that of domestic companies. Foreign insurance companies may establish a joint venture in Indonesia. All insurance policies are to be taken out with either domestic Indonesian companies or joint venture companies unless the insured is a solely owned foreign entity or the risks are special and not covered in Indonesia.

3.3.2 Trade

While foreign investors may set up exclusively owned or joint venture trading companies, they are barred from domestic retail business and are only allowed to open supermarkets or shopping malls in large cities of Indonesia.

3.3.3 Legal services

In order to practice, all lawyers must hold Indonesian citizenship and a degree from an Indonesian legal facility or other recognized institution. Foreign lawyers can only work in Indonesia as “legal consultants” and must first obtain the approval of the Ministry of Justice and Human Rights. A foreign law firm seeking to enter the Indonesian market must establish a cooperative relationship with a local firm.

3.3.4 Accounting services
According to relevant Indonesian regulations, licensed accountants must hold Indonesian citizenship. A foreign accounting seeking to enter the Indonesian market must form partnership with a local firm. Foreign accountants and auditors may act only as consultants and cannot sign audit reports.

3.3.5 Audiovisual services

Foreign film and video distributors are not allowed to establish branches or subsidiaries in Indonesia. According to the Film Law of Indonesia, the importation and distribution of foreign films can only be handled by local companies.

3.3.6 Transportation services

Foreigners are banned from investing in domestic Indonesian public transportation services including taxi, public buses and shipping, but are allowed to operate ocean transportation services.

3.3.7 Construction and related engineering services

Foreign consultants working under government contract are subject to government billing rates. Foreign construction firms are only allowed to be subcontractors or advisors to local firms in areas where a local firm is unable to do the work. Besides, for government financed projects, foreign companies must form joint ventures with local firms.

3.3.8 Telecommunications services

Foreign investors may establish joint venture telecommunications companies in Indonesia, but foreign ownership is limited to 35%. Indonesia has opened its mobile communications services to foreign investors.

3.3.9 Medical services

Medical services are basically closed to foreign investment.

3.4 Intellectual property protection

In Indonesia, there is a protruding problem of frequent and malicious trademark squatting of famous Chinese names, such as “JD” diesel engines and generators, “PHOENIX” bicycles, “MARQUIS” pumps, “DAYANG” motorcycles, “Crevon” motorcycle chains from Qingdao, and “YUNNAN BAIYAO”. An Indonesian Chinese by the name of Dhalim Seokodanu alone has squatted over 50 well known names of traditional Chinese patent medicine, including “TONG REN TANG” and “PIENTZEHUANG”. Trademarks of most famous Chinese iron padlocks, such as “808”, “101”, “HORSE”, “THREE RINGS”, “DIAMOND”, AND “TIGER”
HEAD” have also been squatted by different Indonesians.

These Indonesian squatters either know something about these Chinese products or used to be the agents for the relevant products whose agency agreements have been somehow terminated. The rampant squatting of Chinese trademarks of famous names by these former agents has caused huge losses to relevant Chinese producers, and as a result, many famous and high-quality Chinese products have been forced out of the Indonesian market. Such practice has led to the emergence of fake Chinese products in the Indonesian market which were exported deliberately from those who specialize in making fake products in China. This has not only hurt the rights and interests of the Indonesian consumers, but also disrupted the production and circulation order of both China and Indonesia, and ruined the reputation of famous Chinese names. Although certain individual Chinese producers have resorted to judicial means and provide grounds to safeguard their rights and interests, solving trademark squatting through judicial means is costly in Indonesia. Even though the case was eventually won, enforcement of court decisions would be difficult.

The Chinese side expresses a grave concern over the infringement on the intellectual property rights of Chinese companies in Indonesia as well as the lack of effective protection of the legitimate rights and interests of Chinese companies, and hopes that effective measures will be taken by Indonesia to improve its IPR protection system and provide a fair and reasonable environment for trade and investment between China and Indonesia.

3.5 Other barriers

“Grey Customs Clearance” is quite prominent in Indonesia. Most of the goods importing into Indonesia, especially Chinese containers, are handled by Indonesian clearing companies, which are estimated to be 300 approximately. As far as the current situation is concerned, these clearing companies charge a fee of US $400—600 per container sized 20 inches and US $600—1,000 per container sized 40 inches, in addition to import duties and a VAT of 10%. As Chinese goods are moderately priced to achieve a high turnover, per unit value of the goods is quite low. Therefore, charging clearance fees based on the number of containers has a negative impact on Chinese imports to Indonesia.
Japan

1. Bilateral trade and investment

China has close economic and trade relations with Japan, each being the major trading partner of the other. With complementarity in the economy of the two countries, it is in the common interest for China and Japan to maintain and develop mutually beneficial economic and trade ties. According to customs statistics released in China, Japan was China’s third largest trading partner in 2006. The bilateral trade volume between China and Japan hit US $207.356 billion in 2006, breaking the 200 billion dollar mark for the first time and up 12.5% over the previous year, among which China’s exports to Japan accounted for US $91.639 billion, gaining 9.1%, while China’s imports from Japan registered an increase of 15.2% to arrive at US $115.717 billion. With imports growing much faster than exports, China ran a trade deficit of US $24.078 billion with Japan. Of all the exports to Japan, garments and accessories, metal products, computers and auxiliaries enjoyed a marked growth in 2006. Out of all the imports from Japan, electronic devices such as semiconductors, non-ferrous metals, and plastic materials showed a significant growth.

As was released by China’s Ministry of Commerce(MOFCOM), by the end of 2006, the accumulated turnover of the engineering contracts completed by Chinese companies in Japan had added up to US $480 million, the accumulated volume of the completed labor service contracts had come out at US $8.23 billion.

Upon the ratification or on the record of MOFCOM, China’s direct non-financial investment in Japan totaled US $18.42 million in 2006.

According to the figures of MOFCOM, Japanese firms invested in 2,590 projects in China in 2006, with a contractual investment of US $9.91 billion and an injected capital of US $4.6 billion. By the end of 2006, Japan had accumulatively invested in 37,714 projects in China, with a pledged investment of US $88.48 billion and an actual capital input of US $57.97 billion.

2. Japan’s trade and investment regime

The legal framework of trade and investment in Japan consists of Foreign Exchange and Foreign Trade Law, Import and Export Transactions Law, and the relevant government regulations such as Cabinet Orders, Ministerial Ordinances, Circulars, Notices and Announcements.

The Ministry of Economy, Trade and Industry(METI) is Japan’s leading government body in the administration of foreign trade and investment. Other
government bodies partly responsible for foreign trade and investment matters include the Ministry of Finance (MOF) and its affiliated agency Japan Customs, the Ministry of Agriculture, Forestry and Fisheries (MAFF), the Ministry of Health, Labor and Welfare (MHLW), and the Bank of Japan (BOJ). Institutions such as Japan External Trade Organization (JETRO), Japan Bank for International Cooperation (JBIC), Nippon Export and Investment Insurance (NEXI) also deal with trade and investment. According to the Ordinance to Partially Revise the Organization of the Ministry of Agriculture, Forestry and Fisheries, as from 1 August 2006, the government body administering tariff quotas for agricultural products has been changed from the Department of Trade and Tariff to the Department of International Economy, which will be responsible for processing tariff quota applications and granting tariff quotas.

2.1 Trade administration regime and its recent developments

2.1.1 Tariff administration

The major legislation governing customs tariff in Japan mainly includes Customs Law, Customs Tariff Law, and Temporary Tariff Measures Law.

In March 2006, Japan Customs, an agency affiliated to the Ministry of Finance, promulgated the Amendments to Customs Tariff Law, which went into force on 1 April 2006 (part of which took effect from 1 June 2006, 1 July 2006 and 1 January 2007). Major amendments include: (1) changes in the tariff rates for certain products, for example, customs duties for petroleum products and ethyl alcohol have been reduced; (2) the extension of temporary customs rates, namely, temporary customs rates originally scheduled to expire on 31 March 2006 have been extended for another year; and (3) the readjustment in the tariff schedule according to the revisions in the Harmonized Commodity Description and Coding System (HS), strengthening customs inspection on imports at the time of entry, facilitating customs procedures, and toughening inspection on goods suspected to have infringed upon intellectual property rights.

As from 27 December 2006, Japan terminates the application of GSP preferential rates to the following categories of products: sheets for veneering under Tariff Heading Nos. 4408 • 10 • 2(2), 4408 • 31(2), 4408 • 39 • 4(2), and 4408 • 90 • 2(2), (the above applies to products originating in China); products under Tariff Heading No. 4421 • 90 • 3(1), Chapter 44 (excluding those under Tariff Heading Nos. 4421 • 13, 4421 • 14, 4421 • 19, and 4421 • 22—32), Chapter 54 (excluding those under Tariff Heading Nos. 43 and 44), 5604 • 20 • 2(2), 5604 • 90(2), 7409 • 11, 7409 • 19, 7409 • 40, 7409 • 90, 74 • 10, and 7411 • 10 in the customs tariff schedule annexed in the Customs Tariff Law, (the above applies to products originating from all recipient countries of GSP). As from 16 January 2007, GSP preferential rates no longer apply to the following product categories: items under Tariff Heading No. 2905 • 44 originating from China; products under Tariff Heading Nos. 7202 • 30, 7202 • 50, 7202 • 70, 7202 • 80, 7202 • 91, 7202 • 92, and 7202 • 99 (excluding Ferro phosphorus), and Chapter 76 in the customs tariff schedule annexed in the Customs Tariff Law,
above applies to all GSP beneficiary countries). In recent years, Japan has frequently reduced the number of products with Chinese origin to which GSP preferential rates are applicable.

2.1.2 Import administration

According to the relevant regulations in Japan, imports fall into two broad categories: free imports and non-free imports.

Free imports embrace those goods imported into the country that do not need to apply for licensing, submit import statements, and present invoices upon clearing customs. Non-free imports refer to those goods that are, according to the Import Administration Ordinance, subject to prior licensing. These cover goods subject to import quotas, specified goods from certain places of origin or shipment, goods requiring prior ratification of the competent ministers, and goods required to submit designated documents to the customs.

2.1.3 Export administration

A member to the Wassenaar Agreement, Japan has joined all the international export control organizations, including Nuclear Suppliers Group (NSG), Australia Group (AG) and Missile Technology Control Regime (MTCR), and subjects all the goods designated in the relevant international treaties to examination and licensing. Based on Foreign Exchange and Foreign Trade Law, Import and Export Transactions Law, and Export Administration Ordinance, Japan's trade regime also provides for export controls, restrictions on the supply of technologies, prior approval and post-export examination of exports.

2.2 Investment administration regime and its recent developments

Pursuant to Japan's Foreign Exchange and Foreign Trade Law, there is, in principle, no restriction placed upon foreign companies investing in Japan. However, prior application is still needed when investing in an industry such as the aircraft and the weapons industry on which the OECD Code of Liberalization of Capital Movements allows for measures of restrictions to protect national security, or in an industry such as the petroleum and the leather industry on which Japan has expressed its reservation to the OECD Code of Liberalization. In addition, the relevant stipulations in the Anti-Monopoly Law prescribing joint ventures, shareholding restrictions and corporate shareholdings also affect foreign direct investment in Japan.

At present, foreign direct investment (FDI) in Japan has, in aggregate, been liberalized, with the notable exception in four major sectors, namely, agriculture, forestry, fishery, mining industry, petroleum industry, and leather industry. According to the pertinent stipulations in the Law on Vessels, Japan's domestic maritime shipping market is open only to vessels registered in Japan; foreign companies are permitted to invest in Japan's domestic shipping market only after they have established a
company in Japan.

2.3 Administration regime related to trade and investment and its recent developments

2.3.1 Relevant provisions in the new Corporate Law

In June 2005, Japan enacted a new Corporate Law, which went into effect on 1 May 2006. The new Corporate Law was made on the basis of the old Corporation Law in the Commercial Code, Special Law in the Commercial Code, and Limited Liability Company Law. The most notable amendment in the new Corporate Law is the abolition of minimum registered capital requirement for the establishment of a company. To put it simply, permission is now granted for the set up of a one Yen company. This amendment significantly lowers the threshold for foreign investors to open businesses in Japan.

2.3.2 Revisions of Agricultural Seeds and Seedlings Law Enforcement Regulation

At present, about 40% of the applications for the registry of new varieties of plants in Japan comes from foreign countries. The Japanese government considers it important to encourage the registry application of new varieties of plants developed by Japanese in countries overseas. Therefore, the Ministry of Agriculture, Forestry and Fisheries amended on 30 May 2006 the Agricultural Seeds and Seedlings Law Enforcement Regulation, which brings its own application forms and supporting papers in line with those specified by the International Union for the Protection of New Varieties of Plants (UPOV). According to the revised regulation, the names of the new plant varieties under application may be expressed in Roman alphabets or in foreign languages that use Roman alphabets. The new regulation entered into force on 1 August 2006.

2.3.3 Entry and exit administration

In March 2006, the Immigration Bureau of Japan’s Ministry of Justice issued a notification, specifying the guidelines for the examination and approval of applications filed by foreign nationals coming to Japan for “re training” and “alternate training” purposes.

The Ministry of Justice amended in March 2006 relevant regulations (Ministerial Ordinance No. 29, 2006) concerning the criteria for foreign nationals such as doctors, dentists and nurses who intend to engage in the activities as described in the status of residence “Medical Services”, abolishing some of the restrictions placed on their employment in Japan.

2.3.4 Certification procedures of qualification

Subject to mandatory Japanese technical standards, many products must be examined, tested and evaluated by Japanese officials at the point of entry. The Japanese certification of qualification falls into two categories: mandatory and voluntary. Mandatory certification, which mainly applies to consumables, electric appliances,
liquefied petroleum gas utensils and coal gas fittings, is implemented according to relevant laws. The most important certification body is the Ministry of Economy, Trade and Industry, which deals with the certification of 90% of products in Japan.

2.4 Product specific administrative measures

2.4.1 Positive list system

According to the revised Food Sanitation Law, the so-called “positive list system” was formally put into implementation in Japan on 29 May 2006. The positive list system provides a list of residue limits for those agricultural chemicals (pesticides, veterinary drugs and feed additives) that are allowed in foods. According to the new system, there are two ways to establish residue limits for agricultural chemicals remaining in foods: (1) As stipulated in Article 11 of the Food Sanitation Law, maximum residue limits for a total number of 799 agricultural chemicals (including those for 283 agricultural chemicals that are already effective before the introduction of the positive list system) have been established; (2) According to the notification of the Ministry of Health, Labor and Welfare, a uniform limit of 0.01 ppm has been set for those agricultural chemicals for which no maximum residue limits exist. In addition, 65 chemical substances have been designated by the Minister of Health, Labor and Welfare as those that will not pose adverse health effects and, therefore, are not subject to the positive list system.

2.4.2 Revisions of Plant Quarantine Law Enforcement Regulation

On 28 July 2006, Japan’s Ministry of Agriculture, Forestry and Fisheries issued its revised Plant Quarantine Law Enforcement Regulation (MAFF Ordinance No. 68), adding 29 animals and 5 plants to the list of non-hazardous fauna and flora that are exempt from quarantine, which went into effect on 10 August 2006. At the same time, Japan subjects China (excluding the Hong Kong Special Administrative Region) to the growing site inspection in exporting countries, requiring phytosanitary inspection on near wilt of pea. This regulation will become effective as from 10 August 2007.

2.4.3 Revisions of Imported Plant Quarantine Guidelines

In October 2006, Japan’s Ministry of Agriculture, Forestry and Fisheries released the revised Guidelines on Quarantine of Imported Plants, which states: (1) In the light of pest risk assessment, it is decided that there exits a risk that pests may invade Japan via wood packaging materials in international trade and that plant quarantine measures consistent with international standards should be adopted. Wood packaging materials disinfected in exporting countries according to international standards and labeled “DISINFECTED” shall be exempt from plant quarantine upon entry. (2) Wood packaging materials that are not marked “DISINFECTED” shall be subject to plant quarantine at the point of entry. The relevant revisions shall come into effect as from 1 April 2007.
2.4.4 Revisions of industrial standards

In January 2007, Japan’s Ministry of Economy, Trade and Industry published 13 categories of industrial standards, most of which involve electrical home appliances.

3. Barriers to trade

3.1 Tariff and tariff administrative measures

Japan imposes a uniform rate of 17% on imports of both green tea and oolong tea, but a mere rate of 2.5% on black tea in bulk. Believing that the Japanese practice of collecting differential tariff rates on different varieties of tea is unjustifiable, increases export costs of Chinese enterprises and unfavorably affects China’s exportation of tea to Japan, the Chinese side urges Japan to cut the tariff rates on green tea and oolong tea as early as possible.

3.2 Technical barriers to trade

Japan has a multitude of technical standards and regulations. About 10% of the Japanese national standards are not consistent with international standards, particularly so in agricultural standards, which are usually far more demanding than international standards.

On the strength of their unique efficacy, the traditional Chinese herbal and patent medicines (or Kanboyaku in the Japanese language) are increasingly popular and well received in the Japanese market. However, because the Japanese government still fails to formulate unified, integrated and normalized market access criteria for Chinese herbal and patent medicines, the relevant Chinese products cannot enter the Japanese market despite continued efforts on the Chinese side.

China hopes that the competent Japanese authorities will, as soon as possible, draft market access criteria for traditional Chinese medicines and make known the examination and approval procedures so that the relevant Chinese producers and exporters may find access to the Japanese market accordingly.

3.3 Sanitary and phytosanitary measures

3.3.1 Inspection and quarantine procedures

Japan adopts a very exacting inspection and quarantine system on agricultural, livestock and food imports. Imported agricultural products are first inspected for plant diseases and insect pests by plant and animal quarantine centers under the Ministry of Agriculture, Forestry and Fisheries. Meanwhile, as agricultural products are for the most part foodstuffs, they then have to be subjected to food sanitary inspection by quarantine centers under the Ministry of Health, Labor and Welfare after passing plant...
and animal quarantine. The testing, inspecting and quarantine procedures targeting agricultural products from China are over elaborate, complicated and onerous. Japan subjects up to 30 categories of Chinese agricultural products to mandatory inspection (batch by batch inspection), accounting for 25% of all the 119 food items that must go through quarantine procedures. In addition, Japan expands the range of agricultural chemicals that has to be checked and increases sample sizes; for example, 448 testing items have been established for Chinese vegetable exports. Chinese exporters complain that customs clearance fee for Chinese agricultural exports runs into 150,000 to 170,000 Japanese Yen per batch. It usually takes 4 days for Chinese agricultural products to clear customs, and for agricultural exports subject to mandatory inspection, it can take as long as 10 to 20 days, which adds significantly to the customs clearance fees, including warehousing and inspecting charges. Furthermore, the delay in customs clearance adversely affects the quality of fresh vegetables and greatly blunts the competitiveness of Chinese exports.

3.3.2 Food additives

Japan strictly restricts the use of additives in food. A large number of food additives banned in Japan such as potassium sorbate are allowed in the international standards set forth in Codex Alimentarius Commission (CAC) and in many other countries. In addition, Japan usually confines the use of a particular food additive to domestically produced traditional Japanese foods, thereby prohibiting the import of food products containing the same food additive.

3.3.3 Positive list system

Since its official implementation on 29 May 2006, the positive list system has severely affected the export of Chinese agricultural products to Japan. Japanese importers and distributors have begun to look for agricultural suppliers elsewhere or simply suspend agricultural imports from China altogether. There is a marked drop in Chinese agricultural exports to Japan, particularly exports of fresh vegetables and eels. In June 2006, Chinese agricultural exports to Japan fell by 17.9% over the same period last year.

China understands the Japanese concern over food hygiene and safety and the need to strengthen the monitoring of agricultural chemicals in foods, and has made continued efforts to increase the quality and safety of Chinese agricultural exports. However, the Chinese side believes that the enforcement of the positive list system, which is unreasonable in many regards, has adversely affected normal bilateral trade in agricultural products. China, therefore, hopes that the Japanese government takes China’s concern seriously and tackles the following problems properly:

(1) Reasonable and scientific improvements in residue limits. Most of the current temporary residue limits are set at the average value of the standards of only five countries or regions such as the US and the EU, and have not been critically reviewed, which runs counter to the principle of risk assessment and the determination of
appropriate sanitary and phytosanitary protection as laid down in Article 5 of WTO/SPS. In particular, in the absence of sound scientific evidence and sufficient risk assessment, the so-called uniform limit is set at 0.01 ppm for hundreds of agricultural chemicals which differ significantly in physical attributes, uses and effectiveness. Such a practice itself has no justified scientific grounds and does not accord with the principles in the pertinent international agreements. In addition, there is no consistent application of the residue limits. For the same agricultural chemicals, some foods are subject to specified residue limits, while other foods are subject to the uniform limit. China calls into question the rationality of such a practice and demands that Japan give reasons for the determination and application of the uniform limit and improve the establishment of the uniform limit the soonest possible.

(2) The fulfillment of technical assistance obligations. In accordance with Article 9, Section 2 of WTO/SPS regarding the provision of technical assistance to developing member countries, Japan should, as soon as possible, make its testing methods known, provide testing instruments to the Chinese side, and offer technical training, cooperation and development programs to Chinese businesses and farmers.

(3) The adoption of corresponding measures to ensure normal trade. On the one hand, Japan should strengthen dialogue with the Chinese side regarding technical issues. Taking into account the time lag between the productive cycle of farm products and the enforcement of the positive list system, Japan should implement the new system step by step in a flexible and practical way, and provide a timetable for its gradual implementation and a list of key agricultural chemicals and products subject to inspection. On the other hand, Japan should take appropriate measures to speed up inspection and reduce inspecting costs. The increase in inspection expenses not only incurs heavy losses to Chinese exporters and Japanese importers, but also pushes the rise in prices, thereby ultimately harming the interest of Japanese consumers.

(4) Provision of facilitation and differential treatment in import inspection to reliable Chinese enterprises. The relevant Chinese governmental departments or trade associations will provide a list of trustworthy enterprises, which will, it is hoped, enjoy priority in customs clearance and not be affected by problems in food quality and safety caused by other Chinese enterprises.

3.3.4 Mandatory inspection on agricultural imports

According to the revised Food Sanitation Law in 1995, Japan established the so-called “mandatory inspection system”, which subjects a great variety of food products (and their containers) specified by ministerial ordinances such as vegetables, fruits and their processed products, beef, pork, chicken and offals, fish and meat mixed products, and beans to “voluntary inspection” by designated inspection agencies. However, in practice, food products that come under mandatory inspection includes not only those specified by administrative ordinances, but also a considerable number of specific items from specific exporting countries or exporters based on the annual notification of the Ministry of Health, Labor and Welfare. Food products
subject to mandatory inspection must be kept before the inspection results are made known and follow up import procedures for them cannot be processed. When found to be unqualified, these food products will be returned to the suppliers, abandoned, or used in purposes other than human consumption.

Since March 2006, the Ministry of Health, Labor and Welfare has imposed mandatory inspection upon staple agricultural products from China such as green Chinese onion (Allium fistulosum), oolong tea, black fungus, mushroom (Lentinus edodes), white fungus (Tremella fuciformis), pine mushroom, garlic bolt, eel, ginger and shiitake mushroom, which incurs substantial losses to the Chinese enterprises involved. China expresses great concern over the issue of mandatory inspection.

The Japanese authorities sometimes arbitrarily expand the range of mandatory inspection. On 20 October 2006, the Inspection and Safety Division of the Food Safety Department of the Ministry of Health, Labor and Welfare issued a notification, requiring mandatory inspection on onions and their roughly processed products from China to check tebufenozide. The declared reason for such mandatory inspection is that on 6 October 2006, the Kobe Inspection and Quarantine Center detected tebufenozide at 0.03ppm and 0.05ppm respectively in fresh shallots exported from China’s Shandong Province, exceeding the uniform limit of 0.01ppm as laid down in the positive list system. However, onions fall into several different categories, such as green Chinese onions, shallots and sweet onions. China mainly exports green Chinese onions to Japan, with shallots and sweet onions accounting for a negligible part of Chinese exports of onions. So far, no agricultural chemical residues in green Chinese onion exports have been found exceeding the uniform limit. Japan stated that under the Japanese imported food classification code, there is only the entry of onions without any subheadings. Therefore, although only shallots have been detected exceeding the uniform limit of chemical residues, all the varieties of onions should be subjected to mandatory inspection. Japan also asserted that as the cultivation methods of shallots and green Chinese onions are believed to be quite similar, mandatory inspection measures upon all onion categories are justifiable. Mandatory inspection on onions of Chinese origin tarnishes the reputation of Chinese onions, blunts the interest in the import and export trade of the said products, increases inspecting and warehousing costs, raises demurrage from the previous 2 days to 7 or 8 days, and reduces the shelf life from the previous 10 days to 3—5 days. The effect is particularly damaging for fresh onion exports. At present, some Japanese supermarkets have indicated that the reduction of freshness and shelf life will force them to suspend the sale of green Chinese onions from China. China expresses grave concern over the unreasonable practice on the part of the Japanese government and urges Japan to amend its relevant regulation and to end mandatory inspection on green Chinese onions originating from China at the earliest possible date.

3.3.5 Certification of artiodactyl and poultry meat thermal processing facilities
In accordance with Livestock Infectious Disease Prevention Law and other relevant regulations and on the grounds of preventing the spread of foot and mouth disease and avian influenza (“bird flu”), Japan requires that artiodactyl meat and
poultry meat of Chinese origin can be imported into Japan, only after they have been thermally processed at the facilities designated respectively by the Ministry of Agriculture, Forestry and Fisheries and by the livestock sanitation authorities.

Since the implementation of such a certification regime, there are, according to the statistics released by the Ministry of Agriculture, Forestry and Fisheries at the end of July 2006, only 81 designated artiodactyl and poultry meat thermal processing facilities in China. Except that four facilities were changed in January 2005, there are no additions to the list of designated facilities, and the certification of 7 facilities has been canceled for alleged violation of relevant rules. In recent years, meat thermal processing industry has developed very quickly in China, with a steady rise in the number of such enterprises every year. The facilities designated by the Japanese authorities have lagged well behind the overall development in the industry in China, be it in quantity or in quality. On the pretext that Chinese facilities have been found to fall short of the hygienic standards, Japan has refused to entertain any new applications for the certification of designated facilities, which seriously restricts China’s exports of relevant meat products. Many newly established facilities with advanced technology, sound governance and good sanitation have failed to enter into the designated list, which is a total disregard of the real development in the industry in China. The Chinese side believes that to expand the certification of designated facilities will only contribute to the improvement in the quality of Chinese exports of meat products.

China believes that the Japanese regime of certification and accreditation of designated thermal processing facilities should take into full account not only the safety of relevant meat products, but also the interest of Chinese exporting enterprises so that the regime as such will not pose a barrier to the normal development of bilateral trade. China once again strongly urges the competent Japanese authorities to consider the candidate facilities recommended by the Chinese side for the certification and to expand the number of designated facilities in China as soon as possible.

3.4 Export Restrictions

Every year since 2002, Japan has placed many Chinese companies, research institutes and universities in the Foreign End User List of Catch All Export Controls. In 2006, there are still 14 Chinese entities on the catch all list. China believes that it is utterly unjustifiable to put Chinese entities on the catch all list in the absence of any valid grounds and any sound proof and demands that Japan give reasons and provide evidence for such an act.

Some Chinese entities named in the catch all list have engaged in Sino Japanese trade for a long time, and others have been long term clients of Japanese companies. The unfair practices on the part of the Japanese government have seriously affected their legitimate trade activities. Because of catch all controls, the Chinese entities on the list have been forced to terminate their cooperative projects with Japanese partners. China’s import of controlled listed items from Japan has been either
banned or delayed, the indirect adverse effects of which are hard to estimate. Such a consequence not only impedes the long term steady growth in bilateral trade, but also incurs tremendous and unnecessary costs to Japanese as well as Chinese enterprises.

For this reason, a communication arrangement has been set up between the two countries, in which the Chinese government will provide the Japanese government with a Statement of End Users and End Uses for the import of controlled listed items. If necessary, the Japanese government can ask the Chinese government to render assistance in investigation to confirm Chinese end users and end uses. China is prepared to strengthen cooperation with Japan to improve the information sharing mechanism through appropriate channels. China hopes that Japan will adopt effective measures to remove Chinese entities from the catch all control list as quickly as possible.

3.5 Barriers to trade in services

According to the relevant stipulations in the Port and Harbor Administration Law, engagement in port and harbor inspection is subject to the examination and ratification of Japan’s Ministry of Land, Infrastructure and Transport. With recent deregulation in Japanese port and harbor supervision, foreign invested companies are allowed access to port and harbor inspection business subject to the fulfillment of relevant requirements of the Ministry of Land, Infrastructure and Transport. One of the mandatory requirements is that the applicant company should have at least three inspectors with qualifications certified by the Japanese authorities. However, there are, at present, no unified state level qualifications training and accreditation examination recognized by the Japanese government. All the current practitioners in port and harbor inspection are trained by the Japanese trade association, which offers training and accreditation only to its member Japanese companies. Non-member companies, mostly foreign invested companies, have no access to relevant training and accreditation. This means that Chinese invested companies cannot obtain qualifications through relevant training and thus are barred from entering into activities of port and harbor inspection, which amounts to a de facto barrier to trade in services.

China hopes that the competent Japanese authorities will adopt effective measures to provide convenience to the training and accreditation of inspectors in foreign invested companies, including Chinese ones, thereby offering real market access to such business activities.

3.6 Other barriers

With increasingly closer bilateral economic and trade relations, people to people exchanges, especially in the business circles, between the two countries have become very frequent. China’s Ministry of Foreign Affairs has decided that Japanese nationals holding general passports and intending to travel to China’s mainland for
a period of no more than 15 days for purposes of sightseeing, business, visiting relatives and friends or transit can enter China without a visa through ports of entry open to foreigners. In stark contrast, the Japanese government up to now still subjects Chinese business people to complicated and tedious visa application procedures, which has caused considerable inconvenience to Chinese enterprises. The Japanese immigration control authorities impose excessively harsh and irritating review standards for the acquisition and renewal of status of residence of Chinese staff working in Chinese invested companies in Japan, which has affected the employment freedom and business operations of Chinese funded companies in Japan.

China once again urges the relevant Japanese authorities to increase efficiency and transparency of visa issuance, to relax the policy for issuing short-term business visas, to further clarify and streamline procedures of visa issuance, and to normalize procedures and criteria for reviewing the status of residence of employees of Chinese invested companies in Japan, thereby providing facilitation to business people traveling between the two countries and business activities of Chinese invested companies in Japan.
Kazakhstan

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Kazakhstan in 2006 hit US $ 8.36 billion, up by 22.8% year on year, among which China's exports to Kazakhstan amounted to US $ 4.75 billion, up by 21.9% year on year; and China's imports from Kazakhstan reached US $ 3.6 billion, up by 24.0% year on year. China had a surplus of US $ 1.15 million. China's main exports to Kazakhstan were textiles and garments, furniture, leather and leather products, plastic products, machinery and electronic products. China's major imports from Kazakhstan included copper and copper products, mineral fuel, mineral oil and its distilled products, bitumen, base metals and products thereof, precious metals and rare earth metals, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by Chinese companies in Kazakhstan had reached US $ 1.73 billion, and the volume of completed labor service contracts had reached US $ 69.2 million.


2 Introduction to trade and investment regime

In Kazakhstan, major laws governing trade and investment include the Customs Code, the Law on Currency Regulation, the Law on Foreign Investments, the Tax Code, etc.

2.1 Trade regime and its development

2.1.1 Import and export levy system

Kazakhstan is now engaged in bilateral WTO accession negotiation. The latest work report was issued in September, 2006. To realize the systematization of tariff rate and
ensure its consistency with WTO regulations, the government of Kazakhstan approved new Kazakhstan Tax Code, which stipulates all imports should be levied import tax according to the specified import tax rate.

Kazakhstan mainly imposes ad valorem duty on imports. In 2006, Kazakhstan made adjustments on import tax rates of certain commodities. The average weighted import tariff in Kazakhstan was reduced to 7.9%.

As a member of the Euro Asian Economic Community, Kazakhstan makes exemptions of tariffs on most of imports from Russia, Belarus, Kyrgyzstan and Tajikistan.

Kazakhstan and China give the most favored nation treatment to each other. Kazakhstan also grants preferential duties to parts of Chinese imports according to the Generalized System of Preferences.

Goods imported for short term use in Kazakhstan under the temporary import regime can be fully or partially exempt from duties, taxes and non tariff regulations. Goods not eligible for duty exemptions include food products, industrial wastes and consumables.

In Kazakhstan, a value added tax is also imposed on imports, the tax basis of which is the total of the customs clearance value and the customs duties. The value added tax rate was 15% in 2006.

In addition, a customs clearance fee of 50—70 is charged on each import transaction.

2.1.2 Import administration

Kazakhstan has completely lifted the restriction on trading rights. Every natural person and legal person is free to conduct foreign trade business with registration with the authorities. All items are free to be imported into Kazakhstan without being subject to quota or licensing restrictions, with the exception of narcotics and drug paraphernalia, weapons, ammunition, explosive and explosive devices, works of historic, artistic and archeological value, and goods or substance of environmental and health hazard, which are still restricted from import.
2.1.3 Export administration

Kazakhstan adopts incentives to encourage exports, including export tax exemption and duty drawback. All items are eligible for export with the exception of nine categories including weapons, ammunition, drug paraphernalia and cultural relics which are subject to export licenses.

The Customs Code specifies that furs and hides and scrap metals are subject to export duties.

To enhance the management of petroleum export, the Government of Kazakhstan imposes an export duty of 1% to 33% duty on crude oil. The higher the world oil price is, the higher the applicable export duty will be. When the world oil price is above US $40/barrel, the highest rate of 33% is applicable. To ensure the stability of the supply and price of home made goods, Kazakhstan enacted a ban on gasoline, diesel oil, aero oil, etc. in the first half of the year 2006.

2.1.4 Trade remedies

In 2001, Kazakhstan enacted the Law on Anti dumping, the Law on Subsidies and Countervailing, the Law on Safeguard Measures for Domestic Market upon Importation of Goods, which include trade remedies in its domestic legal system. To access to WTO as early as possible and protect domestic market, Kazakhstan revised the Law on Safeguard Measures for Domestic Market upon Importation of Goods in accordance with the WTO Agreement on Safeguards in June, 2006. It explicitly defines the process in which importers are levied provisional protective tariff when the customs adopts provisional safeguard measures. Meanwhile, if the investigation proves that no serious harm or damage is done on domestic manufacturers due to the increase of imports, the customs will return that sum of provisional protective tariff to importers.

2.1.5 Other relevant regimes

In order to simplify and speed up customs clearance, increase the accuracy of tariff statistics and declaration to the maximum extent, Kazakhstan started to establish a system of electronic customs in 2004. Kazakhstan’s customs valuation rules largely conform to the WTO Valuation Agreement. In 2005, the Kazakhstan Customs reevaluated its system of electronic customs and made positive improvements in existing problems, such as customs valuation methods, calculation of fines and
examination procedures of traders.

Under the current system of electronic customs, traders can send customs declaration to the server of the Kazakhstan Customs, monitor the whole process at any moment, inquire about the details of the Customs Code, and find out the payable tariff, thus realizing non-paper declaration.

2.2 Investment regime and its development


The new Law of the Republic of Kazakhstan on Investment abolished the special preferential treatment stipulated in the Law of the Republic of Kazakhstan On Foreign Investments and the Law of State Support of Direct Investment, providing domestic and foreign investment with uniform legal frame and preferential measures. The new Law on Investment authorizes the Committee for Investments of the Kazakhstan Ministry of Industry and Trade to stipulate special preferential policies and direct domestic and foreign investment in priority sectors. In 2004, the Kazakhstani Government employed world renowned research institutions and relevant authorities at home to have a study and analysis of 150 economic fields, Detailed studies have identified seven priority sectors: construction materials, textile, metallurgy, food production, oil and gas engineering, tourism and logistics services. According to Resolution No. 633 of the Government of the Republic of Kazakhstan issued in June, at present, priority sectors include machinery, food production, construction, tourism, textile, metallurgy, etc. Investment in priority sectors can enjoy incentives, including property tax exemptions, land tax exemptions, corporate income tax concessions in the form of an exemption or accelerated depreciation, full or partial exemptions from paying customs duties on the equipment and spare parts and state in kind grants, etc. Tax reduction and import tax exemption usually have a maximum preferential period of five years(with extensions included). The following may be conveyed as a state in kind grant: buildings, construction, machinery and equipment, computing equipment, measuring and regulating devices and units, transport vehicles(except for passenger motor transport), property rights of industrial implements, and the right of land use. The maximal amount of the state in kind grants shall not exceed 30% of the total volume of investment. Investment preferences may be provided subject to investors meeting the following requirements: investment is made in a priority sector of the Kazakhstani economy, investment is made in the fixed assets of business that are legal entities under Kazakhstan
legislation for the purpose of creating new production or expanding and renovating existing production on the basis of advanced technologies; the required documents have been submitted confirming the availability of the financial, technical and organizational resources to implement the investment project. Additionally, the new Law on Investment also stipulates the upper limit of enjoying investment preferences of investment in priority sectors.

According to the Civil Code in effective since March 1, 1995, foreign investment can establish partnership, limited liability company, joint stock company or representative office, branches. In September, 2004, Kazakhstan passed the Law on Registration of Legal Entities, which provides “one stop service” for the registration of legal entities, branches and representative offices, enabling investors to go through the registration with the authorities of justice, statistics, and revenue once for all in ten working days. To improve the utility of “one stop service”, starting from January 1, 2006, Kazakhstan decreased the fees for the state registration of legal entities, branches and representative offices to approximately US $ 57 (previously approximately US $ 150). In relation to legal entities, which are small enterprises, including their branches and representative offices, the state fee was decreased to approximately US $ 17 (previously approximately US $ 40).

2.3 Trade and investment related regime and its development

Investment related laws entering into force in 2006 in Kazakhstan included: the Law on Environmental Protection, the Law on Currency Regulation and Currency Control (Amendments) and Concerning Competition and Restriction of Monopoly Activities. In additional, Kazakhstan made amendment to the 2002 Tax Code.

2.3.1 Tax

According to the Tax Code effective from January 1, 2002, entrepreneurs investing in business in Kazakhstan should be levied corporate income tax, property tax, VAT, social tax, social insurance tax of employees and dividend tax. According to the current taxation, corporate income tax is subject to 30% tax rate on the basis of its net profit, property tax rate, 1%; social tax, 7%—20%, social insurance tax of employees, 5%—20%; VAT rate, 15%. In addition, enterprises must pay 1.5% and 10% of the total salary of employees respectively for social security and pension.

According to the Amendments to the Tax Code in January, 2006, Kazakhstan perfects its tax system on small sized enterprises, whose scale is changed from no more than 15 people to 25. Thus more enterprises can be regarded as small sized taxpayers.
Moreover, the Government of Kazakhstan also made drafts of amendments to the Tax Code and the Budget Code on April 12, 2006. According to the draft, as of 2007, the VAT rate will be reduced from 15% to 14%, 2008 to 13% and 2009 to 12%. The VAT rate of enterprises processing agricultural products have another 50% decrease on the above mentioned rate. Non government organizations in education, science, medical treatment and culture are entitled exemption of corporate income tax and VAT under the frame that these organizations accomplish the state order tasks. As of 2007, Kazakhstan adopts fixed rate of corporate income tax, which is 10% for all legal entities. As of 2008, index of social tax is down by 30% on average. As of 2007, special tax rate is to be lowered. As for taxpayers, the rate is down from 3% to 2%. If the graduated tax is replaced by a unified tax, self employed people and legal entities will enjoy a unified rate of 3%, while they are levied at a rate of 3%—5%, and 3%—7% respectively before.

2.3.2 Work permit

According to the Foreign Labor Work Permit Application, the Government of Kazakhstan is determined to increase the quota for the engagement of foreign labor to perform labour activities from 0.45% to 0.7% of the economically active population of the country, of which: category 1 and 2(managers, specialists with higher and secondary professional education) is increased from 0.21% to 0.25%, category 3(qualified workers) is up from 0.11% to 0.32%, and category 4(workers engaged in seasonal agricultural work) is still 0.13%.

2.3.3 Currency regime regulation

The Law on Currency Regulation and Currency Control(Amendments) coming into effect on December 17, 2005 lays a solid foundation for free convertibility of Kazakhstan currency. According to the Currency Law, as of January 1, 2007, the National Bank of Kazakhstan fully lifts administrative permit of currency convertibility, except for retaining license system for currency operations. If there is a need to remit the foreign currency income back to the country, it is all right to be executed within the duration of business contract. Therefore, the process of currency operations is simplified, reducing the cost of those trade related enterprises to fulfill the legal procedure of currency regulation.

2.3.4 Anti monopoly

On June 21, 2006, Kazakhstan’s Parliament passed Concerning Competition and Restriction of Monopoly Activities and amendments to statutes on the entity of natural
monopoly organizations and monitoring commodity markets. The law explicitly defines the commodity markets, calculation of advantage shares, and pricing system involved in monopoly activities. It is for the first time of this Law to clearly define the rights and obligations of monopoly organizations. Group of oligarch is defined as adjusting body, thus altering the quantity standard of group advantage.

2.3.5 the Law on environmental protection

Kazakhstan brought into effect the new Law on Environmental Protection on December 31, 2005. The Law requires enterprises investing in Kazakhstan be levied environmental protection tax. If any pollution is done on environment or harm done on health of residents, the enterprise should make compensation.

3 Barriers to trade

3.1 Tariff and tariff administration measures

The average tariff rate in Kazakhstan was 7.9% in 2006, lower than the average tariff rate of developing countries. The structure of Kazakhstan’s tariff is complicated and lacks necessary constancy. On August 14, 2006, Kazakhstan passed the No. 765 Government Act entitled On the Issue of the Tariff Rate in Kazakhstan. The Act raised the import tariff on beer yeast, breeding chickling, dry yolk, track tractor, etc. Currently, Kazakhstan still imposes comparatively high rates on certain imports, among which are processed meat(30%), canned fish and shrimps(30%), sugar(30%), etc. Besides, as there are TV assembling plants in Kazakhstan(LG, Korea), Kazakhstan sets the minimum tariff duties on imported color television sets stipulating that the tariff on imported color television with screens over 52cm should not be lower than 40 and it should not be lower than 20 on other imported color televisions. China is concerned about the negative impact the tariff structure of Kazakhstan has had on such Chinese exports as color TV and tape recorders, which enjoy a competitive advantage.

At the end of 2004, Kazakhstan adjusted the standard of load limits for vehicles carrying imported goods, which has led to a rise in the tariff of Chinese exports to Kazakhstan and a detention of a large quantity of goods at the border. Regardless of the load limit of each vehicle, Kazakhstan imposes a unified tariff on all the vehicles carrying Chinese exports. Since the new policy, which put strict limit on the load, the tariff on each vehicle has risen by at least 30%. China insists that the tariff rate is not in line with the international standards and lacks constancy, which resulted in risks and losses that could have been avoided. To maintain the healthy development of
bilateral trade, China hopes that Kazakhstan will abolish this unjustified practice as soon as possible.

3.2 Barriers to customs procedures

The Kazakstani Tax Code effective in 2003 clearly states that customs valuation should be on the basis of the transaction value of the imports. However, inconformity does exist in the practice of the Kazakhstani Customs and the WTO Agreement on Customs Valuation. The Kazakhstani Ministry of State Revenues Order 402 sets conditional prices for certain imports. If the price listed on the customs declaration form is lower than the conditional price, the conditional price will be taken as the basis of taxation. The Chinese side considers that such valuation completely acts against the stipulations of customs valuation in the Kazakhstani Tax Code and it does not conform to the WTO customs valuation. This imposes irrational burden on imports.

According to Kazakhstan’s Tax Code, the Kazakhstani Customs maintains a “customs audit” procedure on imports. If the audited result is higher than the declared value, the Kazakhstani Customs will fine the importer. However, from October 2002, the procedure is administrated by private contractors who determine customs value based on a database of world prices. Under this system, approximately 20% of all goods crossing Kazakhstan’s borders are subject to valuation uplifts. The Kazakhstani courts have decided that over 85% of all appeals under this system violate the Customs Code. However, the Kazakhstani Customs has done nothing to the above mentioned measures. The Chinese side considers that Kazakhstan’s “customs audit” does not conform to the WTO Agreement on Customs Valuation Article 7, and exerts serious impact on normal trade.

The Kazakhstani Customs requires that when importers apply to customs via photocopies or faxes of documents, it should be certified by notary public and write to the Customs to confirm its authenticity. When cleared by the Customs, enterprises should provide “Transaction Passport” issued by the Central Bank to monitor the capital flow, otherwise, imports will not be discharged. The complicated and unreasonable requirements of documents by the Kazakhstani Customs not only increase the cost and risk of customs clearance, but also impose substantial barrier to customs clearance of imports. The Chinese side shows great concern about it.

Furthermore, the Kazakhstani Customs Code clearly states that a certificate of origin is required of imports only under three circumstances. However, in the actual practice, the Customs requires certificates of origin of imports under other circumstances as well; otherwise, import duties will be doubled based on the specified legal rates of
Kazakhstan. The Chinese side is concerned about this arbitrary practice of the Kazakhstani Customs.

The Chinese side hopes that Kazakhstan will take effective measures to reduce the negative effect of Customs clearance procedures on the imports.

3.3 Discriminatory taxes and fees on imported goods

According to Kazakhstan’s 2003 Tax Code, the home made tax articles should be levied excise by home currency, while some of the imported tax articles are required to be levied by Euro. For instance, the excise of home made liquor is 300 Tenge per litre(approximately 1.78), while the excise of imported liquor is 3 per litre. Influenced by the change of Kazakhstan’s exchange rate, imports bear higher domestic tax. The Chinese side hopes that Kazakhstan can unify the excise of home made products and imports.

3.4 Technical barriers to trade

As of 2005, Kazakhstan started to set new systems of standardization and certification. The Kazakhstan Technology Law, the Law on Assurance of Measurement Uniformity, List of Products and Services subject to Compulsory Certification and other supportive regulations were enacted. These new laws and regulations aim to distinguish responsibilities from state authorities and private sectors. It is stipulated that the Government is responsible for product safety, while private sectors are in charge of quality control. According to these new regulations, Kazakhstan adopts compulsory certification on certain products and services, including machinery, cars, agricultural equipments, clothing, toys, food and medicine. However, the inspection and certification of imports in Kazakhstan are progressed by the Kazakhstani Committee on Standards, Metrology and Certification and affiliated certification organizations. The standards of inspection and certification are unknown to the public with complicated procedures. The Chinese side considers that the current system of inspection and certification in Kazakhstan go against the normal development of bilateral trade.

3.5 Trade remedies

On October 15, 2004, the Trade Committee(now known as the Committee of Trade and Tourism) affiliated with the Kazakhstani Ministry of Industry and Trade initiated an anti dumping investigation of active dry yeast imported from China.
In January, 2005, the six month provisionary safeguard measures were applied to three kinds of imported candies by the Kazakhstani Ministry of Industry and Trade, imposing a protective tariff of 21% plus no less than 0.15 per kilogram on candies containing no cocoa powder and candies with or without filling. It imposed a protective tariff of 42% plus no less than 0.28 per kilogram on toffees containing no cocoa powder, hard candies and like candies.

3.6 Government procurement

According to Kazakhstan’s Law on State Procurement in 2002, procurement of all medical facilities, including dental equipments and appliances, disinfection plant, surgery apparatus and appliances, laboratory equipments and appliances, diagnostic apparatus, medical assembly line and medicine should invite public bidding. However, in practice, government procurement in Kazakhstan still lacks transparency, and extensive preferences are granted to domestic suppliers. The Chinese side hopes that Kazakhstan will give national treatment to foreign enterprises in government procurement.

In addition, Kazakhstan’s Oil and Gas Law requires that domestic mining and oil enterprises give preemptive consideration to domestic suppliers when procuring products or services. Domestic mining and oil enterprises are not allowed to import foreign products or services, unless such products or services are not available in Kazakhstan. The regulation constitutes discrimination against foreign product and service providers, including Chinese enterprises.

3.7 Barriers to trade in service

3.7.1 Telecommunications

According to Kazakhstan’s Laws on Telecommunications enacted in 2004, foreign investors can have no more than 49% ownership in joint ventures operating intercity and international telecommunication networks until 2008. Additionally, foreign investors need to gain permission from the Kazakhstani government to get involved in projects such as operating television and wireless broadcasting, planning and designing, construction of national and international trunk lines for communications, providing technical maintenance of telecommunication networks and lines as well as production and services of other projects in the telecommunication sector. The Kazakhstani government is entitled to refuse a foreign investor’s application for such a license based on national security concerns. This arbitrary practice increases
the difficulty of foreign investment in the telecommunications sector in Kazakhstan.

3.7.2 Banking

Kazakhstan still has restrictive regulations on the access of foreign funded banks. In general, foreign banks total capital share should be no more than 25% of the total capital of all banks in Kazakhstan. Additionally, Kazakhstan requires that at least one member of the regulatory commission of any foreign bank should be Kazakhstani citizen with a minimum of 3 years of banking experience, and that at least 70% of the employees should be Kazakhstani citizens. Kazakhstan’s limits on capital share of foreign banks and structure of staff greatly hinder the entry of capital of foreign banks.

3.7.3 Insurance

Kazakhstan requires that the total capital share of non-life insurance joint ventures in Kazakhstan should be no more than 25% of the total capital of the domestic non-life insurance market, and that the total capital share of life insurance joint ventures be no more than 50% of the total capital of the domestic life insurance market. This regulation practically forbids foreign latecomers from entering the Kazakhstani insurance sector.

3.7.4 Media

Kazakhstan requires that foreign investors stock share in media industry should be no more than 20%.

4 Barriers to investment

4.1 Barriers to investment in mining

In Kazakhstan, all the foreign funded enterprises must sign a contract on the utilization of underground resources if they are engaged in extraction of petroleum and gas as well as in the mining of other underground minerals. The government of Kazakhstan offers two types of contract. One is the Agreement on the Allocation of Profits from Maritime Petroleum Projects. The other is the Agreement on Surplus Profit Tax. The former applies to projects of maritime petroleum extraction, ruling
that when a foreign investor exploits offshore oil in Kazakhstan, the minimum state share of the project’s profit is 10% before the investment is recouped, and 40% after the investment is recouped. It normally takes 25 or 30 years to recoup the investment. By the Agreement on Surplus Profit Tax, all foreign investors must pay a tax for surplus profit, ranging between 15%—16%. It is China’s concern that these new regulations have increased investors’ burden of taxes and reduced their rate of return.

According to Kazakhstan’s new Mining Law revised in 2005, when a company prepares to transfer the right for exploitation and the rights to acquire or to sell the shares of Kazakhstan Petroleum, Kazakhstan’s Ministry of Energy and Mineral Resources is the authoritative body to give approval. Meanwhile, the state has tremendous power at its discretion when signing the licenses. In 2005, Kazakhstan passed a new law before China Petroleum acquired Kazakhstan’s PK Petroleum registered in Canada. The new law stipulates that the transfer of shares by the oil and natural gas company is also subject to the approval of the Kazakhstan government if the company is not registered in Kazakhstan but has assets in Kazakhstan. Meanwhile, the law stipulates that the state has preemptive rights to purchase the mining rights or shares of not only a mining company, but also companies which have direct or indirect decisive power over the mining company. The law forced China Petroleum and Natural Gas Group to transfer the shares acquired to petroleum enterprises in Kazakhstan and to agree to jointly operate the refinery and petroleum product business under PK Petroleum with Kazakhstan Petroleum. In November, 2006, when China’s Citic Group was about to acquire the petroleum, based upon the same excuse, Kazakhstan required Citic Group’s acquisition to suspend. China should point out that the regulation has constituted substantial obstacles for foreign investors to entering or withdrawing from Kazakhstan’s mining sector, especially to the acquisition of Kazakhstan’s domestic mining companies. The Chinese side is greatly concerned about the issue.

4.2 Barriers to investment in land

Kazakhstan’s 2003 Land Code provides that a Kazakhstani citizen can privately own land for farming, industrial, commercial and residential purposes, but a foreign national and enterprise can only rent land for farming purpose with a lease of up to 10 years.

4.3 Labor permit

Kazakhstan requires that a foreign employee working in Kazakhstan apply for a labor permit, which still remains one of the main obstacles hampering foreign investment.
In 2001, Kazakhstan established a system limiting the number of labor permits issued to foreign personnel. The system sets quotas on labor permits on the basis of the total number of labor force of the country annually. Despite the fact that Kazakhstan increased the quota for foreign labor work permit in 2006, it could not satisfy the demands of enterprises. Many companies investing in Kazakhstan complain that the Kazakhstani government often denies the visa applications of company managers and technicians without sound justification, or provides them with only a short term stay. This regulation has had a negative effect on the production and management of foreign funded enterprises.
Kenya

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Kenya in 2006 reached US $650 million, up by 36.1%, among which China’s export to Kenya was US $620 million, up by 36.0%, while China’s import from Kenya was US $20 million, up by 38.3%. China’s trade surplus with Kenya stood at US $600 million. China mainly exported medicine, footwear and headwear, textiles and clothing, batteries, industrial and farming tools, office supplies, daily commodities, etc. The major imported products of China from Kenya included ore, textile raw materials, coffee, tea and tea products, leather, etc.

According to the Ministry of Commerce, the turnover of completed engineering contracts by Chinese companies in Kenya reached US $870 million in 2006, and the volume of completed labor service cooperation contracts was US $22.88 million.


2 Introduction to trade and investment regime

The trade related regime in Kenya is mainly manifested in the East African Customs Management Act, the Customs and Excise Act, the Value Added Tax Act, the Export Processing Zones Act, the Standards Act, the Customs Tariff Act, etc. The investment related regime is manifested in the Foreign Investment Protection Act, the Trade Licensing Act, the Investment Promotion Act and etc. Governmental departments regulating business and investment in Kenya include the Ministry of Trade and Industry, the Ministry of Finance, the Investment Authority, Customs, etc. These departments are responsible for supervision and management of the legislation and implementation of trade and investment related regime.

2.1 Trade regime and its development

2.1.1 Tariff system

In 2006, the East African Community Customs Union established by Kenya,
Uganda and Zambia continues to carry out a uniform three band tariff, namely, 0% on raw materials and capital goods, 10% on semi processed and intermediate goods, 25% on finished goods. At present, the average MFN tariff adopted by the East African Community is around 12.9%.

Member States of the East African Community reviewed the East African Customs Management Act and Common External Tariff in May, 2005. Tariff on certain commodities were adjusted: Tariff on LPG, coal, medicine, etc. were lowered to 0. Import tariff on rag was lowered to 45% or US $0.3/kg. Tariff on some motor vehicles were up to 25%. 99.8% of tariff in the East African Community adopts ad valorem tariff, while the others are compound duty. There are no non seasonal tariff, variable tariff and tariff quotas. To encourage the development of local processing industry, Kenya imposes a tariff rate of 25% on exports of fur and scrap metal.

To promote the development of telecommunication industry in Kenya, Kenya declared in February 2006 that all the computer spare parts are entitled to duty exemptions. On July 1, 2006, Kenya enacted the 2006/2007 Fiscal Budget, in which certain tariff related policies and tariff rates were adjusted. Bicycle CKDs, energy saving bulbs, solar equipments and related accessories (including batteries using solar energy), filter paper, car oil and gas strainer, wires of stainless steel, nickle bars, nickle stick, nickle mould and nickle wires are free of import duty. Motorcycle CKDs and aluminium foil customs duty are reduced from 25% to 10%. To protect local manufacturers, duty on imported floor covering and mats are increased from 10% to 25%, while imported matches will now attract 50% customs duty, up from 35%.

2.1.2 Import administration

According to the Customs and Excise Act, prohibited and restricted imports in Kenya are classified into 3 categories: 1. Prohibited Imports 2. Restricted Imports and the importation thereof, save in accordance with any conditions regulating their importation, is prohibited. 3. The goods can be imported as long as they conform to the criteria of technology, inspection and quarantine, health, environment etc. Kenyan Ministry of Trade and Industry may, by order published in the Gazette, amend prohibited imports and restricted imports. Apart from three above mentioned categories of goods, all other goods can be imported freely.

On June 15, 2006, Kenya enacted the Trade Licensing Act (Repeals and Amendments) Bill. The Bill cancelled import license on cotton, cereals, hide, skin, leather, etc.

The Government of Kenya imposes 2.75% of service charge on imports. Kenya Plant Health Inspectorate Service levies 1% of service charge on imports of agricultural
products.

2.1.3 Export administration

In 2006, the Government of Kenya continues to carry out the Economic Recovery Strategy for Wealth and Employment Creation 2003–2007. Various incentives were adopted to promote international trade, such as the Export Processing Zones program, Manufacturing under Bond, and duty exemptions, aiming at boosting the exports of manufacturing departments. All these incentives, more or less, reduce or exempt import duties or VAT for export enterprises when importing raw materials and machinery for production, thus effectively promoting exports of manufacturing industry.

On June 15, 2006, Kenya enacted the Trade Licensing Act (Repeals and Amendments) Bill. The Bill cancelled import license on cotton, cereals, hide, skin, leather, meat, etc.

The government of Kenya accepted the application by Kenyan Battery Manufacturers Association in June, 2006, and declared a ban on export of battery raw material, lead dross, to Asia.

2.1.4 Trade remedies

Section 125 and 126 in the Customs and Excise Act provide the legal basis for Kenya to take anti-dumping and countervailing measures, yet no details have been stipulated. The Ministry of Finance is responsible for investigation and execution of anti-dumping and countervailing measures in Kenya. So far there is no specific legislation covering safeguard measures. The investigation and execution of safeguard measures still adopts the method of One Discussion on Each Matter. Up till now, Kenya has never taken WTO trade remedies, such as anti-dumping, countervailing, safeguard measures, etc.

According to the stipulations in the Protocol on the Establishment of the East African Customs Union, there was hereby established the East African Community Committee on Trade Remedies to handle joint investigation of anti-dumping, countervailing and safeguard measures. So far, the East African Community has never taken trade remedies, such as anti-dumping, countervailing and safeguard measures, either.

2.1.5 Other relevant regimes
Up till now, Kenya has more than 4,000 technology standards, which are all compulsory. Among them, around 50% adopt international standards. The relevant departments in Kenya remark they are separating standards, trying to turn compulsory standards into voluntary ones.

2.1.6 Adjustment of relevant organizations


As a part of the privatization process of state owned enterprises in Kenya, Kenya passed the Privatization Law in 2005. The Privatization Commission was established accordingly in July, 2006. The responsibility of this Commission is to supervise and execute the relevant procedures of privatization of state owned enterprises, thus ensuring that privatization can be carried out fairly and openly.

According to the 2005 Public Procurement and Disposal Bill, Kenya set up the Public Procurement Oversight Authority on January 1, 2006.

2.2 Changes in investment regime

In 2006, Kenya continues to adopt the policy that attracts foreign investment, further relaxing restrictions on investment.

At the end of 2005, Kenya revised Investment Promotion Act. The Act stipulates that the investor must apply to Kenya Investment Authority for investment certificates if he wants to enjoy investment preferential policies. The application is on the condition that the minimum amount of investment is no less than US $ 100,000.

With regard to foreign ownership of companies, it is now permitted in Kenya that foreign ownership of companies listed on the Nairobi Stock Exchange is limited to 75%, and foreign brokerage and fund management firms must have minimum Kenyan ownership of 30% and 51%, respectively.

2.3 Measures on certain commodities

The Government of Kenya attached great importance to the stipulation of technology standards in 2006. Altogether, there were 62 national standards enacted by the Kenya
Bureau of Standards in 2006. Most of the technology standards were related to daily necessities and food, such as marking pens, facial tissues, baby food, etc., most of which are our main exports to Kenya. In addition, the National Environment Management Authority in Kenya enacted the Environment Management and Coordination (Water Quality) Regulations and the Environment Management and Coordination (Waste Management) Regulation in December 2006, regulating standards for water quality and waste disposal.

The Department of Veterinary Services, Ministry of Livestock and Fisheries Development, Kenya, prohibited, in March 2006, imports of domestic and wild birds, hatching eggs, meat and meat products of domestic and wild birds, including products intended for animal feed or for agricultural and industrial use from Asia. It took effect upon the date of announcement.

3Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak

In 2006, the overall tariff level in Kenya has no obvious change compared with that in 2005. It is still quite high. Existing commonly in all sectors, tariff peaks are mainly focused on 58 categories of sensitive products. High tariff rates between 35% and 100% exist in certain sectors, such as dairy, cereal and sugar. Tariff rates on certain textile, clothing and bedding are as high as 50%. China’s main exports to Kenya, such as footwear and headwear, textile, daily commodities, etc. are levied 25% to 75% high tariff, thus hindering China’s export of certain products to Kenya.

3.1.2 Tariff escalation

The East African Common External Tariff explicitly stipulates that tariff on imports outside the East African Community is 0 on raw materials, 10% on semi-processed and intermediate goods, 25% on finished goods. As an important member state of the East African Community, tariff escalation is comparatively prominent in all industries, in particular, textile and clothing, which are China’s main exports to Kenya. The Chinese side is very concerned about this issue.

3.2 Export restrictions
Kenyan Battery Manufacturers Association applied to the Government of Kenya, claiming that some Asian countries headed by China and Indonesia imported a large amount of lead dross of waste battery from Kenya, and then exported low-cost battery made of those raw materials to Kenya. Great impact was exerted on Kenya battery manufacturing industry and many battery manufacturing enterprises were to go bankrupt. In June, 2006, the Government of Kenya accepted the application of this Association, declaring a ban on the export of lead dross, battery raw material to Asia. The Chinese side is very concerned about the consistency between Kenya’s practice and WTO regulations.

3.3 Barriers to customs procedures

The government of Kenya applies an import processing fee of 2.75% to all the imports. Upon access to the WTO, Kenya made its commitment that it will not impose any other fees in the process of imports. However, the import processing fee is still levied on imports. It is the hope of the Chinese Government that Kenya will honour its commitments upon the entry of the WTO and strictly implement the relevant stipulations under Article VIII of GATT1994.

3.4 Technical barriers to trade

The technical regulations are not perfect enough in Kenya, lacking of explicit technology standards. Only around 50% of the technology standards and regulations conform to the international standards. The work of authorities as the Kenya Bureau of Standards, the Kenya Customs, etc. is lack of transparency. The Chinese exporters can not get information on technology standards and conformity assessment procedures from authorities in time.

3.4.1 National standards

From January to December 2006, the Kenya Bureau of Standards enacted all together 62 national standards. Kenya declared enforcement of certain standards, such as standards for erasers, marking pens, shampoo, etc. However, these standards have no international standards to follow, and there is no sufficient scientific evidence to prove that relevant products may have comparatively serious influence on human lives or health, national security, environment, etc. It is lack of rationale to carry out these national standards compulsorily. Moreover, it is not in line with the legitimate objective stipulated in the WTO’s Agreement on Technical
Barriers to Trade. Additionally, a good many of existing standards in Kenya differ from those international standards, thus exerting negative impacts on imports. The Chinese Government hopes that in the process of stipulating and executing technological regulations and standards, Kenya shall respect international standards and follow all principles of the WTO.

3.4.2 Pre-shipment inspection

As from 2005, pre-shipment inspection certification is required for goods to be imported into Kenya. All goods must demonstrate compliance with Kenya Standards or approved equivalents by evidence of a “Test Report or Certificate” from an ISO/IEC17025 accredited laboratory or recognized by the International Laboratory Accreditation Cooperation (ILAC) or the International Federation of Inspection Agencies (IFIA). Goods imported without the above mentioned certificates or reports would be held at the port of entry at the importer’s expense until their quality is determined. This regulation has significantly affected the export of Chinese products to Kenya. According to the China Customs, China’s export to Kenya in 2005 was US $457 million, up by 31.0%, while China’s import from Kenya was US $18 million, up by 4.0%. However, in November and December, 2005, China’s export to Kenya was US $39.74 million and US $35.13 respectively, down by 20.7% and 6.73%. It is for the first time that Sino-Kenya trade has negative growth, due to pre-shipment inspection carried out by the Kenya Bureau of Standards. China hopes that Kenya can accept product certificates issued by Chinese product testing agencies according to the principle of mutual recognition under the WTO Agreement on Technical Barrier to Trade.

3.5 Sanitary and phytosanitary measures

According to the Animal Diseases Act CAP 364, the Department of Veterinary Services in Kenya prohibited, as of March 8, 2006, imports of domestic and wild birds, hatching eggs, table eggs, meat and meat products of domestic and wild birds, including products intended for animal feed or for agricultural and industrial use from all Asian countries, Egypt, the Great Britain, Germany, Italy, etc. According to the International Animal Health Code 2000, imports of cooked meat products of domestic and wild birds are subject to additional sanitary attestation. The Chinese side considers such a prohibition of Kenya covers too large a territory without sufficient consideration of the current situation of animal and plant health in various countries. Its restriction exceeds the necessary limit. China hopes that Kenya shall abide by the principles of non-affected and low-risk areas stipulated in WTO/SPS, and take sanitary and phytosanitary measures on the basis of sufficient risk evaluation.
4 Barriers to investment

The Government of Kenya relaxes its standards for foreign investment approval and simplifies procedures of approval in 2006, in the hope that Kenya can attract more foreign investment. However, starting a business takes an average of 54 days, compared to the world average of 48 days.

4.1 National treatment

Kenya treats domestic and foreign funded enterprises differently. For instance, with regard to investment capital, a foreign funded enterprise needs US $ 500,000, while a domestic enterprise only needs US $ 65,000. As to tax, the corporate tax rate is 30% for locally incorporated companies and 37.5% for branches of foreign companies. Currently, Kenya is carrying out a new round reform of state owned enterprises, involving vital sectors as telecommunication, energy, railway, etc. According to the Privatization Act in Kenya, privatizations are to be open and competitive. Kenyans and foreigners are allowed to participate alike. However, for specific transactions, the Minister of Finance may limit participation to nationals or require minimum participation. The Chinese side is concerned about the consistency between the above mentioned measures and WTO national treatment.

4.2 Restrictions on ownership

Foreign investment is confronted with restrictions on ownership in certain fields of investment, such as infrastructure construction like telecommunication, energy, etc., insurance and media. Foreign ownership of companies listed on the Nairobi Stock Exchange is limited to 75%, and foreign brokerage and fund management firms must have minimum Kenyan ownership of 30% and 51%, respectively. All these restrictions on ownership directly affect the foreign investment in these fields.

4.3 Restrictions on business areas

Areas such as Nairobi, Mombasa, Nakuru, Kisumu, Eldoret and parts of Thika are defined by the Kenya Trade Licensing Act as general business areas. Non citizens shall not conduct business outside the general business areas unless specifically authorized to do so in a license.
4.4 Restrictions on products

The Trade Licensing Act lists a range of about 70 specified goods (from foodstuffs to other manufactured goods) in which non-citizens are banned from conducting a business unless specifically authorized to do so in a license.

4.5 Restrictions on land use

In order to protect agricultural land, it is stipulated in Kenya that Presidential exemption is the channel through which foreign-funded enterprises and foreigners can make agricultural land transactions with non-citizens or a private company or cooperative any of whose member is a non-citizen. However, there are no official procedures or published guidelines that investors can follow. Transitions of real estate with non-citizens need approval from the Government in Kenya.
Malaysia

1 Bilateral trade relations

According to China’s Customs, the bilateral trade volume between China and Malaysia in 2006 reached US $37.11 billion, up by 20.9%, among which China’s export to Malaysia was US $13.54 billion, up 27.6%, while China’s import from Malaysia was US $23.57 billion, up 17.3%. China had a deficit of US $10.03 billion. China mainly exported cereal, machinery and electronic products, textile yarn and products thereof, clothing and accessories, steel, crude oil, footwear, and vegetables, etc. Major imported products of China from Malaysia included machinery and electronic products, palm oil, plastics, natural rubber, unprocessed wood, product oil, steel, and crude oil, etc.

According to the Ministry of Commerce (MOFCOM), by the end of 2006, the aggregate turnover of engineering contracts completed by Chinese companies in Malaysia reached US $2.51 billion, and the completed labor service contracts totaled US $240 million.


2 Introduction to trade and investment regime


In Malaysia, major authorities responsible for trade and investment administration include the Ministry of Trade and Industry (MITI), the Malaysian Industrial Development Authority (MIDA), the Customs, and Bank Negara Malaysia.
2.1 Trade administration and its development

2.1.1 Tariff policy


2.1.1.1 Tariff level

The simple average applied MFN rate was approximately 8.1% in Malaysia in 2005. For the purpose of achieving a more opening and liberal economy, the Government of Malaysia plans to further reduce tariff rates.

2.1.1.2 Form of tariff

Currently Malaysia has two tariff classification systems, one for intra ASEAN trade and the Harmonized System for trade with other countries up to the 6 digit level. However, efforts are now being made by Malaysia to unify the classification system into one classification system at the 8 digit level.

In Malaysia, 99.3% of tariff rates are ad valorem; the remainder are specific, mixed or alternate duties.

The Special Advisory Committee on Tariffs (SACT) under MITI receives and considers applications for tariff review, which may then be announced in the annual budget.

2.1.1.3 Tariff reduction on CBU vehicles within ASEAN

The Government of Malaysia reduced the import duty on CBU vehicles from ASEAN countries from 20% to a level below 5%, and that on CKD vehicles was brought down to zero. Import duty for CBU vehicles from non-ASEAN countries dropped
from 50% to 30%, and for CKD vehicles from non ASEAN countries, tariffs were reduced, depending on engine displacement and model number, to zero for some and to 5% or 10% for most of the CKD vehicles. The above adjustment was effective as of 22 March 2006.

2.1.1.4 Agreement on Trade in Goods of Framework Agreement on Comprehensive Economic Cooperation between China and ASEAN

According to the Agreement on Trade in Goods of Framework Agreement on Comprehensive Economic Cooperation between China and ASEAN, which officially came into force in July 2005, for China and 6 original members of ASEAN (including Thailand, Malaysia, Indonesia, the Philippines, Singapore, and Brunei), tariff rates on 60% of the goods shall be below 5% by January 2007, the China – ASEAN Free Trade Area shall be established by 2010 with normal tariff rates of most of the goods down to zero.

1) Knitwear

Effective as of 1 January 2007, the rate for knitwear was reduced from 20% to 12% and the rate for clothing accessories such as socks to 8%.

Despite the reduction, 20 lines covering suits, pants, shirts, cotton baby clothes, and gloves are listed by Malaysia as sensitive products, which are subject to the rate of 20% until 2018.

2) Non-knitted garments

Effective as of 1 January 2007, the rate for non-knitted garments such as cotton or polyester shirts and trousers dropped from 20% to 12%.

Still, 8 tariff lines covering cotton pants for men, some shirts and blouses, men’s shorts, certain diapers and baby clothes are listed as general sensitive products, which are subject to the original duty of 20% until 2018.

3) Filament products

While most of the filament products are free from import duties in Malaysia, some of the yarns such as artificial filament yarn, nylon monofilament, and chemical filament are subject to a rate of 10%. Starting from 1 January 2007, the rate for these
items is down to 8%.

However, synthetic filament, unbleached or bleached pure polyester filament fabric and dyed pure polyester filament fabric are listed as general sensitive products, for which original tariff is maintained until 2018.

2.1.2 Import administration

2.1.2.1 Import restriction

The Customs (Prohibition of Imports) Order 1998 contains four schedules of items that are subject to various levels of restriction.

The First Schedule includes 14 prohibited items including the Chinese traditional patent medicine containing such ingredients as borneolum and fuzi, 45 herbal medicines, and 13 animal and mineral drugs.

The Second Schedule lists products requiring licenses, mainly for health, sanitary, security, environmental protection or intellectual property reasons. Products include poultry and beef (which requires halal certification), eggs, rice, sugar, cement clinker, fireworks, magnetic tapes for video and audio recording, explosives, wood, safety helmets, diamonds, rice milling machinery, color copying machines, some telecommunications equipment, arms and ammunition, and saccharin. According to statistics, 27% of the tariff lines still require licenses.

The Third Schedule, covering items subject to temporary import restrictions to protect a domestic industry, includes milk, coffee, cereal flours, certain wire and cables, and some iron and steel products.

The Fourth Schedule contains items that may be imported only after meeting specific criteria; these include animals, animal products, plants, plant products, cigarettes, soils, fertilizers of animal origin, bullet proof vests, electrical apparatus, safety belts, and imitation weapons.

2.1.2.2 Import licensing

To protect strategic and infant industries from import competition, Malaysia conducts an involuntary licensing administration regarding construction equipment and the agricultural, mineral, and motor vehicle sectors. For example, all imports of heavy machinery for construction need approval from MITI, which will be given only if this machinery is not available locally. The authority for granting
import licenses rests with Royal Customs Malaysia while MITI, along with other specified authorities, is responsible for the day to day administration of import licensing throughout Malaysia.

2.1.3 Export administration

According to Malaysian regulations, most goods can be freely exported to any country except Israel, and the remaining goods are prohibited from being exported. Some goods can only be exported after obtaining approval from the relevant government agency. Export control is imposed on the following goods: goods in short supply, sensitive, strategic or hazardous items, and endangered wild life species the import and export of which is regulated or prohibited by international agreements.

The Customs (Prohibition of Exports) Order 1988 imposes control on export. Of the three schedules of items under this order, the First Schedule consists of items which are absolutely prohibited from being exported to all countries, including turtle eggs and rattans. Besides, export of petroleum, petroleum products and arms and related materials of all types to Haiti is also prohibited. The Second Schedule consists of goods which can be exported if the exporter can get an Export License. The Third Schedule consists of items which can be exported only in accordance with the provided manner. Most of the goods under second and Third Schedule are primary products like livestock and its products, grains, minerals and toxic and/or hazardous wastes. Exports of arms, ammunition and antiquities which are in the Third Schedule are strictly under the government’s control. The MITI and Ministry of Domestic Trade and Consumer Affairs administer licenses for most of the controlled goods.

2.1.4 Trade remedy system

Pursuant to Countervailing and Anti dumping Duties Act 1993 and Countervailing and Antidumping Duties Regulations 1994, the Trade Practices Unit (TPU) under MITI is responsible for anti dumping and countervailing investigations. Ever since TPU was created, there was only one investigation against Chinese products—bicycles, initiated in April 2002.

2.2 Investment administration and its development

In Malaysia, investment incentives are provided for in the following laws, including the Promotion of Investment Act 1986, Income Tax Act 1967, Customs Act 1967, Sales Tax Act 1972, Excise Act 1976 and Free Zones Act
1990. These Acts cover investments in the manufacturing, agriculture, tourism (including hotel) and approved services sectors as well as R&D, training and environmental protection activities. The investment incentives are delivered through direct or indirect tax cuts.

2.2.1 Investment incentives for manufacturing companies

Major tax incentives for companies investing in the manufacturing sector are the Pioneer Status and Investment Tax Allowance. Eligible projects are termed “promoted activities” or “promoted products”. For this purpose, the Government of Malaysia has made a List of Promoted Activities and Products. In June 2006, the Government updated the tax exemption rate for the eligible companies and the eligible applications.

2.2.1.1 Pioneer status

A company granted Pioneer Status enjoys a 5 year partial exemption from the payment of income tax. It pays tax on 30% of its statutory income, with the exemption period commencing from its Production Day approved by MITI.

To encourage investment foreign investment in the promoted areas, i.e. Sabah in eastern Malaysia, Sarawak and the designated “Eastern Corridor” of Peninsular Malaysia, the Government of Malaysia has the policy that any investment in these areas will enjoy a 100% tax exemption on their statutory income during their 5 year period, and all project applications submitted before 31 December 2010 will be eligible for this incentive measure.

2.2.1.2 Investment tax allowance (ITA)

A company granted ITA is entitled to an allowance of 60% on its qualifying capital expenditure (such as factory, plant, machinery or other equipment used for the approved project) incurred within five years from the date on which the first qualifying capital expenditure is incurred.

The company can offset this allowance against 70% of its statutory income for each year of assessment. Any unutilized allowance can be carried forward to subsequent years until fully utilized. The remaining 30% of its statutory income will be taxed at the prevailing company tax rate.

For investment in “Eastern Corridor”, applications received from 13 September 2003
will enjoy an allowance of 100% on the qualifying capital expenditure incurred within a period of five years. All project applications received by 31 December 2010 will be eligible for this enhanced incentive.

Apart from the above incentives, there are many similar investment incentive policies made by the Malaysian Government, such as incentives for hi-tech companies, strategic projects, SMEs, the machinery and equipment industry, the production of heavy machinery, automotive component modules, and for the utilization of oil palm biomass.

Besides, there is an additional favorable policy regarding foreign investment in the manufacturing sector in the form of export rebate.

2.2.2 Incentives for Halal certification applications

In September 2005, the Government of Malaysia issued the Guidelines for Application of Incentives for Production of Halal Food. Under these guidelines, companies that produce halal food are given Investment Tax Allowance of 100% of qualifying capital expenditure incurred with a period of 5 years. Companies that are eligible for such incentives are new companies undertaking halal food production, existing halal food companies undertaking upgrading or expansion of existing plants, and existing companies diversifying into halal food production.

2.2.3 Dividend tax reduction on Real Estate Investment Trusts (REITS)

To further diversify capital market products in Malaysia to attract local and foreign investors, the Government of Malaysia proposed in the draft budget for 2007 that dividends received by local and foreign individual investors from listed REITs be taxed at a rate of 15%, while the tax rate on dividends received by foreign institutional investors be reduced from 28% to 20%. This incentive will be given for five years.

In addition, the tax treatment for REITs is further improved, whereby the undistributed income from REITs is exempted, provided REITs distribute at least 90% of their income.

2.2.4 Incentives for the development of the biotechnology industry

In the 2007 budget report, the Government of Malaysia announced a host of new incentives to encourage new investments in biotechnology activities so as to promote the development of the biotechnology industry in Malaysia. These incentives are as follows: first, biotechnology companies will be given income tax exemption for 10
years, beginning from the first year the company is profitable; second, after the expiry of the 10 year exemption period, a biotechnology company will be taxed at a rate of 20% for another 10 years; third, tax deduction equivalent to the amount of the investment made in seed capital and early stage financing will be given to companies or individuals investing in the biotechnology sector; stamp duty and real property gains tax exemptions will be given to a biotechnology company undertaking merger with or acquisition of a biotechnology company, within a period of 5 years; and fifth, buildings for research activities related to biotechnology will be given Accelerated Industrial Building Allowance.

The Government will earmark RM210 million (about US $55.25 million) for the development of the biotechnology sector. In addition, RM59 million (about US $15.52 million) will be allocated under the R & D initiatives for genomics and molecular biology, and production of pharmaceutical products.

2.2.5 Promoting the development of Multimedia Super Corridor (MSC)

To become a global information and communications technology (ICT) center, the Government of Malaysia created an ICT program in 1996, i.e. the Multimedia Super Corridor (MSC).

Companies which have obtained the MSC Status enjoy a set of financial and tax incentives and benefits guaranteed by the Government, mainly including access to world class hardware and communications infrastructure, unrestricted recruitment of intellectual personnel from home and abroad, privatization of company ownership, and tax exemption for 10 years or five year financial allowance.

A sum of RM154 million (about US $40.52 million) has been allocated by the Government to undertake various activities. Besides, the Universal Service Provision Fund is founded to further increase access to ICT facilities.

2.3 Trade and investment rated administration

2.3.1 Labor policy

The Ministry of Health Malaysia announced in 2006 that all foreign labors, including maids, would not be subject to mandatory health checks, starting from the third year of their service in Malaysia. However, the regulations regarding three mandatory health checks within the first two years since the arrival of the foreign labor in Malaysia remain unchanged. The three health checks are to be taken within one month after arrival in Malaysia, upon
renewal of foreign labor permit during the second year, and at the end of the second year.

2.3.2 Visa policy

To get prepared for Visit Malaysia Year 2007, the Government of Malaysia announced that, since 1 September 2006, citizens from 23 countries including China, India, Pakistan, Bangladesh, and Myanmar may apply for a landing visa upon arrival at the Malaysian International Airport. Any landing visa holder may stay in Malaysia for one month, but with entry only from the airport. If one wishes to have the visa extended, one must leave the country before reentering it. The one year multi entry visa, previously only issued to the Chinese and Indian citizens, are now extended to include all visitors from West Asia. In addition to consular offices at New Delhi and Chennai, Malaysia will set up another one in Bombay so as to speed up the visa application process.

To attract overseas technicians to Malaysia, especially in emerging sectors, the Government of Malaysia has accelerated the issuance of visas and work permits. In 2007, Malaysia will also create immigration services under the Malaysian Industrial Development Authority (MIDI) and Multimedia Development Corporation (MDeC), and authorize them to handle visas and work permits for foreigners. To provide further facilitation, the Immigration Department will set up in Cheras and Wangsa Maju 2 branches directly under the federal control, and set up specific counters at immigration offices in major cities for professionals and business people. Besides, the spouses of the foreign workers, with professional qualifications, are also allowed to work in Malaysia.

2.3.3 Automotive policy

In March 2006, the Government of Malaysia announced the new National Automotive Policy (NAP), covering the following 7 measures: (1) streamlining of excise duty structure to promote greater transparency in car pricing; (2) regular publishing of the values of imported cars to avoid tax underdeclaration; (3) reducing the ASEAN CEPT import duty to 5% for qualifying vehicles; (4) grants from the Industrial Adjustment Fund to car manufacturers with competitiveness and added value; (5) temporary freezing new manufacturing licenses until the current production overcapacity is overcome; (6) phasing out the current system of Approved Permits (AP) by 31 December 2010; (7) implementing Vehicle Type Approval processes and procedures.

Besides, the importation of second hand cars, other than individual personal imports, will be progressively phased out under NAP. To promote greater
transparency in the prices of imported cars, the NAP requires the prices of all imported cars be published on the Government Gazette for the purposes of duty computation.

2.4 Product specific administrative measures

In the beginning of 2006, Malaysia published the new Automobile Import Regulations, requiring Approved Permits (AP) be obtained for all cars importing into Malaysia with 24 hours of entry of the new cars into the Port Klang, Selangor and Port of Tanjung Pelepas.

As of 20 April 2006, neither AP nor MITI’s approval is needed for the importation of Barite Sulfate.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak

Though the simple average applied MFN tariff rate is around 8.1% in Malaysia, tariff protection is high for products deemed important to Malaysia, mainly including automotives, textiles, clothing and leather, food and beverages, and imported goods that compete with local production. Rates exceed 20% on 16.9% of tariff lines and several lines have rates over 100%.

While the overall tariff level of Malaysia was reduced in 2005, domestic tariff peaks increased by 50%.

Although Malaysia lowered the import duties for cars according to the ASEAN Free Trade Agreement, it started to impose high excise duty on imported cars. Adjustment was made to the excise duty in 2005, bringing down the rates of 90%—250% to 80%—200% for cars; the rates of 40%—170% to 55%—160% for imported CBU or CKD MPVs. However, the excise duty increased by 15% for MPVs with engine displacement below 2,000CC, imported from non ASEAN countries, leading to an increase of actual rates for MPVs and lorries from non ASEAN countries by 10%—20%. Besides, the Malaysian Government also adjusted the computation of excise duty for imported CBUs, which is now levied based on the DDP price instead of the original CIF price. This has exerted a greater burden on car importers.

Malaysian national cars, Proton and Perodua, together with cars produced by other two local JVs, receive a reduction of 50% on the excise duty, which doesn’t apply to foreign controlled car manufacturers. This constitutes a discrimination
against foreign controlled car manufacturers. Although the Government of Malaysia has the intention to eliminate the favorable policy of tax reduction for its national cars, specific timeframe hasn’t been determined yet.

3.1.2 Tariff escalation

Malaysia’s tariff protection is generally lower for raw materials and increases on processed goods, giving rise to tariff escalation to some extent. For example, Cocoa is duty free, but a 15% rate is levied on cocoa preparations; there is no tariff on cotton while a 10% rate is imposed on textile yarn and a 20% rate on cotton knitwear and clothing. In addition to import duties, most products are subject to an excise duty of 10%.

3.2 Technical barriers to trade

According to relevant regulations in Malaysia, effective as of 1 March 2004, 7 categories of pre-packaged processed foods must carry nutritional labels. These products include cereals, breads, milk product, canned meat, canned fish, canned fruit and vegetables, fruit juices, soft drinks, and salad dressings. Malaysia has become the 6th country that implements mandatory nutrition labeling regulations, following the U.S., Canada, Australia, New Zealand, and Japan. The Nutrition Labeling Claims Regulations of Malaysia prescribes for the type and format of the nutritional information required. Pursuant to the Regulations, information on energy value and the amounts of carbohydrate, protein, and fat in the food should be expressed per 100g or per 100ml or per package as well as per serving as quantified on the label. For soft drinks, the amount of total sugars in the food should be given. Where a claim is made regarding the amount and/or type of fatty acids, the amounts of the different types of fatty acids present in the food must be labeled, such as the amounts of monounsaturated, polyunsaturated, saturated, and transfatty acid. Besides, the regulations limit certain kinds of nutritional claims that carry explicit or implicit meanings. Starting from July 2005, over 50 kinds of foods are required to comply with the labeling regulations.

Although the above regulations are basically in line with the General Principles of the CAC, the calculation of energy as well as the way of expressing fatty acid, vitamins and minerals is different from ordinary practices, which has made it more complicated for the enterprises to conduct product development and labeling design. The Chinese sides hopes that while trying to protect consumer rights, Malaysia can put in place reasonable food labeling requirements for the purposes of trade facilitation and reduce unnecessary barriers to international trade.
3.3 Sanitary and phytosanitary measures

All meat, processed meat products, poultry, eggs and egg products are required to be supplied from manufacturers which have been inspected and approved by the Department of Veterinary Services under the Ministry of Agriculture, and all imported products must obtain the import permit issued by the Department. The Department of Veterinary Services often imposes restrictions on the importation of chicken products through import licensing requirements, especially in cases when the local producers find that imported products are competing at low prices. All meat, processed meat products, poultry, eggs and egg products must receive halal certification from specific Islamic Centers, while slaughter houses for cattle, sheep, and poultry, as well as the processing facilities for meat and eggs must be inspected and approved by the Department of Islamic Development Malaysia (JAKIM). The halal certificate is issued on the joint recommendation of the Malaysian Department of Veterinary Services and JAKIM following an on site inspection, and the Government has the right to reinspect the plant one year after the inspection. The halal certification in Malaysia is conducted regarding individual item instead of a processing plant by more stringent standards than those of other Muslim countries, and there are often cases where the processes are found not transparent.

Therefore, the Chinese side expresses concern over the matter and hopes that the Government of Malaysia will strengthen its regulation over the halal certification process and relevant standards to provide greater transparency and ensure that international trade activities are conducted smoothly.

3.4 Government procurement

With regard to government procurement, foreign companies don’t enjoy the same opportunities to compete with local Malaysian companies. In most cases, foreign companies are required to form partnership with local companies before they are allowed to bid. Besides, there is a lack of transparency in quite a few government procurement programs.

The Malaysian Ministry of Treasury made an announcement in September 2005 that all purchases under government procurement programs regarding railways, decorative and outdoor lighting facilities, and other equipments and parts must be made from one of three designated local manufacturers. The Chinese side expresses concern over the new policy and hopes that Malaysia will extend the scope of bidding for government procurement programs so as to create a level playing field in this regard.

3.5 Subsides
There are certain export subsidies in Malaysia. For example, under the Export Credit Refinancing Scheme (ECR) implemented by the Central Bank of Malaysia, exporters can obtain pre and post shipment financing.

3.6 Barriers to trade in services

3.6.1 Telecommunications

Malaysia imposes restrictions on foreign investment through foreign equity ownership limits. Foreign acquisition of fixed telephone services in Malaysia is limited to 30% and foreign ownership of value adding service providers is also limited to 30%.

3.6.2 Distribution and direct selling

Malaysia requires at least 30% of the Malaysian ownership in a local direct selling company before it is licensed to carry on direct sales business. Local companies are required to pay RM1.5 million (about US $395,000) for the application for a pyramid selling license while companies involving foreign ownership are required to pay RM5 million (about US $1.315 million).

In a guideline for foreign participation in distribution services, requirements are also made regarding the proportion of the interests of local traders. For example, department stores, supermarkets, and expensive malls must reserve 30% of the shelf space for products made by Malaysian SMEs. Such demanding requirements for local content have distorted trade in services.

3.6.3 Legal services

According to relevant regulations in Malaysia, foreign lawyers are not allowed to practice law, join local law firms or conduct business using the name of their international law firm. Foreign law firms may not operate in Malaysia except as minority partners with local law firms, with their stake limited to 30%. Their scope of service is limited to advice concerning home country and international law. Pursuant to the Legal Profession Act 1976 of Malaysia, only a citizen or a permanent resident of Malaysia, who has a good command of Malay and has obtained local law degree or recognized qualifications, may practice law in Malaysia. The Attorney General has the right to revoke various restrictions provided that the
applicant has been a legal practitioner for 7 years.

3.6.4 Construction services

According to relevant Malaysian regulations, foreign architectural firms may operate in Malaysia only as a joint venture participant in a specific project with the approval of the Board of architects. Foreign architectural firms may not have Malaysian architectural firms as registered partners. Foreign architects may not be licensed in Malaysia but are allowed to be managers, shareholders, or employees of Malaysian firms. Only licensed architects are allowed to produce architectural plans.

3.6.5 Engineering services

There are harsh regulations in Malaysia regarding the provision of engineering services by foreigners. Foreign engineers may be licensed by the Board of Engineers only for specific projects, and must be sponsored by the Malaysian company carrying out the project. In this case, the license is only valid for the duration of a specific project. In general, a foreign engineer must be a registered engineer at home country with at least 10 year experience, and shall stay for a minimum of 180 days in Malaysia during one calendar year. For a foreign engineer to obtain a temporary license, the Malaysian company has to provide evidence to the Board of Engineers, stating that local qualified engineers can’t be found. Foreign engineers may not conduct business independent of the Malaysian partners, or become managers or shareholders of the engineering consulting firm. Besides, foreign engineering companies may collaborate with a Malaysia firm, but the Malaysian company is to design and is required to submit the plans for domestic approval.

3.6.6 Accounting services

Foreign accountants who wish to provide auditing and taxation services in Malaysia must register with the Malaysian Association of Certified Public Accountants before applying to the Ministry of Treasury for license. The registration requires citizenship or permanent resident status. Only Malaysian citizens or permanent residents with local university degrees or members of 11 overseas professional services recognized by the Government may apply for registration with the Association.

3.6.7 Banking
To encourage domestic financial services, the Government of Malaysia imposes restrictions on foreign participation in financial services. At present, foreign institutions may own 49% of investment banks in Malaysia, but foreign commercial banks may only have a maximum ownership of 30%. Besides, foreign banks may only operate as a domestically controlled branch in Malaysia, and are allowed to open new branches only under the instruction of the Central Bank of Malaysia.

3.6.8 Insurance

Government approval must be obtained for foreign equity ownership of insurance companies exceeding 49%. The existing joint venture insurance companies are allowed to raise foreign equity ownership to 51%. However, foreign insurance companies that have just entered Malaysia are limited to equity participation in local insurance companies, with aggregate foreign ownership no more than 30%.

3.6.9 Labor services

Malaysia hasn’t opened its labor market to general labor services and exercised a strict control over the number of employees as well as technical labors sent from China to Chinese companies in Malaysia.

3.6.9.1 Work visa

The Immigration Department of Malaysia requires Chinese professional technicians who apply for the work permit to have work experience over five years, and often rejects the applications on account of sufficient local personnel of the same kind. It has become a long-standing problem for Chinese companies in Malaysia. Starting from 2005, the process for work permit applications and extensions has become even more complicated for Chinese technicians who are to work in Malaysia, which has seriously affected and restricted the development of Chinese businesses in Malaysia.

The Immigration Department of Malaysia also requires the chief representative or general manager of a foreign company to work in Malaysia for no more than 10 years; otherwise, there will be no extension of his/her work permit. This requirement is extremely harmful to the long-term development of a foreign company in Malaysia.

The Chinese side hopes that Malaysia will take long-term, reasonable, institutionalized and facilitation means and measures regarding the issuing of work permit to Chinese managerial and technical personnel, as well as effective steps to
further promote the normal development of economic and trade relations between China and Malaysia.

3.6.9.2 Business visa

A business visa to Malaysia is only valid for a very short period of time, but it takes a long time to get one. At present, the validity of visa issued by Malaysia to Chinese business persons is only one month, and it is quite difficult to get a multi-entry visa. Besides, it has been complained by some Chinese hi-tech companies that they often need short-term technical support from domestic engineers during the implementation of a project, but an application for a visa to Malaysia in China often takes 1-2 weeks, which has affected the progress of the project as some emergent technical problems haven’t been solved in time.

The Chinese Government has been granting Malaysia business persons in China the multi-entry visa with validity up to two years, so the Chinese side hopes that the Government of Malaysia will follow the principle of reciprocity by giving equal treatment to Chinese business persons visiting Malaysia. The Chinese side thinks Malaysia should resume the previous practice of issuing the 3-month business visa to Chinese business persons.

4 Barriers to investment

While Malaysia encourages foreign direct investment in export-oriented manufacturing companies and in the hi-tech sector, restrictions are imposed on foreign investment in other sectors, in particular, the financial sector. Besides, foreign investment in terrestrial radio services is prohibited. In general, foreign equity ownership is limited to 30% and foreign companies are required to form joint ventures with local Malaysian companies. The Chinese side hopes that the Government of Malaysia will ease the control on foreign access and provide the foreign investors with a fair and just trade environment.

To protect the domestic auto makers, the Government of Malaysia rolled out a policy at the later half of 2005, prescribing that all auto brands, which newly entered Malaysia to have their cars produced and assembled locally, are not allowed to be sold in Malaysia and must be all exported. This policy once caused a standstill of the investment projects of the Chinese auto companies in Malaysia and has impeded the Chinese auto companies with their own brands from entering the Malaysian market. The Chinese side hopes that the Government of Malaysia will change the above policy and provide a level playing field for trade between China and Malaysia.
Mexico

1 Bilateral trade relations

According to China Customs, the bilateral trade volume between China and Mexico in 2006 reached US $11.43 billion, up by 47.2%, among which China’s export to Mexico was US $8.82 billion, up by 59.3%, while China’s import from Mexico was US $2.61 billion, up by 17.10%. China had a surplus of US $6.21 billion. China mainly exported datamation equipment and related parts, spare parts for apparatus or equipment like wireless telephone or radar, related parts mainly for typing and other office machines, integrated circuit and microelectronics constituent, transmission equipment for wireless telephone, telegraph, and radio and TV broadcast, transformer, static converter (rectifier for example) and inductance, printing circuit, optical instrument and device, microphone, loudspeaker, earphone, and audio frequency expander, etc. China’s major imports from Mexico included spare parts mainly for typing and other office machines, copper waste fragments, spare parts for tractor truck, tractor, and passenger or cargo vehicles, non forged refined copper and copper hardener, copper ores and concentrate thereof, motor vehicles mainly for passengers, iron ores and concentrate thereof, aluminum waste fragments, datamation equipment and related parts, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by the Chinese companies in Mexico was US $1.31 billion, and the volume of the completed labour service contracts had reached US $73.19 million.


2 Introduction to trade and investment regime

2.1 Trade administration and its development

The main laws and regulations governing foreign trade in Mexico include Article 131 of the Mexico Constitution, the Foreign Trade Act and its Regulations, Regulations
on Unfair International Trade Practices, the Law on Economic Competition, the Law for Acquisitions, Leases and Services, the Law for Public Works, the Customs Law, General Import and Export Tariff Law, the Law on Metrology and Standardization, and the Industrial Property Act, etc. The Foreign Trade Act (hereinafter referred to as FTA) is the basic law governing foreign trade in Mexico. The FTA, combined with other related laws, regulates and adjusts Mexico’s foreign trade activities. The Ministry of Economy is in charge of foreign trade, responsible for making foreign economic and trade policies with other departments, such as the Ministry of Foreign Affairs, the Ministry of Treasury, and the Customs, etc.

2.1.1 Tariff system

Mexico promulgates its tariff adjustments to imported and exported goods in the form of Presidential decrees, which are published in the Official Journal.

In September 2006, Mexico published its adjustments to import and export tariff through the Official Journal. In line with the General Import and Export Tariff Act, which has made some adjustments to the applicable tariff item numbers and tariff rates of certain products, the Mexican government has adjusted accordingly the products related to the Northern Border and Border Area Import Program and the Sectorial Import Promotion Program in order to maintain the previous tariff level stipulated in the programs.

The Mexican government has cut the import tariffs of some products as well, for instance, the aluminum ingot used for making aluminum products, the pig feed and bird feed, and certain chemical raw materials. According to the adjusted tariff rates, zero export tariff is applicable to products such as the unexposed photographic sensitive hard cards and plane soft cards, shoes and boots parts, telephone and telex equipment, etc. Mexico has made adjustments to the export tariff in the hope of maintaining the competitiveness of certain Mexican industries, keeping its sustained development, and encouraging exportation.

The Customs Law of Mexico stipulates that an additional duty (also called a customs processing fee) shall be levied on all imported goods, and the rate is 0.8% of the declared FOB value. In addition, the Mexican Customs levies a 15% value added tax on most imported goods.

2.1.2 Import administration

As from 2003, Mexican corporations regularly engaged in import and export operations should file for a customs certificate with the Tax & Revenue Federal
Agency. The certificate must be renewed on an annual basis. The certified company will get the following benefits: conducting import export operations through any customs broker; simplifying customs and administrative procedures; filing preference for specific import licenses of goods.

In July 2003, the Strategic Private Bonded Warehouses (hereinafter referred to as SPBW) concept came into effect in Mexico. In August 2004, the defining administrative regulations regarding documentation and procedures were released. Under the SPBW system, foreign or domestic goods may be stored in confined spaces that are managed by private Mexican companies. In the SPBW, not only warehousing, display, sale, labeling, packaging or sampling activities are permitted, but also raw materials can be manufactured and transformed into finished products. Goods imported into Mexico and housed in an SPBW may remain in the SPBW for two years. Machinery, administrative equipment, furniture and general fixed assets may remain in the SPBW for as long as ten years. In addition, companies storing goods in a SPBW are not subject to the Bonded Area Processing Program or the Temporary Importation Program for Exportation. At the same time, foreign goods that housed in a SPBW are not liable for import tariffs or countervailing duties. They are not subject to VAT on importation or general excise tax for as long as they are not removed from the SPBW for definite importation into Mexico. Goods entered in a SPBW are not required to comply with non tariff regulations and restrictions or Mexican official stands, or national security standards.

In accordance with the Foreign Trade Act and its related regulations, the Mexican Ministry of Economy publishes the catalogue or list of commodities under licensing administration through the Official Journal. Since January 1, 2006, Mexico has adopted a new non automatic import licensing system to the sensitive goods, which has taken full use of computer technology and fastened the application information circulation speed. In October 2006, Mexico reclassified and codified some merchandise whose importation and exportation is subject to a requirement of a prior licensing permit from the Secretariat of the Economy in the purpose of reducing the type and number of products which are subjected to the non automatic licensing system.

All import and export operations must be conducted by a previously appointed customs broker. Importers must be registered with the National Importers Registry to be allowed to import goods into Mexico. In specific cases, importers of certain specific goods may need an additional license to import the goods.

2.1.3 Export administration

Mexico strives to promote exportation, especially the exportation of non petroleum products. To this end, the Mexican Ministry of Economy has formulated and implemented many export promotion plans and made preferential
policies on exportation in terms of tax and administrative management.

On September 5, 2006, Mexico, through its official journal, adjusted the tariff item numbers of the products related to the “Sectorial Export Promotion Program”, which covered twenty two important industrial sectors, mainly including electronics, toys, shoe making, mining and metallurgy, capital assets, agricultural machinery, chemical, rubber and plastic, iron and steel, pharmaceutical and medical equipment, wood products, paper and cardboard making, leather products making, motor vehicle and automotive parts manufacturing, and textile. To facilitate the implementation of the program, Mexico has stipulated the list of imported goods. If the goods are on the list, the company should send application materials to the Ministry of Economy within a definite period before importing the goods.

2.1.4 Trade remedies

In January 2006, the Mexican Ministry of Economy made some amendments to the Foreign Trade Act. Meanwhile, the Ministry amended correspondingly Article No. 1, 3, 10, 16, 17, 20 and 25 of the Guidelines on the Implementation of the Transitional Safeguard Mechanism specified in China’s WTO Accession Protocol. It is stated that the General Administration of International Trade Practices under the Ministry of Economy shall conduct investigations on the Chinese products which are specified under the Transitional Safeguard Mechanism in the Protocol and adopt corresponding special safeguard measures. If the Mexican side requests for a negotiation and an agreement can not be reached with the Chinese side within 60 natural days, the Mexican Ministry of Economy may take measures like withdrawing concessions, or restriction (此处中文原文是“撤销减让或限制”而不是“撤消、减让或限制”) against China exported products under investigation in order to avoid or remedy market disturbance. The resolution of taking special safeguard measures should be submitted to the Mexican Foreign Trade Commission for consideration. The Mexican Ministry of Economy, based on the preliminary knowledge, can take temporary safeguard measures that include special safeguard duty, ad valorem tariff, prior license, quota or combination of them. The Mexican Ministry of Economy can decide to take transitional safeguard measures for 200 days starting from the day when the resolution of transitional safeguard investigation is published. This term can be extended if the circumstance calls for it.

In addition, the amendments to the Foreign Trade Act have revised the Mexican anti dumping investigation procedures. The time period between the publication of an anti dumping investigation case in the Official Journal and the making of the final award by the Ministry of Economy has been shortened to 210 days; inquiries must be made among domestic producers before approving or refusing importation or exportation of certain goods; the nomination of the agencies and the formulation of procedures with regard to the examination of tariffs and screening of new exporters:
the Ministry of Economy is authorized to conduct anti-dumping investigations based on adequate evidence.

Article 5.8 of the Foreign Trade Act has been changed into: the Ministry of Economy is responsible for advising Mexican exporters involved in investigations abroad of unfair international trade practices and safeguard measures or in any other procedure that could result in an import restriction in other countries. Section 9 has changed into: the Ministry of Economy will coordinate the international trade negotiations with the competent departments and, at the request of the Ministry, with the productive sectors. Section 11 has been changed into: the Ministry should establish programs and mechanisms to foster and promote exports as well as corresponding provisions.

2.2 Investment administration and its development

The main law governing investment in Mexico is the Foreign Investment Law. In addition, some laws and regulations applicable to specific sectors, such as the Federal Telecommunications Law, the Natural Gas Regulations, the Railroad System Act, and the Port Act, etc., also set the terms and conditions for the accession of foreign investment.

The Foreign Investment Law stipulates that foreign companies are free to remit their profit, equity, dividends, interest and capital. In case of difficulties in the balance of payments, international transfers may be temporarily restricted by the Mexican government.

The Mexican Foreign Investment Law provides that unless specifically stipulated otherwise, Mexico allows foreign investors to invest in most of the economic sectors within its borders, even allowing solely foreign ownership in operation.

All the foreign invested firms must register at the Foreign Investment Registration Office under the Ministry of Economy; and a few foreign investment projects shall be subjected to the examination and approval procedure of the National Commission of Foreign Investment (hereafter referred to as NCFI). The NCFI should resolve applications submitted by foreign investors within 45 working days, otherwise, applications will be deemed approved. The Foreign Investment Law sets forth the criteria under which the Commission must perform its evaluations upon foreign investors' applications. The NCFI is entitled to halt foreign investment projects when national security is concerned. The NCFI is responsible for dictating the policies on foreign investment and establishing terms and conditions applicable to participation of foreign investment.

In 2005, Mexico signed with China the Agreement between the Government of the People’s Republic of China and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect
to Taxes on Income.

In 2006, China and Mexico conducted a number of negotiations concerning agreement on bilateral investment protection.

2.3 Measures on specific commodities

2.3.1 Measures on firearms and ammunition

In order to strengthen the control over the import and export of firearms, ammunition, explosives and its spare parts, the Mexican Ministry of Economy released public notice on October 20, 2005, which amended and supplemented the decree on firearms and explosives issued on November 25, 2002. It is made clear that the type of commodity governed by Article 1 of the Decree is the shell parts and airgun bullets under tariff item No. 9306.29.01 of the General Import and Export Tariff Act. Article 2 further includes phosphate and nitrate under tariff item No. 3105.51.01 and stipulates that only when these products are used to produce, assemble explosives or smoke and fire device are they subject to the decree. Article 1 entered into force on October 13, 2006 and Article 2 on November 25, 2006.

2.3.2 Hygiene measures on part of goods

In 2006, the Mexican Ministry of Economy and the Ministry of Public Health jointly released the applicable hygienic measures on imported porcelain, toys and teaching instruments. According to the stipulation, importers must submit the hygiene description of the imported products to the hygiene inspection and quarantine agency when they declare the above mentioned products, together with information like the 8 digit number of the imported products, product description, brand, model, name of the product, etc. The importers also need to submit the hygiene certificates or the original regions (countries) certificates of free trading issued by the concerned regions (countries) of origin.

2.3.3 Import measures against China produced chili

From January 1, 2006, the Mexican government has taken the following inspection and quarantine measures against the chili originally produced by China: a Certificate of Plant Quarantine issue by Chinese inspection and quarantine agency must be attached to the chili when entering the border and the place of origin of the chili must be stated; the exporter should go through the hygiene registration procedures in
advance at the inspection and quarantine agency in the place of origin and the
registration number should be stated in the Certificate of Plant Quarantine; the chili
should be clean from soil or other contaminants and packaged by new gunny bags
with name, shipping mark, weight and lot number; the relevant information about
the producer and packing factory should be stated in the Certificate of Plant
Quarantine; when the chili is about to enter the border, the Mexican inspection and
quarantine agency will carry out inspection at port and take samples to the
government designated lab for check, the fees incurred shall be borne by the
importer; before the release of the inspection result from the lab, the customs shall
not let the chili pass; if the result does not meet the inspection and quarantine
requirements, the chili will be returned to the country of origin or be destroyed at the
entry port, the fees incurred shall be borne by the exporter; the Mexican Ministry of
Agriculture will send personnel on an irregular basis to the origin place of the chili to
check and inspect the quarantine situation. The authorized port of entry include Port
Manzanillo and Port Veracruz as well as Nuevo Laredo, CD Juarez, and Mexicali
along the borders of the US and Mexico.

2.3.4 Measures on diesel engine of motor vehicle

On May 1, 2006, the Mexican Ministry of Environment and Natural Resources
published the emission standard of the new diesel engine, which is applicable to the
diesel engine used by the new motor vehicle whose total weight is over 3,857
kilograms. The standard sets the maximum emission limit in terms of the amount of
hydrocarbon, non methane hydrocarbon, carbon monoxide, nitrogen oxide, particulate matter and the turbidity of the smoke emitted through the exhaust pipe.

3 Barriers to trade

3.1 Tariff and tariff administration measures

3.1.1 Tariff peak

In 2006 Mexico adjusted its tariff rates substantially. According to the 2006 Mexico
customs tariff schedule, the products with high tariff rates include: the shelled
poultry eggs (fresh, salty or boiled), with a tariff rate of 45%; passenger motor
vehicles with more than 6 seats, cars, and cargo vehicles, with a tariff rate of 50%
%; part of poultry (chicken, duck, goose, turkey and guinea fowl) fresh, cold, or frozen meat and edible entrails, with a tariff rate as high as 234%; part of
fructose and fructose syrup, with a high tariff rate of 210%.

3.1.2 Tariff escalation

Mexico levies much higher average tariff on processed products than on raw
materials, and the most concerned industries are textiles, apparels, and leather.

In the leather industry, the average tariff rate of the rawhide and leather is about 5.9%, while the average tariff rate of leather products, saddlery and harness, and handbag can be as high as 31.45%. The average tariff gap between raw materials and finished products is 25.55% and the tariff rate for most of the leather products is as high as 35%.

The average tariff rate of the processed textile products is 35%, while the average tariff rate of the raw materials is only about 10%.

In 2006 Mexico maintained a low tariff rate for part of textile raw materials and even a zero tariff for raw materials like chemical filament, which further widened the gap between the tariff rate of the processed textiles and that of the raw materials.

3.1.3 Tariff quotas

In 2006, tariff quotas were implemented on 0.5% of the total Mexican subject goods. Among them, 5.2% of the agricultural products were affected by tariff quota, including poultry, animal fat, milk, cheese, beans, tomato, coffee, wheat, barley, corn and products rich in sugar.

3.2 Import restrictions

At present, Mexico conducts import licensing administration for certain imported goods, which include petrochemical products, motors, large freight vehicles and cars, weapons, office equipment, etc. The written application for import license must be accompanied by the quoted invoice issued by the foreign exporter, and the validity of the import license is 9 months and can be extended to another 3 months if necessary.

For used vehicles and used machines, the Ministry of Economy issues import licenses only when the foreign product has no domestically produced substitute. The tariff items of the products which are subject to import licensing are to be published in the Official Journal, but they are subject to frequent changes and lack predictability.

3.3 Customs evaluation

The Mexican government sets reference prices or officially established evaluation prices for some 200 types of goods, including categories of liquor, apparel,
chemicals, footwear, steel, hand tools, appliances, plywood, apples, rice, poultry, etc. If the declared customs value is less than the established reference price, a guarantee must be posted to explain the reason. The Mexican government has the right, within six months, to decide whether to start a formal investigation or to release the guarantee. These measures do not specify the process of verification or determination regarding the customs value of the imported goods, and therefore lack the corresponding remedy measures, thus bringing about possible unfair treatment to parties concerned.

The above mentioned practice by the Mexican Customs is inconsistent with relevant stipulations of the WTO Agreement on Customs Evaluation and impedes low cost imports from entering into Mexican market. China has kept a close watch on the development.

3.4 Discriminatory taxes and fees on imported goods

The Mexican government levies no tax on beverages made from Mexico produced cane sugar, but imposes a 20% soft drink tax on imported beverages that use soft drinks and any sweetener other than cane sugar. The services related to those products, for example, consignment, agency, etc. shall be levied a 20% distribution tax as well. In addition, the taxpayers of the above two taxes must also meet the bookkeeping requirements. Mexico’s practice of imposing soft drink tax and distribution tax on imported soft drinks and syrups (final products), together with its bookkeeping requirements, was discriminatory and inconsistent with the national treatment in Article 3.2 and Article 3.4 of the GATT 1994.

3.5 Technical barriers to trade

In line with the 1992 federal law, Mexico introduced the qualification evaluation procedure. Since March 1994, the Mexican government has extended the number of products covered by the compulsory norms from 81 to 424. Imported products relevant to security, health and sanitation, environment protection, and energy must go through compulsory certification. Not only has Mexico revised its standards frequently, but also it has provided no transitional period for the amendments to the official standard, they enter into force next day after a temporary public notice is released. Mexico sometimes exercises stricter demand on part of imported products than on its own products and different ports may handle same goods in different ways. Mexican official norms are issued by different institutions; each institution has its own qualification evaluation procedure. As the Mexican government stipulates that only its domestic producer and importer can apply for Mexican official norm certification, which has caused additional burdens to the foreign manufacturers. Take the importation of toys for example, the producer can not directly apply for the
product certification, which can only be done by the importer and remain valid to the importer. If another importer imports the same product, certification will have to be done again. In addition, a certification procedure charges a high fee and may cause delay of importation.

The technical trade measures published by Mexico in 2006 include: the technical requirements and testing norms concerning life jacket, life buoy, and hydraulic bottle jacks, etc; the waste gas emission of the diesel vehicle, and the use of the fishing boat satellite monitor system, etc.

In September 2006, the Mexican government published new label regulation (NOM004 SCFI2006), which is applicable to apparels, garment auxiliary materials, and textiles. From now on, textiles, apparels or auxiliary materials exported to Mexico must be attached at the collar or waist or other obvious sections with clear permanent labels, which give information on country of origin, the producer, etc. The label language should be changed from English into Spanish.

3.6 Sanitary and phytosanitary measures

On February 2006 Mexico adopted the official standard of the Handling of Wood Packing Materials and the Use of Marks. The standard requires all the wood packing materials of the imported products should be smoked in advance (including heat treatment or smoked by potassium bromide) and marked with international recognized seal. The standard is almost in conformity with the NIMF No.15 (Standard of Wood Packing Materials Used in International Trade) made by the International Plant Protection Convention, while this international standard has listed a number of ways of smoking; the Mexican standard only listed two. If the Mexican Federal Environment Protection Bureau finds the wood packing materials of the imported products do not meet the standard, the importer is required to take the following three measures: immediate heat treatment or smoked by potassium bromide; unpack the wooden package under the supervision of the authority and change into Mexican local packaging; return the wood package of the imported goods to the export country.

3.7 Trade remedies

By the end of 2006, Mexico has initiated 36 anti dumping investigation cases against Chinese products, among which, 3 were newly launched in 2006. Mexico is one of the top ten countries in terms of the number of anti dumping investigations initiated against China.

3.7.1 Anti dumping
3.7.1.1 Newly initiated anti-dumping investigations

In 2006, Mexico initiated 3 anti-dumping investigations against Chinese seamless pipe, paint brush, and conventional electrode. The Mexican Ministry of Economy has decided not to impose temporary anti-dumping duties on conventional electrode.

3.7.1.2 The follow up of the 2005 cases in 2006

In June 2006 the Mexican Ministry of Economy declared the final award of the anti-dumping case involving China produced plastic pencil sharpener, an anti-dumping duty of US $10 per kilogram will be imposed on the product.

3.7.1.3 Anti-dumping review

In May 2006 the Mexican Ministry of Economy declared to carry out the review award applied by Trading Specialties, S.A. de C.V, which eliminated the 312% anti-dumping duty imposed on tools imported from China by the company.

In 2006 Mexico conducted anti-dumping administration reviews on China produced locks, steel joints, textiles, weldment, synthetic and man made fiber and fabric, white mushroom, carbon ferromanganese, baby carriage, and wireless dust collector. It was ruled that an anti-dumping duty of 236% would be imposed on China produced locks, which started from August 15, 2005 and would last for 5 years. An anti-dumping duty of US $2.07 per kilogram would be imposed on China produced locks. An anti-dumping duty of 533% would be kept on textiles under tariff item Number 6, 101—6, 117, 6, 201—6, 217, and 6, 301—6, 310, which started from October 19, 2004 and would last 5 years. An anti-dumping duty of 331% would be levied on products under tariff item Number 5, 201—5, 212, and 5, 301—5, 311. An anti-dumping duty of 501% would be levied on products under tariff item Number 5, 401—5, 408, 5, 501—5, 516 and 402.49.05. An anti-dumping duty of 54% would be levied on products under tariff item Number 3, 005, 5, 803, and 5, 911. An anti-dumping duty of US $0.247,6 per kilogram would be levied on China produced mushroom imported by Calkins& Burke Limited and the anti-dumping duty imposed on other China produced mushroom would be maintained. An anti-dumping duty of 54.34% would be imposed on China produced carbon ferromanganese. The anti-dumping administration review on weldment would continue, and a temporary anti-dumping duty of US $2.07 per kilogram would be imposed on the said product.
In October 2006 the Mexican Ministry of Economy ended the anti dumping sunset review on China produced toys. It was ruled that an anti dumping duty of 258% —351% will be imposed continually on part of China produced toys, which started from November 25, 2006 and would last 5 years.

In September 2004 the Mexican Valve Manufacturing Association applied to the Mexican Ministry of Economy for an anti circumvention investigation against Chinese steel valves and asked for anti circumvention measures on similar products imported from the US. On July 2006 the Mexican Ministry of Economy ruled that no anti dumping duty of 125.96% would be imposed on similar products imported from the US.

3.7.1.4 The unfair practices in the Mexican trade remedy investigation

In 2006 Mexico amended the Foreign Trade Act and adjusted part of anti dumping, countervailing and safeguard measures. However, there are still unfair practices which mainly include:

According to the WTO Anti dumping Agreement, anti dumping investigation is conducted to determine whether the involved products are dumped during the investigation period. However, since Mexico selected an irrelevant time period to investigate the case, the result would not truly reflect the actual situation. This practice may lead to judicial decisions unfavorable to Chinese side.

The Mexican Foreign Trade Act specifies that all interested parties shall submit to the investigators their arguments, information and evidence within a period of 28 days from the day following the publication of the initiating resolution. By using the date of publication of the initiation notice instead of the date of receiving a questionnaire as the starting point for the time period for questionnaire responses, the Act in effect shortens the time period for the affected Chinese firms to make response. This practice on the part of Mexico is inconsistent with the unequivocal requirement in the Anti dumping Agreement and Agreement on Subsidy and Countervailing Measures to provide both parties with 30 days for them to respond to questionnaires.

The Mexican Foreign Trade Act coercively stipulates that the principle of “acquired facts” shall be applied to the producers who fail to respond to a lawsuit or to furnish information timely and properly or who have furnished incomplete information and that highest dumping margin shall be adopted. This stipulation is inconsistent with the Anti dumping Agreement and the Agreement on Subsidy and Countervailing Measures. The Mexican investigation bodies did not inform the affected exporters or producers of the consequence of not providing information or providing incomplete information. As a result, some affected Chinese firms, without knowing the consequence, had not provided or provided only incomplete information. These firms suffered a loss because they had been subject to the “acquired facts” and the
highest dumping margin meted out by the Mexican government.

Article 68 of the Mexican Foreign Trade Act stipulates that annual reviews can be applied to producers whose margin of alleged dumping or subsidization was found to be negative as the result of the original investigation. This is inconsistent with the Anti dumping Agreement and the Agreement on Subsidy and Countervailing Measures which clearly provide that an investigating authority should terminate the investigation “in respect of” an exporter found not to have a margin above de minimis. Owing to the unfair practice carried out by the Mexican government, anti dumping duties were imposed on some affected Chinese firms, even though their anti dumping margins were not positive.

The Mexican Foreign Trade Act enacts a provision to penalize any firm that imports products which are subject to investigation. This is not in conformity with the GATT 1994, the Anti dumping Agreement and the Agreement on Subsidy and Countervailing Measures.

The Mexican Foreign Trade Act stipulates that once the judicial proceedings against anti dumping or countervailing measures begin, the investigation body shall immediately terminate all the administration reviews, new exporter reviews or changed circumstances reviews, which should not be resumed until the completion of the judicial proceedings. This stipulation deprives the Chinese exporters of the rights to apply for reviews which they are entitled to enjoy in line with the Anti dumping Agreement and the Agreement on Subsidy and Countervailing Measures.

In addition, the Mexican authorities, in their anti dumping investigations, denied China’s market economy status. Subsequently, they have adopted the surrogate country method in determining the normal value of Chinese products. Article 48 of the Foreign Trade Act specifies the conditions for a country to be deemed as a market economy, but the stipulation leaves ample room for interpretation and a high degree of discretion to the Mexican government in anti dumping investigations.

3.7.1.5 The Fulfillment of Mexico’s Reserved Commitment to Anti dumping Measures as Described in the Protocol on the Accession of the People’s Republic of China

Mexico used anti dumping measures against many Chinese products before China’s entry into the WTO. Mexico has committed to have the measures lifted gradually after China’s accession and to bring its existing anti dumping measures in conformity with the WTO Anti dumping Agreement. The transitional period is 6 years (until January 1, 2007). However, until the end of 2006 Mexico has still been exercising anti dumping measures against Chinese bicycles, shoes and boots, brass and bronze padlocks, baby carriages, baby beds, gas fuelled, non refillable lighters, some hardware tools, textiles, toys, pencils, apparels, some organic
chemicals, porcelain tableware and other wares, steel joints, candles, and wireless dust collector, locks, weldment, white mushroom, etc.

3.8 Subsidies

Mexico adopts the Countryside Direct Support Program, which means the government will allocate a certain amount of subsidy to the farmers according to the size of their actually cultivated land. After the local agriculture committee’s check and confirmation of the area of cultivating land reported by the farmers, subsidy will be meted out in line with the government stipulated amount based on per unit area. Twice subsidies will be given if the land is cultivated twice in a year. Agricultural subsidies are allocated according to the actual output of the agricultural products, such as corn, rice, and sorghum, which are specified by the government. In addition, the Mexican government may set forth some other temporary subsidies according to the real situation and regional difference.

The Mexican government provides subsidies for farmers producing basic agricultural products through its “target income plan” every year. Other financial support schemes include supply of diesel oil and electricity. These schemes are trade distorted subsidies and belong to the amber box of the WTO Agreement on Agriculture.

Among the developing countries, only Mexico boasts a high ratio of 34% in terms of the ratio of amber box aggregate measurement of support to its total agricultural output. In other developing countries, it is on average less than 4%. Therefore, Mexican domestic agriculture is greatly supported by the government and its agricultural products can enjoy a competitive advantage over foreign agricultural products.

4 Barriers to investment

The Mexican government worked for improving investment environment in 2006. However, different regions adopt different laws and regulations in terms of property registration, which makes it very difficult for foreign investors to understand the relevant legal provisions. In addition, when starting a company in Mexico, the notarization fee, registration fee, and local licensing fee are charged and calculated according to the GDP per capita in each state, therefore, the fees charged by different states may vary from 6% to 65.8%.

In most of the Mexican states, registration fee is charged at a specific percentage and in line with the registered amount of capital, the more the amount of registered capital, the higher the registration fee.
Mexico restricts the ratio of foreign investment in its telecommunication industry. The highest ratio of direct foreign investment in companies providing telecom network and services is 49%. In the Mexican telecommunication market, the Mexican telecommunication company enjoys a dominant position and other foreign companies find it hard to compete with it.

The Mexican Labor Law stipulates that the ratio between foreign employees and Mexican employees in a foreign company should not be higher than 1 : 8. In principle, the company’s technical personnel or professionals should be Mexicans, and only when there are no qualified Mexicans to fit the positions can foreigners be employed temporarily.
New Zealand

1 Bilateral trade relations

According to China’s Customs, the bilateral trade volume between China and New Zealand in 2006 reached US $2.93 billion, up by 9.5%, among which China’s export to New Zealand was US $1.62 billion, up 19.7%, while China’s import from New Zealand was US $1.31 billion, down 0.9%. China had a surplus of US $310 million. China mainly exported knitted or crocheted garments and accessories, non-knitted or non-crocheted garments and accessories, electromechanical products, electric products, beddings, furniture, lightings, and mobile communication base stations. Major imported products of China from New Zealand included milk, honey, meat and edible offal, animal hair and skin such as wool and sheep skin, wood and articles of wood, wood pulp, paper and paper board, etc.

According to the Ministry of Commerce (MOFCOM), by the end of 2006, the aggregate turnover of engineering contracts completed by Chinese companies in New Zealand stood at US $66.15 million, and the volume of the completed labor service contracts reached US $33.66 million.

According to MOFCOM, China’s direct investment in non-financial sectors in New Zealand, approved by or registered with MOFCOM in 2006, totaled US $0.53 million. New Zealand investors invested in 110 projects in China in 2006, with a contractual volume of US $260 million and an actual utilization of US $83.4 million. By the end of 2006, New Zealand had accumulatively invested in 1,136 FDI projects in China with a contractual volume of US $1.56 billion and an actual utilization of US $660 million.

2 Introduction to trade and investment regime

In 2006, the Government of New Zealand followed its open policy and implemented a host of measures including tariff concession and trade facilitation to promote foreign trade, but maintained restrictive sanitary and phytosanitary policies. Besides, New Zealand further issued some new sanitary and phytosanitary standards in 2006. While New Zealand has maintained a welcoming attitude to foreign investment and lifted threshold on foreign investment to some extent, it still imposes enhanced restrictions on foreign investment in land business.

2.1 Trade administration and its development

2.1.1 Tariff policy

2.1.1.1 Tariff level
On 1 July 2006, New Zealand decided to defreeze the unilateral tariff reduction plan, bringing tariff rates of 17 19% down to 17%. According to the plan, tariff rates of 5 to 7.5% will be reduced to 5% on 1 July 2008. The rates of 10 to 12.5% will fall to 10% on 1 July 2006 and decline to 7.5% and 5% on 1 July 2007 and 1 July 2008 respectively. The rates of 17% will be reduced annually to reach 10% by 1 July 2009.

2.1.1.2 Tariff administration

To comply with the revision in Harmonized System (HS) that the World Customs Organization (WCO) makes in five yearly cycles and to accommodate advances in technology and changes in the patterns of world trade, the New Zealand Customs Service, Statistics New Zealand and the Ministry of Economic Development organized a project team, which worked closely together to incorporate the HS amendments into the Tariff of New Zealand. The 2007 Tariff came into force from 1 January 2007.

2.1.1.3 Import linkage tax

From 1 October 2006, all imports are subject to the new biosecurity risk screening duty levied by the New Zealand Government, in addition to import duties and GST. The new levy, collected by the Customs on behalf of the Ministry of Agriculture and Forestry (MAF) is to fund MAF’s new biosecurity screening work.

New Zealand also adjusted the excise and excise equivalent rates of duty applicable to alcoholic beverages, effective as of 1 June 2006. The adjustment to the rates was based on the movement in the Consumers Price Index over the past 12 month period.

2.1.2 Import administration

On 1 July 2006, the MAF adopted the new import health standard funding and management system. Under the current import administration, the first step when a person wants to import a product is to check Biosecurity New Zealand’s website to see whether an import health standard that covers the desired product already exists. If no appropriate import health standard exists, applications need to be sent to the MAF for a new standard. Considering that the MAF receives a huge amount of applications all through the year and has to process them in time, the new funding and management system was put in place. According to the new system, the MAF will suspend accepting new applications if there are too many requests, and prioritize the requests. After the requests are scored, they are re-sorted into a preliminary numerical order and then assessed against the acceptability criterion to form the prioritized list. Private funding is allowable for the review of the application. The MAF hopes that the new management system will improve work efficiency and optimize the utilization of resources.
2.1.3 Export administration

(1) In 2006, New Zealand enhanced the export administration over protected goods. The relevant law in this regard is the Protected Objects Act 1975. The Act updates and strengthens the protection for certain protected and cultural objects by amending parts of the Antiquities Act and renaming it as the Protected Objects Act 1975. The Act also updates the categories of protected objects, specifies and strengthens export control of cultural objects, military goods, and tractors, and increases the penalties for exporting or attempting to export a protected object without the required approval. The Act came into force on 1 November 2006.

(2) In 2006, the Government of New Zealand continued to subsidize the heightened cost of assuring the security of New Zealand's exports. The exporters already pay the fees for clearing their goods across New Zealand's borders. However, a significant part of this cost is currently met by the Government. Exporters will continue to receive this assistance up until the end of the 2007/2008 financial year. At the end of the two years, exporters will be required to meet the cost of the tighter security controls, which will be recovered through increased fee. Although charges differ according to the mode of transport, basic fee increases are likely to range from NZ $6 to NZ $17.

2.1.4 Trade remedies

According to the news released on the official website of the Department of Economic Development on 14 July 2006, the Government of New Zealand has started to review the Temporary Safeguard Authorities Act 1987 (TSA). The discussion paper of the Act has clarified the ambiguous points contained in the Act and substantiated the procedures involved to improve the operation of the law.

In the discussion paper, questions are raised to the public, including: issues regarding the extension of the timeframe for safeguard inquiries; should the safeguard inquiries be carried out by the Ministry of Economic Development or by a Temporary Safeguard Authority; should the Minister be authorized to impose a separate final and provisional duty or should the present method for imposing a safeguard measure by an increase in the tariff remain in place; should a safeguard measure be extended, renewed, or liberalized; should the definitions of “domestic industry” and “serious injury” in the TSA Act be made consistent with those in the Safeguards Agreement; should the notification and consultation provisions in the Safeguards Agreement be incorporated into the TSA Act; and should the developing country provisions of the Safeguards Agreement be incorporated into the TSA Act.

2.1.5 Relevant institutional changes

(1) New Zealand Registered Architects Board

The Registered Architects Act, enacted in 2005, has replaced the Architects Act 1963,
which was repealed in 2006. The New Zealand Registered Architects Board (NZRAB), created on 1 July 2005 under the new Act, now undertakes the registration function, replacing the Architects Education and Registration Board. Under the new Act, a registered architect is entitled to a renewal of his or her registration provided that he or she passes the assessment which takes place every five years, instead of being assured of a lifetime title under the previous Act. This reform measure is intended to better protect the security of the consumers.

(2) Joint Therapeutics Products Agency (JTPA) between Australia and New Zealand

On 10 October 2003, New Zealand and Australia signed an Agreement to establish a Joint Therapeutics Products Agency (JTPA) to regulate all therapeutic products, including over the counter and prescription medicines and medical devices, in the two countries. The JTPA started to operate as of 1 July 2006.

2.2 Investment administration and its development

New Zealand amended the Overseas Investment Act and Overseas Investment Regulations in 2005 and 2006 respectively, lifting threshold on foreign investment. Pursuant to the new legislation, an overseas person will require consent of the Overseas Investment Office to acquire sensitive land or fishing quota, or 25% or more ownership of a business in New Zealand, or non-land business assets exceeding NZ $100 million (about US $69 million). Significant policy changes also include lifting the threshold for acquisitions of non-land business assets from NZ $50 million to NZ $100 million. Besides, the applications for the above investments, originally made to the Ministry of Conservation, are now handled by the Ministry of Finance and Land Information. The new regulations also lower the application fee from NZ $2500 (about US $1725) to NZ $1300 (about US $897) per application.

2.3 Trade and investment related administrative measures and their development

2.3.1 Trade related technical regulations

(1) The New Zealand Ministry for the Environment announced in April 2006 that the Ministry of Energy proposed an amendment to the Energy Efficiency (Energy Using Products) Regulations, considering raising the mandatory Minimum Energy Performance Standards (MEPS) by following the Australian New Zealand joint standards. The proposed amendment regulations prescribe for the MEPS for three phase motors and single phase non-duct air conditioners. The raised standards were adopted on 6 June 2006. All three phase motors and single phase non-duct air conditioners that fall under the description, be they imported or manufactured domestically, must meet the MEPS specified in the new standards on or after 6 June 2006. The standards became effective as of 20 June 2006.

(2) In August and September 2006 respectively, New Zealand published the draft assessment reports on Proposal P295 and Proposal P230. The proposals announced that New Zealand would consider mandatory fortification of bread with folic acid and
the substitution of non-iodised salt with iodised salt in bread, starting from August and October 2007 respectively.

(3) In December 2006, the New Zealand Ministry of Health published the Amendment Bill to the Smoke-free Environment Act 1999, involving the health warnings and health information on the packages of tobacco products. Currently, the Cabinet has approved the amendment to the Smoke-free Environment Regulations 1999, requiring the display of larger illustrated health warnings on the packages of cigarettes, tobaccos, cigars, and other tobacco products. The amendment is expected to take effect in February 2007.

2.3.2 Sanitary and phytosanitary measures

(1) On 24 February 2006, New Zealand notified to WTO members through the WTO Secretariat of the import health standard for wood packaging material from all countries, effective as of 1 May 2006. Upon implementation of the standard, treatment of all wood packaging will be mandatory and untreated imported wood packaging will be treated, reshipped or destroyed. This requirement also applies to uncontainerized/break bulk cargo. Although exempt from ISPM 15, peeler cores are regulated under this standard.

(2) In May 2006, the New Zealand Ministry of Agriculture and Forestry (MAF) released the import health standard for soils, rocks, grit, sand, clay, peat and water from all countries. The standard specifies detailed requirement for the importation of soils, rocks, grit, sand, clay, peat (unprocessed, sterilized and processed), and water. The standard took effect immediate after it was released.

(3) In April 2006, the MAF amended the import health standard for dairy products for human consumption. The revised standard requires a statement made by the management of the factory regarding the processing and ingredients of the dairy products. The statement will have to be certified by an official veterinary. The standard, which is now effective, applies to all countries except Australia and member states of the European Union.

(4) In October 2006, the New Zealand Food Safety Authority (NZFSA) published the draft food standards, involving the maximum residue limits (MRLs) for agricultural compounds exported to New Zealand. The draft standard plans to add the MRLs for 7 agricultural compounds including Closantel to the list of MRLs for agricultural compounds in the New Zealand Food Standards. The draft standards are expected to take effect in February 2007.

2.4 Product specific administrative measures

(1) In January 2006, the MAF reviewed and revised the existing import health standard for Ya pear from Chinese Hebei and Shandong Provinces, requiring a certificate of inspection for the exporting consignments, products coming from areas
free from Bactrocera dorsalis, and necessary prevention measures taken by the production area against prescribed pests. The draft standards took effect on 6 March 2006.

(2) In February 2006, New Zealand notified to the WTO members through the WTO Secretariat of a new import health standard for the importation into New Zealand of specified bee products, to be implemented from March 2006. The new standard consists of 4 parts, General Information, Import Procedure, Clearance Procedure, and Zoosanitary Certification.

(3) On 20 February 2006, New Zealand imposed the import health standard for the importation of garlic from China, including the following phytosanitary measures: inspection and certification of export consignments, methyl bromide fumigation for 3 high impact arthropods; and pest free area and pest control activities for a high impact fungi.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak

Most imported products are duty free in New Zealand. Besides, New Zealand reinitiated the unilateral tariff reduction plan in 2006. As 2006 is the first year on the plan, tariff peak still exists in areas covering textiles, clothing and accessories (made of leather, plastics, artificial fiber), footwear and headwear, beddings, glass, machinery, and motor vehicles, tariff rates of which range from 10% to 17%. A typical example can be found with footwear and articles of plastics (for clothing and accessories), the tariff of which is still high after reduction with a rate of 17%. As the above products are the China’s major exports to New Zealand, high tariffs prove to be an obstacle to the entry of the relevant Chinese products into New Zealand.

3.1.2 Tariff escalation

Tariff escalation, though not common, still exists in 2006 and is quite prominent in textiles and clothing, and footwear, where China enjoys an export advantage. While New Zealand levies no duties on most textile materials (such as cotton), rates of 5 to 10% are imposed on most woven products and a high rate of 17% is on most finished products like clothing, footwear and headwear. The Chinese side expresses concern over the matter.

3.2 Barriers to Customs clearance

Starting from 1 October 2006, all import consignments that attract the Import Transaction Fee in New Zealand shall also incur MAF’s new biosecurity risk screening levy. The Chinese side is of the opinion that the introduction of a new levy
on all imported products regardless of their categories has far too extensive effect on imports, and this practice, applicable to imports only, constitutes a discrimination against imported products and therefore violates the MFN Principle of the WTO.

3.3 Import restriction

Under the current import administration, the importation of a product is only allowed if the imported product meets the relevant import health standard. If no appropriate import health standard exists, applications need to be sent to the MAF for a new standard. As the MAF is inadequately staffed and there are often a huge number of applications made by importers, the system fails to meet the practical needs, and in fact has become an obstacle to the importation of new products.

3.4 Technical barriers to trade

New Zealand will enforce mandatory fortification of bread with folic acid and the substitution of non-iodised salt with iodised salt in bread in August and October 2007 respectively. While the Chinese side appreciates the measures taken by New Zealand to improve people’s health, mandatory fortification of bread with folic acid and iodine is not in line with the international practice. After all, most of the countries in the world don’t have such mandatory requirements, and New Zealand has not been able to prove by sufficient scientific evidence the urgency of such mandatory fortification. The requirements fail to meet the legitimate objective principle as prescribed in the WTO/TBT Agreement.

3.5 Sanitary and phytosanitary measures

(1) New Zealand implemented the new import health standard for wood packaging material from all countries, effective as of 1 May 2006. Though the standard is basically the same as ISPM 15 as far as the implementation principle is concerned, certain detailed requirements are tougher than international standards. For instance, the standard applies to both containerized and uncontainerized/break bulk cargo, requiring that treatment of all wood packaging be mandatory and untreated imported wood packaging be treated, reshipped or destroyed. ISPM 15 is the universally adopted uniform standard for wood packaging material, which has significantly streamlined the inspection and quarantine process. The previous New Zealand standard for wood packaging material was already a strict one, compared with ISPM 15. The revision in 2006 further extends the scope of inspection, and has certain impacts on trade. The Chinese side hopes that New Zealand will try its best to adopt the international standard in this regard so as to avoid obstructions to trade.

(2) On 28 August 2006, Food Standards Australia New Zealand (FSANZ) issued the assessment report on Applications A574 and A582 regarding MRLs, announcing that FSANZ would consider amending the Australian New Zealand Food Code by adjusting MRLs for various agricultural and veterinary drugs. The Chinese side hopes that FSANZ will base the amendment on sufficient risk analysis and comply with the
prevailing international standards so as to avoid unnecessary obstacle to normal food trade.

3.6 Trade remedy measures

Up to the end of 2006, there were altogether 11 anti-dumping investigations initiated by New Zealand against Chinese products, among which the new one was initiated in 2006. Out of the 11 investigations, 6 cases were closed with the imposition of a final anti-dumping duty and there are 3 cases where anti-dumping duties remain in place.

On 21 February 2006, New Zealand initiated an anti-dumping investigation against canned peaches from China. The Ministry of Economic Development made a final determination on August 21 that both dumping and injury existed and an anti-dumping duty should be imposed on canned peaches from China starting from August 22. This was the third anti-dumping investigation initiated by New Zealand against China after China’s accession to the WTO, and the first since the launch of Sino-New Zealand FTA negotiations.

The Government of New Zealand started to review the Temporary Safeguard Authorities Act 1987 (TSA) on 14 July 2006. The review is to substantiate the procedures involved. Proposed amendments include the extension of the timeframe for safeguard inquiries, application procedure for safeguard measures, and issues such as: should the notification and consultation provisions in the Safeguards Agreement be incorporated into the TSA Act; and should the developing country provisions of the Safeguards Agreement be incorporated into the TSA Act. The amended TSA Act will be more practicable and convenient for safeguard applications.

3.7 Barrier to trade in services

For the protection of domestic culture, New Zealand has been planning to introduce local content quotas into the radio sector, requiring a certain percentage of the local content be incorporated into the radio programs. As the restrictive measure would violate the rules of GATS, it hasn’t been rolled out. However, the Government of New Zealand has claimed that it reserves the right to introduce the policy. Influenced by the policy that is yet to be introduced, all radio companies in New Zealand set up local content quotas on a voluntary basis, keeping a certain percentage of local content in their programs.

3.8 Working visa

There is a strict control on the importation of foreign labor in New Zealand. The importation of labor services mainly involve the recruitment and hiring of a small number of foreign experts and skilled workers that are in short supply domestically and opportunities for mass introduction of labor services are rare. However, there has been a lack of skilled workers, and the cost of labor is expensive in New Zealand. The
current visa policy of New Zealand, on one hand, makes it difficult for foreign invested firms or foreign engineering projects to get enough skilled workers and labors needed in time, and on the other hand, causes inconvenience to Chinese skilled workers who are to work in New Zealand.

4 Barriers to investment

In 2006, the New Zealand Government maintained a welcoming attitude towards foreign investment and adopted a serious of facilitation measures, but there are still restrictions on foreign access to certain sectors.

4.1 Investment involving land

Stringent restrictions are imposed on foreign interests to acquire land or relevant assets that are deemed sensitive, such as farms, beaches, sea beds, river beds, lake beds, and relevant warrants). Especially after the promulgation of the Overseas Investment Act 2005, the Overseas Investment Board enhanced the supervision on the approval of foreign access to the sensitive areas, requiring the submission of detailed land administration plans by the foreign investor to the Government, which enjoys priority in purchasing beaches, sea beds, river beds, and lake beds, and has the right to deny foreign access to the above land. Besides, the investor is subject to further supervision and required to report at regular intervals how the agreement is implemented after the acquisition of the land. This has led to an increase in foreign demand for land and difficulty in acquiring land. As this has restricted China’s investment in land business in New Zealand, the Chinese side expresses concern over the matter.

4.2 Ownership restrictions

According to relevant regulations, a foreign person is not allowed to have interests of more than 49.5% of a telecommunications company. Foreign ownership of Air New Zealand is limited to 49%. For ocean fishery, foreign ownership of a commercial fishing company in New Zealand is limited to 24.9%, and any foreign investor is required to apply to the competent authority to obtain the fishing quota. The above restrictions have to some extent limited foreign access to these sectors.
Nigeria

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Nigeria in 2006 reached US $3.13 billion, up by 10.6%, among which China’s export to Nigeria was US $2.85 billion, up by 23.9%, while China’s import from Nigeria was US $280 million down by 47.3%. China had a surplus of US $2.57 billion. China mainly exported motorcycles, machinery equipment, auto parts, rubber tires, chemical products, textiles and garments, footwear, cement, and etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in Nigeria reached US $3.68 billion in 2006, and the volume of completed labor service cooperation contracts was US $160 million.

According to MOFCOM, the direct investment volume of Chinese non-financial projects in Nigeria, which were authorized by or put on record in MOFCOM, reached US $157 million. According to MOFCOM, Nigeria invested in 15 projects in China in 2006, with a contractual volume of US $110 million and an actual utilization of US $20 million.

2 Trade and investment regime

The main law governing investment in Nigeria is the Nigerian Investment Promotion Commission (NIPC) Decree No.16 of 1995, which was amended in 1998. The main legislation guiding the tariff system and procedure is the Customs and Excise Management Act of 1990. The law regulating imports, excise tariff and related import bans is the Customs, Excise Tariff Decree No.4 (1 March 1995). Other laws governing investment include the Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree No.17 of 1995, the Investments and Securities Decree No. 45 of 1999, and etc.

The authorities administering trade and investment in Nigeria remain unchanged in 2006. The Ministry of Commerce is Nigeria’s trade authority, responsible for the administration of foreign trade, domestic trade and regional trade, the making of related trade policies, and the management of trademarks, patents, anti-dumping and other matters. The Nigerian Investment Promotion Commission (NIPC) is the investment authority in Nigeria, responsible for making laws and regulations to
attract foreign investment, assisting foreign companies in communication with government agencies, and processing relevant formalities such as registration.

2.1 Trade administration and its development

2.1.1 Tariff system

In 2006, the West African Economic Community (WAEC) formally launched a common tariff system, which comprises the following 4 aspects. The import tariff rate is 5% for primary products, 10% for semi-finished products (such as raw materials and other industrial products), 20% for finished industrial products, and 50% for luxury goods. Moreover, members of WAEC continue to promote regional trade liberalization. As a member of WAEC, Nigeria has made a commitment to bringing its tariffs in conformity with the level of WAEC by the end of 2007.

2.1.1.1 Textiles and tobacco raw materials

In order to implement the common tariff of WAEC, tariffs levied on imported textiles and tobacco raw materials were reduced by 67% in February 2006. For textile raw materials (including the silk worm cocoons suitable for reeling, unprocessed raw silk and non-carded silk waste), the import tariff rate is lowered from 15% to 5%. For non-waste spun silk yarns not put up for retail sale, the tariff rate is lowered from 30% to 10%. For waste spun silk yarns and cocoons not put up for retail sale, the tariff rate is lowered from 30% to 20%. For greasy shorn wool (not carded or combed, and carded or combed and carbonized) used in textile factories, the tariff rate is lowered from 15% to 5%. For unprocessed raw tobacco (partly or wholly stemmed or stripped) and tobacco waste, the tariff rate is lowered from 15% to 5%. And for finished tobacco products, the tariff rate is lowered from 80% to 50%, including cigars, cigars with square toes, cigarettes, and etc.

2.1.1.2 Automobiles

With the implementation of common tariff of WAEC, the Nigerian federal government will cut the import tariff for automobiles by 50%.

Under the new tariff framework, the import duty rate for small cars, vans, racing cars and other passenger cars with exhaust air volume under 2500cc and classified under HS Heading of 8, 703 is lowered from 40% to 20%. For luxury vehicles with
exhaust air volume above 2,500cc, the import duty rate remains at 50%. Auto parts (regardless of exhaust air volume) imported in the form of CKD are imposed a 5% duty rate. Buses, trucks and camions are subject to a 10% import duty rate, tractors 5%, and complete sets of farm tractors 10%. Tractor parts imported in the form of CKD are imposed a 5% import duty rate. (0 import duty rate for farm tractors). Vehicles with special purpose, such as dump trucks, cranes, and fire engines, are imposed a 5% import duty rate.

Under the new tariff regulations, vehicle chassis with engines (such as tractors, small cars, trucks and other models) are imposed a 5% import duty rate, while other auto components, such as bumpers, safety belts, brakes, gear case, non-driven shaft, hubs, silencers, and exhaust pipes are imposed a 10% import duty rate. Cars and motorbikes with 50cc~800cc exhaust air volume are imposed a 20% import duty rate, and those with exhaust air volume above 800cc a 50% import duty rate. Motorcycles imported in the form of CKD (regardless of exhaust air volume) are levied a 5% import duty rate. Non-motorized vehicles such as bicycles and tricycles are imposed a 20% import duty rate. However, motorized or non-motorized vehicles for the disabled people are free from import duties.

2.1.2 Import and export administration

According to the Agreement on Import Licensing Procedures of Nigeria, narcotic drugs, psychotropic substances and certain pharmaceuticals harmful to health and security remain subject to import licensing.

Besides, according to the regulations set by the National Agency for Food and Drug Administration and Control of Nigeria, the importation of veterinary medicine and pharmaceuticals (including herbal medicine) must be registered with this agency and publicized before being approved.

2.2 Investment administration and its development.

According to the Nigerian Investment Promotion Commission (NIPC) Decree No.16 of 1995, both Nigerians and non-Nigerians are allowed to invest in all areas except the manufacturing of arms, ammunition, narcotic drugs, and psychotropic substances. Besides, foreign enterprises are allowed to set up their subsidiary companies in Nigeria to do business. An enterprise in which foreign participation is permitted shall, after its incorporation or registration, be registered with the Nigerian Investment Promotion Commission (NIPC). A foreign enterprise may acquire shares of any Nigerian enterprise in any convertible foreign currency. Investment returns can be repatriated free of control.

According to the Export Processing Zone Decree promulgated by the Nigerian
government in 1991, the first export processing zone was established in Calabar located in the southeast of Nigeria. Foreign investors who make investment and set up factories in this zone can enjoy the following favorable policies. (1) The current Nigerian laws and regulations on taxation, rate payment, and foreign exchange control are not applicable to enterprises located in the zone. (2) Foreign capital for investment can be withdrawn at any time. (3) All investment profits and dividends of foreign investors can be repatriated free of control. (4) In the zone, goods can be imported and exported without import or export licenses, and products produced in the zone can be exported to the European Union or the United States without quota restrictions. (5) Factories under construction can be exempted from land rent. (6) Exclusively foreign owned enterprises are permitted in the zone. (7) Imports of machinery equipment, consumer goods, raw materials and other products related to investment projects are free from tariffs. (8) 25% of the products produced in the zone are permitted for sale in Nigeria after being approved and paying related tariffs. (9) All the formalities of application for setting up a foreign funded plant in the zone can be processed in the authorities of the export processing zone at one time. Besides, if the foreign investment in the zone is made in manufacturing, a 25% tax reduction will be offered.

In order to encourage the agricultural production, the federal government approved new agricultural policies in March 2006 to encourage private investors to invest in agriculture and play more important roles in the agricultural production and processing industries. The main favorable policies are as follows. (1) The agricultural loan of a private investor is exempted from taxes, and the deadline for repayment of the loan can be extended for 18 months. (2) New investment in agricultural production and processing industries can be exempted from taxes for 5 years. (3) Fertilizer purchases are entitled to a subsidy of 25% of the cost. (4) Imported agricultural processing machines and equipment parts are exempted from tariff duties.

In order to improve investment environment, in March 2006, the Nigerian government launched “One stop Services” to simplify its investment procedures, and reduce time spent on processing relevant formalities. Aimed at providing convenient, efficient, quick, and open services, the One Stop Investment Center (OSIC) was set up in the Nigerian Investment Promotion Commission (NIPC). It provides services such as incorporation registration, residence permit and work permit application and tax registration to all economic sectors (including petroleum and natural gas).

3 Barriers to trade

3.1. Tariffs and tariff administration measures

3.1.1 Tariff peaks

Nigeria has high tariffs and tariff peaks. For example, the tariff rate is 150% for
certain agricultural products, 98.2% for fruits and vegetables, 75.3% for beverages and 42.7% for textiles and garments.

3.1.2 Tariff escalation

Nigeria has tariff escalation. For foodstuff and beverage, raw materials are imposed a 39% tariff rate, semi finished products 44%, and finished products 59%. For wooden products, the tariff rate is 15% for log, 30% for dale and plywood, and 100% for wooden furniture. For paper products, the tariff rate is 10% for raw materials, 20% for semi finished products, and 25% for finished products. For metal products, the tariff rate is 12% for raw materials, 19% for semi finished products, and 25% for finished products. Lower tariffs are applied to imported basic raw materials and means of production (including production equipment), while industrial products, foodstuff, consumer products and luxury goods are levied a higher level of tariffs. Such a tariff structure has considerably hindered China’s exports of higher value added products such as semi finished or finished products to Nigeria.

3.2 Import restrictions

3.2.1 Import bans

In January 2004, the Nigerian federal government announced on a unilateral base to impose import bans on 41 product items. In 2005, the Nigerian Ministry of Finance issued a revised list of banned import items to adjust the former list. The list covers some of China’s main export products to Nigeria, such as textile items, footwear and bags. In September 2006, in order to improve the domestic manufactures production of high quality product, the Nigerian government announced to remove the import ban on certain textile products and furniture raw materials. The textile items removed from import ban include lace materials, basic fabrics, metal yarns and carpets. No specification has been provided as regards categories of furniture raw materials. However, by the end of December 2006, no formal document had been issued in this regard. China expresses concerns over this issue, and hopes that Nigeria will keep its trade policy stable and predictable.

3.2.2 Import licensing

Nigeria applies special licensing requirements to certain products including petroleum products and generation units. Applications for import licenses or permits must be
made three months prior to the arrival of goods at the entry point. The quantity allocated to each importer, product item or each country is stated in individual licenses and permits, and determined on the merit of each application. Such practice has brought uncertainty to China’s export to Nigeria. China expresses concerns over this issue.

According to relevant Nigerian laws and rules, the Federal Ministry of Finance and the Ministry of Industry work together in the examination and issuance of import licenses for motorcycle CKD. Applicants of such import licenses must possess a production line of the complete set of motorcycles and other production facilities, and meet certain requirements including experiences in the motorcycle industry, credit ranking, annual capacity, investment capital, and number of employees. The CKD certificate is valid for 1 year, and could be renewed for another year through application and after annual audit.

3.3 Barriers in customs procedures

Customs procedures in Nigeria constitute major obstacles to trade with Nigeria. Importers face inordinately long clearance procedures and high berthing and unloading costs. The Nigeria government currently practices a double inspection system requiring both pre-shipping inspection and 100% on-arrival inspection. Cargoes are kept waiting for clearance at the ports, some even delayed for several months. Currently at fastest it takes a week to clear goods, and normally 2 to 3 weeks, far longer than the committed no more than 48 hours. The Nigerian government announced on July 1, 2002 that it would remove the required pre-shipping inspection and adopt the destination inspection system. For many reasons, however, the removal has not yet been implemented.

It is required in Nigeria that all product imports must be inspected by a third party inspection agency appointed by the Nigerian government and authorized to carry out customs valuation. Chinese enterprises have complained that these inspection agencies often deliberately create difficulties for exporters and conduct customs valuation in an arbitrary manner. Such practice has seriously undermined the interests of Chinese enterprises. China hopes that Nigeria will conscientiously fulfill its obligations under the Agreement on Preshipment Inspection of the WTO.

3.4 Technical barriers to trade

3.4.1 Standards Organization of Nigeria Conformity Assessment Program (SONCAP)
Nigeria filed a notification with the WTO on February 8, 2005 to apply mandatory SONCAP to import products such as electrical products, certain auto products and toys. SONCAP is a set of conformity assessment and certification procedures applied to certain categories of controlled products imported into Nigeria. According to the Program, non-compliant products will not be able to pass Nigeria Customs. Controlled products must conform to Nigeria Industry Standards (NIS) and/or other approved international standards prior to shipment.

Nigeria has started to implement SONCAP since September 2005, applying mandatory safety certification to certain import products, such as electrical and electronic products, auto tires, auto glass, auto parts, auto batteries, gas apparatus, toys, galvanized steel products, generators, and etc. Manufacturers or exporters must provide inspection reports issued by qualified labs in accordance with standards approved by the Standards Organization of Nigeria (mostly international standards or standards used by developed countries). Both of the inspection report and the application for certification should be submitted to the Standards Organization of Nigeria for processing. Generally, a certification certificate is valid for 3 years, but needs to be reviewed annually. The Nigerian government has named INTRTEK as the only organization to conduct the SONCAP certification. Chinese enterprises have complained that certification fees charged by INTRTEK are quite high, especially for small-sized exporters.

The conformity assessment procedures required for import products are not applicable to domestic products of Nigeria, which are subject to a different set of mandatory conformity assessment procedures. China expresses its concern over possible discriminatory treatment between import products and domestic products when the two are applied different conformity assessment systems.

3.4.2 Pharmaceuticals Registration Regulations

The National Agency for Food and Drug Administration and Control of Nigeria is responsible for supervising and controlling the technical standards of processed food, beverages, medical appliances, pharmaceuticals and other chemical products (including raw materials). The production, import, export, sale, promotion and advertisement of products including processed food, beverages, tobacco, cosmetics, pharmaceuticals and chemical products must be registered with the above-mentioned agency. Some of the requirements of the agency are very strict, for example, the importation of new medicine must meet the requirements for clinic experiment certificates and registration in the original producing country and at least two developed countries. These requirements have actually constituted restriction to imports. According to the new regulations of pharmaceuticals registration issued by the National Agency for Food and Drug Administration and Control of Nigeria in June 2006, all pharmaceutical enterprises intending to register in this bureau must become members of Pharmaceutical Manufacturers Group of Manufacturers.
Association of Nigeria（PMGMAN） or Association of Pharmaceutical Importers of Nigeria（APIN）. Pharmaceutical enterprises that have not joined PMGMAN or APIN must complete the membership formalities before August 31 2006; otherwise their pharmaceuticals registration certificates will be revoked.

3.5 Export restrictions

In Nigeria, the following products are banned from export: corn, logs and wood boards（teak）, raw hides and skin, scrap metals, unprocessed rubber and rubber lumps, culture relics and antiques, rare wildlife and its products. China questions the justifiability of the ban and expresses concern over its inconsistency with WTO rules.

4 Barriers to investment

No obvious policy barriers exist in the access, operation and exit of foreign investment in Nigeria, and there is no restriction on remittance of profits gained by foreign funded enterprises. Besides, foreign investment is allowed in all sectors except the production of arms, ammunition, narcotic drugs, and uniforms for army, the police, and the Customs. 100% foreign ownership is permitted except in joint ventures in the sectors of petroleum and natural gas, where Nigeria parties shall hold controlling shares.
Russian Federation

1 Bilateral Trade Relations

According to the statistics from China Customs, bilateral trade volume between China and Russia reached US $33.39 billion in 2006, 14.7% up from the previous year. Specifically, China’s exports to Russia amounted to US $15.83 billion, 19.8% up from the previous year, while China’s imports from Russia came up to US $17.55 billion, 10.5% up from the previous year. China had a trade deficit of US $1.72 billion with Russia. China mainly exported to Russia such consumer goods as clothing, leathers, machinery and electronic equipment, luggage, and footwear, while Russia mainly exported to China such products as minerals, iron and steel, fuels, timbers and chemicals.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by Chinese companies in Russia had reached US $1.89 billion, and the volume of completed labor service contracts had reached US $2.47 billion.

According to MOFCOM, China’s total non-financial foreign direct investment (FDI), approved by or filed with MOFCOM, reached US $470 million in 2006. Russia investors invested in 126 projects in China in 2006, with a total contractual investment of US $233 million and an actual utilization of US $67.2 million.

2 General Introduction to the Trade and Investment Regimes

As Russia speeded up the process of acceding to the WTO, the country continued to make greater efforts in establishing the relevant systems, laws and regulations in the foreign economic field.

2.1 Trade Regime and its Developments

Russia’s laws and regulations related to foreign trade administration mainly include the Customs Code of the Russian Federation, the Law on Tariffs, Federal law on the Fundamentals of State Regulation of Foreign Trade Activity, the Law on State Regulation of Foreign Trade Activity, the Federal Law on Special Safeguards, Anti-dumping and Countervailing Measures Applied to Imports, and the Law on Measures
for the Protection of State Economic Benefits in Foreign Trade.

2.1.1 Tariff System

On August, 2006, the Russian Government announced the Government Decrees, the Measures for the Assessment of the Customs Values of Goods illegally Transported into the Customs Territory of the Russian Federation, the Measures for the Assessment of the Customs Values of Inward Goods Damaged by Accidents or Force Majeure, and the Measures for the Assessment of the Customs Values of Goods Transported out of the Customs Territory of the Russian Federation, which stipulate for the rules and procedures to be complied with by Customs Houses when assessing the customs values of the relevant goods.

In September, 2006, the Russian Federal Customs Service promulgated the Decree on Determining the Forms for Correcting Customs Duty Paying Values and Correcting Amounts of Payment to the Customs and the Regulations on Correcting the Levy of Customs Duty, which set forth the rules for correcting Customs duty paying values declared to the Customs on Customs declaration forms, and the rules for filling out forms for correcting Customs duty paying values and amounts of payment to the Customs when correcting Customs duty paying values and when releasing goods.

On September 1, 2006, the Russian Federal Customs Service issued the Rules on the Format of Customs Values Declaration Forms and on the Filling out of Customs Values Declaration Forms, and the Regulations on the Format of Procedure Forms for Correcting Customs Values and Customs Charges and on the Correction of Customs Values. As stipulated, Russia Customs should, as from January 1, 2007, introduce international standard practices into Customs clearance procedures by using the new Customs Values Declaration Forms. Furthermore, the Regulations on the Format of Procedure Forms for Correcting Customs Values and Customs Charges and on the Correction of Customs Values stipulate for Customs charges to be paid only in roubles.

On September 16, 2006, after amending the Regulations on Imposing Uniform Customs Duties and Taxes on Goods Carried into the Customs Territory of the Russian Federation by Natural Persons for Self consumption(Government Decree No.718 dated November, 2003), the Russian Government issued the Decree on Balancing the Customs Duties and Charges Paid by Judicial Persons and Natural Persons for Certain Means of Transport Entering the Customs Territory of the Russian Federation, which shall come into effect on January 1, 2007. The Decree requires that the generally applied rules and regulations on customs duties and taxes should be applied to the means of transport of natural persons carrying products Customs Code
During the year 2006, the Russian Federal Government lowered the import tariff rates on many kinds of technological equipment. On March 24, 2006, the Russian Federal Government issued Government Decree No.168 on Levying Interim Import Duties on Certain Technological Equipment, which stipulates that, within a period of 9 months, import duty exemption should be applied, once and for all, to over 700 types of high-tech equipment which can not be domestically made, including modern equipment and machinery to be used in the fields of the light industry, the processing industry, the food industry, the pharmaceutical industry, the mining industry, the construction industry and agriculture. And on June 26, 2006, the Prime Minister of the Russian Federal Government issued the Decree on the Reduction of Import Duties on Technological Equipment Used in the Aviation Industry. As stipulated in the Decree, import duties on lathes and milling machines for manufacturing aero engines should be reduced, within a period of 9 months, to 0—10% from 5%—15%.

2.1.2 Import Administration

In June, 2005, Russia adopted Resolution No.363 concerning the Approval of the Regulations on Imposing Supervision on the import and Export of Certain Categories of Commodities, and Resolution No.364 concerning the Approval of the Regulations on Granting Licences in the Field of Foreign Commodity Exchange and on Establishing the Federal Data Bank for Licences, requiring the application of licensing administration to the import of different commodities. Currently, in Russia, there are 17 categories of commodities whose import is subject to licensing, mainly including radioactive substances and products thereof, explosives and articles of fireworks, psychedelia, narcotics, pharmaceuticals, information safety equipment, and spirits, and import licences are granted by such Russian Federal Government agencies as the Federal Atomic Energy Agency, the Federal Industrial Agency, the Federal Bureau for Monitoring Health care and Social Development, the Federal Security Bureau, and the Federal Taxation Bureau.

In August, 2006, the Russian Federal Bureau for Monitoring Health care and Social Development promulgated 28 items of technical regulations on the administration of the import and export of pharmaceuticals, covering such issues as product inspection, the grant of licences, and the administration of import and export. And before the promulgation of these 28 items of technical regulations, the Russian Commission on the Reform of Public Administration, launched the first 3 items of regulations directly related to normalizing the Russian pharmaceutical market, namely, the Regulations on the Registration of Pharmaceuticals, the Regulations on the Registration of Medical
Instruments, and the Regulations on Imposing Technical Supervision over Pharmaceuticals and on Applying Assessment to the Effectiveness, Safety and Quality Controllability of Pharmaceuticals. Of these items of regulations, the Regulations on the Registration of Imported Pharmaceutical Preparations have been submitted to the Ministry of Justice for examination. Russia is to apply strict control and supervision to the import of pharmaceuticals by implementing these regulations.

2.1.3 Export Administration and its Changes

On March 24, 2006, the Russian Government adopted the amendments to Government Decree No.830 dated November 30, 2001 and Government Decree No. 1364 dated December 9, 1999 regarding certain varieties of raw wood. The amendments stipulate for a breakdown of the product category under Tariff No. 4403 based on the diameters and lengths of wood and also provide that the product category be supplemented with certain varieties of raw coniferous and deciduous wood. The amendments took effect on May 31, 2006, and after that, the relevant shipping documents and the documents submitted for Customs declaration were required to indicate the specific diameters and lengths of the wood shipped according to the related appendix. And the amendments also require that wood with different specifications should not be packed together for shipment.

2.1.4 Trade Administrative Bodies and their Adjustments

The Ministry of Economic Development and Trade is the competent authorities to administrate foreign trade in Russia. For the purpose of promoting the country’s export trade, Russia planned in August, 2006, to establish a new government agency, the State Export Support Agency, intended to integrate the advantageous positions enjoyed by such organizations as Russia’s Trade Representative’s Offices in foreign countries, the Import and Export Bank, the Federation of Industry and Commerce, the Union of Exporters, the foreign trade departments of local governments and the Science Academy of Foreign Trade. The new agency was also intended to improve the legislature on Customs and to foster connections with the relevant regions.

2.2 Investment Regime and its Developments

Russia’s Federal Law on Special Economic Zones entered into effect on January 1, 2006. As required by the law, all the special economic zones within the territory of the Russian Federation except the special economic zones in the States of Magadan and Kaliningrad were eliminated. And in their place, two types of small-sized special economic zones(SEZ) were set up: SEZ for industrial production and SEZ for
technological dissemination. The former were established to attract investments in high tech production so as to satisfy Russia’s domestic economic needs and promote the export of industrial products, while the latter were established to make scientific research commercially successful. The operating entities in both types of SEZ shall enjoy a preferential treatment in respect of taxation and Customs arrangements.

In November, 2006, China and Russia officially signed the Agreement between the People’s Republic of China and the Russian Federation Concerning the Encouragement and Reciprocal Protection of Investment. The Agreement stipulates that the two Governments should undertake to apply equal terms to access of mutual investment, and ensure that investment from enterprises of either country should not be subjected to confiscation or discrimination in the other country, unless such measures are taken for a public purpose. The Agreement gives protection to investors by stipulating that investors should be duly compensated in case they suffer a loss owing to the outbreak of hostilities or disturbances.

2.3 Trade and Investment Related Administration and its Developments
2.3.1 Foreign Exchange Control

At the end of June, 2006, the Russian Federal Government adopted the relevant amendment to the Law on the Regulation and Surveillance of Foreign Exchange, and since July 1, 2006, has eliminated the restrictions on the movement of capital in foreign exchange, and therefore, the roubles under capital accounts have been made freely convertible. The Russian Federal Government has eliminated the practice of collecting foreign payments for imports and exports, and liberalized the controls over Russian banks’ transactions in foreign exchange. In addition, residents, whether natural persons or judicial persons, have been allowed to open accounts outside the Russian territory, and the limit on the remittance by a natural person to an account outside the Russian territory to US $150,000 has been lifted. The amendment has, to a certain extent, streamlined the formalities that foreign investors have to complete when entering the Russian market, placed foreign enterprises in a better position to liquidate their assets within the Russian territory, lowered the risk that foreign enterprises may face when making investments in Russia, and strengthened the ability of foreign enterprises to evaluate projects and raise funds.

2.3.2 Administration of the Residence and Stay of Foreigners

Registration of Immigrant Foreign Citizens and Persons without any Nationality stipulates that, except in border areas, enclosed military camps and areas struck by ecological disasters, the written notification procedures, rather than the existing compulsory registration procedures, should be applied to the registration of foreign citizens and persons without any nationality, and that foreign citizens and persons without any nationality may register themselves with the competent department or the post office in the place where they stay. And the amendment to the Russian Federal Law on the Legal Status of Foreign Citizens eliminates the quota set by the Russian Federal Government every year on foreigners who are permitted to enter the territory of the Russian Federation for temporary residence without an entry visa, and it also stipulates that the competent government agency should not refuse the applications of such foreigners for contemporary residence. But pursuant to the law, such foreigners are required to register with the relevant department subordinated to the Federal Immigration Administration each year and submit their relevant personal documents in proof of their permanent or temporary residence in the Russian Federation. The amendment also provides for the immigration card to function as proof of the right of temporary residence in Russia of foreign citizens and persons without any nationality.

In November, 2006, to fulfill the national task of institutionalizing the administration of immigrant workers, the Russian Federal Immigration Administration made a proposal to the Duma to amend the relevant provisions of the above mentioned two federal laws. According to this proposal, for foreign citizens holding a multiple entry exit visa, the period of stay in the territory of the Russian Federation should be shortened from 180 days to 90 days, and an employer does not need to obtain a permit when employing “visa exempted” immigrant workers, but needs to handle taxation registration, and provide the competent government department with details of the nationalities and jobs of the immigrant workers. The Regulations on Granting Quota on Foreign Citizens Invited to Work in Russia in 2007 issued by Russia in November, 2006 set the quota, for the year 2007, on foreign workers allowed to enter Russia on a visa at 308,000, showing a decrease of 20,000 as compared with the figure for the year 2006.

2.3.3 Land Administration

On April 18, 2006, President Putin issued the amended version of the Russian Federal Law on Hidden Resources, and on October 26, the same year, adjustments were made to some of the provisions of the law. The amended law clearly defines the right of the state to own land, and stipulates that all plots of land, and all land belong to the Russian Federation, the entities of the Russian Federation, and the civic organizations. And at the same time, the amended law stipulates for the state registration procedures for the right of property of land. Besides, the law makes it possible for a vertically integrated company to have a two way transfer of the right to use land with its affiliates.
2.3.4 Administration of Forest Resources

In November, 2006, the Russian Duma ratified the new version of the Russian Federal Forestry Code, which shall enter into force on January 1, 2007. As stipulated in the Code, forest resources should be categorized according to their economic, ecological and social functions. Forest resources to be leased must be those forest reserves owned by the state, and the local governments, or those registered and recorded after state investigations. According to the Code, the term of lease must be shortened, the term of lease based on an auction agreement can be a period of 10 to 49 years, and in other cases, the term of lease should be a period of 1 to 49 years. The Code also states that forest resources are property of the Russian Federation. Moreover, the Code provides a legal basis for the exploitation of forest resources, the development of forestry, the construction of infrastructure of forestry and wood processing. And at the same time, the Code grants the entities of the Russian Federation great autonomy. As stipulated, as from January 1, 2007, all powers related to the administration of forestry, except those relevant to seed breeding, medical control of plants, forestry education, and the preparation and approval of regulations on forestry, shall be determined by the entities of the Russian Federation themselves.

2.3.5 Tax Administration

In July, 2006, the Russian Federation Council ratified the Amendment to the Tax Law. The Amendment clearly stipulates the frequency and times of tax inspection to be conducted, which will help to reduce arbitrary action taken by tax collectors against enterprises. In accordance with the Amendment, the Russian Federal tax collectors can conduct tax inspection only in two forms: inspection at a fixed point and circuit inspection; the frequency of circuit inspection on one taxpayer, including a subsidiary or a representative office of a foreign enterprise, should not exceed twice a year, and the time allowed for each circuit inspection should not exceed two months (but, in special circumstances, it may be extended to six months). Moreover, the Amendment reduces and defines the types of document to be submitted to tax collectors during circuit inspection. And it also stipulates that taxpayers should have the right to demand necessary explanation from tax authorities when required to present supplementary information in proof of the authenticity of the tax declaration forms which have been submitted to tax authorities.

2.3.6 Copyright Administration

In May, 2006, the Russian Federal Government, in compliance with the Russian
Federal Law on the Grant of Licences for Certain Categories of Activities, promulgated the Regulations on the Grant of Licences for the Duplication(Production) of Audio visual Products. The Regulations provide detailed stipulations for the procedures of granting licences for the duplicating(producing) of audio visual products by judicial persons and / or private dealers(hereinafter referred to as licensed business activities). The licences for licensed business activities shall be valid for a period of five years, and the Russian Federal Bureau for Supervising the Protection of Cultural Heritage and the Regulations on Mass media shall be the authorities responsible for granting licences.

2.3.7 Competition Policy

In July, 2006, the Russian Federal State Duma passed the Amendment to the Law on the Protection of Competition. The Amendment has defined the power of the Federal Anti monopoly Authorities, and modified a series of basic concepts in the Law on Anti monopoly. The Amendment made the following changes to the Law: business entities that are in a “dominant position” are redefined as business entities that have a market share of 50% instead of 65% as originally stipulated; a practice shall be established that allows enterprises to challenge the decisions and rules made by the Anti monopoly Authorities within three months from the date of receiving such decisions and rules or from the date of notification of such decision and rules, and, during the legal proceedings, the implementation of the decisions and rules of the Anti monopoly Authorities shall be suspended until the ruling of the court of law becomes effective; any merger and acquisition transaction involving a business organization with total assets of 3,000 million roubles or a total income of 6,000 million roubles shall be subject to prior approval by the Anti monopoly Authorities; and any merger and acquisition transaction involving a financial institution whose amount of total assets meets the criteria set by the Russian Federal Government shall also be subject to prior approval by the Anti monopoly Authorities.

2.4 Administrative Measures Applied to Specific Commodities

The Russian Federation levies excise duties on alcohols, tobacco, automobiles, gasoline, diesel, motor oil, etc. In accordance with Federal Law No. 107 in which the Russian Federation made an amendment in 2005 to the Federal Tax Code, the Russian Federal Customs Service issued an order to “levy excise duties”. By this order, all Russian Customs houses, including the Far east Customs House, have been applying new excise rates to most of the imported commodities since January 1, 2006. The following products are subject to new excise rates: the excise duty on light automobiles with an engine capacity between 90 to 150 H.P.(inclusive of 150 H.P.) has been increased to 16.5 roubles per H.P.from 15 roubles per H.P.; the excise rate on light automobiles with an engine capacity exceeding 150 H.P.has been increased to
167 roubles per H.P. from 153 roubles per H.P.; the excise duty on motorcycles with an engine capacity exceeding 150 H.P. has been increased to 167 roubles per H.P. from 153 roubles per H.P.)

3 Barriers to Trade

3.1 Tariff and Tariff Measures

Russia’s import tariffs are categorized into ad valorem duties, specific duties, and compound duties with over 13.1% of the country’s import commodities subject to specific duties and compound duties. Russia’s ad valorem duty rates are graded 0%, 5%, 10%, 15% and 20%, with a weighted average rate of approximately 9.5%. Specifically, the weighted average tariff rate on agricultural products is 8.8%, and the weighted average tariff rate on finished products is 9.6%.

Although the year 2006 saw a slight decline in Russia’s average tariff rate on import commodities, over 10% of the country’s import commodities were still subject to a high tariff rate of over 25%. The average import duty rate applied to such commodities as automobiles, plastic articles, certain textiles materials and clothing, white sugar, tobacco, and alcohol was as high as 30%. Russia’s tariff peaks have constituted a barrier to the export of Chinese products with a competitive advantage to Russia.

In 2006, Russia issued several Government Decrees to raise import duties on selected commodities. On March 3, 2006, the Russian Federal Government issued Government Decree No.118 to increase the import duty on textile fibers HS No.7019320009 to 15% from 5%. On April 17, 2006, the Russian Federal Government issued Government Decree No.214 to raise the import duty on some raw and modified starches to 20% from 10%, requiring that the import duty on such products should not be less than 0.06 euros per kilo. And on May 31, 2006, the Russian Federal Government issued Government Decree No.325 to impose a nine month interim import duty of 5% on electrodes used in apparatuses for electrolyzing aluminium and other electrodes. At the same time, Russia applies different tariff rates to certain commodities different in price. On July 25, 2006, the Russian Federal Government issued the Government Resolution on the Modification of the Customs Tariff System for Certain Categories of Dairy, which requires that, starting from September, 2006, the practice of levying import duties on cheese at a rate of 15% of its import prices but not less than 0.3 euros per kilo should be abolished, and that specific duties should be imposed on imported cheese categorized by price. According to the Resolution, the import duty rate on cheese whose prices are lower than 1.65 euros per kilo shall remain at 0.7 euros per kilo, and the import duty rate on cheese
whose prices range between 1.65 to 2.00 euros per kilo shall be 0.65 euros per kilo. The Russia’s new practice of levying import duties has actually raised the import duties on the relevant commodities, thus restricting the import of such commodities.

Russia levies import duties on textiles imported from China at a rate as high as 11% though it applies an import tariff rate of 6%—7% to textiles imported from other countries. And, while China, as a developing country, is included by Russia in its list of countries enjoying GSP rates, Russia excludes many of China’s competitive products from its list of products enjoying a favourable treatment. Bulk commodities, such as light industrial products, textiles, clothing, and leather goods, exported to Russia by China are usually subject to higher tariff rates. For instance, Russia applies an import tariff rate of 15% to imports of footwear, and moreover, it charges an extra import duty of 1.70 euros on each pair of leather shoes imported, and 0.7 euros on each pair of synthetic leather shoes imported. China has expressed its concerns about Russia’s inability to meet its commitments with respect to most favoured nation treatment.

3.2 Tariff Rate Quotas

Russia continues to apply tariff rate quotas to imports of swine meat, bovine meat and poultry meat. In 2006, Russia’s volume of tariff rate quotas on the import of poultry meat reached 1.1308 million tons with an import duty of 25% but not lower than 0.2 euros per kilo on quota imports, and 60% on non-quota imports; swine meat, 476,100 tons with an import duty of 15% on quota imports but not lower than 0.25 euros per kilo and 60% on non-quota products; bovine meat, both fresh and chilled, 27,800 tons with an import duty of 15% but not lower than 0.2 euros per kilo on quota imports and 55% on non-quota imports.

3.3 Barriers to Customs Clearance

For the purpose of rectifying the “grey Customs clearance”, Russia is currently applying special measures to the Customs clearance of imported goods of Chinese origin. And these measures include: reducing the number of Customs ports for clearance of imports from China; pooling all imports from China; imposing an extra Customs duty of 30% on imports from China; and levying the Customs duty on any import from China at a rate of US $ 3.5 per kilo.

Moreover, the Russian Customs has set the lowest Customs declaration prices for certain products imported from China. As an example, the Customs declaration price of Chinese made down coats is US $ 20 per piece, but the Russian Customs has fixed the lowest Customs declaration price for down coats at US $ 50 per piece, thus
increasing the import duty on down coats by 150%. From April, 2004, the Russian Customs began to raise the Customs declaration prices for 21 categories of general consumer products imported from China to a level not lower than US$ 3.4 per kilo from the previous level of US$ 0.2—1.4 per kilo, and this practice by the Russian Customs has greatly reduced the competitiveness of Chinese products in the Russian market. The Chinese side believes that the above move made by the Russian Customs deviates from the relevant provisions of the WTO Agreement on Customs Valuation, has resulted in a sharp increase in tariff rates and reduced the competitiveness of the relevant Chinese products.

On June 10, 2006, the Russian Federation issued the Notice on Strengthening Controls over Customs Values of the Commodities Categorized under Chapters 42 and 43 of the Russian Federal Catalogue for Foreign Economic Activities. According to the provisions of the above document, the Russian Customs shall exercise controls over the Customs values of imported products of Chinese origin under HS chapters 42 and 43, and shall charge specific duties on such products imported from China at rates ranging from US$ 5 to US$ 90 per kilo. The above measure applied by Russia is discriminatory against the relevant Chinese exports, and has severely affected the normal export of the relevant Chinese products. The Chinese side is much concerned about that.

3.4 Discriminatory Taxes and Charges Levied on Imports

In addition to Customs duties, Russia levies excise duties on such products as alcohol, alcohol beverages, tobacco and articles thereof, jewellry, gasoline, and automobiles. And at the same time, Russia applies to certain imports special tax rates different from the excise rates applied to its domestic products. For instance, according to the Russian Tax Law, excise duties on domestically made cars are levied at 5%, while specific duties are imposed on imported cars at different rates based on their cylinder capacities. Russia applies different taxation systems to imported products and domestically made products, and this might lead to discrimination against imported products in respect of taxes. Therefore, the Chinese side hopes that Russia will apply the same taxation system both to imports and to domestic products.

3.5 Technical Barriers to Trade

Since the Law on Technical Regulation entered into force on July 1, 2003, Russia’s technical standards and certification system have improved progressively. However, Russia currently has 22,000 technical standards in effect, about 70% of which are not in conformity with international standards, and at the same time, insists that any product certified in compliance with generally accepted international standards should
be retested. In Russia, there is still a lack of transparency in the process of preparing and amending technical standards. Although Russia established an enquiry point in 1998, as required by The Agreement on Technical Barriers to Trade, the enquiry point has provided little prompt and valid information.

Russia’s administration of technical standards and certification is rather complicated. Though the Russian Federal Bureau for Technical Regulation and Measures and the organizations authorized by it are the main bodies or agencies responsible for the application of administration to technical standards and certification, other government bodies such as the Ministry of Agriculture (for agricultural products), the Health Ministry (for medical equipment and pharmaceuticals), the State Commission on Communications (for telecommunication equipment and services), and the State Commission on Inspection and Surveillance of Mining (for mining equipment, petroleum and natural gas equipment), also participate in the application of administration to technical standards and certification. And as a result, many products have to undergo overlapped certification, which adds to the cost of the relevant exporters.

3.6 Sanitary and Phytosanitary Measures

Russia has brought under the unified administration of the Federal Veterinary and Phytosanitary Supervision Bureau all bodies or agencies responsible for preparing agricultural product criteria and certification. But, for agricultural products and foods, entry into the Russian market is often difficult, as Russia’s sanitary and phytosanitary measures are intricate in procedures and lacking in scientific basis. And what’s more, Russia usually prevents the import of so-called “sensitive foods” while there is no enough scientific evidence. Following the imposition of import prohibitions on the meat products of Chinese origin in September, 2004, Russia once again prohibited the import of any meat product of Chinese origin in July, 2006 on the grounds that “the conditions of foot and mouth, bird flu and other diseases in China are complicated, that Chinese made meat products are found to be illegally circulating and that the system of China’s veterinary agencies for monitoring enterprises engaged in the processing of meat products delays disclosing information”. The Chinese side is much concerned about the ill-grounded import prohibitions.

In December, 2006, Russian Animal and Plant Inspection and Quarantine Agency issued an order to suspend the import of rice, and to stop using the licences granted for the quarantine of imported rice. The reason for the import prohibition was that such poisonous substances as metallic additives, mercurial compounds, pesticides and genetically modified ingredients had been found. As a result of Russia’s enforcement of the import prohibition, a considerable number of Chinese exporters had to suspend their export contracts, and, therefore, incurred a great loss. The
Chinese side is concerned about this.

3.7 Trade Remedies

By the end of 2006, Russia had taken six trade remedies against China. Following the application of special safeguard measures to ammonium chloride imports from China in October, 2005, Russia, in accordance with the Federal Law on the Application of Special Safeguards, Anti-dumping and Countervailing Measures to Imports, issued Government Decree No.50 on January 28, 2006, declaring the application of a special safeguard measure to white hot light bulbs. According to the above safeguard measure, Russia set a 3-year import quota on white hot electric light bulbs with a wattage less than 200 watts and a voltage higher than 100 volts (except ultraviolet and infrared ray bulbs, light bulbs with halogenated Tungstic filaments, and reflective light bulbs) at 136.7 million per year.

In November, 2006, Russia initiated anti-dumping investigations against roller bearings of Chinese origin. The case involved products under seven 8-digit tariff numbers with a total export value of US$ 21.53 million.

3.8 Export Restrictions

Russia applies export restrictions to certain strategic and resource based products. In compliance with Resolution No.363 concerning the Approval of the Regulations on Imposing Supervision on the import and Export of Certain Categories of Commodities, and Resolution No.364 concerning the Approval of the Regulations on Granting Licences in the Field of Foreign Commodity Exchange and on Establishing the Federal Data Bank for Licences, both dated June 9, 2005, Russia has applied export licensing to 16 categories of product including non-ferrous metals, timbers, oil and minerals.

Additionally, Russia levies export duties on selected products to restrict their export. In 2006, the country imposed export duties on up to 476 categories of product, mainly including raw materials containing hydrogen carbonate compounds, unprocessed wood, precious stones and valuable accessories, certain metals and chemicals.

In March, 2006, the Russian government issued a Government Decree declaring that, starting from May, 2006, the export duty on logs and unprocessed sawn wood was to be raised from the rate of 6.5% but not lower than 2.5 euros per cubic meter to a rate of 6.5% but not lower than 4 euros per cubic meter. And at the same time, the Russian
government decided to impose an export duty on wood particles and scraps at 6.5% but not lower than 4 euros per cubic meter with effect from April 7, 2006. And soon after that, the Russian government decided that, starting from July 1, 2007, the export duty on logs was to be raised from the rate of 6.5% but not lower than 4 euros per cubic meter to a rate of 10% but not lower than 6 euros per cubic meter, and was planned to be further increased to a level of 20% but not lower than 24 euros per cubic meter by the year 2010. As Russia is currently China’s largest exporter of logs, Russia’s repeated rise in the export duty on logs has increased the import cost of those Chinese importers of raw materials such as logs as well as the production cost of those Chinese exporters of traditional products such as floorboards and furniture. Therefore, the Chinese side is concerned about this.

And in addition to the above, in 2006, Russia repeatedly raised the export duties on oil, and oil related products such as greases, propane, butane, ethylene, propylene, butylene, and butadiene. The highest export duty on oil has reached US $237.6 per ton, the highest export duty on such products as propane, butane, ethylene, propylene, butylene, and butadiene has reached US $172.4 per ton, the export duty on greases and oil preparations will be raised to US $92.9 per ton.

3.9 Barriers to Trade in Services

3.9.1 Telecommunications Services

The Law on Telecommunications effective as of January 2004 contains special regulations on the intercommunication between the network of alternative operators and the network of Russian public telephones. According to the regulations, both the contracts and expenses with regard to the intercommunications are placed under the tight control of the Federal Ministry of Telecommunications. Meanwhile, according to the law, the license is valid for only 5 to 10 years, during which time the telecommunications operators are unlikely to recover their investments.

3.9.2 Construction Services

It is stipulated that only natural persons with Russian nationality can obtain the permit to provide architectural services. Only by jointly providing service with Russian citizens or permitted Russian commercial firms can foreigners provide architectural services.

It is also stipulated that when more than 100 employees are employed at a
construction site, more than 50% of them should be Russian citizens.

3.9.3 Transport Services

Russia has not yet opened the market for passenger and cargo transportation by railway. Meanwhile, no joint venture is allowed to engage in cargo handling, container yard operation, shipping agency, or customs clearance. No foreign business is permitted to provide maintenance service to railway transportation equipment. Moreover, certain non national treatment restrictions are imposed on Chinese companies that provide cross border road transportation services.

At present, Both Russian and foreign investors engaged in aviation related research and manufacturing are granted by the Russian legislation some favorable treatments, including tax holiday and investment guarantee. However, foreign ownership is not allowed to be more than 25% of the whole share of an aviation enterprise. Moreover, directors and senior managers must be Russian citizens.

3.9.4 Retail Services

On November 15, 2006, the Russian Federal Government issued the regulations restricting the entry of foreign citizens into the retail trade. According to the regulations, effective from January 1, 2007, immigrant workers shall be prohibited from retailing alcohol beverages and pharmaceuticals in Russia, and effective from April 1, 2007, all immigrant workers shall be prohibited from providing retail services except shop based retail services.

4 Barriers to Investment

Although, in order to attract foreign investment, Russia has taken numerous measures aimed to reduce restrictions on business operations of foreign investors, the investment regime prevailing in Russia still constitutes a barrier to the business operations of foreign investors.

The Law on Foreign Investment promulgated in 1999 clearly stipulates that the Russia Federal Government must establish a single registration administration agency for foreign investors, but so far, the stipulations have not been implemented. In practice, Russia, on the contrary, requires foreign investors to file registration for every new affiliate they set up within the territory of Russia. And this has caused much
inconvenience to the business operations of foreign investors and added to their operating expenses.

While the Law on Foreign Investment promulgated in 1999 also stipulates that foreign invested enterprises should enjoy the same treatment as that accorded to domestic enterprises in Russia in respect of purchases of securities, transfer of property, judicial protection and profit remittance, it also specifies a great number of exceptions such as the principle of maintaining the constitutional system, ethics and the protection of other people's health, the protection of other people's rights and legal rights, the guarantee of national defense and security. These exceptions allow the Russian government great discretion in administrative affairs, and as a result, foreign investors can not really enjoy national treatment in Russia.

The Russian Federal Law on Land promulgated in 2001 stipulates that foreign investors shall enjoy the same right as that accorded to domestic enterprises in Russia in respect of purchases of land and its attached buildings, but, restricts purchases of farm land by foreign enterprises, and prohibits foreign enterprises from purchasing any land close to Russia's border areas on grounds of ensuring national security.

According to the Russian Federal Tax Code, Russia applies a personal income tax rate of 13%, but, Part II of the Tax Code also requires that tax payer not filed in the Russian Federation should be subject to a personal income tax rate of 30%. The stipulations on the application of different personal income tax rates to residents and non residents are contrary to the principle of national treatment.

And in addition, Russia prohibits foreign investment from entering into 39 strategic industries including the production of weapons, the production of nuclear materials, the construction of nuclear facilities, the construction of water conservancy facilities in oceanic fishing ports, health and quarantine, and exploitation of strategic mines. Though Russia allows foreign investment to enter certain industries, there are restrictions on its entry, and among them are the following:

(1) the telecommunications industry: according to the relevant stipulations of Russia, foreign investment entry is not allowed to be incorporated as a wholly owned foreign invested enterprise except as a part of a joint venture enterprise with foreign investment limited to 49% of its ownership. The integrated telecommunications equipment used in Russia's communications internet must fully satisfy Russia's current technical requirements for such equipment, and must have the permit to enter into the internet issued by the Russian state.

(2) the white wine industry: according to the regulations of the Russian Federal
Government, foreign investment in the white wine industry is limited to 49% of the ownership interest of an enterprise.

(3) the aviation industry: according to the relevant stipulations of Russia, foreign investment is limited to 25% of the ownership interest of an aviation enterprise engaged in processing, production, experimenting, repairing, and using technology, foreign investors are not allowed to participate in the administrative work of the shareholders general meeting and the board of directors.

(4) the banking industry: Russia allows foreign banks to establish joint venture banks within the territory of Russia, but does not allow the establishment of branches of foreign banks. And at the same time, Russia does not allow foreign invested banks to conduct borrowing or lending business. The percentage of the local staff of a foreign invested bank established in Russia must not be lower than 75% of the total staff of the bank.
Saudi Arabia

1. Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Saudi Arabia in 2006 reached US $20.14 billion, up by 25.3%, among which China’s export to Saudi Arabia was US $5.06 billion, up by 32.2%, while China’s import from Saudi Arabia was US $15.08 billion, up by 23.2%. China had a deficit of US $10.02 billion. China mainly exported to Saudi Arabia new pneumatic tires of rubber; woven fabrics of synthetic filament yarn; women’s or girls’ suit, ensembles, jackets, blazers, dresses and skirts; men’s or boys’ suits, ensembles, jackets, blazers, and trousers; furniture and parts; air conditioning machines; footwear; T-shirts; undershirts; vests; trunks and handbags; sportswear; skiwear; swimwear and etc. China mainly imported from Saudi Arabia crude petroleum oil and crude oil obtained from bituminous minerals; acyclic alcohols and their halogenated, sulphonated, nitrated or nitrosated derivatives; polymers of ethylene in primary forms; petroleum gases; cyclic hydrocarbons; oil products; propylene, ethers, either alcohols, ether phenol, cross and oxidize alcohol, plural carboxyl acid, acid anhydride, acyl halogenations and sulfur in primary forms; and etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of completed engineering contracts by Chinese companies in Saudi Arabia had reached US $1.64 billion, The accumulated volume of completed labor service contracts was US $130 million.

According to MOFCOM, Chinese non-financial direct investment in Saudi Arabia approved by and put on record by MOFCOM reached US $600,000 in 2006.


2. Trade and investment regime

2.1. Legislation on trade and investment

Over the past few years, the Saudi Arabian government has promulgated a series of laws governing trade and investment, including the Import Licensing Guidelines & Procedures, the Sanitary and Phytosanitary Measures, the Foreign Investment Act, the Law on Ownership of Real Estate by Non-Saudis, the Saudi Arabian Standards Organization Technical Directives, the Negative List excluded from Foreign Investment, the Trade Information Law, the Enhanced Money Laundering Regulations, the Executive Rules of the Foreign Investment Act, the Tax Law, the Real Estate Law,
the Capital Markets Law and the Anti-dumping Law.

2.2. Trade administration

2.2.1 Tariff system

The tariff rate in Saudi Arabia averages 5% (ad valorem CIF price). Members of the Gulf Cooperation Council (GCC) are granted duty-free treatment when certificate of origin or accreditation certificates are provided.

2.2.2 Import and export administration

Saudi Arabia applies free trade policy to general products, placing no quantitative or price controls on imports. However, Saudi law prohibits importation of the following products: weapons, alcohol, narcotics, pork, pornographic materials, distillery equipment, and certain sculptures.

Imported foods are subject to health and sanitation requirements, as well as point of origin labeling.

2.2.3 Foreign exchange administration

Saudi Arabia imposes no foreign exchange restrictions on capital receipts or payments by residents or nonresidents, beyond a prohibition against transactions with Israel. In practice, Saudi Arabia pegs its currency, the Saudi Riyal, to the U.S. Dollar.

2.3 Investment administration

According to the Negative List excluded from Foreign Investment issued by Saudi Arabia in 2003, foreign investment is prohibited in three manufacturing sectors, including oil exploration, drilling and production; manufacturing of military equipment, devices and uniforms; and manufacturing of civilian explosives, as well as 16 service sectors, including catering to military sectors, security and detective services, insurance services, real estate investment in Makkah and Madina, real estate brokerage, printing and publishing, and telecommunications services. However, according to the Report of the Working Party on the Accession of the Kingdom of Saudi Arabia to the World Trade Organization, Saudi Arabia has committed to open sectors such as insurance, telecommunications services, wholesale and retail trade. For example, foreign insurance companies will be permitted to open and operate direct branches in Saudi Arabia, or to form a joint venture insurance company with local insurers, in which foreign participation is limited at 60 per cent. In the sector of basic telecommunications, foreign participation in a facilities-based joint venture is limited at 49 per cent, 51 per cent by the end of 2007, and 60 per cent by the end of 2008. For wholesale and retail trade, foreign participation is limited at 51 per cent, and 75 per cent after the end of 2008.
According to the Foreign Investment Act, solely foreign funded enterprises or joint ventures are allowed in Saudi Arabia. Except sectors outlined in the Negative List excluded from Foreign Investment, foreign investment is allowed in all other sectors. The minimum level of investment for agricultural projects is SR25 million(approximately RMB 53.33 million), for industrial projects SR5 million(approximately RMB 10.66 million), and for service projects SR2 million(approximately RMB 4.27 million). Foreign investors are not required to look for local partners and are allowed to own company assets. Solely foreign owned enterprises are entitled to apply loans from the Saudi Industrial Development Fund(SIDF).

2.4 Competent authorities

The Saudi Arabian Ministry of Commerce & Industry is responsible for foreign trade administration. The Saudi Arabian General Investment Authority(SAGIA), reporting to the Supreme Economic Council(SEC), is responsible for investment administration. The Board of Directors established under SAGIA is made up of deputy ministers and private business representatives.

3. Barriers to trade

3.1 Technical barriers to trade

The Saudi Arabian Standards Organization(SASO) is the solely organization granted for standards making. Certain imported products must get certificate of the International Conformity Certification Program(ICCP) before entering the Saudi market. However, the ICCP is unduly complicated and stringent, with onerous procedures and unclear product coverage. In order to better monitor certain imported products, the Saudi government has started to replace ICCP with the Certificate of Conformity Program(COCP). The new program will require all exporting companies to provide a certificate of conformity issued by labs recognized in the exporting country with every shipment to Saudi Arabia. China hopes that through bilateral consultations with Saudi Arab, Chinese inspection institutions will be recognized to conduct COCP at an early date.

Besides, the Saudi government has said that such certification would not be required when Saudi Arabia has built its own ability to inspect imported or domestic products. Such changes as regards inspection methods don’t mean relaxed requirement on imported products. Saudi Arabia will continue to implement technical standards towards products which must take into account the tough Saudi environment. For instance, auto tires must be able to withstand the high temperatures in summer.

3.2 Sanitary and phytosanitary measures

The Saudi Arabian Ministry of Commerce & Industry issued ministerial resolutions in 2000 and in 2003 successively to consolidate the former Agricultural Product
Quarantine Rules and the Animal Product Quarantine Decree into the “Sanitary and Phytosanitary Unified Procedures”, so as to be in line with the requirements of WTO agreements. The new law has pledged to adopt quarantine procedures on food, animals and plants in consistency with WTO agreements, implement the law on the basis of prevailing international standards and procedures, and recognize and adopt quarantine measures suggested by other countries if they are equally effective.

Meanwhile, SASO will put the Food Standard Draft on its website to improve transparency in the making of laws and regulation.

3.3 Other barriers to trade

According to the Saudi Labor Law, staff of Saudi nationality should account for a minimum of 75%, and occupy 50% of the total paycheck in various enterprises including solely foreign funded enterprises. This Law also requires that positions such as human resources staff, recruiting officers, receptionists, cashiers, and security staff are open only to Saudi citizens. Besides, the Labor Department is entitled to lower this proportion when there is a shortage of labor force in Saudi Arabia. Foreign nationals need to obtain working permits and guarantee in order to work in Saudi Arabia. A letter of release issued by former employer is needed if a foreign national changes employer. In practice, the Saudi government usually requires that foreign companies must provide 25% or even 30% of their job openings to Saudi citizens. Otherwise foreign staff in foreign companies will be denied working visas.

Female foreign persons face even greater difficulties in obtaining working visas from Saudi Arabia. Particularly there are remote possibilities for women to obtain long term working visas. Besides, the Saudi government places quantitative limits on working visas and prohibits their repeated usage. This has effectively affected the normal business of Chinese companies based in Saudi Arabia.
South Africa

1 Bilateral trade relations

South Africa is China’s largest trading partner in Africa. According to customs statistics released in China, the bilateral trade volume between the two countries totaled US $ 9.856 billion in 2006, up 35.6% over the previous year, among which China’s exports to South Africa arrived at US $ 5.768 billion, an increase of 50.8%, whereas China’s imports from South Africa grew by 18.7% to hit US $ 4.088 billion. China had a trade surplus of US $ 1.679 billion with South Africa. China mainly exported to South Africa electro mechanic products, garments and accessories, cereals and cereal powders, electric appliances and electronic products, textile yarn and related products. The major imports of China from South Africa were, among others, iron sand and iron fine ores, magnesium sand and magnesium fine ores, and paper pulp.

According to figures of China’s Ministry of Commerce (MOFCOM), by the end of 2006, the accumulated turnover of the engineering contracts completed by Chinese businesses in South Africa amounted to US $ 288 million, with that of all the accumulated volume of the completed labor service contracts reached US $ 77.29 million.


2 Introduction to trade and investment regime

Legislation concerning import and export administration in South Africa is the International Trade Administration Act. The other related legislation includes the Customs and Excise Act, the Consumer Code and the Sales and Service Code.

The Department of Trade and Industry is the primary competent authorities governing foreign trade in South Africa. The International Trade Administration Commission (ITAC) carries out trade remedies investigations in the SACU region and is responsible for import and export administration, licensing administration,
restructuring the tariff regimes, supervision of preferential industrial policies. Other governmental agencies relating to trade and investment administration include the South Africa Avenue Service and the Bureau of Standards.

The Southern African Customs Union came into existence in 2002, with the signature of the Customs Union Agreement between South Africa, Botswana, Lesotho, Namibia and Swaziland. It maintains the free interchange of goods between member countries. It provides for a common external tariff to non-member countries.

2.1 Trade administration development

2.1.1 Tariff system

According to its WTO accession commitments, South Africa has significantly reduced its tariff. South Africa’s average tariff stands at 5.8% at present, with an average tariff of 9.1% and 5.3% for agricultural and non-agricultural products respectively.

According to the International Trade Administration Act, South Africa released the Tariff Investigations Regulations in April 2006. The legislation stipulated the reduction or increase in the rate of a customs duty by SACU and whether the creation or removal of rebate or drawback provisions with regard to a custom duty. The International Trade Administration Commission is responsible for conducting investigations.

2.1.2 Import administration

2.1.2.1 Customs procedures

On October 1, 2006, to improve the Customs service, the South African Avenue Service adopted the format of the European customs declaration—the single administrative document (SAD). All imported goods must be presented to the customs through the SAD accompanied by pertinent documents.

Electronic Customs clearance is available in the Customs of some large ports in South Africa. The data for electronic clearance, which is exchanged with floppy disks, must meet the Customs classification requirements, attached with printed documents. With the cooperation of the port authorities, the Customs carried out electronic clearance on containerized imports in some regions to speed customs clearance. The
Customs in South Africa is updating its technology and information system. Besides, in coordination with the updating of the Harmonized Commodity Description and Coding System by the World Customs Organization (WCO) every four to six years, the Customs in South Africa made adjustments of tariff codes. The new Customs tariffs take effect as of January 2007.

In September 2006, China’s Customs Authority and the South African Revenue Services (SARS) signed the Agreement on Mutual Administrative Assistance in Customs Matters between China and South Africa, which stipulated the cooperation of the customs of both countries in combating smuggling. According to the agreement, both administrations reached a consensus on developing a new modern customs information system, and planned to develop an IT system for electronically exchanging trade data and to create a stronger legal basis for Customs cooperation in the administration of bilateral trade.

2.1.2 Import administration

Any company registered in South Africa’s Department of Trade and Industry can engage in import trade, with no need to apply for special trading rights. In accordance with the International Trade Administration Act, certain special products are subject to licensing administration in South Africa. These products include shoes, waste products, certain agricultural products, petroleum and certain petrochemical products. Importers should be granted a license before importing any of these products and then make shipment overseas. The import license is issued by the Import and Export Administration Bureau and is to remain valid for 12 months.

In February 2006, in accordance with the Animal Disease Act, the Department of Agriculture stipulated that animal health administers are responsible for releasing import licenses and high grade licenses to the import of animals and related products. Each import license for single products is charged R105 (around US $15) while each high grade license for products of the same category is charged R850 (around US $122)

2.1.3 Export administration

It is required that South African exporters be registered in the Customs House. The exporters of diamond should register in South African Diamond Commission. Besides, export licensing administration is imposed on strategic products, non regenerable resources, agricultural products, scrap metals and so on. Before an export license is granted, waste metals should first be made available to South African lower stream enterprises at a discounted rate of their export prices. The
government can only issue export licenses if the lower stream enterprises do not respond to the offer or do not need the waste metals. The catalog of products coming under licensing is determined by the South African Minister of Trade and Industry and published on government bulletins. The export of ostrich and its breeding eggs is still prohibited.

To increase the added value of exports and create job opportunities, the South African government has decided to reduce the export of raw materials including gold, platinum, and chromium. At present, the South African enterprises have applied to the government for imposing export duties on chromium and decided to restrict the melting and processing of chromium to domestic regions and to export ferrochrome only.

2.1.4 Trade remedies

The trade remedy measures South Africa has resorted to mainly include antidumping and countervailing investigations. So far, it has not conducted safeguard investigations.


2.1.5 Other related systems

In February 2006, the Reserve Bank in South Africa amended the Foreign Exchange Control Act, canceling its foreign exchange control under the current account. However, to guard against financial fraud and money laundering, South African banks have, as required by the Financial Intelligence Center Act, tightened their monitoring over the funds of their clients.

In 2005, South Africa subjected transit Chinese nationals to visas. After the Chinese Foreign Ministry took up the matter with South Africa’s Department of Internal Affairs, the South African government has decided that it lifted visa restrictions on transit Chinese passport holders as of July 2006. Transit via South Africa only requires the legitimate visa of the third country.

On September 1, 2006, the Department of Trade and Industry (DTI) has declared to make amendments of the Trademark Act, the Patent Act and the Design Act. According to the amendment, registering fees for trademarks, patents and designs and are raised, and changes in other terms and conditions are made.
2.1.6 Adjustment of other authorities

According to the National Credit Act issued in 2005, the National Credit Regulator and was set up on June 1, 2006. The administration is responsible for inspecting and supervising currency and credit suppliers, currency and credit offices and debt advisors. The National Credit Law serves as standardizing the currency and credit market and promoting competition and sustainability of the market. It aims to protect consumers, prevent vicious crediting from increasing, and supervise interest and spending. The law concerns all types of consumption crediting, including bank loan, credit cards and mortgage trade and so on.

2.2 Investment administration development

Laws concerning investment in South Africa include the Export Credit and Foreign Investments and Reinsurance Act, the Credit Agreement, and the Foreign Exchange Control Amnesty and Amendment of Taxation Laws Act. Other laws related to foreign investment include the Corporation Act, the Income Tax Act, the Financial Institution (Investment Funds) Act, and the Labor Act, the Competition Act, and the Environment Act.

The Department of Trade and Industry (DTI) is the main department responsible for investment administration. Other departments related to investment administration include the South Africa Avenue Service, the National Economic Development and Labor Council and the Board for Regional Industrial Development.

2.2.1 Income tax and investment provisions

South Africa has adopted the policy of taxation according to residence. According to the agreements with other countries on the avoidance of double taxation, nonresidents in South Africa are still subject to taxation on their earnings in South Africa. The South African taxation categories fall into two broad types: direct taxation and indirect taxation. The former includes four taxes such as income tax and capital earnings tax whereas the latter covers eight taxes such as value added tax, consumption and import tax. The South African corporate income tax currently stands at 30% and value added tax at 14%. The rate of excise duties is 10% except that office equipment and motorcycles have a duty at 5%; specific excise duties are levied on tobacco and tobacco products, alcoholic and nonalcoholic beverages.

South Africa places no restrictions upon stock investment by foreign investors.
Foreign investors buying stocks of publicly listed companies in South Africa should confirm that authorized dealers endorse “Non resident” on stock certificates so that stock returns such as dividends could be remitted home in the future. Generally speaking, no restriction is imposed upon the remittance abroad of investment earnings by non residents.

2.2.2 Investment promotion measures

South Africa has adopted a series of national programs to promote investment, esp. foreign investment. Current investment promotion measures include the skill support program, industrial development area scheme, foreign investment grant, critical infrastructure program and power price fixing development program, which encourage investors with subsidies, tax reduction and exemption respectively.

In 2006, South Africa has made adjustments of some investment promotion measures. In August 2006, the Department of Trade and Industry (DTI) suspended the Small and Medium Enterprise Development Program. Moreover, in September, DTI suspended the export promotion measures in the car industry development scheme.

2.3 Changes in trade investment laws and regulations

In 2006, in view of the preparatory work for South Africa’s engagement in the non agricultural market access (NAMA) negotiations, the International Trade Administration Commission of South Africa (ITAC) planned to reduce the tariffs on parts of industrial products and parts of agricultural products in light of the WTO bound tariff rates. The industrial products include nine categories of products such as yarns, shoes and apparatus for television. Agricultural products include 37 categories such as frozen vegetables, sweet biscuits and opium extracts. Moreover, in 2006, South Africa amended the Customs and Excises Act, exempted and reduced tariffs on parts of sweet, stainless steel, and iron and steel products as well as increasing the import tariffs on parts of tools and sweets.

In October 2006, in terms of the Perishable Products Export Control Act, 1983, the South African Perishable Products Export Control Board decided to impose export inspection levies ranging from 28.65 cents to 57.30 cents per container in a consignment of grapes, pome fruits and stone fruits exports.

In addition, the Small Business Tax Amnesty and Amendment of Taxation Laws Act took effect as of August 1, 2006. According to the act, small businesses whose carrying on does not exceed R10 million (around US $1.25 million) every year are exempt from taxation, including income tax, value added tax and pay tax.
3 Barriers to trade

3.1 Tariff barriers

In spite of tariff reforms, South Africa’s tariff schedule remains complex and can create uncertainty for foreign exports to the country. Moreover, South Africa imposes relatively high import tariffs on sweet products, mutton, milk and maize to support the development of its own industries.

3.2 Import restrictions

3.2.1 Import Procedures

According to the South African gazettes, imports such as waste products are subject to the approval from the relevant departments and the licensing from the Import and Export Administration Bureau under South Africa’s Department of Trade and Industry. Importers often have to face frequent delays in getting licenses issued, which adversely affects their normal export to the country.

3.2.2 Restrictions on the import of textiles

In June 2006, the Chinese administration and South African administration signed the Memorandum of Understanding on the Promotion of Trade and Economic Technological Cooperation between the People’s Republic of China and South Africa. The South African Department of Trade and Industry declared that 31 categories of textiles including cotton products, curtains, knitting trousers and so on from China would be subject to import quotas from January 1, 2007 to December 31, 2008. Moreover, South Africa undertook to waive the use of Article 16 of the Protocol on China’s Accession to the WTO and Paragraph 242 of the Working Group’s Report on China’s WTO Accession, and carry out its commitment of recognizing the market economy status of Chinese enterprises.

3.3 Technical trade barriers

3.3.1 Compulsory technical laws
In 2006, South Africa issued three compulsory technical laws and sales administration laws, which stipulated a rise in the property index, safety requirements and standards for non-pressure kerosene stoves and heaters, and stricter requirements for circuit breaker sets with the alternating current not exceeding 1,000 volt of rated voltage or 1,500 volt of direct current. Compared with the previous standards, relatively great changes were made in the compulsory standards, which placed higher safety requirements for mechanical and electrical products, adversely affecting the export of Chinese mechanical and electrical products to South Africa. Besides, modifications of circuit breaker index are made twice a year, which creates uncertainty to the export of foreign industries related products to the country.

3.3.2 Package Classification for agricultural products

The South African government places stringent provisions for the classified labeling of parts of agricultural products sold in South Africa, which include the calculating, labeling and quantity fixing requirements for prior packing, general rules for goods delivery and sales, voluntary classification and labeling requirement for sheep, cows, pigs, goats sold in South Africa as well as grading, packing, labeling requirements for sorghum syrup. The compulsory classification and labeling provisions for the above products add production processes and operation costs to foreign related enterprises. China is watching with concern the enforcement of the above regulations.

3.3.3 Standards for portland cement

As the South African government has currently increased the investment in infrastructure, speeding up the economic growth, the demand for cement is on the increase in South Africa. The South African government stipulates certification identification is only available to ordinary Portland cement imports complying with South African Bureau of Standards (SABS) marking standards SANS50 197/1 and SANS50 197/2. Cements with no certification identification are not allowed to be sold in South Africa. The Chinese side believes the regulation on certification adds market access costs to Chinese enterprises in South Africa, thereby adversely affecting the normal trade among enterprises.

3.4 Sanitary and phytosanitary measures
South Africa places strict import control on agricultural and poultry products and prohibits the import of radiation processed meat. The fruits exports to South Africa such as apples, cherries, and pears are subject to strict quarantine. The Chinese government believes food radiation processing is a kind of normal sterilization technique. Many studies show food radiation exposure is safe. South Africa’s prohibition on radiation processed meat imports has no scientific basis, thereby adversely affecting the normal trade.

To prevent the bird flu outbreaks, South Africa currently prohibits the import of all birds and related products, for which the Chinese government has expressed understanding. However, it lacks scientific basis that South Africa extend the restrictions to nations with no bird flu outbreaks. The Chinese government hopes the South African government can evaluate the safety of Chinese exports in question according to the actual inspection and test results and lift the restrictions as early as possible.

3.5 Trade remedies

South Africa is among the countries that most frequently subject Chinese exports to anti dumping investigations. During recent two years, with the deepening of the cooperation and communication between China’s Ministry of Commerce and the South African International Trade and Administration Commission, both sides have conducted fruitful consultations and achieved encouraging results on the matters of carrying out the commitments of recognizing China’s market economy status, determination of the causal relationship between dumping and injury, the conclusiveness of evidence of injury to South African industries, and public interest.

By the end of December 2006, the South African authorities initiated 37 anti dumping investigations on Chinese exports, one of which involved glass fiber staple mats. In 2006, the South African International Trade and Administration Commission terminated anti dumping investigations on products such as toughened glass, polystyrene, and glass fiber staple mats on the ground that there was no causal relationship between dumping and market injury and the quantity of imports was less than 3%. South Africa gave four Chinese enterprises meeting the lawsuit market economy status, but the pneumatic tires of more than ten Chinese enterprises were still imposed 3% to 22.3% anti dumping duties. In 2006, South Africa also initiated anti dumping sunset review on garlic of Chinese origin and made the final adjudication of continue imposing anti dumping duties. Besides, South Africa offered four Chinese enterprises meeting the lawsuit market economy status, but the pneumatic tires of more than ten Chinese enterprises were still levied 3% to 22.3% anti dumping tariffs. The Chinese side believes that Chinese enterprises export of such products to South Africa involved in the lawsuit during the period of investigation was not particularly large. However, these measures discourage to a large extent Chinese enterprises from continuing and expanding their export of the
above products to South Africa. The Chinese government hopes the South African government will comply with the agreement signed between China and South Africa, undertake the commitments of waiving the use of Article 16 of the Protocol on Accession of China to the WTO and in Paragraph 242 of the Working Group’s Report on China’s WTO Accession, and of recognizing China’s market economy status.

In December 2006, the South African International Trade and Administration Commission accepted the application for conducting anti-dumping investigations on critic acid of Chinese origin or Chinese imports. In January 2007, ITAC decided to initiate anti-dumping sunset review on door locks and knobs and woven fabrics of Chinese origin or Chinese imports. China is watching with concern the enforcement of the above regulations.

3.6 Government procurement

In the process of government procurement in South Africa, the principle of fairness and transparency is not always strictly enforced. During government procurement, South Africa restricts imported products and services which require local ingredients to support the development of its own industries. The Chinese government hopes South Africa enhances the principle of transparency in government procurement and provides a fairer competitive atmosphere for foreign enterprises.

3.7 Intellectual property right protection

South Africa has made some progress in protecting the intellectual property rights of imports. However, problems such as counterfeit trademarks and copyright infringement still widely exist. The Chinese government hopes South Africa further punish the infringement on intellectual property rights and safeguard the related interests of Chinese products.

3.8 Export restrictions

South Africa is the main producer and exporter of chromium in the world, which makes up 75% of the world reserves. To increase the added value of its exports and create job opportunities, the South African government has decided to reduce the export of raw materials including gold, platinum, and chromium. South African enterprises have demanded that the government restrict the export of chromium to China and impose export tariffs on chromium. The Chinese side believes that the restriction on chromium export will result in the decrease of chromium supplies in the
international market and the fluctuation of chromium prices. The Chinese government is watching with concern over it.

4 Barriers to investment

4.1. Barriers to the access of investment

Since the racial segregation system in South Africa was abolished, to make more black investors involved in the mainstream economy and help competent black business people compete better with western counterparts, the South African government issued the Broad Based Black Economy Empowerment Act in 2001. The act stipulated that 25% of enterprises' ownership be held by local black people and stipulated the proportion of local black people in the management, which means the ownership of foreign investment is restricted below 75%. South Africa formulated the act with a view to protecting the interest of black people, for which the Chinese side expressing understanding. However, the compulsory index may adversely affect the operation of foreign companies and restrict foreign investment in South Africa.

4.2. Barriers to investment operation

4.2.1. Restrictions on financing

According to the related laws, certain groups of South African companies are restricted in access to financing through local credit institutions, which include companies with 75% or more of capital or assets held by foreign investors, companies with 75% or more controlling sharing, or companies with 75% or more business earnings distributed to non-residents. The above measures have restricted foreign funded enterprises' capacity to finance locally.

4.2.2. Visa system

A grievance often voiced by many Chinese enterprises is South Africa's visa system. It often takes considerable time to be granted an entry visa, and the South African Embassy charges working visas applicants a deposit of 15,000 yuan, thus hindering the transfer of personnel on the part of Chinese funded enterprises in South Africa. The Chinese Foreign Ministry and the Chinese Embassy in South Africa have taken up the deposit matter with South Africa's Embassy in China and South Africa's
Department of Internal Affairs. China hopes the South African administration will resolve the matter as soon as possible.

4.2.3 Other problems

A number of incidences involving criminal violence against Chinese business people and Chinese invested enterprises have occurred in South Africa over the past few years, which have considerably weakened the confidence of the Chinese business community in investing in South Africa. The Chinese side hopes that the South African government will take adequate measures to protect the interest of the Chinese people and enterprises doing business in South Africa.
Thailand

1. Bilateral trade and investment

According to the China Customs, the bilateral trade volume between China and Thailand in 2006 reached US $27.73 billion, up by 27.1% year on year, among which China’s export to Thailand was US $9.76 billion, up by 24.9% year on year, while China’s import from Thailand was US $17.96 billion, up by 28.4% year on year. China had a deficit of US $8.20 billion. Major Chinese exports to Thailand included electric power machinery and parts, computers and parts, iron and steel products, machinery equipment and parts, chemical products, cloth, household electrical appliances, mineral products and metal scrap, integrated circuits, daily necessities, etc. China’s main imports from Thailand included computers and parts, plastic resin, natural rubber, crude oil, chemical products, cassava products, integrated circuits, iron and steel products, timber and products thereof, LPG, etc.

According to the Ministry of Commerce of the People’s Republic of China (hereinafter referred to as MOFCOM), as of the end of 2006, the accumulative turnover of complete engineering contracts by the Chinese companies in Thailand reached US $2.42 billion. The volume of completed labor service cooperation contracts was US $210 million. According to MOFCOM, in 2006, approved by or registered with MOFCOM, non-financial Chinese funded enterprises in Thailand made a direct investment of US $9.55 million in Thailand. According to MOFCOM, in 2006, Thailand conducted 108 investment projects with a contractual volume of US $372 million and paid-up capital reached US $144 million.

2. The change of trade and investment administrative regimes


Major competent authorities in Thailand responsible for investment and foreign trade include the Ministry of Commerce, the Investment Promotion Committee of the Ministry of Industry and the Department of Customs of the Ministry of Finance. In February 2006, Thai cabinet approved the establishment of National Development Special Investment Commission.

2.1 The change of trade administration
2.1.1 Tariff regime

Tariff rates in Thailand are still fairly high. On average, the applied MNF tariff rate is 11.46%. The average MFN tariff rate is 24.32% in agriculture sector and 9.48% in Industrial sector. High tariff rates are mostly applied to the import products that constitute competition with Thai products such as agricultural produce, automobile and auto parts, alcoholic drinks, textile products, paper and cardboard products, restaurant equipment and some electric appliances.

（1） Tariff reduction pursuant to the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China. Pursuant to the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China that came to effect in July 2005, tariff rates for 60% of goods between China and six original ASEAN members(Thailand, Malaysia, Indonesia, Philippines, Singapore and Brunei) shall be reduced to 0~5% beginning from January 2007. By 2010, China and ASEAN shall establish a free trade area and the tariff rates of majority of normal products shall be reduced to zero.

1） Knitting products

The tariff rate for knitwear in Thailand will be reduced from 30% to 12% since January 1st 2007. Specialty duties for products such as cotton underwear will be reduced from $0.16 per piece to $0.06 per piece and that for products such as cotton shirts will be reduced from $0.32 per piece to $0.13 per piece since January 1st 2007.

A total of 28 tax items such as some womens coat, womens trousers, mens and womens shirts, pajamas, baby wear and part of socks are listed as general sensible products by Thailand. The tariff rate of these products would remain the current level of 30% until January 1st 2012.

2） Cotton woven products

Since January 1st 2007, ad valorem duty levied by Thailand on cotton cloth will be reduced from 20% to 12%, specific duty on cotton cloth will be reduced from 0.41 US dollar per kilogram to 0.1 US dollar per kilogram; import duty on cotton yarn will be reduced from 10% to 5%.

3） Staple fibre and filament products

Thailand will reduce the import duty of man made staple fibres and yarn of filaments from 10% to 8% since January 1st 2007; reduce ad valorem duty of man made staple woven fabrics and filament fabrics from 20% to 12%, meanwhile specific duty will be reduced from 0.41 US dollar per kilogram to 0.1 US dollar per kilogram.
(2) ASEAN new member tariff preferential

Pursuant to ASEAN preferential tariff integration system, Thailand will give three ASEAN new members, e.g. Cambodia, Laos and Myanmar, special import tariff preferential in three years beginning from 2007.

2.1.2 Import management regime

(1) Import control products

Ministry of Commerce in Thailand is responsible for the management of import and export permits. Ministry of Commerce identifies category of import control products, pursuant to Controlling Importation and Exportation of Goods Act, 1979. For those products, importation of which is under control, import permit application should be submitted to Ministry of Commerce. Those products, which are subject to import control, are generally posing direct competition for Thailand domestic products, currently there are at least 26 categories of products requiring import permit, including various raw materials, petroleum, industrial materials, textiles, medical products, pharmaceuticals, agricultural products etc.

(2) Prohibitive import products

Importation of second hand motor vehicles, parts and gambling machines are prohibited.

(3) Temporary prohibitive import notice

On April 28, 2006, Thailand Consumer Protection Committee Office announced a consumer protection committee decree on prohibiting the sale of correcting steel wire in Thailand. Contents of the decree include: temporarily prohibit the sale of fashion correcting steel wire in Thailand until the decree is repealed by Thailand Consumer Protection Committee; any person, who wants to sell, produce, order or import into Thailand this kind of product shall contact Thailand Consumer Protection Committee Office, to test and approve that its products will not harm consumers.

2.1.3 Export control regime

Main products under Thailand’s export control are rice, sugar, corn and other agricultural products. Some are regulated reserve products, especially food products like rice and sugar, export is permitted only after domestic demand is met first. Pursuant to export standards act 1979, exporting some products requires export permit.

Thailand levies export duty on small part of products, e.g. rice, animal skin, rubber, lumber, raw silk, iron sheet and fish meal.
2.1.4 Trade remedy system

Pursuant to Thailand Anti-dumping and Countervailing Act, Thailand Dumping and Subsidy Review Commission is responsible for the initial determination of dumping and subsidy, evaluating and levying temporary fines. Thai Minister of Commerce is responsible for reviewing the Commission’s recommendations. Department of Foreign Trade of Ministry of Commerce (Department for short) is responsible for dumping investigation and Department of Domestic Trade is responsible for damage investigation. Under the Department, Trade Benefit Protection Office is established for daily routine of Dumping and Subsidy Review Commission and for anti-dumping research, appeal, investigation, damage evaluation and material sorting out to report to commission.

2.2 Investment management system and its development

2.2.1 General regulations

Foreign Operated Business Act 1999 is the main law governing Thailand’s foreign investment, with foreign investment limit, permit requirement and various fees specifically regulated in it.

The appendix of the act divides foreign investment areas to be prohibited into three categories: the first category is the area clearly closed to foreign investment due to special reasons, there are 9 groups including publishing, radio and television; rice plantation, fruit and vegetable plantation and gardening; animal husbandry; forestry, wood processing of primeval forest; aquaculture and fishing within Thailand waters and Thailand economic waters; refinery of Thailand herbal medicine; sale and auction of Thailand antiques and national historic articles; manufacturing and casting of Buddha and monk’s mantle and alms and land sale.

The second category is the area in which foreign investment is strictly controlled; there are three groups in this category. The first group is the sector affecting national security and social stability, including manufacturing of arms and ammunition, various weapons and armament and domestic sea, land and air transportation; the second group involves Thailand culture and arts, traditional and folk handicraft, including manufacturing of wood carving and engraving, silk cloth and thread, Thailand instrument, gold, silver, copper, lacquer ware, pottery and plastery; the third group is sectors affecting natural resource or environment, e.g. salt industry (including underground salt), mining, sugar making, wood and furniture processing.

The third category is the area where Thailand is not competitive to foreign countries, including rice hulling, aquaculture, food and beverage marketing, accounting service, legal service, construction service, project service, advertising, hotel, and tour guiding.
If foreign investors are interested in investing in the second and the third categories areas, they must apply to Thai government for permit and approved by State Council and Business Registration Commissioner respectively. The review shall be completed within 60 days after submission of application. If necessary, review period can be prolonged by no more than 60 days. A permit shall be issued within 15 days after approval.

The above Act also made specific regulation on investment amount. The minimum capital investment of foreigners establishing business operation can not be less than 2 million Thai Baht(54,000 U.S. dollars); if investment belongs to the sectors listed in the appendix of the act and needs to be approved, the minimum capital investment can not be less than 3 million Thai Baht(81,000 U.S. dollars).

2.2.2 Investment promotion policy

In August 2000, Thai government divided Thailand into investment regions I, II and III according to its investment policy, each region enjoying different tax preferential policies respectively. Region I is composed of 6 central provinces, including Bangkok and its nearby 5 provinces; region II is made up of 12 provinces, namely periphery of region I; region III includes 58 faraway provinces in east, west, south and north directions with poor infrastructures. Thai investment committee will later on put forward follow up investment encouragement policy each year, to promote investment in target industries.

(1) Pharmaceutical industry

Medicine and medical industry is a key industry Thai government gives great push on. In December 2005, Thailand Investment Committee extended the scope of investment preferential measures given to medical industry. The new policy covers not only manufacturing of active ingredients, but also of finished medicines, e.g. medicine and vaccine for use of human beings and animals.

Import duties on machines and equipments will be exempted for the investment committee supported medicine projects. Meantime, 5 to 8 years corporate income tax exemption can be obtained depending on different project locations.

Thai government regulates all medicine manufacturers to achieve the medicine good manufacture practice of the international pharmaceutical inspection cooperation convention (PIC/S) by 2008, namely GMP standard; pharmaceutical companies which enjoy preferential policies are required to achieve the GMP standard with two years of operation.

(2) Three priority industries

On May 22, 2006, Thai Investment Committee approved extra investment encouragement measures for three priority industries, including:
Electronic industry: projects with investment over 30 billion Thai Baht and government priority investment activities will enjoy the maximum tax preferential and other funding measures, including establishing human resources fund and R & D fund.

Petrochemical industry: Companies producing basic preparation for sodium chloride, chlorine, caustic soda, hydrochloric acid and peroxide hydrogen in petrochemical industry will be given investment promotion preferential.

Automobile rubber tire industry: for expansions of projects in investment region I and II, tax exemption for importing machines will be provided, which also applies to the scale expansion of tire producers outside the regions. Previously, projects companies outside the regions were not entitled to such preferential measures.

(3) Open the door to investment in energy saving automobile industry

In November 2006, Thailand Investment Promotion Committee relieved the investment restriction on energy saving and environmentally clean automobile manufacturing. Specific requirements on investors include: detailed investment and operating plan is required, including automobile parts and engines manufacturing; investment production plan(no less than 5 years), automobile output at the fifth year can not be less than 100,000 vehicles; gasoline consumption of energy saving cars produced can not exceed 5 litres of fuel per 100 kilometers, emission standard must not be below the emission standard of Europe 4.

2.3 Management system related to trade and investment and its development

Thailand had a new visa regulation for transit visitors since October 1, 2006. New regulation allows transit visitors on the site visa to be renewed twice a year; for each visa, a visitor is allowed to stay up to 90 days.

Currently, Thailand gives citizens from 41 countries and regions including China, U.S. and India the treatment of transit “landing visa”. According to the new measures, citizens from 41 countries and regions, which are given “landing visa”, is allowed to stay up to 30 days in Thailand after the first landing visa is issued. Landing visa can be renewed twice at the most. Obtaining this visa, visitors are allowed to stay in Thailand up to 90 days.

2.4 Management measures targeted at specific products

(1) High carbon steel bar mandatory standard

In April 2006, Industry Standards Institute of Ministry of Industry in Thailand announced to implement mandatory standard towards high carbon steel bars. The standard covers high carbon steel bar used for producing hard drawn steel wire, hot rolled steel wire, prestressed concrete cold rolled steel wire, zinc coated wire
line and steel cable etc, but doesn’t cover steel wire for producing piano string. Thailand divides products into 21 kinds of codes by their chemical components, the standard specifies diameter tolerance, chemical component and exterior of each code. The standard also specifies labelling and tagging, sample and qualification norms and testing methods etc.

(2) Household washing machine safety requirements

In April 2006, Thailand Industry Standards Institute notified WTO of household washing machine safety requirements, regulating safety requirement of washing machines for household and similar use. Single phase rated voltage cannot exceed 250 V, and three phase rated voltage cannot exceed 480 V.

(3) Microwave safety requirements

In April 2006, Thailand announced microwave safety requirements, including microwaves with rated voltage not exceeding 250 V and safety requirement for composite microwaves.

(4) Optical cable norm


(5) Secondary cells and batteries containing alkaline safety requirements

In April 2006, Thailand notified WTO of Secondary cells and batteries containing alkaline or other non-acid electrolytes safety requirements for portable sealed secondary cells, and for batteries made from them, for use in portable applications. This standard specifies type approval, tests and requirements, safety device operation, marking and packaging for portable sealed secondary cells and batteries containing alkaline or other non-acid electrolytes.

(6) Standard for Harmful Dyestuffs in Fabrics

In April 2006, Thailand notified WTO of Fabrics: Safety from Harmful Dyestuffs and Chemical Substances. The ministerial notification specifies quality of fabrics, including woven, knitted or crocheted fabrics and non-woven made from whole natural fibres, man-made fibres and combined fibres, and safety from harmful dyestuffs and chemical substances, i.e. aromatic amines derived from azo colourants,
formaldehyde content, heavy metal particle, acidity, alkalinity and colour fastness; includes packaging, marking, and labelling, sampling and criteria for conformity.

(7) Synthetic Dyestuff Standard

In July 2006, The Thai Industrial Standards Institute announced a mandatory standard for synthetic dyestuff including sulphur dye and vat dye, replacing previous relevant standard. New standard specifies safety requirements i.e. hazardous aromatic amine, free aromatic amine and heavy metal content; prescribes moisture content (if in solid form), colour difference, colour fastness to artificial light (xenon arc lamp) and washing; and includes packaging, marking and labeling, sampling and criteria for conformity and testing.

(8) Food safety standard

In January 2006, Thailand launched the first food safety standard, regulating livestock, poultry and poultry carcasses to be sold in market must be verified by quality certification authority and with a green “Q” as a safety label. Pork, beef, chicken and egg in Thailand shall be the first be undertaken quality certification.

(9) Sanitary requirements concerning aquatic animal

On March 27, 2006, Thailand Department of Fisheries (DOF) specifies: facilities of Thai aquatic animal farms or companies have to achieve the quarantine standard of the DOF before receiving an import permit; the imported animals and their gametes must be accompanied with Certificate of Origin and Health, the health certificate must be issued by competent authority or authorised laboratories and signed by veterinarian, authorised officer or inspector; aquatic animals will be quarantined for at least 21 days. Fish health inspectors will examine the animals for diseases listed in the OIE, koi herpesvirus and other contagious pathogens. DOF will begin to use the new model of health certificate since May 1, 2006.

(10) Food Standard regarding Chemical Contamination

In May 2006, the Office of Food and Drug Administration of Thailand proposed Food Standard regarding Chemical Contamination, “Malachite Green and its salts” is added to the existing lists of prohibited substances on food.

(11) Regulation proposal on food in sealed containers

To prevent container food from contaminating, in July 2006, the Office of Food and Drug Administration of Thailand published Notification proposal No.144. The proposal specifies bacteria standard and treatment method pertaining to low acid food in sealed containers with different PH levels.

(12) Dairy processing management standard
In June 2006, the Office of Food and Drug Administration of Thailand published dairy processing management standard. It proposes to regulate the dairy processing in particular ready to eat products in liquid from through pasteurization in line with Good Manufacturing Practice(GMP) under which establishment and location, processing equipments, sanitation, personal hygiene, and record and reporting shall meet requirements as stipulated therein. Transitional period is provided for one year upon the effective date of this proposal.

(13) Plant pests and carriers related regulation

In August 2006, Ministry of Agriculture published notification draft concerning plant pests and carriers. The draft notification provides lists of plants and products thereof from any source as prohibited articles with some exemptions and conditions, in particular for those to be withdrawn from prohibited lists must be justified by Pest Risk Analysis(PRA). Transitional Period is also provided for historically imported products over the last 5(five) years before the effective date of this provision whereas the import is granted further pending the completion of pest risk analysis. the NPPO of the concerned countries shall request for import permit together with supportive evidence of afore mentioned trade within 60(sixty) days after the enter into force of this notification. The products covered under trade obligations committed by the government before the effective date of this provision is granted to further import unless there is evidence proved to be otherwise. The proposed date of entry into force is one day after being officially notified.

(14) Snack foods labeling requirement

In October 2006, Thailand published snack foods labeling requirement, involving potato chips, corn chips, rice chips, biscuits, stuffed wafers and other snack foods determined by the Food Commission at a latter stage as deemed necessary and notified under the Thai FDA Notification accordingly. It regulates specific labelling requirements for that particular food, where the word content of “Children Should Take Less” with letter size of 5 mm in red color in white background box be affixed on the Label in addition to those requirements; nutritional labelling as required under relevant provisions regarding both cholesterol(at least 2 mg/eaten unit) and other nutritional claims; labelling of nutritional symbols for nutrient contents of energy, sugar, fat and sodium salts to be shown in traffic light like colour forms altogether with legible letters within a rectangular box, where the green is for low nutrient content, the yellow for moderate nutrient content and the red for high nutrient content, the criterion for each nutrient is also provided therein. The transitional period for compliance with the new provisions is one year.

3. Trade barriers

3.1 Tariff and tariff management measures
3.1.1 Tariff spikes

High tariff is still the major barrier for some Chinese products to enter Thailand market. Products with high tariffs include agricultural products, automobile and auto parts, spirit and beverage, textile, paper and paper board products and some electronic products.

Import duty of instant food products in Thailand is 30%—50%, which is the highest in ASEAN countries. Coffee import duty is as high as 90%. Duties on meat, fresh fruits and vegetables, fresh cheese and beans (dry pea, small lentils and chickpea) are fairly high as well. Thailand levies high tariff on products which are seldom made domestically, e.g. Thailand levies 30% import duty on frozen fries.

Some products in Thailand have fairly high excise tax, e.g. unleaded petrol, beer, wine, distilled spirit etc. Adding duty, excise tax and other extra fees together, total tax levied on whisky reaches 169%, 400% on import wine. Excise tax on wine is 60% or 100 Baht per liter (3 U.S.dollars). For ferment wine made of fruit other than grape, namely mangosteen, excise tax is 25% or 75 Baht per liter (2 U.S. dollars), whichever is the higher.

3.1.2 Tariff escalation

Tariff escalation exists in Thailand, unfinished and intermediate products have a higher tariff than finished products. Thailand levies 5% of tariff on most primary products, 10% on intermediate products and 20% on finished products generally and 30% on those special goods which need protection.

3.1.3 Tariff related quota

Thailand implements tariff related quota management on 23 kinds of agricultural products including longan, coconut meat, milk, cream, potato, onion, coconut, coffee, tea, dried pepper, corn, rice, bean, onion seed, soya bean oil, soya bean cake, sugarcane, coconut oil, palm oil, instant coffee, pipe tobacco and raw silk etc. Low tariff is implemented within the quota and high tariff is implemented outside the quota. e.g. import quota for corn is 5.444 million tons, tariff within the quota is 20%; tariff above the quota is as high as 73.8%.

China will closely follow the process of tariff concessions in Thailand, hope it can open the agricultural market which is under tariff quota management as soon as possible.

3.2 Import control

3.2.1 Import permit

Currently, Thailand still imposes import permit management on at least 26 categories
of products, including many raw materials, petroleum, industrial material, textile, medicine and agricultural products. Importation of food, pharmaceutical products, minerals, armaments and work of art needs special permit of relevant authorities.

Fairly high fees need to be paid for obtaining import permits of meat products. Beef and pork import permit fee is charged at 114 U.S dollars per ton, poultry import is 227 U.S dollars per ton and 114 U.S dollars per ton for importing viscera. These requirements largely add to import costs. Thailand import permit management is one major barrier for certain foreign products to enter it.

3.2.2 Seasonal import control

Although Thai government relatively opened import of forage material in assurance of permit, e.g. corn, bean, and bean pulp, other requirements are added in issuing permits. For example, import of corn can only be done in March and June each year. This seasonal control is not in line with WTO regulations and hinders normal development of international trade.

3.3 Technical trade barriers

3.3.1 Food and drugs import verification

Thailand Food and Drugs Administrative Office specifies all food, tobacco, cosmetics, medicine, forage, fertilizers, animal and plant, seeds, medical equipment, mental medicine, volatilizing material must obtain import certification before import. Designated food storage shall be inspected by FDA before being put into use. Food import permit shall be renewed every three years. The certifying process can be fairly complex, requiring sealed by economic and commercial office of the Chinese embassy in Thailand; documents shall be charged again when reaching FDA, time consumed can amount to one year. Drug import permit shall be renewed every year, equally involving certain fees. The above regulation posts unnecessary barriers for the export of relevant Chinese products.

3.3.2 Mandatory certification

Thailand requires 78 categories of products in 10 industries to be verified by mandatory standards, including agricultural products, building material, consumer goods, electronics and accessories, PVC pipes, medical equipment, liquefied petrol gas cylinder and motor vehicles etc. In addition, Thailand implemented new mandatory standards with inadequate preparation and inadequate testing and inspecting devices, causing untimely customs clearance and losses to exporters.

3.4 Sanitary and phytosanitary measures

3.4.1 Food chemical additive testing
Thai FDA began to implement food safety testing new regulation since 2005 April, all food imported are subject to various chemical additive testing. Furthermore, Thailand specifies all processing food should provide detailed component list and production course. These regulations add to importers burden and Thailand did not provide risk assessment basis of the regulation.

3.4.2 High risk food import certificate of health

Thailand notified WTO on February 8, 2006, specifying import of high risk food shall be accompanied by certificate of health issued by authorities in producing countries or officially recognized organizations. If it is proved that no such organization in producing country can provide certificate of health, importers can apply to domestic organization recognized by Thai FDA for the certificate. High risk food products range shall be identified by risk assessment of Thai FDA. Unspecified products range and food names by Thai government pose uncertainty to relevant products. China expects Thailand to clarify relevant regulation, undertake full risk assessment and scientifically single out high risk food according to the assessment.

3.5 Government procurement

Thailand didn’t sign WTO agreement on government procurement. Though Thai regulation on government procurement specifies non-discriminative treatment to other countries and open competition to all bidders, in actual practice, Thai domestic corporations are automatically entitled to 15% price preferential during the first round of bidding price assessment. Government procurement authorities can accept or decline some or all bids at any time, they can even change technical requirements in the course of bidding, which largely affect and control bidding results. These practices put foreign companies including Chinese companies in an unfair status in bidding.

Furthermore, pursuant to Thai regulation, for each government procurement contract with the value over 300 million Baht or 7.7 million U.S. dollars, foreign winner of bidding must buy back Thai products with the value no less than 50% of the contract. This kind of regulation adds to the operating cost of foreign winner companies.

China expresses its concern over the above Thai practice and expects Thai authorities to create a fair and open trade environment for government procurement tendering.

3.6 Trade remedy measures

Thai Anti-dumping and Countervailing Act is not completely transparent and fair. Department of Foreign Trade of Ministry of Commerce Many is responsible for explaining specific requirements and procedures in many terms of the Notice on Levying Anti-dumping and Countervailing Duties 1995. Anti-dumping and Countervailing Act was enacted in July 1999, however, the Department of Foreign Trade of Ministry of Commerce hasn’t put up detailed explanation on many terms in the act. This kind of legal lagging behind gives relevant Thai agencies too much
freedom of arbitration. Though the act is compatible with WTO GATT 1994 Section 6 agreement, Thai government hasn’t provided others with the English version of the act yet.

Since 1995, Thailand has in all launched 6 anti-dumping investigations towards China. In 2006, 3 new anti-dumping investigation were targeted at China, including rolling bar, glass brick and oxide zinc.

3.7 Export subsidy

Thailand still keeps some programs for supporting some specific industrial products and agricultural products processing trade, including various tax preferential, exemption of import duty, below market interest rate of credit can be obtained in trading Thai rice between government ministries, and special financing treatment given to exporters. All these constitute to export subsidy. China will continue to follow the dynamics of Thailand government export subsidy measures.

3.8 Service trade barriers

3.8.1 Telecommunications service

In 2005, though Thai government carried out reform of telecommunication sector and made great progress, foreign investors are still subject to certain qualification limit in entry of Thai telecommunication sector.

Thailand has a limited openness to telecommunications area. Thailand National Telecommunications Committee telecommunication priority plan for 2005—2007 specifies three kind of standards in which telecommunication permit is required.

Currently, mobile phone service in Thailand is dominated by three private Thai companies, all of whom have established certain contacts with foreign investors. However, majority market share of fixed phone service and international long distance phone service are still controlled by state owned TOT and CAT companies. Thai government expressed interest in partially privatizing these two state owned enterprises, specific policies and measures are yet to be seen.

3.8.2 Post service

In 2002, long term loss Thailand Post was restructured into Thailand Post Corporation by Thai government and kept dominating post service in Thailand. After 2004, private companies were allowed to provide limited service, e.g. companies can establish mail receiving networking points and provide sorting service in certain areas, they are not allowed into mail delivery service. Thai government set up long term post plan to ensure Thailand Post Corporation can dominate mail delivery until 2012. After full opening up of market in 2012, private companies will be allowed to free pricing and mail delivery. Currently, private delivery service companies are charged 37 Baht(1
U.S. dollar) per parcel, including mail fee and fines for violating mail service monopoly. Monopoly operation in Thailand post industry violates the rule of fair competition and pose limit to foreign companies access. China is concerned about openness of Thailand post industry.

3.8.3 Financial sector

Though Thai government took liberalization measures for foreign investment access to financial sector after the financial crisis, there is still much limitation exists. For example, foreign investors are allowed into agent services, however, Thai securities companies with foreign proportion over 49% still need an individual approval.

Foreign investors can hold at most 25% shares of Thai banks. Thai Central Bank drafted and approved financial sectors management plan, specifies that central bank will raise the proportion to 49% whenever it “thinks appropriate”. The plan also requires all Thai deposit agencies to be retail or commercial banks. Thai bank specified that no new banking license will be issued before Thai bank market conditions are ready for more competition.

Currently, foreign banks are disadvantaged in the competition with Thai domestic banks. Only one branch is allowed for foreign banks and long distance ATM service is prohibited, otherwise it will be treated as opening branches. Foreign banks must spare at least 125 million Baht(3.1 million U.S. dollars) value of capital to buy Thai government bonds or SOE bonds or directly deposit in Thai banks.

3.8.4 Construction

Thailand keeps its construction contract market conditionally open. Construction is not in the list of encouraged investment. Thai government strictly approves even does not approve those foreign applications of establishing representatives, offices and non-profit organizations in Thailand. Foreign companies generally need local partners when they get local registration and operation, foreign ownership can not exceed 49%. Thailand also has strict restriction on foreign contractors introducing operational management personnel. Generally speaking, for companies with registered assets over 100 million Baht, they have to employ four local workers when bringing in one foreigner; for those with registered assets below 100 million Baht, they have to employ five local workers when bringing in one foreigner. There is tough restriction on bringing in labor of general kind. Foreign companies can only undertake infrastructure projects with foreign capital over 500 million Baht(13.5 million U.S. dollars). Projects within government budget are not contracted to foreign companies usually. Foreigners are banned from engineer or architect occupation, they are only allowed for counseling in this field.

3.8.5 Transportation
Foreign ownership can not exceed 49% in road transportation by Thai regulation. Multi Combined Transportation Act 2005 poses new barrier to transportation service trade and causes uncertainty to foreign shipping companies business. The act requires foreign shipping companies, when doing multi combined transportation service in Thailand, to form companies in Thailand or designate a Thai agency. Otherwise, heavy fines shall be laid, including 50,000 Baht ($1,350 U.S.dollars) fine for every contract. China expects Thailand to abandon restrictions on foreign shipping companies in the following implementation regulation.

3.8.6Legal service

Foreign ownership can not exceed 49% of Thai law firms by Thai regulation. Foreign lawyers are banned from practicing in Thailand and are only allowed for legal counseling.

3.8.7Accounting

Foreigners are not eligible for Thailand Registered Accountant Permit, such they can not provide accounting service in Thailand. Foreign accountants can only provide service for business consultant.

3.8.8Medical care

Thai government tightly control medical care service market access(e.g. hospitals, clinics, and health checkup). Thai government medical care agencies do not need to get registered like other private agencies. While government medical care agencies are not subject to safety testing before directly producing and selling popular OTC of foreign market.

3.8.9Labor

Thailand imposes strict market access system on foreign labor. Foreign labor with common skills is strictly banned from entering Thai market. Only after Thailand can not find technically skilled workers and management personnel, foreigners can apply to Ministry of Labor for work permit and find local employment.

4.Investment barriers

4.1Foreign access restriction

Thai Foreign Operated Corporation Act makes framework regulations on foreign investment in Thailand. Many sectors are banned from foreign investment.

Article 15 of the Act specifies foreigners must meet the following two qualifications to work in sectors involving national security, culture and arts and affecting natural environment, regulated in Appendix Group 2 of the Act. Thais or non foreigners, as
regulated by the Act, own no less than 40% capital of foreign legal companies (unless appropriate reason stated, Minister of Commerce can loose the above ownership shares appropriately to at least 20% by cabinet resolution); Thais own no less than two fifth positions within the boards of foreign operated corporations.

Foreign Operated Corporation Act covers some projects subject to special permit, which is hard to obtain, unless they are in practice special projects agreed upon through governmental negotiations between two countries.

4.2 Amendment of foreign investment act

On January 9, 2007, Thai cabinet “principally” agreed to amend foreign investment act and restricting foreign investor ownership or voting rights not more than 50%, which means, once put into actual application, foreign companies with over 50% share ownership shall reduce their ownership within one year; foreign companies with over 50% voting rights shall reduce their voting rights within two years.

The amendments will force foreign investors to sell some share of Thai companies to Thai investors at a low price. Foreign investors are concerned about this. China holds the practice from Thailand is not in accordance with the trend of trade and investment liberalization.
The European Union

1. Bilateral trade and investment

In 2006, the European Union (EU) retained its position as China’s top trading partner and was also the third largest investor in China, while China was the second largest trading partner of the EU (after the United States). According to China Customs, the bilateral trade volume between China and the EU in 2006 topped US $280.48 billion, up 29.1% over the preceding year, among which China’s exports to the EU jumped by 32.1% to arrive at US $189.85 billion, whereas China’s imports from the EU totaled US $90.63 billion, an increase of 23.1% year on year. China ran a surplus of US $99.22 billion in its trade with the EU. China mainly exported to the EU electrical appliances, electronic products, machinery, wool and textile products, knitwear, toys, furniture, footwear, optical and photographic equipment, leather products, bags and cases, iron and steel products, plastics, and organic chemicals. China’s imports from the EU included, among others, machinery, electrical appliances, electronic products, aircraft, automobiles and auto parts, optical, photographic and medical equipment, plastics, organic chemicals, iron and steel products, copper and copper products.

According to the figures released by China’s Ministry of Commerce (MOFCOM), by the end of 2006, the accumulative turnover of engineering contracts and labor service cooperation contracts completed by Chinese firms in the EU had stood at US $4.92 billion and US $1.3 billion respectively.

Upon the approval or on the record of MOFCOM, China’s non financial direct investment in the EU hit US $130 million in 2006. The EU invested in a total number of 2,770 projects in China in 2006, with a contract investment of US $10.66 billion and an actual utilization of US $5.41 billion. By the end of 2006, the EU had accumulatively invested in 25,450 foreign direct investment (FDI) projects in China, with a committed contractual investment of US $98.03 billion and an actual invested capital of US $53.19 billion.

2. EU’s trade and investment regime

The process of economic integration in the European Community (EC) began in the 1950s. In July 1968, a customs union was established among the EC members. Their move towards a Single European Common Market was basically completed in 1993. Euro (EUR), Europe’s single common currency, was officially launched on 1 January 1999, marking the establishment of the European Economic and Monetary Union among the members of the EU.

On 1 May 2004, the EU was expanded to comprise 25 members, with full
membership extended to 10 countries, namely, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. On 1 January 2007, Romania and Bulgaria became members of the EU, increasing its membership to 27 countries. In addition, the EU has entered into accession negotiations with Croatia and Turkey.

In October 2004, the Heads of State or Government of the 25 EU Members States signed in Rome the Treaty establishing a Constitution for Europe, a decisive step towards ever closer European integration based on a Constitution. However, the proposed Constitution was rejected by the people of France and the Netherlands in a referendum on 29 May and on 1 June 2005 respectively. At the EU summit meeting in mid June 2005, leaders of the EU Member States decided to suspend the ratification process of the Constitutional Treaty and to extend the deadline for its ratification. By December 2006, 16 EU Member States have ratified the Treaty: Lithuania, Hungary, Slovenia, Spain, Italy, Greece, Slovakia, Austria, Germany and Finland.

The EU has gradually developed and improved a wide range of common policies during the process of integration over the past five decades, and among them, those closely related to trade include the Common Commercial Policy, the Common Agricultural Policy, the Common Fisheries Policy, and the Common Consumer Protection policy.

2.1 Trade administration regime and its recent developments

2.1.1 Tariff administration

The EU adopts a common customs tariff policy, implementing uniform tariff rates and tariff administration. Council Regulation(EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff lies at the foundation of the EU tariff administration. The EU publishes as a Commission Regulation every year an amended tariff rates schedule. On 17 October 2006, the EU released Commission Regulation(EC) No 1549/2006 amending Annex I to Council Regulation(EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, effective as from 1 January 2007. The mean tariff rate of the EU currently stands at 4.2%, with a simple average tariff rate of 4.0% for non agricultural products.

sterile surgical or dental adhesion and appliances for ostomy use formerly classified in different chapters of the Combined Nomenclature(CN) are to be classified in Chapter 30 of the CN, and after 1 January 2007, these products, originally subject to a 6.5% rate of duty, are extended a suspension of duties for an indefinite period.

The EU published Commission Regulation(EC) No 215/2006 on 8 February 2006 and Commission Regulation(EC) No 402/2006 on 8 March 2006, both of which amended Regulation(EEC) No 2454/93 laying down provisions for the implementation of Council Regulation(EEC) No 2913/92 establishing the Community Customs Code. The two Commission Regulations, which entered into force as of 19 May 2006 and 1 June 2006 respectively, provide for specific rules for the determination of customs value of perishable goods and specific methods to be used for determining the net weight of fresh bananas. On 18 December 2006, the EU released Commission Regulation(EC) No 1875/2006 amending Regulation(EEC) No 2454/93 laying down provisions for the implementation of Council Regulation(EEC) No 2913/92 establishing the Community Customs Code. This amendment is designed to introduce a number of measures to tighten security for goods leaving or entering the customs territory of the EU, for example, the analysis and electronic exchange of risk information concerning imports and exports of EU members under a common risk management framework, and the granting of the status of authorized economic operator to reliable economic operators who meet certain criteria and who are to benefit from simplifications provided for under the customs rules and/or facilitations with regard to customs controls.

After accession to the EU of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, the EU adjusted its customs concessions and customs quotas accordingly. On 20 March 2006, the EU released Council Regulation(EC) No 838/2006, announcing the implementation of its agreement with China concerning its customs modifications.

On 9 January 2007, the European Commission passed a proposal, announcing the cuts in import tariff rates for unwrought non-alloyed aluminum in two phases. As of 1 January 2007, the rate will be reduced from 6% to 3%; as from 1 January 2009, the rate will be bound at zero. At present, the bill is yet to be ratified by the EU Member States.

2.1.2 Import administration

principles of import licensing administration, and procedures for administrative
organization of the markets in processed fruit and vegetable products lays the
groundwork for the administration of agricultural products.

introducing a system of import licenses for apples imported from third countries. The
Regulation requires that importers of apples submit import license applications to the
competent authorities in any EU Member States, lodge with their applications a
security of EUR 15 per tonne, and guarantee compliance with the commitment to
import during the term of validity of the import license.

In the light of perceived threat of injury of steel imports to EU steel producers, the EU
continuing prior Community surveillance of imports of certain iron and steel products
originating in certain third countries. The Regulation extends prior surveillance over
imports of steel products from 31 December 2006 to 31 December 2009. In order to
minimize unnecessary restraints and not disturb excessively the activities of
companies close to the borders, the Regulation provides that imports whose net
weight does not exceed 2,500 kilograms be excluded from the scope of prior
surveillance.

2.1.3 Export administration

the export of cultural goods contain legal provisions for the EU to administer exports.
The EU only subjects a very small number of products to tight export controls. In
June 2000, the EU published Council Regulation(EC) No 1334/2000 setting up a
Community regime for the control of exports of dual use items and technology,
which strengthens export controls over invisible products such as software and
technology and the transmission of software and technology by means of electronic
media, fax and telephone.

amending and updating Regulation(EC) No 1334/2000 setting up a Community
regime for the control of exports of dual use items and technology. To fulfill
international obligations of the EU and its Member States for the non proliferation
of nuclear weapons, the EU updated the list of dual use items and technology
annexed in the Regulation(EC) No 1334/2000, according to the changes made by
international organizations such as Australia Group(AG), Missile Technology Control
Regime(MTCR) and Nuclear Suppliers Group(NSG) in the export control rules for
conventional weapons and dual use items and technology and according to the
spirit of international conventions such as Wassenaar Agreement.

On 19 December 2006, the European Commission presented a proposal to the Council
of the European Union(formerly known as the Council of Ministers) on setting up a Community regime for the control of exports of dual use items and technology, intended to replace the export control regime that was put in place in 2000. The proposal represents a major revision of existing regime of controlling exports of dual use items and technologies, which aims to (1) strengthen EU security through a more effective control regime of dual use exports against the backdrop of the enlargement of the EU to 27 member countries,(2) improve surveillance environment and enhance the international competitiveness of the EU dual use items, and (3) cooperate more closely with countries outside the EU to toughen control of the export of dual use items and technologies. Currently, the European Council is deliberating the proposal.

2.1.4 Generalized System of Preferences

The Generalized System of Preferences(GSP) of the EU is implemented by means of Council Regulations following cycles of ten years. The old GSP scheme expired at the end of 2005. On 27 June 2005, the EU published Council Regulation(EC) No 980/2005, which went into effect on 1 January 2006 and made significant revisions to Council Regulation(EC) No 2501/2001 applying a scheme of generalized tariff preferences for the period from 1 January 2002 to 31 December 2004. The features of the new GSP scheme are summarized as follows:

Firstly, the new scheme reduces the number of GSP arrangement categories from five to three. The second GSP arrangement category, i.e., the special incentive arrangement for sustainable development and good governance(known also as “GSP plus” or “GSP+” incentive), has already applied as from 1 July 2005. The other two GSP arrangement categories are the general arrangement and the special arrangement for the least developed countries(LDCs) also known as the “Everything But Arms”(EBA) initiative.

Under the general GSP arrangement, sensitive products benefit from a tariff reduction of 3.5 percentage points on the most favored nation(MFN) rates, while non sensitive products enjoy duty free access to the EU market. The “GSP plus” arrangement waives all import duties on goods originating in the beneficiary countries. However, to be eligible for “GSP plus” arrangement, the beneficiary should, among the many other conditions, be an especially vulnerable low income country highly dependent on foreign trade of a very limited number of products. The EBA arrangement grants duty free access to imports of all products from the world’s 50 poorest countries, except arms and munitions.

Secondly, the new scheme expands the range of products covered by the GSP. The coverage under the general GSP arrangement has increased from about 6,900 products to about 7,200 products in the new scheme, the new additions coming mostly from the agriculture and fishery sectors.

Thirdly, the new scheme provides a simpler mechanism for “graduation”(exclusion
from the GSP). The old criteria (share of GSP imports, development index and export specialization index) have been replaced with a single straightforward criterion: share of the Community market expressed as a share of exports from GSP countries. This share would be 15%, with 12.5% for textiles and clothing respectively.

According to the new GSP scheme, the EU will assess in 2008 the market share of GSP imports to determine whether a particular product can be graduated from the scheme, except in the case of textiles and clothing which will be reviewed annually to closely monitor the possibility of sharp increases in textile and clothing exports.

According to Council Regulation(EC) No 980/2005 of 27 June 2005 applying a scheme of generalized tariff preferences, products originating from China in 68 chapters and 15 tariff headings under Tariff Headings Nos.6 to 20 in the Harmonized Commodity Description and Coding System(HS) have, as from 1 January 2006, graduated from the EU GSP and no longer benefit from preferential tariff treatments from the EU. These products involve chemicals, plastics, rubber, metals and metal products, wood and articles of wood, textiles, footwear, machinery and mechanical appliances, and vehicles. Currently, of all the exports to the EU from China, only agricultural and mineral products are still placed in the GSP arrangement.

2.1.5 Trade remedies


The EU is currently contemplating amending its legislations regarding trade defense mechanism. On 6 December 2006, the EU published on its official website a Green Paper(COM(2006) 763 final) reviewing its trade remedy policies and seeking public opinions. The Green Paper falls into six themes: the role of trade defense in a changing global economy, the weighting of different EU interests in trade defense investigations, the launch and conduct of trade defense investigations, the form, timing and duration of trade defense measures, the transparency of trade defense investigations, and the institutional structure of trade defense investigations. And comments are invited from all interested parties on the questions raised in this Green Paper.

2.1.6 Competent trade authorities and their changes

Currently, for the EU to formulate a common trade policy (including negotiations of bilateral, regional and multilateral trade agreements) vis-à-vis non-member
states, the European Commission should present a drafted proposal in the first place. The European Council (in some cases jointly with the European Parliament) makes a policy decision after consultations with the Article 133 Committee. When the European Commission drafts a proposal for Community trade policy, the Directorate General for Trade (DG Trade) will work closely with experts from designated departments of the EU Member States, while seeking opinions of various stakeholders, in particular, business circles and intermediary agents.

On 1 January 2007, the European Commission’s DG Trade was restructured, currently with 9 Sections and 27 Departments. Five regional departments were newly added, namely, Trade Relations with the Far East, Trade Relations with the Americas, Trade Relations with Euromed and the Middle East, Trade Relations with Europe (non-EU) and Central Asia, and Trade Relations with South Asia, Korea and ASEAN. The Department of Trade Relations with the Far East is in charge of EU-China trade matters. In addition, a new Department of Industrial Sectors was set up, administering external trade in iron and steel, shipbuilding, chemicals, hard coke, automobiles, textiles and footwear. The number of departments under the Trade Defense Section has been increased from 5 to 6.

2.2 Investment administration regime and its recent developments

The Treaty establishing the European Community provides that policy decisions on investment be kept within the competence of each of the Member States. The Treaty establishing a Constitution for Europe signed by the leaders of the 25 Member States in Rome in October 2004 made amendments concerning investment policies, integrating the administration of foreign direct investment (including foreign investment inflow and outflow), currently under the discretion of EU Member States, into the EU common commercial policy. When the Treaty establishing a Constitution for Europe is ratified, regulation on foreign investment will be transferred from the Member States to the EU, enabling the latter to formulate uniform legislations and to sign international agreements on foreign investment. Although the Treaty is yet to take effect, the general trend remains that the EU is increasingly powerful in deciding and exercising EU-wide foreign investment policies.

On 6 February 2006, the European Commission issued a drafted directive promoting the liberalization of the EU financial service sectors. The proposed directive is designed to provide facilitations to cross-border securities investment within the EU and foster competition between banks and stock exchanges in related areas. The envisioned directive provides that investment firms be entitled to cross-border transactions within the EU and only subject to the supervision of the respective competent authorities of their home countries. On the other hand, the directive allows banks to provide their clients with services in securities transactions, thereby enabling banks to compete directly with stock exchanges in securities business. The directive also sets down new standards for trade transparency and consumer protection. The directive is to be reviewed by the European Parliament and the EU Securities Committee.
2.3 Trade and investment related administration and its recent developments

2.3.1 Common agricultural policy

The common agricultural policy (CAP), first proposed in the Treaty establishing the European Community, is the earliest of all the common policies adopted by the EU, which underlines the importance the EU has attached to agriculture. The European Commission formally proposed a scheme for setting up a CAP on 30 June 1960, which has been implemented since 1962.

On 20 February 2006, the EU published Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy. Pursuant to the Regulation, the EU agrees to a 36% cut in the guaranteed minimum sugar price within 4 years beginning from 1 July 2006, while providing compensation to sugar farmers for their losses incurred. The EU will also establish a Restructuring Fund to encourage sugar producers to switch to other crops. The EU estimates that following the reform in the EU sugar regime, the annual EU sugar production will fall to 6 to 7 million tonnes, thereby reducing the EU exports of sugar and increasing EU imports of sugar from least developed countries.

2.3.2 Common fisheries policy

According to the common fisheries policy (CFP), the EU decided to extend, as of 1977, its common fishing waters to 200 miles from their coasts in the North Atlantic and the North Sea, which are subject to the unified administration of the EU. The EU Member States authorize the European Commission to negotiate fishing agreements with third parties. The CFP of the EU essentially took shape in 1983, regulating the distribution of fishing quotas among the EU Member States, the conservation of fishery resources and the marketing of aquaculture products.

On 19 June 2006, the EU approved its new fishing support program. According to the program, the EU will set up a European Fisheries Fund (EFF) with a budget of EUR 3.8 billion for the next 6 years (2007—2013) to replace the Financial Instrument for Fisheries Guidance (FIFG), which expired at the end of 2006. The new fishing support program will help to modernize and restructure the EU fishing and aquaculture industry, increase the value that the sector adds to its products through investments in processing and bringing fish to the market, and encourage coastal regions to pursue fish farming and other activities to substitute for fishing.

To implement consistently and effectively the CFP of the EU, the EU published on 26 April 2005 Council Regulation (EC) No 768/2005 establishing a Community Fisheries Control Agency (CFCA). According to the Regulation, the CFCA is designed to coordinate fishing control and inspection among Member States.
2.3.3 Common consumer protection policy

Article 153 of the Treaty establishing the European Community serves as the legal basis for the EU common consumer protection policy, which states, “In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organizing themselves in order to safeguard their interests.” It also provides that consumer protection requirements shall be taken into account in defining and implementing other EU policies. Apart from implementing the common consumer policy, the EU Member States may introduce more stringent protective measures on condition that such measures are compatible with the Treaty establishing the European Community and the European Commission is notified of them.

On 18 December 2006, the EU released Decision No 1926/2006/EC of the European Parliament and of the Council establishing a program of Community action in the field of consumer policy (2007—2013). The Decision confirms that the objectives of the EU action program in consumer protection policy are to improve, support and supervise consumer policies in the EU Member States, and to contribute to protecting the health, safety, and economic and legal interests of consumers, promoting their right to information and education and organizing themselves in order to safeguard their interests. The Decision provides in its annex a list of 11 joint actions and instruments to achieve the set objectives.

The program of Community action in the field of health and consumer protection (2007—2013) supplements and supports the policies of the EU Member States and helps to improve health and safety as well as protecting the economic interests of citizens. Health policy and consumer policy in the EU share three key objectives: protecting citizens from risks and threats which are beyond the control of individuals, increasing the capacity of citizens to take better decisions about their health and interests as consumers, incorporating health and consumer policy objectives into all policies.

2.3.4 Policy on services in EU internal market

On 12 December 2006, the EU issued Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market. The Directive aims to remove barriers to the development of intra EU trade in service, establish a genuine common market for services within the EU, and boost the worldwide competitiveness and viability of EU service providers. It requires the Member States to ensure free access to and non discriminatory treatment in their services markets, dismantling the restrictions that cross border service providers should open branch offices in their places of operation and that they should pass through authorization procedures by the local authorities. However, the Directive includes a number of exclusions, for example, services such as financial services, private security services, notary services, education, healthcare services, and social services do not fall within
the scope of the Directive. The Directive adopts the rule of operating country, abandoning the much controversial rule of original country in the drafted proposal released in February 2006 (i.e., cross border service providers only abide by the regulations of the country where their registered offices are located, and not those of the countries where they operate). The Directive demands that Member States bring into force the laws, regulations and administrative provisions to comply with the Directive before 28 December 2009.

2.3.5 Intellectual property protection

Legal framework for the protection of intellectual property rights (IPR) varies in the EU Member States. Currently, the major legislation of the EU protecting and defending IPR related to international trade is Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights. The Regulation lays down specific provisions regarding customs interventions against imports and exports suspected of violating IPR. According to the Regulation, customs protection of IPR covers trademarks, copyrights, patents, pant variety rights, designations of origin and geographic indications. IPR holders, authorized users, and representatives of right holders or authorized users are all entitled to lodge an application with the customs authorities for actions and measures against goods suspected of IPR offences. The Regulation went into force on 1 July 2004.

2.3.6 Updating and improving the 1985 China-EU Trade and Economic Cooperation Agreement

The Chinese and the EU leaders released in Helsinki, Finland on 9 September 2006 a Joint Statement of the Ninth China-EU Summit, announcing that the two sides had agreed to launch negotiations on a Partnership and Cooperation Agreement (PCA) and to update the 1985 China-EU Agreement on Trade and Economic Cooperation. On 7 December 2006, the 21st China-EU Trade and Economic Joint Committee meeting was held in Beijing. The two sides exchanged views in a practical and business-like manner on a wide range of issues such as improving the 1985 China-EU Trade and Economic Cooperation Agreement, EU economic and trade policy paper towards China, strengthening intellectual property protection, China’s market economy status, EU anti-dumping investigation against China’s footwear exports, auto parts disputes, intensifying department-level dialogues, and the development of cooperation. At the end of the meeting, the two sides announced that they had reached eight-point consensus in economic and trade relations between China and the EU.

2.3.7 Deepening China-EU customs cooperation

On the occasion of the Second Session of the Joint EU-China Customs Cooperation Committee (JCCC) on 19 September 2006, China and EU arrived at an agreement on the launch of a pilot scheme creating “smart and secure trade lanes” to facilitate and
secure commercial exchanges between China and the EU. The two sides will give mutual recognition of each other’s safety standards and authorizations of economic operators, and collaborate to improve information exchanges and risk assessment by means of the latest technologies aiming at ensuring smooth and prompt customs clearance. The pilot project initially involves the ports of Rotterdam (the Netherlands), Felixstowe (UK) and Shenzhen (China). However, if it is met with success, the scheme could be gradually expanded to cover the entire EU.

2.4 Product specific measures

2.4.1 Technical regulations

2.4.1.1 Directive on reuse, recycling and recovery of end of life vehicles
According to Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end of life vehicles, the EU Member States will adopt the necessary measures of their own accord to ensure that the following targets are attained: By 1 January 2006 at the latest, the reuse and recovery of end of life vehicles shall be increased to a minimum of 85% by an average weight per vehicle and year; the reuse and recycling of vehicle components shall be increased to a minimum of 80% by an average weight per vehicle and year. No later than 1 January 2015, the rate of reuse and recovery of end of life vehicles and the rate of reuse and recycling of vehicle components shall be increased to at least 95% and 85% respectively. It also provides that the Directive shall apply, as of 1 July 2002, to vehicles placed on the EU market after 1 July 2002, and as from 1 January 2007, to vehicles placed on the EU market before 1 July 2002, thereby implementing the Directive for all end of life vehicles in the EU Member States.

2.4.1.2 Standards for ceramic articles intended to come into contact with foodstuffs
On 29 April 2005, the EU released Commission Directive 2005/31/EC amending Council Directive 84/500/EEC as regards a declaration of compliance and performance criteria of the analytical method for ceramic articles intended to come into contact with foodstuffs. The Directive requires that ceramic articles intended to be brought into contact with foodstuffs that are manufactured and sold in the EU shall be accompanied with a written declaration of compliance from the producer and the seller. The written declaration shall include the following information: the identity and address of the company that manufactures the finished ceramic article and of the importer who imports it into the EU, the identity of the ceramic article, the date of the declaration, and the declaration that the ceramic article meets the relevant requirements in the Directive and Regulation (EC) No 1935/2004. In addition, ceramic articles that comply with the migration limits of lead and cadmium shall, upon request, make available the results of the analysis carried out, the test conditions, and the name and address of the laboratory that performed the testing. As from 20 May 2007, the EU will prohibit the manufacture and importation of ceramic articles that do not comply with the Directive.

2.4.1.3 Eco design requirements on energy using products

Currently, the EU has already incorporated household hot water boilers, household electric refrigerators and ballasts for fluorescent lighting into the EuP Directive, and will adopt measures to cover other specific products. The Directive requires the EU Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 11 August 2007.

2.4.1.4 Purity criteria for sunset yellow FCF and titanium dioxide

On 20 March 2006, the EU published Commission Directive 2006/33/EC amending Directive 95/45/EC as regards sunset yellow FCF (E110) and titanium dioxide (E171). The Directive provides amended purity criteria for E110 sunset yellow FCF and E171 titanium dioxide: It restricts the presence in E110 sunset yellow FCF of Sudan I (phenylazo) 2 naphthalenol), an unauthorized color and undesirable substance in food, which may be formed as an impurity during the production of sunset yellow, and allows the use of the rutile form of E171 titanium dioxide. It is required that the EU Member States shall bring into force the laws, regulations and administrative provisions necessary to conform to the Directive by 10 April 2007 at the latest.

2.4.1.5 Regulation protecting agricultural products and foodstuffs as traditional
specialities guaranteed
On 20 March 2006, the EU released Council Regulation(EC) No 509/2006 on agricultural products and foodstuffs as traditional specialities guaranteed. The Regulation lays down detailed rules for the certification and protection of agricultural products and foodstuffs with specific and traditional characteristics in the EU, including the application (including the application from third country applicants) for registration of a traditional speciality guaranteed and objections to the proposed registration. The Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union on 31 March 2006. However, Article 12(2) of the Regulation shall apply with effect from 1 May 2006: Where reference is made to a traditional speciality guaranteed on the labeling of an agricultural product or foodstuff produced within the Community, the registered name accompanied either by the Community symbol or the indication “traditional speciality guaranteed” shall appear thereon.

2.4.1.6 Decision on exemptions for applications of lead

On 21 April 2006, the EU published Commission Decision 2006/310/EC amending, for the purposes of adapting to the technical progress, the Annex to Directive 2002/95/EC of the European Parliament and of the Council as regards exemptions for applications of lead. The Decision allows five exemptions from the prohibition for the use of lead: (1) lead in linear incandescent lamps with silicate coated tubes; (2) lead halide as radiant agent in High Intensity Discharge (HID) lamps used for professional reprography applications; (3) lead as activator in the fluorescent powder (1% lead by weight or less) of discharge lamps when used as sun tanning lamps containing phosphors such as BSP(BaSi2O5:Pb) as well as when used as speciality lamps for diazo printing reprography, lithography, insect traps, photochemical and curing processes containing phosphors such as SMS((Sr,Ba)2MgSi2O7:Pb); (4) lead with PbBiSn Hg and PbInSn Hg in specific compositions as main amalgam and with PbSn Hg as auxiliary amalgam in very compact Energy Saving Lamps (ESL); (5) lead oxide in glass used for bonding front and rear substrates of flat fluorescent lamps used for Liquid Crystal Displays (LCD).

2.4.1.7 Decision on child resistant lighters

On 20 July 2006, the EU published in its Official Journal Commission Decision 2006/502/EC of 11 May 2006 requiring Member States to take measures to ensure that only lighters which are child resistant are placed on the market and to prohibit the placing on the market of novelty lighters. The Decision requires child resistant(CR) safety equipments for lighters and the ban on novelty lighters on the EU market. All lighters that resemble by any means to another object commonly recognized as appealing to or intended for use by children should be banned. This includes, but is not limited to, lighters the shape of which resembles cartoon characters, toys, food or beverages, or that play musical notes, or have flashing lights or moving objects or other entertaining features. Ten months after the notification of the CR Decision, the EU Member States should make the placing on the market of
lighters subject to the condition that they are child resistant and prohibit the placing on the market of novelty lighters. The CR Decision shall be applicable until 12 months from the date of its notification. On 1 December 2006, the European Commission released guidelines with the aim of facilitating the practical application of the CR Decision.

2.4.1.8Marketing standards for eggs

On 19 June 2006, the EU published Council Regulation(EC) No 1028/2006 on marketing standards for eggs, which contains basic requirements for the classification, indication and import controls of eggs. The Regulation provides for two quality classes of eggs: Class A(fresh eggs intended for direct human consumption) and Class B(eggs used by the food and non-food industry). Class A eggs should also be graded by weight and marked with the producer code in order to enable the tracing of eggs and to identify the farming methods used, whereas Class B eggs shall only be delivered to the food or non-food industry for use. For the import of eggs, the Regulation provides that:(1) If the European Commission finds that the marketing standards for eggs applicable in exporting third countries offer sufficient guarantee as to equivalence with the EU legislation, eggs imported from the countries concerned shall be marked with a distinguishing number equivalent to the producer code;(2) If sufficient guarantees as to equivalence of rules are not provided, imported eggs from the third country concerned shall bear a code permitting the identification of the country of origin and an indication that the farming method is “unspecified”; and(3) For Class A eggs imported from third countries, checks on compliance with the marketing standards shall be made at the time of customs clearance and prior to the release for free circulation, and Class B eggs imported from third countries shall be released for free circulation only after checking at the time of customs clearance that their final destination is the processing industry. The Regulation shall apply from 1 July 2007.

2.4.1.9Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment

As of 1 July 2006, Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment(RoHS) entered into force. The RoHS Directive provides that new electrical and electronic equipment(EEE) put on the EU market, excluding those in the list of exemptions, shall not contain six specified hazardous substance, namely, lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls(PBB) or polybrominated diphenyl ethers(PBDE). For the purposes of adapting to technical progress, the EU published on 12 October 2006 three Commission Decisions 2006/690/EC, 2006/691/EC and 2006/692/EC amending the Annex to Directive 2002/95/EC as regards exemptions for applications of lead in crystal glass, lead and cadmium, and hexavalent chromium. The three Commission Decisions add nine exemptions to the Annex to Directive 2002/95/EC, to be specific, eight exemptions for the applications of lead(including one exemption for the applications of lead and cadmium) and one exemption for the
applications of hexavalent chromium.

The RoHS Directive covers, in principle, all categories of energy using products (EuP), although mainly targeting those that use electricity, solid fuels, liquid fuels and gaseous fuels, for example, household appliances, IT and telecommunications equipment, consumer equipment, lighting equipment, electrical and electronic tools (with the exception of large scale stationary industrial tools), toys, leisure and sports equipment, medical devices (with the exception of all implanted and infected products), monitoring and control instruments, and automatic dispensers. The RoHS Directive affects the producers of component parts as well as manufacturers of finished products. The producers of components and parts should make available appropriate documentations regarding the relevant materials and energy consumption.

2.4.1.10 Directive on prohibiting the use of certain substances in hair dyes
On 19 July 2006, the EU published Commission Directive 2006/65/EC amending Council Directive 76/768/EEC, concerning cosmetic products, for the purpose of adapting Annexes II and III thereto to technical progress. Following the recommendations of the Scientific Committee on Cosmetic Products and Non-Food Products intended for Consumers (the SCCNFP), the Directive placed under a ban 22 categories of substances as hair dye cosmetic ingredients. It requires that no later than 1 September 2006, the Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive and that the Member States shall take all the necessary measures to ensure that by 1 December 2006 at the latest, no cosmetic products which fail to conform to the Directive are placed on the EU market.

2.4.1.11 Protection measures against highly pathogenic avian influenza

2.4.1.12 Directive restricting the use of hazardous substances in batteries and accumulators
On 6 September 2006, the EU published Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC. The Directive strictly restricts the presence of cadmium in batteries and accumulators, with its maximum amount in all portable batteries and accumulators cut from the current 0.025% by weight to 0.002% by weight, while maintaining the limitation of mercury (0.0005% by weight). The maximum limit placed on the amount of cadmium does not apply to portable batteries.
and accumulators intended for use in emergency and alarm systems, including emergency lighting, medical equipment or cordless power tools. In addition, the Directive requires all distributors of batteries and accumulators to take back waste batteries and accumulators. By 26 September 2009 at the latest, producers or third parties should establish collection systems and bear the costs of collection, treatment, recycling and disposal of waste batteries and accumulators. The EU Member States shall bring into force the Directive no later than September 2008.

2.4.1.13 Directive banning the sale and use of perfluorooctane sulfonate

On 12 December 2006, the EU published Directive 2006/122/EC of the European Parliament and of the Council amending for the 30th time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (perfluorooctanesulfonates, PFOS). The Directive puts PFOS in the list of dangerous substances. According to the Directive, unless authorized, PFOS may not be placed on the EU market or used as a substance in semi-finished articles; the concentration of PFOS may not exceed 0.1% by mass in semi-finished articles and 0.005% by mass in finished articles; for textiles or other coated materials, the amount of PFOS may not exceed 1 μg/m² of the coated material. The Directive requires that the EU Member States shall adopt and publish, not later than 27 December 2007, the laws, regulations and administrative provisions necessary to comply with the Directive and they shall apply these measures on 27 June 2008.

2.4.1.14 Directive restricting the sale and use of phthalates

On 14 December 2005, the EU published Directive 2005/84/EC of the European Parliament and of the Council amending for the 22nd time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (phthalates in toys and childcare articles). According to the Directive, three specified phthalates (DEHP, DBP and BBP) shall not be used as substances or constituents in the preparations, at concentrations of greater than 0.1% by mass of the plasticized materials, in toys and childcare articles; three specified phthalates (DINP, DIDP and DNOP) shall not be used as substances or constituents in the preparations, at concentrations of greater than 0.1% by mass of the plasticized materials, in toys and childcare articles which can be placed in the mouth by children. The EU Member Countries shall, by 16 July 2006, adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive and they shall apply these measures from 16 January 2007.

2.4.1.15 Regulation for Registration, Evaluation, Authorization and Restriction of Chemicals

and Restriction of Chemicals (REACH) was formally adopted on 18 December 2006 by the Council of Environment Ministers, following the vote in second reading of the European Parliament on 13 December 2006. REACH Regulation will enter into force on 1 June 2007. It will probably take about a year before all the necessary REACH mechanisms are put in place, and the complete REACH regulatory regime is expected to become fully operational in 2008.

REACH covers regulatory measures on chemical production, trade and safety. The aim is to provide a high level of protection of human health and the environment for sustainable social development, while maintaining and enhancing the competitiveness of the EU chemicals industry. To this end, the European Commission will set up a unified surveillance and governance system for chemicals to be completed by 2012. The ambitious REACH Regulation incorporates some 30,000 chemicals and related “downstream” products in textiles, light industrial articles and pharmaceuticals in the EU market into the management and monitoring procedures of registration, evaluation and authorization. According to the proposed EU timetable, producers and importers of chemical substances with a volume over 1,000 tonnes per year and per producer/importer should register them with a new EU Chemicals Agency within the next three years; chemical manufacturers and importers with a yearly volume between 100 to 1,000 tonnes should register within six years; chemical manufacturers and importers with an annual volume between 1 to 100 tonnes should register within eleven years. Chemicals from producers and importers who fail to register within the designated time shall not be marketed in the entire EU market. In the meantime, the REACH Regulation established stringent testing criteria for chemicals, the cost of which is to be borne by the producers. According to the EU estimates, testing fees for a chemical substance and for a new substance are around EUR 85,000 and EUR 570,000 respectively.

2.4.1.16 Regulation on organic production and indication of agricultural products and foodstuffs

2.4.1.17 Directive restricting the sale and use of arsenic compounds
necessary to clarify the rules concerning the first placing on the market of wood treated with arsenic compounds and the placing of such wood on the second hand market. As stipulated by the Directive, the EU Members States shall, no later than 30 June 2007, adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive and they shall apply those measures by 30 September 2007 at the latest.

2.4.2 Sanitary and phytosanitary measures

2.4.2.1 Rules on the hygiene of foodstuffs


(1) Regulation(EC) No 852/2004 lays down general rules for food business operators on the hygiene of foodstuffs, taking particular account of the following principles: primary responsibility for food safety rests with the food business operator; it is necessary to ensure food safety throughout the food chain, starting from the place of primary production and processing up to and including distribution and export; the application of Hazard Analysis and Critical Control Point (HACCP) principles should be extended, whenever feasible at any of the stages of food production; it is necessary to establish pathogen reduction targets and temperature controlled storage conditions for food; and it is necessary to ensure that imported foods are of at least the same hygiene standard as foods produced in the EU or are of an equivalent standard.

(2) Regulation(EC) No 853/2004 provides specific hygiene rules for food of animal origin, requiring that food business operators shall not use any substance other than potable water—or, when Regulation(EC) No 852/2004 or this Regulation permits its use, clean water—to remove surface contamination from products of animal origin; establishments handling products of animal origin must be approved by and registered with the EU Member States; products of animal origin must be labeled with a health or identification mark; and products of animal origin can only be imported from third countries from which such imports are permitted by the EU.

(3) Regulation(EC) No 854/2004 lays down specific rules for the organization of
official controls on products of animal origin intended for human consumption, requiring that the exercise of the rules on food controls by competent authorities in the EU Member States; approval for the registration of food business establishments and action in the case of non-compliance, including restricting or prohibiting the placing on the market, restricting or prohibiting import; specific control measures in the annex on meat, bivalve mollusks, fishery products, raw milk and dairy products; and import procedures, for example, lists of third countries or parts of third countries from which specified products of animal origin are permitted.

(4) Regulation(EC) No 882/2004 states that the purpose of official controls is twofold: to prevent, eliminate or minimize safety risks which may arise, either directly or via the environment, for human beings and animals; and to guarantee fair trade in food and feed and the protection of consumers interests through the enforcement of the labeling requirements for food and feed. To this end, official controls on products from both EU Member States and exporting third countries are performed to ensure the verification of compliance with food and feed law, animal health and animal welfare rules in the EU.

According to these food hygiene legislations, food products from third countries must satisfy the new food standard before they can be placed on the EU market. The new legislations have introduced significant changes in three areas: (1) these legislations apply to all categories of food products, paying particular attention to food safety and separating food safety from food trade; (2) an integrated approach is adopted, covering the entire food supply chain (from farm to fork), and the inclusion of animal welfare requirements places a greater responsibility upon Chinese enterprises handling products of animal origin; and (3) retroactive force is established for food products, which must be recalled in the event of failure to comply with the food standard. Compared with previous food hygiene regulations in the EU, these three legislations have strengthened food safety control measures, raised the threshold of market access for food products, placed accountability upon food business operators, and set out detailed hygiene criteria for the entire food production process, requiring their compliance from primary production to sale or supply to the final consumers, particularly in the case of products of animal origin.

2.4.2.2 Microbiological criteria for foodstuffs

On 1 January 2006, the EU put into effect Commission Regulation(EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs. The Regulation lays down stringent microbiological criteria for foodstuffs, including meat and edible meat offal; fish and crustaceans, mollusks and other aquatic invertebrates (excluding live fish); dairy produce; birds eggs; natural honey; edible vegetables; edible fruits and nuts; margarine; semi-finished products of fish and crustaceans, mollusks and other aquatic invertebrates; semi-finished products of cereals, flours, starches and dairy; semi-finished vegetables, fruits and nuts; and semi-finished edible mollusks.
2.4.2.3 Maximum levels for dioxins in foodstuffs

On 3 February 2006, the EU published Commission Regulation(EC) No 199/2006 amending Regulation(EC) No 466/2001 setting maximum levels for certain contaminants in foodstuffs as regards dioxins and dioxin like polychlorinated biphenyls(PCBs). The Regulation sets maximum levels in foodstuffs applicable not only to dioxins, but also to furans and dioxin like PCBs. The food products covered in the Regulation include meat and meat products, liver of terrestrial animals and derived products thereof, fish and fishery products, milk and milk products, eggs and egg products, vegetable oils and fats, animal fats, marine oils, and any other foodstuffs derived from or containing the above said products intended for human consumption. The regulation ran into force as from 4 November 2006.

2.4.2.4 Requirements on wood packing material in international trade

On 6 February 2006, the EU published Commission Directive 2006/14/EC amending Annex IV to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community. By this Directive, the application of the EU requirement that wood packing material imported from third countries be made from debarked round wood is postponed until 1 January 2009, to allow for sufficient time to review phytosanitary concern of the presence of bark on wood packing material in international trade.

2.4.2.5 Approval of residue monitoring plans for products of animal origin submitted by China

On 7 March 2006, the EU released Commission Decision 2006/208/EC amending Decision 2004/432/EC on the approval of residue monitoring plans submitted by third countries in accordance with Council Directive 96/23/EC. According to the Decision, plans monitoring residues of veterinary medicines, pesticides and contaminants in food of animal origin presented by China have been approved only for ovine/caprine casings, swine casings, poultry, aquaculture, rabbit and honey. The Decision took effect from 17 March 2006.

2.4.2.6 Regulation on quality criteria for primary smoke products

On 21 April 2006, the EU published Commission Regulation(EC) No 627/2006 implementing Regulation(EC) No 2065/2003 of the European Parliament and of the Council as regards quality criteria for validated analytical methods for sampling, identification and characterization of primary smoke products. The Regulation lays down provisions for quality criteria for primary products authorized for use as such in or on foods or for the production of smoke flavorings for use in or on foods. Only products evaluated and authorized by the European Food Safety Authority(EFSA) can be used. For the safety assessment, relevant enterprises and importers should submit all the necessary information regarding the chemical composition of primary products and a proposed validated method for sampling, identification and characterization of
primary products. The Regulation enters into force on the 20th day following that of its publication in the Official Journal of the European Union.

2.4.2.7 Directives on maximum residue levels for pesticides


2.4.2.8 Special conditions for certain food imports due to contamination risks by aflatoxins

On 12 July 2006, the EU issued Commission Decision 2006/504/EC on special conditions governing certain foodstuffs imported from certain third countries due to contamination risks of these products by aflatoxins. The Decision imposes special conditions on the import of certain foodstuffs, including peanuts and certain products derived from peanuts originating or consigned from China. The Decision has entered into force as from 1 October 2006.

2.4.2.9 Maximum residue levels for cereals and certain products of plant and animal origin


2.4.2.10 Maximum residue limits of veterinary medicinal products in foodstuffs of animal origin

lasalocid. The Regulation extends the testing scope of maximum residue levels of flubendazole and lasalocid from organs of the poultry to the poultry species. The Regulation has entered into effect from 11 September 2006.

2.4.2.11 Animal health conditions and certification requirements for imports of fish for ornamental purpose

On 20 September 2006, the EU published Commission Decision 2006/656/EC laying down the animal health conditions and certification requirements for imports of fish for ornamental purpose. The Decision amends Commission Decision 2003/858/EC of 21 November 2003 laying down the animal health conditions and certification requirements for imports of live fish, their eggs and gametes intended for farming, and live fish of aquaculture origin and products thereof intended for human consumption. The Decision shall apply to fish caught in the wild, imported for the purpose of being used as ornament fish; ornamental fish imported by transhippers and wholesalers; and ornamental fish imported into pet shops, garden centers, garden ponds, exhibition aquaria and similar businesses without direct contact with Community waters. The Decision shall apply six months after the date of its publication.

2.4.2.12 Directive on purity criteria of sweeteners in foodstuffs

On 8 December 2006, the EU published Commission Directive 2006/128/EC amending and correcting Directive 95/31/EC laying down specific criteria of purity concerning sweeteners for use in foodstuffs. Taking account of the norms as drafted by the Joint FAO /WHO Expert Committee on Food Additives (JECFA), the Directive adopts specific purity criteria for E 968 erythritol and amends the definition of E 965(ii) maltitol syrup set out in Directive 95/31/EC by including its new production method. The EU Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 February 2008 at the latest.

2.4.2.13 Directive on purity criteria of food additives

On 8 December 2006, the EU published Commission Directive 2006/129/EC amending and correcting Directive 96/77/EC laying down specific purity criteria on food additives other than colors and sweeteners. The Directive decides to withdraw the purity criteria for E 216 propyl p-hydroxybenzoate and E 217 sodium propyl p-hydroxybenzoate which are no longer permitted for use as food additives, to adopt the specific purity criteria for E 319 tertiary butylhydroquinone (TBHQ), E 426 soybean hemicellulose, E 462 ethyl cellulose, E 586 4-hexylresorcinol, E 1204 pullulan and E 1452 starch aluminium octenyl succinate, to amend the level of sulphated ash in the purity criteria for E 472c citric acid esters of mono and diglycerides of fatty acids in order to cover partially or wholly neutralised products, to require that E 559 aluminium silicate be produced from raw kaolinitic clay which is free from unacceptable dioxin contamination, and to restrict the presence of dioxin in the raw kaolinitic clay to the lowest possible level. According to the Directive, the EU
Member States are required to adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive by 15 February 2008 at the latest.

2.4.2.14 Directive on the mandatory labeling of certain ingredients in foodstuffs

On 22 December 2006, the EU issued Commission Directive 2006/142/EC amending Annex IIIa of Directive 2000/13/EC of the European Parliament and of the Council listing the ingredients which must under all circumstances appear on the labeling of foodstuffs. Noting the cases of severe allergic reactions from lupin and its product and from mollusks and their products, the Directive adds lupin, mollusks, and products thereof to the list of allergy causing ingredients that must under all circumstances appear on the labeling of foodstuffs. The EU Member States shall, by 23 December 2007 at the latest, adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive, and shall, as from 23 December 2008, prohibit the sale of foodstuffs in the EU market which fail to comply with the Directive.

2.4.2.15 Manufacturing practice for materials and articles intended to come into contact with food

On 22 December 2006, the EU released Commission Regulation(EC) No 2023/2006 on good manufacturing practice for materials and articles intended to come into contact with food. The Regulation sets down certain obligations on business operators producing materials and articles intended to be brought into contact with food, requiring them to establish, implement and ensure adherence to general and detailed rules on good manufacturing practice(GMP), including quality assurance system, quality control system and record documentation system. The Regulation shall apply from 1 August 2008.

3. Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peaks

In 2006, the EU still maintained a number of tariff peaks in items such as meat and meat products, fish and fish products, vegetables and vegetable products, fruits and fruit products, foodstuffs, beverages, tobacco, textiles, footwear and motor vehicles. For example, the customs tariff rates for certain fish products, motor vehicles and tobacco products were over 20%, 22% and 74.9% respectively. China’s priority exports to the EU such as footwear, vegetables, fruits, fish, foodstuffs, tobacco and bicycles came under high tariff rates in the EU. The practice on the part of the EU to protect its own uncompetitive industries through the imposition of tariff peaks has not only obstructed fair competition of the relevant industries, but also affected the development of normal bilateral trade.

3.1.2 Seasonal duties
The EU imposes seasonal duties on certain fruits, vegetables and horticultural products in various forms such as ad valorem duty, compound duty and mixed duty, and publishes standard import value for such products as fruits and vegetables, which is subject to frequent modifications. Such a practice has led to complicated duties and unstable rates, which created uncertainty to Chinese enterprises exporting their products to the EU.

3.1.3 Additional duties

In addition to an ad valorem duty, the EU levies an additional duty on certain sugar products, cocoa, biscuits, bread and potatoes, depending on the agricultural contents of their composition (e.g., anhydrous milk fat, milk protein, sucrose and starch). The EU publishes annually specific rules on the collection of additional duties. The practice of basing the imposition of customs tariff duties on the agricultural content of products adds great uncertainties to exporters.

3.2 Import restrictions

On 25 July 2006, the EU published Commission Decision 2006/521/EC amending Decisions 2005/692/EC, 2005/733/EC and 2006/7/EC as regards certain protection measures in relation to highly pathogenic avian influenza. The Decision extends import restrictions against poultry products and unprocessed feathers entering the EU from third countries. China hopes that the EU will, according to the developments of the epidemic, assess the risks associated with avian influenza in a more objective and timely fashion and eliminate the import restrictions as rapidly as possible.

The EU released on 18 December 2006 Commission Regulation(EC) No 1915/2006, which extends prior Community surveillance over certain imports of iron and steel products originating in certain third countries until 31 December 2009. The EU introduced prior Community surveillance over iron and steel imports on 1 January 2002. The Regulation makes a particular reference to China, stating that since 2003, China’s market has been the key driver of the very important increase in the demand for steel products and that it can be anticipated this trend of decreasing imports and increasing exports in China will continue, thereby releasing into the world market important increased quantities of steel products looking for a new market. The Chinese side hopes that the EU will notify China of its trade surveillance statistics in a timely way and not adopt restrictive measures on relevant Chinese exports.

3.3 Barriers to customs clearance

Although the 27 EU Member States apply the same Community Customs Code and its implementing rules, national customs authorities are still left with a great leeway in a number of key areas of customs administration. This gives rise to disparate and inconsistent customs administration in the EU Member States. First, there are
differences not only in the customs classification and valuation of goods, but also in the procedures for such classification and valuation, including the provision of binding tariff information to importers. Second, customs clearance procedures for imports and exports vary significantly from one Member State to the other, for example, the use of computerized customs process in some Member States but not in others, different requirements among Member States for certificate of origin, different criteria for the inspection of goods, different licensing requirements for the importation of foodstuffs, and different procedures for processing express delivery shipments. Third, variances also exist in the procedures for reviewing entry statements after goods are released into the EU market. In addition, there are discrepancies in the penalties applicable in the case of failure to comply with the customs rules and in the procedures regarding the imposition of such penalties. Finally, record keeping requirements also differ to certain extent.

The differing and incoherent administration of customs measures among the EU Member States adds unpredictability to the Chinese exporting firms.

3.4 Technical barriers to trade

3.4.1 Directive on traditional herbal medicinal products

On 31 March 2004, the EU published Directive 2004/24/EC of the European Parliament and of the Council amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use. According to the Directive, a traditional herbal medicinal product can be authorized to be placed on the EU market, only when it has been demonstrated to the effect that it has been in medicinal use for at least 30 years in the EU or for at least 30 years outside the EU, including at least 15 years in the EU. The Directive also requires that traditional herbal medicinal products entering the EU be manufactured under the EU good manufacturing practice (GMP) guidelines and comply with quality standard in European Pharmacopoeia. The EU importers should apply for a license for their traditional herbal medicinal imports.

The aforementioned provisions seemingly afford traditional herbal medicinal products from China an opportunity to enter the EU market, but they actually constitute a barrier to market access. Many Chinese herbal products can be used as food additives, non medicinal products and tonic foods. The EU puts raw materials of traditional Chinese herbal medicines, herbal beverages and patented herbal medicines all in the category of traditional herbal medicinal products, which are regulated under medicinal legislation and subject to harsh requirements for market access, thereby severely restricting the export of relevant products. China is very concerned with the negative impact that the Directive may have upon the export of traditional herbal medicinal products from China.

3.4.2 Directive on eco design requirements for energy using products

and of the Council establishing a framework for the setting of eco-design requirements for energy using products (EuP). The EuP Directive requires manufacturers to undertake environmental impact assessment for the entire life cycle of energy using products. Energy using products shall be evaluated according to the implementing regulations to be established separately by the European Commission according to the Directive, and if approved, shall be labeled with a CE marking. Currently, the European Commission is reviewing a wide array of products such as hot water boilers, television sets, display screens, external power supply equipment, and battery chargers so as to formulate implementing measures for the eco-design requirements for energy using products, including their raw materials, methods of production, conditions of use (including their energy consumption), product life, waste treatment and possibilities of recycling.

There are enormous difficulties in terms of both technology and capital for enterprises in developing countries to implement environmental impact assessment for energy using products from the stage of product design up to the end of life of the product. China is gravely concerned with the adverse effects of the EuP Directive. In addition, the EuP Directive leaves the specific product categories targeted and the relevant product properties to the Implementing Rules, which will, to some extent, result in the arbitrariness in the selection of products to be targeted and create technical uncertainties for both producers and exporters. The Chinese side has already expressed to the EU that China hopes that the EU will clarify as soon as possible the scope of products to which the Directive applies and the procedures for certification of the related products.

3.4.3 Proposal for a Council Regulation on compulsory origin marking

The European Commission presented a proposal on 16 December 2005 for a Council Regulation on the indication of the country of origin of certain products imported from third countries. The proposed Regulation requires that the country of origin be marked on certain products imported from third countries such as feather, footwear, textiles and garments, ceramics, glassware, jewelry, furniture, brooms, brushes and dusters (excluding certain foodstuffs, fish and other aquatic products). In consequence, the envisaged Regulation covers a great many priority exports from China to the EU. If the proposal is adopted by the European Council, the Chinese exports covered will be required to bear a mark indicating their origin “Made in China”. Currently, the proposal has not gone through the European Council.

The proposed Regulation on compulsory origin marking only applies to products exported from third countries and does not cover products of the same categories produced inside the EU. In addition, the products affected come mostly from developing countries and accordingly amounts to a discriminatory treatment of products from developing countries. Such being the case, China is highly concerned with the proposal.

3.4.4 Regulation on agricultural products and foodstuffs as traditional specialities
guaranteed
On 20 March 2006, the EU published Council Regulation(EC) No 509/2006, which sets out rules for the recognition and protection of agricultural products and foodstuffs having specific and traditional characteristics in the EU. However, the definition and determination of “traditional specialities guaranteed” is not precisely elucidated in the Regulation, which may confuse producers. In addition, according to the Regulation, traditional specialities guaranteed may be recognized for only nine categories of foodstuffs, which prevents foodstuffs in other categories from applying for such recognition and certification in the EU, despite their inherent traditional character, thereby leading to unfair conditions of competition. The Regulation also fails to provide specific procedures of application for registration for products from a third country, which will make it difficult to those applicants. China invites the EU to clarify the application procedures of traditional specialities guaranteed for products imported into the EU.

3.4.5 Proposal for a Directive on restricting the sale of certain measuring devices containing mercury
On 11 April 2006, the EU notified the WTO of its Proposal for a Directive of the European Parliament and of the Council amending Council Directive 76/769/EEC relating to restrictions on the marketing of certain measuring devices containing mercury. To contribute to a high level of protection of human health and the environment, the Proposal suggests introducing a ban on the distribution of mercury containing measuring devices such as thermometers, barometers and sphygmomanometers. China believes that the proposed restrictions on the use of mercury in measuring devices are too broad, while exemptions from the ban are not clearly defined. Currently, around two thirds of the measuring equipment on the EU market intended for sale to the general public comes from China, India and Japan. China is highly concerned with the adverse effect the envisaged Directive may have on Chinese exports.

3.4.6 Decision on child resistant lighters
On 20 July 2006, the EU published in its Official Journal Commission Decision 2006/502/EC of 11 May 2006 requiring Member States to take measures to ensure that as from 11 March 2007, only child resistant(CR) lighters may be put on the market. Shortly afterwards, the European Commission drafted Guidelines for the Application of the Commission Decision, and the relevant competent authorities of the Member States formulated Strategy for Market Surveillance on Child Resistant Lighters, providing specific and operational measures for implementing the Commission Decision. After China has taken up the matter with the EU over the years, the EU has finally removed in its Commission Decision the unreasonable requirement that lighters with an ex-factory value under EUR 2 be equipped with child resistant mechanisms and instead based the safety requirement upon technical parameters. There are now no apparent points in the EU Commission Decision and its relevant guidelines that run counter to the WTO rules, and comments from Chinese enterprises have been adopted in the relevant EU measures. China appreciates the EU
Currently, China is negotiating with the EU on its acceptance of test results and test reports issued by Chinese laboratories which have conducted tests on lighters against safety requirements.

3.4.7 Regulation on marketing standards of eggs

On 19 June 2006, the EU released Council Regulation (EC) No 1028/2006 on marketing standards for eggs. The requirements in the Regulation on the indication of farming methods used for imported eggs do not have any sound scientific basis. According to the relevant WTO rules, regulations on product labeling and marking shall not be more trade restrictive than necessary to fulfill a legitimate objective. China expresses concern over the unfavorable impact of the labeling requirements on relevant Chinese exports.

3.4.8 Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment


According to the RoHS Directive, the EU Member States may, according to their own national laws, adopt different measures to inspect electrical and electronic products placed on their markets and impose penalties applicable to non-compliance with the RoHS Directive. However, the RoHS Directive only provides very general rules regarding how to determine the compliance of different kinds of products. Therefore, the varied implementing standards will cause a series of problems for the manufacturers. For example, it is likely that a particular product certified to have satisfied the relevant requirements in one EU Member State may be found to have failed to meet such requirements in another. The widely divergent inspection fees in different Member States may distort the exporting costs of the same product placed on the Community market. In addition, the RoHS Directive has been implemented in different ways in different Member States, with different enforcement authorities (including inspection and registration bodies) and different institutions drafting and publishing the implementing regulations, which makes the relevant product standards in the Member States inaccessible to the exporters. Chinese firms have complained that the test results for the same product in different Member States may be inconsistent.

China is watching with concern the implementation of the RoHS Directive. China hopes that the EU will establish detailed guidelines on the application of the RoHS Directive, draw up a list of exemptions based on sound scientific evidence, provide
reference experiment methods for certification, and grant technical assistance to developing countries.

3.4.9 Directive on the restriction of the use of hazardous substances in batteries and accumulators
On 6 September 2006, the EU published Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators. China appreciates the legislative objective of the EU to reduce the quantities of waste batteries and accumulators containing hazardous substances and to achieve a higher recollection and recycling rate for waste batteries and accumulators. However, the restriction on the use of hazardous substances is too harsh, while the scope of exemptions is not clearly delimited. In addition, the Directive does not provide a clear definition for “producer” and “third parties”, nor does it contain clear provisions on the rights and obligations on the part of importers or third country producers in the waste collection scheme. China hopes that the EU will lay down the responsibilities of producers of imports in the waste collection scheme in order to avoid discriminatory treatments and unnecessary costs of the imports.

3.4.10 Regulation on the Registration, Evaluation, Authorization and Restriction of Chemicals
Following the vote in second reading of the European Parliament on 13 December 2006, Regulation(EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals(REACH) will run into effect as of 1 June 2007. Although REACH Regulation will contribute to the safety management of chemicals and the protection of human health and the environment, it contains a number of unreasonable and unjustifiable points. First, the registration procedures are too complicated and the testing costs too high, which will greatly increase the production costs of chemical manufacturers. Second, according to the REACH Regulation, only enterprises and individuals in the EU are entitled access to the data regarding the registration, evaluation, authorization and restrictions on the chemical compositions of chemicals and relevant downstream products. Such an exclusive provision accords differential treatments to EU and non-EU producers. Third, the REACH Regulation does not lay down specific procedures for the evaluation and authorization of chemicals, which may result in the arbitrariness of relevant competent authorities. China will monitor closely the impact that the REACH Regulation may have on the international trade of chemicals and related downstream products. China hopes that the EU will take into sufficient account the gap between developed and developing countries in terms of technologies and funds and grant certain preferential treatments or transitional arrangements for developing countries.

3.4.11 Regulation on organic production and indication of agricultural products and foodstuffs
Regulation revises the scope of products applicable and the requirements for their labeling and certification. China hopes that the EU will, based on fairness, publish as early as possible the list of inspection bodies in third countries recognized by the EU to issue such certification, specifying the standards that a particular inspection body adopts—the EU standards, the Codex Alimentarius Commission (CAC) standards or other standards. In addition, China suggests the EU to amend the Regulation, stipulating that a product detected to be genetically modified should not be labeled as an organic product.

3.5 Sanitary and phytosanitary measures

3.5.1 Rules on the hygiene of foodstuffs

As of 1 January 2006, the EU brought into force a package of three new legislations on the hygiene of foodstuffs and a regulation on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. The new food hygiene package strengthens inspection on food safety and raises the threshold of access to the EU food market. These new complicated food rules, particularly those rules on animal health and animal welfare, constitute a major barrier to trade in agricultural and farming products. China expresses great concern with the impact of the new food hygiene package on Chinese exporting businesses and hopes that the EU will relax its restrictions on Chinese products of animal origin.

3.5.2 Approval of residue monitoring plans for products of animal origin submitted by China

Council Directive 1996/23/EC establishes that the EU Member States are prohibited from importing products of animal origin from third countries named in the Directive unless their residue monitoring plans for the chemical substances covered by the Directive are submitted to and approved by the European Commission.

On 7 March 2006, the EU released Commission Decision 2006/208/EC amending Decision 2004/432/EC on the approval of residue monitoring plans submitted by third countries in accordance with Council Directive 96/23/EC. According to the Decision, residue monitoring plans for foods of animal origin presented by China have been approved only for ovine/caprine casings, swine casings, poultry, aquaculture, rabbit and honey, which is not in line with China’s efforts in formulating and implementing residue monitoring plans.

The Chinese government has already established adequate laws and regulations in this regard, and the Chinese export inspection and quarantine authorities have carried out their functions according to the relevant laws and regulations. China’s residue monitoring plans are based not only on the relevant Chinese laws, regulations and administrative measures regarding the use of veterinary medicines, but also on the relevant rules and requirements of importing countries. China hopes that the EU will accept the certificate of inspection and quarantine issued by the competent Chinese authorities and approve China’s residue monitoring plans for products of animal
origin on the basis of objective evaluation that accords with China’s efforts made in this regard.

3.5.3 Directive on food additives

On 8 December 2006, the EU published Commission Directive 2006/128/EC amending and correcting Directive 95/31/EC laying down specific criteria of purity concerning sweeteners for use in foodstuffs and Commission Directive 2006/129/EC amending and correcting Directive 96/77/EC laying down specific purity criteria on food additives other than colors and sweeteners. Currently, the EU legislations relating to food additives and flavorings are Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption and Council Directive 88/388/EEC of 22 June 1988 on the approximation of the laws of the Member States relating to flavorings for use in foodstuffs and to source materials for their production, while the EU legislations on enzyme and enzymic preparations have not been approximated and are found in many different laws at the EU level and of its Member States. There are wide variations between the EU legislations and the international standards as laid down by the Codex Alimentarius Commission (CAC) with regards the categorization of food additives, the scope of foodstuffs applicable, and the terms of conditions for their use. In practice, these disparities have made it difficult for exporters to adopt appropriate food standards and hamper the free movement of relevant food products. The aforementioned EU Directives provide the establishment of reevaluation procedures for authorized food additives, the drawing up of a list of authorized enzyme and labeling requirements, and the establishment of evaluation and authorization procedures for flavorings used in foodstuffs. Deeply concerned with the possible trade restrictive impact of these EU Directives, China hopes that the EU will base its specific purity criteria for food additives upon relevant international standards so as not to impede normal trade in foodstuffs.

3.5.4 Directive on the mandatory labeling of certain ingredients in foodstuffs

On 22 December 2006, the EU issued Commission Directive 2006/142/EC amending Annex IIIa of Directive 2000/13/EC of the European Parliament and of the Council listing the ingredients which must under all circumstances appear on the labeling of foodstuffs. Noting the cases of severe allergic reactions from lupin and its product and from mollusks and their products, the Directive adds lupin, mollusks, and products thereof to the list of allergy causing ingredients that must under all circumstances appear on the labeling of foodstuffs. However, in a strict technical sense, proteins in various beans may cause allergic reactions. The Codex Alimentarius Commission (CAC) has already laid down detailed requirements for the compulsory labeling of allergy causing ingredients, which do not include lupin and its products. China hopes that the EU will bring its Directive on the labeling of allergy causing substances in line with the relevant CAC requirements and take account of the production capacity and interest of small producers.
3.5.5 Good manufacturing practice for materials and articles intended to come into contact with food

On 22 December 2006, the EU released Commission Regulation (EC) No 2023/2006 on good manufacturing practice for materials and articles intended to come into contact with food. The Regulation requires producers of materials and articles intended to be brought into contact with food to establish and implement rules on good manufacturing practice (GMP). China appreciates the legislative objective of the EU to protect human health and consumer interest. However, there are no international standards on GMP for materials and articles intended to come into contact with food. The Codex Alimentarius Commission (CAC) has only set down only one GMP code, namely, the Code of Practice for the Prevention and Reduction of Lead Contamination in Foods (CAC/RCP 56 2004), which only involves lead contamination and makes no mention of the establishment of GMP for materials and articles intended to come into contact with food. When attempting to establish a lead time regulation to protect human health, the EU should consider whether it would pose unnecessary obstacles to international trade and provide adequate evidence to demonstrate the necessity of such a regulation. China hopes that the EU will take into full account the developmental stage of developing countries such as China, provide a sufficiently long transitional period and grant differential and preferential treatments to developing countries.

3.6 Trade remedy measures

3.6.1 Unabated trade defense investigations against Chinese exports

By the end of 2006, the EU has launched a total number of 131 anti dumping investigations against Chinese exports. In 2006 alone, the EU initiated 12 new anti dumping investigations against Chinese products, 4 investigations more than the previous year and accounting for 34% of the total such EU investigations. In 2006, the EU adopted provisional anti dumping measures in 7 cases and made definitive rulings in 5 cases against Chinese products. By the end of 2006, the EU has 40 anti dumping measures in force against Chinese exports, which directly affect the export of relevant Chinese products to the EU, and 12 anti dumping investigations against Chinese products are pending, awaiting preliminary rulings, which create high unpredictability and export risks for relevant Chinese exports to the EU. In addition, the EU conducted 2 anti absorption investigations and 2 anti circumvention investigations against Chinese exports in 2006.

3.6.2 Considerable obstacles to the EU recognition of China’s market economy status

After the European Commission unveiled a preliminary assessment report of China’s market economy status (MES) in June 2004, China and the EU have set up a technical working group to discuss issues relating to the EU recognition of China’s status as a full market economy.

Currently, China still faces many obstacles to the EU recognition of its MES. In respect of technical assessment, the EU, while believing that China has already
fulfilled one of the five assessment criteria for its full recognition of a MES, has constantly raised many new requirements for China in the other four technical criteria. Until January 2007, the EU has not updated its preliminary assessment report of China’s MES issued in June 2004 and has failed to set a deadline for its updating. In addition, some Member States of the EU still resort to trade defense instruments for the protection of their domestic industries and oppose to grant China its requested status as a market economy.

3.6.3 European Commission’s harsh assessment of the technical criteria for market economy status
The EU has continued to deny China’s status as a market economy, and used surrogate or analogue countries to determine the dumping margins of Chinese firms subject to anti dumping investigations. Although the EU has laid down in relevant anti dumping regulations five technical criteria for granting the request from individual Chinese companies of market economy treatment, these five criteria are too abstract and give too much discretion to the investigation authorities. Particularly in recent years, the European Commission has been overcritical in examining the request of market economy treatment filed by Chinese firms, and in total disregard of their explanations and counterpleas, often deny them such treatment based on certain minor trivialities. From 2004, the EU, without any apparent justifications, changes the deadline for the submission of requested information from the original 21 days to the current 15 days after the issuance date of the notice of initiation of anti dumping investigation, which makes it extremely difficult for Chinese respondent enterprises to complete in due time hundreds of pages of the questionnaire, negatively affects their enthusiasm to respond to the anti dumping charges and severely harms their interest.

3.6.4 Failure of the EU anti dumping investigation authorities to automatically adopt the export prices of Chinese firms
According to Article 9.5 of the Basic Regulation, i.e., Council Regulation(EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, the EU anti dumping investigation authorities would directly adopt the export prices of Chinese respondent firms to determine the margins of dumping, when they have demonstrated to the effect that they have met the five EU technical criteria for market economy treatment. Pursuant to relevant provisions in the WTO Anti Dumping Agreement, the EU anti dumping investigation authorities shall, as laid down in Article 6.10, directly use the export prices of Chinese respondent firms to calculate a separate dumping margin for them, unless the EU anti dumping investigation authorities can demonstrate that special conditions as laid out in Articles 6.10.2 and 2.3 exist, and as a result, the export prices of Chinese respondent firms cease to apply. The automatic adoption of the export prices is the treatment entitled to the respondent firms, has nothing to do with whether or not the firms in question are granted market economy status, and applies to all the WTO members.

Moreover, unjustifiable practices of the EU anti dumping investigation authorities
in cases involving Chinese exports include, among others, the irrational sampling methods in determining market economy status for individual enterprises, arbitrariness in selecting surrogate or analogue countries, the untimely delivery of notice of initiation before the launch of anti-dumping investigations, the inadequate disclosure of information, the automatic application of trade defense measures to all EU Member States after its recent enlargement, the over-reliance upon the constructed normal value and the variances in calculation methodology, and the excessive use of imputed export prices.

3.6.5 Anti-dumping measures

3.6.5.1 Anti-dumping measures against leather shoes

On 7 July 2005, the EU announced the initiation of an anti-dumping proceeding concerning imports of footwear with leather uppers from China and Vietnam. The investigation of dumping covered the period from April 2004 to March 2005. However, Chinese exports of footwear to the EU were subject to a quantitative quota until 2005. During the period targeted by the investigation, a total of 1,257 Chinese manufacturers and exporters exported footwear to the EU. According to the EU estimate, US$730 million worth of leather shoes would be affected. This is the largest anti-dumping investigation in amount of money brought against China by the EU in recent years.

During the investigation, 163 Chinese firms responded to the EU investigation, accounting for 90% of China's total footwear exports to the EU. The European Commission sampled 13 Chinese respondent firms for its investigation. On 12 January 2006, the EU made its final decision, denying market economy treatment to all the 13 Chinese firms sampled in the investigation. On 23 February 2006, the EU announced that as from 7 April 2006, temporary anti-dumping duties would be imposed on leather shoes originating in China. The EU's denial of market economy status to all Chinese respondent firms and its planned imposition of anti-dumping duties are obviously biased and discriminatory, and go against the principle of fair trade. China has expressed strong dissatisfaction over the EU move.

On 23 March 2006, the European Commission formally approved the preliminary ruling of the anti-dumping investigation against leather footwear, planning to levy provisional anti-dumping duties on Chinese leather shoes from 7 April 2006. China has fully expressed its positions and concerns to the EU, the major points of which include: the lack of fairness and legitimacy of the EU decision on the market economy treatment of Chinese firms, the absence of legal and factual basis of the EU decision to impose an indiscriminate anti-dumping duty on the entire Chinese industry of leather shoes, the unjustified selection of Brazil as the surrogate country for China, the lack of conclusive evidence in its determination of dumping and injury, the incompatibility of the adoption of anti-dumping measures against Chinese imports with its own broader interest, the irrelevance of the charges and comments voiced in
public by the EU against Chinese footwear to the anti-dumping investigation in question.

On 7 April 2006, the EU issued its preliminary ruling, rejecting the requests from all the Chinese respondent firms of market economy treatment and individual treatment, and imposing provisional countrywide anti-dumping duties on Chinese leather shoes. The collection of anti-dumping duties will be gradually phased in, namely, different tariff rates will apply at different stages: to be specific, a 4.8% rate for the period from 7 April until 1 June, 9.7% from 2 June until 13 July, 14.5% from 14 July until 14 September, and 19.4% from 15 September until 6 October.

In mid-July 2006, the EU published its definitive ruling, granting market economy treatment to only one Chinese respondent firm sampled in the investigation, and imposing an anti-dumping duty of 9.7% to be collected in a deferred manner. On 28 July 2006, the EU announced its supplementary final ruling, abolishing the deferred collection of duties and replacing it with an ad valorem anti-dumping duty of 16.5% on Chinese exports. On 4 August 2006, the Anti-Dumping Advisory Committee of the European Commission repealed the scheme.

After much debate, the EU approved on 5 October 2006 a proposal tabled by the European Commission, cutting the period during which the anti-dumping measures shall be applied from the usual five years to just two years.

In the absence of legal and factual basis, the EU insisted on adopting anti-dumping measures against leather footwear from China. Despite the modifications in its anti-dumping measures, the Chinese enterprises are discontented at the EU decision to adopt anti-dumping measures against Chinese leather shoes. The unfair and discriminatory practices in the anti-dumping proceeding against Chinese leather shoe imports have incurred heavy losses to Chinese shoe-making businesses and will bring about negative consequences for the production and development of the Chinese leather footwear sector.

The legal inadequacies as evidenced during the process of the initiation, investigation and ruling of this EU anti-dumping proceeding, which do not comply with either the WTO rules or the EU legislations, have harmed the legitimate rights and interests of Chinese exporting producers involved. China will closely watch and monitor the developments in the EU anti-dumping mechanism.

3.6.5.2 Anti-dumping measures against plastic bags

On 30 June 2005, the EU initiated an anti-dumping investigation against plastic bags originating in China, which implicated products worth US $ 312.9 million (according to China Customs data) and 1,793 Chinese companies. Hundreds of Chinese firms responded to the investigation. On 29 September 2006, the EU issued its definitive ruling, awarding 7 respondents Chinese firms market economy treatment and imposing an anti-dumping duty ranging from 4.8% to 12.8% on these Chinese
firms, a duty of 8.4% on other respondent cooperating Chinese firms and a rate of 28.8% on the non-respondent Chinese firms not cooperating with the investigation.

In this case, the EU only issued a ruling for the Chinese firms sampled in its investigation, but without any examination and without any explanation, denied the claim for market economy treatment or individual treatment from nearly 100 un-sampled respondent Chinese firms cooperating with the investigation. As a matter of fact, the WTO Anti-Dumping Agreement allows the determination of anti-dumping duties to be based on the methods of sampling and weighted average, but the ruling on market economy treatment and individual treatment has much to do with the specific situations of different enterprises and must be based on an adequate review of each and every enterprise.

3.7 Barriers to trade in services

3.7.1 Banking services

German legislation pertaining to banking activities provides that with the exception of the EU, US and Japanese banks, the capital of the head offices of foreign commercial banks do not count as the capital of their subsidiaries in Germany. In addition, Germany imposes harsh requirements on the qualifications of senior executives of the branch offices of foreign banks in Germany. It is provided that a senior executive shall be a natural person domiciled in Germany with at least one year working experience in Germany. Chinese-funded banks in Germany complain that under such requirements, the general manager sent by the head office to its branch in Germany is barred from performing his duty for at least one year, which greatly affects the routine operation of Chinese-funded banks in Germany.

In its banking regulations, the Netherlands requires that priority be given to the like domestic firms in the merger and acquisition of its domestic banks. Only under the circumstances that no like domestic companies have considered taking it over six months after the bank’s announcement to sell, will foreign businesses have the eligibility to merge and acquire it. Furthermore, the merger and acquisition contract between the foreign business and the selling bank will not be legally binding until approved both by the original board of directors of the selling bank and by the trade committee of the Dutch Parliament.

Based on the type of banking services provided, the UK classifies banks into universal banks and wholesale (or limited-purpose) banks. The latter only provides banking services to financial institutions. So far, no license of universal bank has been granted to any Chinese-funded banks in the UK.

The Greek legislation provides that citizens of EU Member States should be in the majority of the board of directors of foreign-funded banks in the country.

Italy provides differential treatment between non-EU banks and domestic banks.
The establishment in Italy of the first branch of a bank from a country not a member of the EU is subject to the ratification of the Central Bank, the Ministry of Foreign Affairs and the Ministry of Economy of Italy. With regard to technical review, if the Italian regulatory authorities believe that the financial regulatory practice of a non-EU country fails to meet the standards set out in the Italian legislation, they can reject the request of commercial banks from that particular country to set up branches in Italy. In addition, when settling a foreign exchange transaction exceeding EUR 12,500, banks and other financial institutions involved should apply for approval from Foreign Exchange Administration of Italy.

The aforesaid regulations have, to varying degrees, caused inconvenience to the normal operation of Chinese-funded banks in relevant countries, over which the Chinese side expresses its concern.

3.7.2 Professional services

Professional services include, inter alia, legal, accountancy, auditing and bookkeeping, taxation, architectural designing, civil engineering projects, integrated engineering projects, urban planning, medical and dental services. The EU imposes many restrictions on the supply of professional services from foreign businesses. For example, in respect of legal services in the EU, the areas open to foreign suppliers are consulting services regarding laws of the host country and public international laws, whereas in respect of taxation services, access to the EU market is provided only to the supply of taxation advice services, but does not involve other types of taxation services. Moreover, many entry barriers to services exist in the form of nationality and residence requirements, economic needs tests (ENTs), market access requirements for the contract service providers and so on.

3.8 Sino-EU intellectual property protection and cooperation

In July 2004, the Sino-EU Working Group on Intellectual Property Rights was established. On 18 October 2005, the Working Group met in Beijing for its first session. On 6 June 2006, the second session of the Working Group was convened. On 9 September 2006, the leaders of China and the EU issued in Helsinki, Finland a Joint Statement of the Ninth China-EU Summit, with both sides reiterating the importance of protecting intellectual property rights (IPR). In particular, both sides agreed on the need for appropriate deterrence against piracy and to the effective enforcement of IPR legislation. Both sides expressed their satisfaction over the communication and cooperation of the past year under the EU-China IPR Dialogue and the IPR Working Group and stood ready to further the exchanges and cooperation in this field. Both sides also reiterated that they would strengthen the cooperation and exchanges in the field of geographical indications. The two sides recognized the importance of technology for their economic development and expressed the willingness to strengthen exchanges and cooperation on IPR protection in this area and support the contractual freedom between enterprises in the field of technology transfers under the condition of fairness, reason and non-discrimination.
In October 2006, the European Commission released its first ever economic and trade policy paper towards China entitled “Competition and Partnership: A Policy Paper on EU China Trade and Investment”. The paper asserts that inadequate protection of IPR in China represents a pressing challenge for EU firms trading with and investing in China and that China is by far the largest source of counterfeit and pirated products seized at the EU’s borders.

There is no denying the fact that firmly committed to protecting and defending IPR, the Chinese government has taken substantial measures to enhance IPR protection and implementation. First, China attaches equal importance to the national strategy on IPR protection and the national strategy of independent innovation. Second, China has set up a Task Force for IPR Protection at the state level to better coordinate countrywide efforts in strengthening the protection of IPR. Third, China has enacted and improved a series of IPR related legislations, including the Patent Law, the Copyright Law and the Trademark Law. Fourth, China has toughened law enforcement, putting in place an IPR protection regime that integrates both administrative protection and judicial protection. China has established across the country 50 centers for receiving and handling complaints of IPR infringement, initiated a number of special campaigns to crack down on IPR offences, targeting counterfeit and pirated products in particular. Fifth, China has launched education campaigns to raise the awareness of the public of IPR protection and to urge consumers, businesses and the like to be an active participant in the IPR protection efforts. Sixth, China has actively engaged in international cooperation in the field of IPR protection and established dialogue mechanisms with the EU on the issue of IPR protection.

China hopes to intensify cooperation with the EU by giving fuller play to the role of China EU Dialogue Mechanism on IPR. On the other hand, China takes exception to the practice of maintaining technology monopoly by abusing IPR agreements and rules. IPR protection is a central priority for China, arising from its own need. China remains determined to combat counterfeiting and pirating activities. China will resolutely and sternly clamp down on counterfeit and pirated products, wherever they emanate from. At the same time, the Chinese side also hopes that the EU will accord due attention to the frequent infringements of Chinese trademarks in the EU. On issues of IPR related law enforcement, China hopes that the EU will refrain from making unsubstantiated criticisms in general terms, but inform China of specific cases of IPR violations so that China could crack down on counterfeiting and piracy more effectively. The two sides should exchange relevant information in a timely way and keep the communication channel easily accessible, thereby making the dialogue mechanism more results oriented and effective.

3.9 Trade compensation following the accession of new members to the EU
On 1 January 2007, Bulgaria and Romania joined the EU. The EU common trade policy will automatically apply to these two countries. The accession of Bulgaria and Romania presents challenges as well as opportunities to the China EU economic and trade cooperation. On the one hand, after their accession to the EU, the customs
tariff rates in these two countries will be significantly cut, trade activities will be more rules based, market transparency and integration will be greatly improved, and their market will be more accessible to foreign businesses, all of which will facilitate bilateral trade development as well as economic and trade cooperation for Chinese enterprises in these two countries. However, on the other hand, because Bulgaria and Romania will adopt the EU common trade policy following their accession, China will incur certain economic and trade losses in regards of trade in goods (including tariff, quotas, anti dumping, anti subsidy and safeguard measures), trade in services, technical barriers to trade, sanitary and phytosanitary measures. China has formally asked the EU to open negotiations in bilateral trade compensation, requesting the EU to make compensatory arrangements for China in areas such as tariff, quotas, and anti dumping measures.

3.10 Other barriers

3.10.1 Visas

In recent years, some EU Member States have adopted a tougher visa policy towards transferees from Chinese funded companies in the EU, which amounts to a disincentive to investment in the EU from Chinese businesses.

France imposes harsh requirements for the issuance of visas to employees sent by Chinese firms, and the visa application procedures are complicated and time consuming. The visa granted usually allows only one entry, valid for one year or even three months.

According to the Dutch Immigration Law, Chinese citizens wishing to visit the Netherlands for business purposes must apply for a business visa, which only allows a stay of three months at most. Testimonial papers from Chinese companies and Dutch inviting firms must be presented upon the application of a business visa. The actual processing period for the issuance of a business visa usually takes one to two months.

Pursuant to relevant provisions in the Sino Italian Agreement for Economic Cooperation, each side should grant long term working visas to employees from the other country. However, the Italian government has for a long time issued visas valid for only three or six months to Chinese employees, thus compelling them to go back to China for visa application every three or six months.

Chinese employees find it difficult and complicated to obtain visas to Germany, and it usually takes six months to go through all the procedures, which adversely affects the sustained development of Chinese funded firms in Germany and the intention of the Chinese businesses to invest in Germany.

The procedures for the Chinese staff of Chinese invested companies in Lithuania to apply for visas and residence permits are very elaborate and tedious, sometimes
arbitrary and lacking transparency. It usually takes several months or even half a year for Lithuanian embassies to approve and grant a visa.

3.10.2 Working permits

It is required in some EU Member States that a working permit should first be obtained before a foreign national could work in those countries, but the requirements for granting a working permit are very stringent.

For example, a Chinese citizen in the Netherlands wishing to work for a Dutch company must get a working permit in the first place. First of all, the prospective Dutch employer must report the vacancy to the Dutch Labor Bureau and run a recruitment advertisement in one or two national newspapers. All the qualified applicants for the job must be interviewed, and their application can be rejected only on sufficient grounds. A Chinese citizen can be granted a working permit, only when the candidate for the job cannot be found in the Netherlands or in other EU Member States. The Dutch employer and the Chinese candidate for the job must file an application for a working permit to the local Labor Bureau. The processing period of the application may run into eight or twelve months. However, if a Chinese citizen is to be employed by a branch or a subsidiary set up in the Netherlands by a Chinese or other foreign companies, the employment is deemed to be an internal transfer within an international company and the requirements for the issuance of a working permit will be relatively relaxed. The employer and the Chinese applicant for the vacancy will file a working permit application to the local Labor Bureau, which will examine the application and grant a working permit within three to six months.

3.10.3 Residence permits

Upon arrival in France, business executives of Chinese invested companies in France often encounter unexpected requirements when applying for residence permits. The French authorities require the Chinese business people to submit various kinds of documentary papers, many of which are simply not required for staff sent from other countries. Such practices have in effect impeded the investment from Chinese businesses in the EU countries.

4. Barriers to investment

4.1 Access restrictions

Some EU Member States restrict the market access to investment. Businesses from third countries are prohibited from investing in some fields, and investment of third country businesses in other fields is subject to the ratification of the governments of the EU Member States.

In France, only French nationals, nationals of the EU Members States or nationals of the countries with which France has signed bilateral agreements can invest in certain
sectors. These include privately run research institutions, insurance brokerages, casinos and gambling clubs, forwarding agencies, public market trading, audio video communications, commodity brokerages, tobacco retailing, beverage retailing, French language publishing firms, private security companies, telecommunications, theatrical and artistic performing companies, and pharmacists.

With the exception of investment from other EU Member States, Spain requires investment in the following fields to be licensed by the Directorate General of Trade Policy in the Ministry of Economy, including investment in “sensitive industries” such as casinos, television, radio broadcasting, air transport and national defense, investment by foreign governments and investment by enterprises directly or indirectly controlled by foreign governments, and investment by foreign state owned enterprises.

The articles of association of many Swedish corporations provide the clause of “restrictions on the ownership of foreigners”, stipulating that at least 60% of the equity and 80% of the voting rights should be retained by Swedish nationals. In the absence of such a clause in the article of association, the company shall be deemed a foreign company. Foreign companies are not allowed to come into possession of Swedish natural resources such as mines, oil fields, farm lands, forests and water resources, neither can they have more than 20% of the voting rights of corporations in possession of the aforesaid natural resources. Foreign nationals cannot own vessels or airplanes registered in Sweden, operate Swedish domestic airlines, or hold shares of banks and military factories.

Industries subject to investment restrictions in the Czech Republic include mortgage banking, asset management companies, passenger airlines, passenger and freight road transport, bonds underwriting, and construction engineering service. For seven years after its accession to the EU, Czech bars foreign nationals from purchasing agricultural farmland in the country.

Hungary restricts foreign ownership to varying degrees in areas such as civil aviation, television and broadcasting. For ten years following its EU accession, Hungary will prohibit foreigners from purchasing its land.

In Poland, the establishment of foreign invested banks is subject to prior approval, and foreign investment in mine exploration and extraction, production and operation of ammunitions and military products, toll highways, radio broadcasting and television is subject to government licensing. Poland does not set any limits to foreign ownership in most industries. However, a 49% limit is set respectively for the cap on the ownership of non EU firms in television and radio broadcasting and the cap on foreign ownership in civil aviation. No foreign investment is currently allowed in casinos.

4.2Differential treatment
Only when a third country subsidiary has demonstrated to the extent that it is related, in a substantial and sustained way, to the economy of the Community, is it entitled to national treatment in the EU market, including the liberty to set up branch offices and the cross border supply of services within the Community. However, national treatment is not granted to its branch offices directly set up in the EU by the third country corporations.

In Germany, Ireland, Austria, Sweden and Finland, the purchase of land and in some instances the leases of land by alien citizens are subject to the approval of the local governments. In the EU Member States except Austria, Finland and Sweden, all the public utilities services, be they at the state or the local level, are allowed to be publicly monopolized or to accord exclusive right to private operators.

4.3 Restrictions on alleged security grounds

On 30 December 2005, France issued Decree No. 2005-1739, amending its regulation on foreign financial relations and establishing a prior authorization regime for certain foreign investments. According to the Decree, investment in France and merger and acquisition of French businesses by third country companies in the following eleven strategic business sectors are subject to prior authorization. Only after an approval is granted can investment, merger and acquisition be effected.

These eleven sensitive areas identified by the Decree cover:(1) businesses involved in the gambling industry,(2) regulated businesses providing private security services,(3) businesses involved in the research and development or the manufacture of means of fighting the illegal use of pathogens or toxic substances by terrorists and preventing the adverse health related consequences of such use,(4) businesses dealing with wire tapping and mail interception equipment,(5) businesses licensed to provide evaluation and certification services relating to the security of information technology systems and products,(6) businesses providing goods or services relating to the security of the information systems subject to the French National Defense Code,(7) businesses relating to dual use technologies and items subject to the export control of the EU,(8) businesses involved in providing cryptology goods and services subject to the French Act of Trust in Digital Economy,(9) activities of national defense businesses,(10) businesses involved in the research, development, production and trade in military or war materials subject to the French National Defense Code, and(11) businesses that have entered into a design or equipment supply contract with the French Defense Ministry.

Moreover, the French Senate put to vote and passed on 23 March 2006 the Public Offering of Takeover Act. According to the Act, in the event of foreign hostile takeover of a publicly traded company in France, the French company may issue stock warrants free of charge to strengthen the power of stockholders and to increase the value of corporate capital, thereby boosting the strength of the company to thwart the hostile bid.
German legislation provides that foreign investment in Germany should gain the approval of the relevant German industry federations. According to the regulations, foreign investment may not be approved, if it is likely to affect the development of the existing German enterprises. In addition, the approval for setting up a Chinese funded enterprise in Germany often takes considerable time. The lengthy approval process, the complicated procedures and the lack of transparency have affected the normal business operation of Chinese funded enterprises in Germany.

In Greece, laws governing taxation and investment are numerous and are subject to frequent changes. Take the investment promotion law and the taxation law for example, over the past two decades, ten laws relating to investment promotion have been promulgated, averaging one such law every two years, and a new taxation law is published almost each year. Furthermore, it takes an average of 60 days for a foreign investment project to be examined and approved. And the Greek law provides that government examination and ratification could take as long as two years. The frequent legislative changes and the lengthy authorization procedures have added the investment risks to enterprises.

In the Czech Republic, it is required that non-EU nationals should register a company (a legal entity) before they are entitled to purchase real estate in the country, whether for commercial or for residential purposes. However, exceptions apply to a permanent resident with a spouse of the Czech nationality. This means that a Chinese company must first set up a new company in Czech, if it wants to purchase land for investment purposes.

Such regulations and practices as described above have, to varying degrees, constituted serious barriers to business activities of Chinese funded enterprises in the EU Member States concerned.
The Philippines

1 Bilateral trade and investment

According to the China Customs, the bilateral trade volume between China and the Philippines in 2006 reached US $23.41 billion, up by 33.3% year on year, among which China’s export to the Philippines was US $5.74 billion, up by 22.4% year on year, while China’s import from the Philippines amounted to US $17.67 billion, up by 37.3% year on year. China had a deficit of US $11.93 billion. China mainly exported to the Philippines machinery and electronic products (including electrical and electronic products, semiconductor devices, integrated circuits and micro electronic components), processed oil, cereals and cereal products, coal, textile yarn and products thereof, etc. China’s main imports from the Philippines included integrated circuits and micro electronic components, semiconductor devices, electrical and electronic products, inductors and parts, bananas, fresh and dried fruit, nuts, processed oil, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by Chinese companies in Philippines had reached US $1.24 billion, and the volume of completed labor service contracts had reached US $52.45 million.

According to MOFCOM, China’s total non-financial foreign direct investment (FDI), approved by or filed with MOFCOM, reached US $2.86 million in 2006. Philippines investors invested in 147 projects in China in 2006, with a total contractual investment of US $459 million and an actual utilization of US $130 million.

2 Changes in trade and investment regime

Legislation governing the trade and investment in the Philippines remained quite stable in 2006. Foreign trade is subject mainly to such laws as Tariff and Customs Code, Export Development Act, Anti-Dumping Act, Countervailing Act, Safeguard Measures Act, while investment in the Philippines is subject mainly to Omnibus Investment Code, Foreign Investment Act, Tax code and Price Act. In addition, Consumer Act of the Philippines and Intellectual Property Code constitute an important integral part of the Philippine trade and investment regime.

2.1 Legislation on trade and investment and its development
2.1.1 Tariff regime

The Philippines imposes ad valorem duties on most imports while imposing specific duties and compound duties on a minority part of the imports. According to the tariff reform plan taking effect in 1995, the Philippines is gradually lowering its tariff rates on imports. At present, the Philippines levies ad valorem MFN duties at rates ranging from 0% to 65%. Furthermore, according to the Tax Code, the Philippines will impose excise duties on imports of some products such as automobiles, tobacco, alcohol and alcoholic products. Value added tax will be levied on imported goods based on customs valuation plus tariffs and excise duties.

As a key member of ASEAN, the Philippines adopts special preferential tax rates on the imports from other ASEAN members, generally from 0% to 5%. Pursuant to the Agreement on Trade in Goods between China and ASEAN signed in November 2004, ASEAN should gradually reduce the tariff rates on imports from China as of 2006. According to the commitments made by the Philippines in the Agreement on Trade in Goods, the Philippines will gradually reduce the tariff rates on normal products from China to zero before 2010 and 2012, the tariff rates on sensitive products to 20% before 2012 and then to 0%—5% in 2018, the tariff rates on highly sensitive products to 50% in 2015.

To perform the obligations provided in the ASEAN–China Free Trade Area Agreement, Philippine President Arroyo issued Executive Order No. 485 on 29 December 2005, declaring as of 1 January 2006, the Philippines would impose zero tariffs on 214 categories of Chinese vegetables and fruit which are incorporated in the “early harvest” plan. On 12 January 2006, Philippine President Arroyo issued Executive Order No. 487, stipulating as of 1 January 2006, the tariff rates under the normal track of the ASEAN–China Free Trade Area would be reduced. Import tariff rates above 20% would be reduced to 20%, 15%—19% to 15%, 10%—14% to 10%, 6%—9% to 5% and 0—5% remaining unchanged. The MFN tariff rates would be imposed on the imports from China which were not incorporated in the annex to Executive Order No. 487.

2.1.2 Import administration

In 2006, import licensing still applied to over 130 categories of products, such as autos, tractors, motorcycles, durable consumer goods, cement and some agricultural produces.
In the spirit of the Uruguay Round negotiations, the Philippines has the obligations to eliminate the tariff quotas on agricultural produces such as rice before June 2005. However, in order to protect the interests of domestic farmers, the Philippines made a request to the WTO, hoping the quota administration on rice could be extended to 2012. On 27 April 2005, the governments of China and the Philippines reached an agreement on the extension of the “special treatment” to the Philippine rice under the WTO framework. The Chinese side agreed to extend the special treatment to the Philippine rice for seven years while the Philippines agreed to increase the import quota on rice, of which 25,000 tons per year was appropriated for China. The import quota tariff rate of rice would be reduced from 50% at present to 40%. Besides rice, another 15 categories of imports including chickens and ducks are subject to quota administration.

According to the relevant stipulations of the 2001 Tariff and Customs Code, the Philippines generally takes the actual transaction price as the base for Customs evaluation and withdraws the original unreasonable practice of taking the domestic consumption price as the base for Customs evaluation. The Philippine Customs processes all the Customs declaration documents of the importers or their agencies through the Automated Customs Operating System which makes use of its selectivity system to classify shipments with different levels of risks. A low risk shipment goes through the “green lane” and is generally subject to no documentary review or physical inspection but is covered by “post audit review”. A moderate risk shipment goes through the “yellow lane” and is subject to documentary review but no physical inspection. A high risk shipment channels through the “red lane” and is subject to both documentary review and physical inspection prior to its release. The Philippine Customs has also added a “super green lane”, for qualified importers of extremely low risk, to provide immediate clearance. At present, the Philippine Customs is gradually lowering the cost of using the system by the importers so as to improve its utilization rate.

2.1.3 Export administration

The Philippine government encourages export trade apart from banning export of ramie seeds and seedlings, some wild animals and live fish. Incentive policies for export oriented enterprises and export products are stipulated in Omnibus Investment Act and Export Development Act.

Export incentive measures taken by the Philippines include simplifying export procedures and exempting additional taxes on export; rebate of VAT for the imported raw materials used in processing for re-export, foreign exchange assistance and the using of low cost facilities in the export processing zones. In addition, exporters can
retain 100% foreign exchanges from export for the use of any purposes. Export financing is granted as well. Exporters can apply to local banks for low interest rate foreign exchange loans if the L/C, the purchase contract or sales contract are submitted. The Central Bank provides guarantee to encourage the export of labor intensive products using local raw materials. Incentive measures concerning raw materials and tariffs are also granted to the establishment of export processing zones, bonded warehouses and various kinds of industrial parks. On 18 January 2006, the trade promotion fund was jointly established by the government agencies including the Department of Trade and Industry (DTI), the Department of Budget Administration, the Central Bank and the National Development Bureau of the Philippines as well as the Philippine Export Confederation to provide financial support for export enterprises in capacity building, product design, market research, overseas promotion and image building, etc.

On 3 August 2006, Philippine President Arroyo issued Executive Order No. 554, requiring that all the administrative departments, agencies and state owned enterprises related to export trade should eliminate the administrative fees and charges relevant to export trade unless otherwise stated in the special laws. In the meantime, it also demands to simplify the procedures and shorten the time for approval so as to improve the international competitiveness of the Philippine exports.

2.1.4 Trade remedy measures

Pursuant to Anti-Dumping Act, Countervailing Act and Safeguard Measures Act, the Philippine Tariff Commission is responsible for the public hearing and consultation of anti-dumping and countervailing investigations as well as the initial investigation related to safeguard measures.

2.2 Investment administration and its development

Except for the restricted industries stipulated in the Foreign Investment Negative List published by the National Economic Development Bureau, the Philippines encourages foreign investment. Numerous investment incentive policies are specified in the industrial and regional investment laws and regulations including Export Development Act, Omnibus Investment Code, Foreign Investment Code, BOT Act, Mining Act, Iron and Steel Act and the Special Economic Zone Act.

According to the relevant investment laws, foreign investors are entitled to the rights to withdrawing investment, remitting profits back, paying off foreign debts, and being exempted from confiscation or appropriation. The Special Economic Zone Act of the
Philippines stipulates that foreign invested enterprises located in the state level economic zones enjoy the following preferential treatment: four year corporate income tax holiday which can be extended to eight years at most; upon the expiration of the exemption period of corporate income tax, companies can choose to pay 5% gross income tax in lieu of state(central) and local taxes; imported capital goods(equipment), CKDs, components, raw materials, breeding stock or gene materials for breeding purposes are exempted from import duties and other taxes and fees; the purchase of the like products in the Philippines can be granted tax credit, that is to say, various taxes and fees should be paid at first, but will be refunded after the products are exported(including the imposition of import duties and the refund of it); exemption of dock dues and export fees and charges is available; foreign investors and their family members are granted permanent residents; procedures for import and hiring of foreign employees are simplified, etc.

The 2006 Investment Priorities Plan published by the Philippine Board of Investment in September 2006 specifies the incentive measures for fields of investment priorities in eleven areas of health care, electronics, auto parts and components, energy, shipbuilding, garments, building materials and furniture: 100% foreign ownership is allowed; corporate income tax is exempted for six years since the date of registration; if the capital equipment and the annual employee proportion of the enterprise comply with the regulations of BOI of DTI, the newly employed of the enterprise(including skilled and unskilled labor) enjoy 50% reduction of their income tax within five years of the registration of the enterprise and 75% income tax reduction is granted if the enterprise is located in less developed regions; contract tax is exempted; breeding stock or genetic products are exempted from import duties and tax credit is granted if domestic breeding stock or genetic products are used; the import of spare parts and components are exempted from various kinds of fees and taxes if the company exports over 70% of its products; Customs procedures are simplified and dock dues and export fees and charges are exempted. In January 2007, the Philippines made major modifications to the 2007 plan:(1) To increase its revenues, the Philippine government will not grant any incentives to the building, expansion and transformation of projects in any of the existing economic activities;(2) BOI cancelled the simplified registration procedure for applying for incentives, stating that DTI has to consult the Ministry of Finance to grant incentives to any projects stipulated in Omnibus Investment Code.

2.3 Legislation on trade and investment and its development

Pursuant to Decree 9337/2005, corporate income tax rate of the Philippines was raised from 32% to 35%, with the implementation period from 1 November 2005 to 31 December 2008. As of 1 January 2009, corporate income tax rate will be reduced to 30%. 
In November 2005, a new VAT act was passed in the Philippines. According to the act, the VAT rate will be increased from 10% to 12% as of 1 February 2006 so as to regulate the domestic tax regime and increase the revenues of the government. Besides, selling of certain agricultural produces is exempted from VAT.

3 Barriers to trade

3.1 Tariff and tariff measures

The weighted average tariff rate published by the Philippine Tariff Commission in 2006 is 3.56%, a little lower than 3.78% in 2005. In breakdown, the weighted average tariff rate of agricultural produces and foodstuffs is 9.22%, chemical products 4.16%, textiles, paper and leather 6.84%, mineral products 2.79% and finished industrial products 2.97%.

The “tariff rate recalibration” stipulated in 2003 Tariff and Customs Code of the Philippines still remains the main barrier to tariff administration. According to the regulation, the Philippine government can use executive orders to selectively raise tariff rates of any products. Executive Order No. 419 published in April 2005 regulated that the tariff rate of autos with the capacity of ten or more passengers including the driver would be 25%, which was 5% higher than the original MFN tariff rate. The order still remains effective to this date. The above mentioned tariff administrative measures which have granted too much discretion to the administrative authorities have resulted in the great uncertainty of those relevant imports. The escalating tariff rates have constituted certain obstacles to the relevant Chinese export companies and the Chinese side is concerned about it.

3.1.1 Tariff peaks

In spite of the relatively low weighted average tariff rates on the imports to the Philippines with 56.4% of the products rates lower than 5% in 2006, over 20% of the imports to the Philippines are levied high tariff rates of over 15%. In breakdown, products with rates of over 7.6% account for more than 20%; products with rates of over 5.2% account for more than 30%; and some products are even levied high rates of 50% and 65%. At present, the imports subject to tariff peaks mainly include live animals, pork, poultry meat, vegetables, rice, sugar, coffee, powered vehicles, motorcycles, etc. The average tariff rate reached as high as 43.5%.
3.1.2 Tariff quotas

Tariff quota restrictions still remain effective in the Philippines in 2006. Besides rice, livestock and meat thereof, potatoes, corn, coffee, and sugar are also subject to tariff quotas. In quota tariff rate on fresh and frozen pork is 30%, out quota rate 30%. In quota tariff rate on corn is 35%, out quota rate 40%. In quota tariff rate on frozen chicken is 40%, out quota rate 40%. In quota tariff rate on turkey is 30%, out quota rate 40%.

3.2 Barriers to Customs procedures

Though the Tariff and Customs Code of the Philippines specifies that the Philippine Customs is the administrative authority responsible for Customs evaluation of imports, post review, risk management and IPR border protection, there are private agencies taking part in the process of Customs evaluation, especially the evaluation of goods through the “green lane”. In addition, some Customs staff charge extra fees not stipulated by the law. The Chinese side believes that these practices are detrimental to the smooth Customs clearance of imports.

3.3 Import restrictions

The Fishing Act of the Philippines allows the import of fresh and frozen fish and fish products on condition that the import license must be obtained from the Ministry of Agriculture of the Philippines. No import licenses will be issued by the Ministry of Agriculture until it believes that the Philippines has to import the product to ensure domestic food supply and that the import will not constitute any material injury or threat of injury to the domestic industry. In 2006, under the excuse of protecting domestic farmers interests, the Ministry of Agriculture of the Philippines ordered BPI to stop issuing the import license for onions. While the Chinese side respects the licensing administration of the Philippines on sensitive products such as autos, tractors, motorcycles, durable consumer goods, fish and other agricultural products, it is concerned about the inconsistency between the reasons given by the Philippines to stop issuing the license and the relevant regulations incorporated in the Agreement on Import Licensing Procedures of the WTO.

3.4 Imposition of discriminatory taxes and fees on imported goods

In December 2004, The Philippine President signed the decree to increase the excise duties on tobacco and alcoholic products. The decree specifies different duties on
imported liquor and domestically produced liquor. The government imposes US $ 0.19 per liter excise tax on liquor distilled by using the raw materials available locally while the liquor made from imported raw materials is subject to excise taxes varying from US $ 1.76 to US $ 7.06 per liter. For low alcohol contained wine such as 14% or below basically using imported materials, the excise tax is US $ 0.28 per liter. US $ 0.56 per liter excise tax is levied on drinks with alcohol content ranging from 14% to 25%. If the alcohol content is higher than 25%, the tax of the product is levied as liquor. That the imposition of excise duties on imported liquor is obviously higher than the domestically produced liquor has evidently constituted discrimination against the imports and is in violation of the WTO national treatment principle.

3.5Technical barriers to trade

At present, according to the mandatory national standards, the Philippines requires the inspection of 91 categories of products including household electric appliances, cosmetics, medical equipment, and wire and cables. Mandatory labeling requirements are set for textiles and clothing. If labeling of the imports is found to be inconsistent with the requirements, not only the default products, but also the whole lot of the products will be distrained and destroyed. The Chinese side holds the view that the regulation which enlarges the scope of punishment is likely to cause damage to qualified goods in practice, and is thus concerned about it.

Bureau of Product Standards of the Philippines published PNS 154:2005, regulations on ceramic wall and floor tiles on 13 September 2006. It specifies dimensions and tolerances, physical and chemical characteristics, sampling, testing and marking requirements of ceramic wall and floor tiles and fittings. It applies to both glazed and unglazed ceramic tiles and fittings generally used for wall and floor coverings. Those found not complying with the requirements cannot enter the Philippine market. The Chinese side believes there are obvious discrepancies between the contents of PNS 154:2005 and the international standards widely adopted in the world and that it is unnecessary to have mandatory requirements on the specifications and sizes of ceramic wall and floor tiles. Besides, these requirements are not in conformity with trade practice or the technological development trend. Furthermore, the testing methods of ceramic wall and floor tiles lack scientific evidence. Consequently, they will increase the cost of manufacturers and exporters by a large margin. The Chinese side hopes that the Philippines will modify the contents of the standards in question, call off the mandatory implementation of the standard so as to be in compliance with the requirement of taking the international standards as the basis and the principle of legitimate goal laid in the WTO TBT Agreement.

The Department of Trade and Industry(DTI) of the Philippines specifies that as of January 2006, all imported color TV sets or black and white TV sets with sizes from
14 inches to 29 inches should be subject to the inspection and certification by the testing center of BPS and Solid Laguna Corporation. Products can not be put on the market without the designated certification labels. The Chinese side holds the view that the practice of appointing Solid Laguna Corporation as the sole “third party” inspection agency has resulted in inconvenience in importing business and increased the cost of the imports.

3.6 Sanitary and phytosanitary measures

In 2006, the Philippine Ministry of Agriculture still maintained VQC on the import of meat and poultry products. Executive Order No. 26 of the Philippines requires the officially recognized importers to obtain VQC before importing meat and poultry products. At present, the validity of VQC in the Philippines is 60 days and it is not extendable. In addition, VQC in the Philippines can only be used once. When the amount of actual import exceeds that permitted by the VQC, the importer must apply for another VQC and the importer will be fined. This regulation allows the relevant authorities to have more discretion when issuing VQC. The Chinese side hopes that the application for VQC in the Philippines can be more flexible and transparent so that it is in consistency with the WTO/SPS agreement.

3.7 Trade remedy measures

Up to the end of 2006, the Philippines had initiated eight cases of trade remedies against China. The outstanding trade remedy cases at present include the anti dumping case of sodium tripoly phosphate initiated in 1998 and reviewed in 2004, the safeguard measures case of imported goods such as printed glass, float glass, mirrors and sodium tripoly phosphate filed in 2003.

In July 2006, provisional safeguard measures of 200 days were taken for sodium tripoly phosphate in the Philippines and US $0.29 per kilo duties was levied on the import of the product in question.

On 21 June 2006, the Philippine Tariff Commission decided to initiate safeguard measures investigation into imported printed glass, float glass, and mirrors originated in China and made a conclusion in November 2006, resulting in three year safeguard measures for the afore mentioned products. This has been the second round of safeguard measures for these products by the Philippines since the expiration of the first round executed in 2004. Since then, the export of glass and glass products from China to the Philippines has dropped dramatically. In 2004 the export amount was only 10% of that of 2003, and in 2005 it was 35% of that of 2003.
The Chinese side hopes that the Philippines will restrain itself from adopting trade remedy measures to avoid the adverse effect on the Sino-Philippines bilateral trade.

3.8 Government procurement

Executive Order No. 120/1993 of the Philippine government requires counter purchase if government institutions or government-controlled companies want to purchase goods worthy of more than US $1 million. The Department of Trade and Industry requires that foreign suppliers should be obliged to purchase Philippine goods worth more than half the value of its supply from the international trading company of the Philippines; otherwise they shall be fined.

The 2003 Government Procurement Act of the Philippines grants preferential treatment to the domestically produced goods and raw materials. In addition, the Philippines has specified the eligibility of contractors in the government procurement for infrastructure projects such as water, electricity, telecommunications, and transportation, requiring that the contractors for infrastructure projects should be at least 60 percent Filipino-owned.

In 2004, the Philippine President signed Executive Order No.278, providing incentive policies to the Philippine enterprises participating in infrastructure building. The Executive Order states that in the bidding process for the service of infrastructure facilities, the Philippine government should try its best to choose those enterprises which make use of the domestic fund, domestic resources and employ domestic professionals.

Although the Philippines is not a signatory to the Government Procurement Agreement of the WTO, its discriminatory policies in government procurement constitute substantial obstacles to Chinese enterprises in bidding for the Philippine government projects. The Chinese side is concerned about it.

3.9 Subsidies

The Philippines offers tax exemptions to auto manufacturers through implementing the export incentives program for domestically manufactured automobiles. The program allows any auto manufacturers which export finished vehicles from the Philippines to receive a benefit equivalent to US $400 per vehicle for year one and two, US $300 for year three, and US $100 by year five. In October 2005, the
coverage was extended to include auto parts. The export subsidies have enhanced the competitiveness of the auto and auto parts of the Philippines. The Chinese side is concerned about the inconsistency between the export subsidy measures of the Philippines and the relevant rules and regulations of the WTO.

3.10 Barriers to trade in services

3.10.1 Banking

Only ten foreign banks are permitted to open full service branches in the form of wholly owned subsidiaries in the Philippines and foreign banks are limited to six branches each. Four foreign owned banks that had been operating in the Philippines prior to 1948 are each allowed to operate up to twelve branches. The Philippines also specifies 70% of the total bank assets and 50% of the total capital should be controlled by the Philippine local banks. It is also required that the branches of foreign banks should not take from or provide to its mother banks and/or other banks a net capital more than four times of its permanent capital.

3.10.2 Insurance

The Philippines allows foreign insurance companies to set up wholly owned foreign insurance institutions, but the minimum capital requirement on foreign insurance companies is on the rise. Foreign funded insurance companies are not allowed to be engaged in insurance business of government funded projects which can only be insured by the insurance companies with state ownership. This regulation was extended to cover the public and private BOT projects in 1994. The prevailing Philippine insurance regulatory law also provides that all the insurance and reinsurance companies operating in the Philippines should pay at least 10% of the premium to the Philippine National Reinsurance Company.

3.10.3 Securities and other financial services

The Philippines allows foreign securities companies to have access to its domestic securities market, yet foreign equity in securities underwriting is limited to 60 percent. Membership on a board of directors of foreign invested mutual funds is limited to Philippine citizens.

3.10.4 Basic telecommunications
The Philippines does not provide access for foreign satellite telecommunications services to its domestic market and limits foreign ownership of telecommunications firms to 40 percent. Besides, telecommunication companies cannot hire foreigners to be their general managers and the proportion of foreign staff should not exceed that of foreign equity.

3.10.5 Advertising

According to the laws in the Philippines, foreign ownership in Philippine advertising companies cannot exceed 30%. In addition, eligibility of managers of advertising agencies is limited to Philippine citizens.

3.10.6 Public utilities

Relevant laws in the Philippines restrict the foreign ownership of the companies of public utilities such as water, electricity, communications, and transportation system, of which domestic ownership should exceed 60% and the managers of the contractors are limited to Philippine citizens.

3.10.7 Professional services

The Philippine authorities reserve the practice of licensed professions of engineering, architecture, law, medicine, and accountancy to Philippine citizens.

3.10.8 Shipping

The Philippines prohibits foreign flagged vessels from engaging in the provision of domestic carriage services. The country’s bareboat chartering laws stipulate that Philippine flagged vessels should be manned by a Filipino crew and disallows foreign crew or officers, except as supernumeraries.

3.10.9 Courier service

The Philippines specifies that foreign courier service companies cannot engage in the Philippine domestic courier services unless they sign contracts with 100% Philippine owned companies or establish joint ventures with Philippine ownerships exceeding 60%.
3.10.10 Retailing

The 2000 Retailing Act of the Philippines allows foreign investors to establish retail businesses with registered capital not less than 2.5 million US dollars ten years after the law being effective, but foreign ownership cannot exceed 30%. Foreign ownership cannot exceed 10% if the company deals in the sale of luxury goods. Foreign investors have to satisfy the reciprocal requirements. That is to say, only those nationals or legal persons whose countries allow the Philippine nationals and legal persons to engage in retail business can deal in the same business in the Philippines.

4 Barriers to investment

The Philippine laws allow foreign investors to set up joint ventures, branches and representative offices. The law stipulates that Filipino shareholders should not be fewer than five and more than fifteen in a joint venture, most of whom should be permanent residents of the Philippines. The secretary of a joint venture should be a Philippine citizen. The Philippine Securities and Exchange Commission also requires that the financial personnel of joint ventures should be permanent residents of the Philippines. Prior to the operation of branches in the Philippines, the mother company of the foreign party should have registered with the Philippine Securities and Exchange Commission. It is also required by Corporation Code that the branch should at least deposit negotiable securities with a real market value of 100,000 pesos at the Philippine Securities and Exchange Commission. Within six months after each fiscal year, the branch should deposit negotiable securities with a market value of 2% of its total revenues (no less than five million pesos) at the Philippine Securities and Exchange Commission. In addition, representative offices should register with the Philippine Securities and Exchange Commission and remit US $30,000 to the Philippines.

The above mentioned regulations on the establishment of joint ventures, branches and representative offices required of foreign investors by the Philippines have raised the threshold of foreign investment, constituting substantial barriers to foreign investment.
Bilateral trade relations

In 2006, the Republic of Korea was China’s fifth largest trading partner. According to customs statistics released in China, the trade volume between China and ROK in 2006 hit US $134.31 billion, up by 20.0%, among which China’s exports to ROK were US $44.53 billion, up by 26.8%, while China’s imports from ROK were US $89.78 billion, up by 16.9%, with a deficit of US $45.25 billion on China. China mainly exported to ROK coking coal, anthracite, diode, transistor, inductance, maize, petroleum crude, Portland cement, natural ore, granite, semiconductor switch parts, circuit switches, printed circuits, single phase digital integrated circuits, iron or non-alloy steel plate, etc. China’s main imports from ROK included sulphuric acid, alternating current motors, petroleum asphalt, diode, transistor, sockets, inductance, single phase integrated circuits, benzoic diacid, printed circuits, integrated circuits and microelectronic parts, semiconductor devices, processed petroleum, etc.

According to the China’s Ministry of Commerce (hereinafter referred to as MOFCOM), in 2006, Chinese funded non-financial direct investment projects in ROK, which had either been approved by, or submitted relevant applications for approval of, the MOFCOM, amounted to US $9.96 million. In 2006, Korean invested projects in China numbered 4,262 with the contracted amount hitting US $12.32 billion and actually contributed US $3.89 billion. By the end of 2006, the number of Korean direct investment projects in China had reached 43,130 and the amounts of the contracted investment and actual contribution stood at US $82.64 billion and US $35 billion respectively.

Changes in trade and investment regime

2.1 Trade administration regime and its development

2.1.1 Tariff system

The Customs Act serves as the basic regulation governing ROK’s tariff system. The ROK’s tariff policies are formulated by the Ministry of Finance and Economy and enforced by the Customs Department and its subordinate organizations.

ROK’s import tariffs are classified into basic tariffs, temporary tariffs and elastic tariffs, etc. Temporary tariffs and elastic tariffs are regulated and imposed by the ROK government under different circumstances. ROK’s elastic tariffs, comprised of anti-dumping duties, adjustment tariffs, price equilibrium tariffs, are vital in regulating imports and exports as well as protecting its domestic related industries.
As of September 1, 2006, the Asian Pacific Trade Agreement (originally the Bangkok Agreement) was enforced by ROK. The current members of the agreement are six countries in Asia, including China and ROK. Members of the agreement were committed to mutual tariff reduction by applying general concession rates to all the members of the agreement and special concession rates to the least developed countries. According to the agreement, ROK implemented general recession measures on chemical products, iron and steel, metal, and so on. The scope of application of the preferential tariffs was expanded from previous 285 to 1,367 and the tariff levels will be lowered by 35.7% on average. The measures make 1367 10 digit tariff heading Chinese products subject to preferential tariffs.

2.2.2 Import administration

The Ministry of Commerce, Industry and Resources (MOCIE) works as the competent authority for trade and investment administration, responsible for the formulation and implementation of ROK trade and investment policies. The Import & Export Notice published by the Ministry of Commerce, Industry and Resources (MOCIE) from time to time imposes restrictions on the import of specific commodities temporarily. The import of special items specified in the Import & Export Notice requires import license application which shall be submitted to the related government bodies or the trade associations and approval by related authorities. In addition, special items defined by the MOCIE in its Annual Trade Plan require approval by the Minister.

2.2.3 Trade remedies

The Korean Trade Commission subordinate to the Ministry of Commerce, Industry and Resources is responsible for implementing trade remedies including anti dumping, countervailing and safeguard measures. In light of the Customs Act, the Korea Trade Commission investigates unfair trade practices disrupting import and export and puts forward proposals for punishment, which is to be ruled by the Ministry of Finance and Economy.

2.2 Investment administration

In the wake of Asian financial crisis, full liberalization and incentive policies are applied to foreign investment.

1,029 sectors of 1,121 Korean sectors (based on the standard industry) are fully open to foreign investment. Besides 63 sectors not suitable for foreign investment such as administration, foreign affairs, and war industry, there are two sectors not officially liberalized including television broadcasting and radio broadcasting. 27 sectors are under investment restriction.

Related administration agencies implement the market access approval system over foreign direct investment for the purpose of capital flow and market access
administration. All relevant restrictions to foreign direct investment will be collected by the MOCIE and announced in the Comprehensive Notice of Foreign Investment each year.

The Foreign Investment Mid and long term Strategy issued by the Ministry of Commerce, Industry and Resources in October 2006 stipulated the scope of encouragement in the preferential policies for foreign investment was expanded from high technology and its related industries to less developed areas regardless of foreign investment sectors. In addition, foreign industries with their investments in the capital, if moving to the less developed areas, would enjoy related subsidies and financial support.

2.3 Administration system related to trade investment and its development

2.3.1 Foreign exchange control

The laws governing foreign transaction in ROK are classified into two categories: basic laws and related laws. The former include the Foreign Exchange Act, the Foreign Exchange Implementation Decree, and all types of foreign exchange control regulations while the latter include the Foreign Trade Act, the Foreign Investment Promotion Act, the ROK Banking Act, the Customs Act and the Internal Tax Act, etc. ROK’s Ministry of Finance and Economy is responsible for the formulation, amendment and implementation of the foreign exchange policies in ROK.

In March 2006, to prevent the ROK won from continued appreciation and to keep the stability of the foreign exchange market, the ROK government decided to loosen foreign exchange control, lift the restrictions on overseas direct investment and overseas real estate purchase, and relax the requirements that outbound funds must be remitted within the stated time. Small and medium sized export enterprises which respond fairly weakly to the exchange rate fluctuations are exempt from the exchange fluctuation insurance limit of export insurance companies.

2.3.2 Visa administration

As of August 2006, ROK’s Ministry of Law implemented the regulations of the amended Transit Control Act. According to the amended regulations, the foreigners qualified for business investment are granted residence visas with the term of validity extended from currently three years to five years, are allowed to apply for residence visas with the maximum term of validity of five years for one entry, and are exempted from service charges for changing residence qualifications or time limit.

2.4 Administration measures for specified products

The Draft of Food Sanitary Act Decree Amendments formulated by the ROK’s Health Department On June 22, 2006 strengthened the requirements for sample preservation in official inspection and test labs, added the requirements for business people engaging in food to keep files, standardized the labeling of country of origin
for red meat sold in restaurants, and specified the scope for false labeling and misleading advertisements. The draft applies to such products as food, food additives, instruments and devices, packages and containers. It has not been defined when it will take effect.

On June 27, 2006, the ROK Health Department announced the formulation of the Draft of Health Food Act Decree Amendments, which added the qualification requirement for quality control managers of the manufacturing factories, amended the regulations for the Health Food Act, extended the scope of production to all procedures and lifted the compulsory requirements for all enterprises. The draft is applicable to health products. The regulation was approved and took effect in September 2006.

In July 2006, to provide consumers with more information and comply with international standards, ROK’s Food and Drug Administration Bureau proposed an amendment to food labeling standards. For instance, it required the nutrition labels to state the ingredients contained with standard unit gram per serving, the content of sugar, cholesterol, trans fat with more specific table. The amendment took effect in September 2006.

3 Trade barriers

3.1 Tariff and tariff administrative measures

The average level of tariff in ROK was under 8 percent in 2006, but the actual tariffs of some agricultural and industrial products are much higher than those in other industrialized countries. For instance, the weighted average of ROK’s bound tariffs on all agricultural products is 52%.

3.1.1 Adjustment Tariffs

An adjustment tariff lower than 100% is, in addition to the basic tariff, applied to the agricultural, forestry, animal and aquatic imports whose domestic counterparts are weak in competition or whose increase is likely to result in the disruption of domestic market or injure related domestic industries, and to those imports whose domestic counterparts are subject to provisional protection on such reasons as environmental protection, domestic consumers’ interests and the balance of domestic industry development. The imports subject to the adjustment tariffs scheme and the related rates are published once every year and the imposition runs from January 1 till December 31.

In 2006, 17 kinds of products are subject to adjustment tariffs, with the average level at 37.4%. Compared with the level of 2005, the adjustment tariff on shrimp(frozen) is canceled and those on 8 kinds of products including live river bass, frozen colonbissnira, frozen ray, frozen slatecocodecroakers, salted shrimps and shrimp sauce, frozen squi, bean sauce pies and veneer board were cut down by 1%—7%. Among the 17
kinds of products subject to the adjustment tariffs, live eel, live river bass, live river slatecodcroakers, salted shrimps and shrimp sauce, tricholoma matsutake, Chinese vermicelli, bean sauce pies, mixed seasonings (including red pepper paste) are totally or mostly Chinese imports in which Chinese producers enjoy competitive advantages. The Chinese side hopes ROK will continue reducing the number of categories of products subject to adjustment tariffs and the related rates.

3.1.2 Tariff quotas

In the negotiations of the Uruguay Round, ROK was allowed to implement tariff quotas on such agricultural products as rice and corn. In 2006, ROK maintained tariff quotas on 63 major kinds of agricultural products. Some of the covered items are subject to an over quota tariff rates above 200%. For example, the rates of sesame, garlic, mung bean, date and green tea are 630%, 360%, 607.5%, 611.5% and 513.6% respectively. Most agricultural products in which China enjoys competitive advantages are subject to tariff quota administration by the ROK Government, so the over quota tariff rates have, in fact, impeded the export of related Chinese products to ROK.

3.1.3 Special safeguard duties on agricultural products

At the end of December 2006, ROK made slight adjustments on the coverage of products subject to Special Safeguard Duties on agricultural products in 2006 and the related tariff level, reduced the covered goods to 44 from 45 in 2005 and removed the special safeguard duties on potato powder and grains. The stipulations in the amendment took effect as of January 1, 2006. If the imports of 44 agricultural and forestry products such as mung bean, red bean, buckwheat, soybean, peanut, and ginseng exceed the certain quantity, the special safeguard duties that can reach 1,067% at maximum shall be imposed, and this measure shall remain valid for one year. In the meanwhile, according to the amendment, the benchmark import quantities of 19 categories of agricultural products such as buckwheat, wheat, and peanut were lowered, which meant that ROK government could impose special safeguard duties on agricultural products of fewer import quantity.

Among the 44 products subject to special safeguard duties, 21 are Chinese imports. In accordance with the amendment, 810% and 561% emergency tariffs are imposed on the imports of mung bean and red bean respectively, if their aggregate quantity exceeds 33,308 tons; 307% emergency tariffs on peanut if the imports exceed 2,542 tons: 297% to 1,005% emergency tariffs on the imports of 19 kinds of ginseng including Saengsam (unprocessed ginseng) and Red Ginseng and converted products if they exceed the import limit of 50 tons. According to ROK Customs statistics, Chinese imports of mung bean, red bean and peanut were heavily affected by this measure, reduced by 20% to 50% in 2006, compared with 2005. The Chinese side has expressed concern over the effect of the system on the trade of agricultural products between China and ROK.
3.1.4 Others

The ROK Customs usually adopts ‘main ingredient’ or ‘import purpose or motive’ criteria in deciding the tariff items applicable to ‘blended products’, namely those containing various ingredients. This practice frequently results in unreasonably high tariff rates applied to certain products. “Blended products” disadvantaged by this practice include potato flakes, soybean flakes.

3.2 Barriers to customs procedures

3.2.1 Selected inspection of agricultural products

As of July 2003, the ROK Customs conducts pre-clearance examination on selected agricultural products. The average rate of random inspection on selected imports is 3% to 5% only, but 20% on agricultural products and 100% on frozen chilli and mixed seasoning. The Chinese side believes this practice prolongs the clearance of related Chinese agricultural products and increases cost of trade.

3.2.2 Pre-clearance tariff examination

As of 2000 the ROK Customs conducts pre-clearance examination on selected agricultural products under the reason for preventing “duty evasion by low-priced customs declaration”. The ROK Customs further intensified its pre-clearance examination on 18 agricultural products to be imported into ROK such as sesame, perillaseed, ginger, dried red bean, dried mung bean, seasoned peanut, soybean for bean sprout, onion, barley, sweet potato starch, frozen chili, frozen garlic, pickled garlic, fresh(chilled) whole garlic, fresh(chilled) garlic grains, garlic temporarily marinated for storage, dried garlic, carrot, etc. The 18 products subject to ROK's pre-clearance tariff examination are mainly Chinese imports. Except for perillaseed, frozen chili, carrot, frozen garlic, the other 14 products shall be subject to quotas.

The agricultural products subject to examination must receive price examination by the ROK Customs for the possibility of duty evasion. In the pre-clearance tariff examination, the Korean Customs evaluates the prices of products declared by importers by comparing the declared prices with the unit prices that the customs have constructed from their instant calculation. Importers requesting instant clearance are allowed to make delivery of goods before clearance and receive tariff examination afterwards on the condition that they are charged certain amount of cash deposit.

In 2006, unexpectedly, ROK changed the ways of tariff calculation and raised the benchmark price of the Korean customs, namely imposing tariffs on the appraised prices by the Korean government instead of invoice amount. In addition, the prices of small red beans defined by the Korean government at $496 per ton, is much higher than the market price, which impeded the export of Chinese small red beans to ROK and subjected Chinese enterprises to great loss.
The pre-clearance tariff examination has prolonged the customs clearance for related Chinese agricultural imports, thereby impeding Chinese agricultural exports to ROK. The Chinese side has expressed concern over the transparency and implementation of the measure.

3.3 Technical barriers to trade

The Korean government requires approval before importation of many industrial products, such as cosmetics, medical devices, telecommunication equipment, computers, chemicals, etc. The practice covers too many products and poses necessary restrictions on normal international trade.

Since the second half of 2006, the Korean Customs has demanded that all Chinese glazed tiles imports with the measurements over 50mm*50mm should be labeled “Made in China” at the back of each glazed tile. It was the first time that the Korean government made such requirements on glazed tiles imports. According to some Chinese enterprises, the Korean government has made no stipulations on its domestic glazed tile producers. The Chinese side believes the regulation constitutes discrimination against Chinese glazed tiles exports, which is against the National Treatment principle of the WTO and hopes the Korean side will amend the regulation as soon as possible.

3.4 Sanitary and phytosanitary measures

The Chinese products significantly affected by ROK’s inspection and quarantine measures include agricultural products, aquatic products, products of animal origin, food and food additives, medicines and medicine materials.

3.4.1 Agricultural products

ROK has conducted strict import inspection and quarantine measures on agricultural products. In accordance with the Grains and Cereals Control Act, the Infectious Animal Diseases Prevention Act, the Animal Act, the Livestock Processing Act, the Feed Control Act, the Fertilizer Control Act, the Plant Quarantine Act, the Law on Birds, Animals and Hunting, the Aquatic Products Act, and the Food Sanitation Act, ROK conducts various kinds of quarantine and sanitary inspections on the imports of agricultural products, animals and aquatic products. ROK does not acknowledge the inspection results of exporting countries and ROK’s sampling and inspection procedures are complicated. ROK requires further inspection on foodstuff of the same category imported with containers of different measurements, and residual tests for pesticide residues in agricultural and animal drugs in the processing place of agricultural imports, for which every importer has to pay about $500. However, the ROK government only requires sample inspection of its domestic agricultural products and bears the inspections fee itself. This practice constitutes discrimination against imports of Chinese agricultural products. The Chinese side has expressed concern over it.
In accordance with related Korean laws, fresh fruits are subject to the risk evaluation on plant diseases and pests by Korean inspection and quarantine agencies. The evaluation process will usually take years to complete. Currently, Chinese fresh fruits are not importable to ROK. In October, 2003, Chinese quarantine departments submitted the application for the risk evaluation on plant diseases and pests risks on cherry and longan. However, the import of these fresh fruits has not been approved by the Korean side. As at present China has basically completed the evaluation on plant diseases and pests risks, the Chinese side hopes the Korean side will speed the evaluation process, making the export of Chinese cherry and longan a fact as soon as possible, and initiates the risk evaluation on Chinese litchi and longan.

3.4.2 Chinese traditional medicine materials

3.4.2.1 Pesticide residues and residual limits of heavy metal

In April, 2006, Korean Food and Drug Administration (KFDA) promulgated Amendment to the Recommendation on the Limits of Pesticide Residues/Heavy Metals in Materials for Traditional Chinese Medicines and Related Testing Methods.

The Amendment not only includes new items for testing pesticide residues and adjusts the maximal residual limits but also establishes the maximal residual limits for heavy metal content in the materials for traditional Chinese medicines as follows: the maximal content for plant medicines: lead (Pb) 5mg/kg; arsenic (As) 3mg/kg; mercury (Hg) 0.2mg/kg, and cadmium (Gd) 0.3mg/kg; for pilose antler: arsenic 3mg/Kg. The aggregate residue limit of heavy metal in patent medicine or preparation with herbal medicines as the main ingredients (exclusive of preparation containing mineral medicine material) must be lower than 30mg/kg.

By amending the notice, ROK aimed at standardizing and improving the quality of the traditional Chinese medicines imports and reestablishing the reputation of the Korean doctors and machines. The Chinese side believes over 70% of raw materials in the Korean medicines rely on Chinese imports, and the amendment of above standards has raised the export threshold of and has a negative effect on Chinese related products to ROK. The Chinese side expresses concern over this issue and hopes the Korean side can provide solid scientific evidence for the above standards.

3.4.3 Aquatic products

The ROK government conducts “clearance after precise inspection” on some Chinese aquatic products to ROK, asserting the aquatic products are not up to the sanitary standards. In January 2005, the Korean Aquatic Products Inspection Bureau declared to increase the number of products subject to “clearance after precise inspection” in order to ban illegal marketing and improve sanitary safety of food. At present, the measure “clearance after precise inspection” applies to live fish, frozen food, dried food and pickled food.
Currently, special import regulation is administered on 6 aquatic products, namely scallop, dried shrimp, eel, American red snapper, perch, and fugu rubripes. Chinese companies exporting above mentioned products are required to receive the precision inspection from Korean quarantine authorities at least once a month, and should any inconformity be found in the case of one company, all other companies exporting the same products to ROK shall be required to receive the precision inspection.

This practice, usually lasting for 3—4 days, greatly prolonged time needed for customs clearance, thus reducing the fishes survival rate and hampering Chinese export of live fishes to ROK. The Chinese side has expressed much concern over it.

3.4.4 Animal products

3.4.4.1 Import quarantine recognition system

This system is applied to all imported animal products. According to the system, exporting countries are required to make application and submit relevant documents on its animal diseases, if any, to be evaluated and endorsed by competent Korean authorities. Non OIE member countries shall be subjected to on site inspections and investigations by competent Korean authorities and are able to export related products after a bilateral quarantine agreement is signed. Claiming that China is not a member country of OIE and is affected by mouth foot disease, Korean authorities have banned the import of artiodactylous products produced in the whole territory of China mainland.

Furthermore, according to the requirements of Sanitary Conditions for Import of Coarse Fodder formulated by ROK’s Ministry of Agriculture and Forestry, countries that are banned to export artiodactylous animals and related products to ROK are automatically not included on the list of countries free to export coarse fodder to ROK. Subsequently, Chinese coarse fodder exporters have to accept one by one quarantine recognition by Korean authorities before being allowed to export this product to ROK.

3.4.4.2 Meat inspection

In the second half year of 2003, ROK prohibited the import of poultry meat from China, for the reason of outbreak of avian flu in China. Through the Chinese side’s active negotiation with ROK, in the second half of 2004, ROK began to allow the import of Chinese heat treated poultry meat and endorsed 11 Chinese heat treated poultry production enterprises. However, ROK insisted on rigid inspection on every heat treated poultry product, which retarded customs clearance, increased the storage expenses and costs and impeded export of Chinese poultry meat to ROK.

The outbreak of avian flu in some of regions in China has been under control. The
Chinese side hopes the Korean side resumes the import of Chinese frozen poultry meat as soon as possible in light of “principle of Regionalization” under the WTO SPS Agreement. The Chinese side also hopes ROK will simplify the formalities of recognition inspection on the heat treated poultry meat enterprises recommended by the Chinese side and postpone the recognition for the qualified enterprises when the recognition expires.

In addition, the Korean quarantine departments refused to inspect the exports of some enterprises on the pretext that the suppliers of the materials used by Chinese enterprises in processing were not approved by the Korean side. The subsequent rejection by Korean importers has subjected Chinese exporters to great loss.

3.4.5 Regionalization of epidemic infected area

As far as regionalization of epidemic area is concerned, the total territory of China mainland has always been regarded as a whole region by ROK, which means if an epidemic or a pest forbidden to enter the Korean territory is discovered in products originating from a region of China, ROK will accordingly ban the import of products of the same kind from other regions on China mainland.

The Chinese side believes ROK’s above practice is against “principle of regionalization of epidemic areas” under the WTO SPS Agreement and hopes the Korean side makes adjustments of the practice as soon as possible to avoid unnecessary adverse impact on the normal trade in animal products between China and ROK.

3.5 Trade remedies

3.5.1 Anti dumping measures

Up to the end of 2006, ROK had initiated 23 antidumping investigations on Chinese exports, one of which was initiated in 2006. The antidumping duties are imposed on 10 Chinese exports: disposable lighter, alkplali battery, silicon manganese alloy, printing paper, sodium dithionite, choline oxide, and titanium dioxide, glazed tiles, extension processed long staple polyester silk, and polyvinyl alcohol.

In June 2005, Korean Trade Commission conducted anti dumping investigations on Chinese floor or wall tiles. Nine Chinese ceramics enterprises were subjected to sample inspection. In the recent anti dumping investigation launched by ROK, the total amount of the involved tiles is valued at US $58.66 million. In April 2006, Korean Trade Commission made the final adjudication by imposing anti dumping duties 2.76% to 29.41% on nine Chinese enterprises involved in the case.

In November 2005, Korean Trade Commission conduct anti dumping investigations on extension processed long staple polyester silk of Chinese origin. In October 2006, Korean Trade Commission made the final adjudication by imposing anti
dumping duties 0% to 8.69% on Chinese enterprises.


3.5.2 Market economy status

In November 2005, ROK acknowledged the market economy status of China. In 2006, ROK amended the Dumping Investigation Guiding Principles. It means in the future anti-dumping investigations Chinese enterprises will enjoy the same treatment as the enterprises in other market economy countries, which has been favorably received by the Chinese side.

3.5.3 Special safeguards and special restrictions on textiles

So far, ROK has not proposed investigations on special safeguards against or special restrictions on Chinese textiles. The Chinese side hopes, after acknowledging China’s market economy status, the Korean side will waive the rights to conduct such special safeguard investigations as stipulated in Article 16 of the Protocol on China’s Accession to the WTO and such investigations as specified in Paragraph 242 of the Working Group’s Report on China’s WTO Accession, so as to facilitate the further development of economic and trade relations between the two countries.

3.6 State trade

Korean Agricultural & Fishery Marketing Corporation (AFMC) is responsible for conducting state trade on parts of agricultural and aquatic products which are subject to quantity restrictions in the Uruguay Round. In the public bidding for import of agricultural products under the government procurement program, Korean Agricultural & Fishery Marketing Corporation (AFMC) adopts unduly stringent standards for public bidding, and uses highly unilateral contracts, which is inconsistent with accepted trade practices. For example, bidding companies are required to render a guarantee bond equivalent to 10% of the contract value before bidding, and this bond may be seized, partially or wholly, by the Korean authorities on various reasons. In addition, it is stipulated in the public bidding import contract that if the Korean side deems prices of agricultural products lower than prices required, it may refuse to give shipping instructions. This provision is significantly arbitrary, and may directly threaten the reimbursement of the bond and the execution of the contract. After the arrival of the imports at Korean ports, apart from the inspections to be conducted according to the relevant Korean laws and regulations, Korean Agricultural & Fishery Marketing Corporation may carry out quality or
quantity inspection by itself, and if the result of either inspection proves not consistent, the involved goods will be rejected, even though approved at the port of shipment. ROK’s practices of extending the rights of the bidding administration and Korean industries not only go beyond the rights and obligations stipulated in usual international trade laws and practices, but also increase risks sustained by Chinese exporters in participating in ROK’s public bidding for import of agricultural products under government procurement program, and pose unreasonably heavy burden on Chinese exporters. The Chinese side hopes that ROK will further improve bidding methods and follow international customary practices by recognizing the result of inspection conducted by exporting countries and conducting re-inspection in importing countries.

According to some Chinese enterprises, Chinese enterprises conducted inspections as required by ROK and made shipment and delivery after winning the bidding for sesame in 2006. However, Korean Agricultural & Fishery Marketing Corporation didn’t conduct timely sample inspections and didn’t inform the Chinese enterprises that it disapproved some of goods inspected and claimed refund until over 20 days after the arrival of the goods. The disapproval of the goods was to a great extent due to the fact that AFMC failed to conduct prompt sample inspection upon arrival of the goods as promised so that some of the sesame went bad as the containers had been exposed to high temperature and open air for a long time. The above practices subjected the Chinese enterprises to great losses.

3.7 Barriers to trade in services

3.7.1 Financial services

ROK applies different standards to the supervision over foreign banks’ branches in ROK and Korean local banks. It requires that, if a foreign bank wishes to establish a new branch in ROK, all the procedures required for the establishment of the first branch in ROK be completed and that relevant information be submitted. No such requirements are needed in case of the application for establishment of new branches submitted by a domestic bank. Besides, some Korean measures are not favorable for the business development of Chinese banks in ROK, such as treating foreign banks’ branches as their subsidiaries with regard to the business scope and capitals of foreign banks, and imposing capital limits on the supplementary institutions of foreign banks’ branches. ROK’s restrictions on the size of loans to individual borrowers and of credits and large loans to groups as well as on the size of interbank lending and borrowing have limited the financing ability and asset sizes of Chinese-funded banks in ROK.

According to some Chinese banks, the expenses involved for the access to the Won Settlement System charged on foreign banks are dearly high.

3.7.2 Legal services
Currently foreigners are not allowed to set up law offices or conduct legal consultancy in ROK. The existing laws forbid Korean law offices to employ foreign lawyers or come into partnership with foreign offices. Foreign lawyers can only act as legal advisers at Korean law offices and are not allowed to practice as lawyers.

3.8 Other barriers

Koreans are expected to improve the transparency in formulating and implementing their laws and regulations. Relevant Korean authorities often make internal policies, namely Guidelines, regarding inspection and quarantine of imported products, in particular, agricultural products and aquatic products, but these “guidelines” are seldom made public. The implementation of laws and regulations by Koran officials seem so discretionary that the exporters involved tend to feel at a loss, thus bringing about much uncertainty to their business operation.

4 Barriers to investment

4.1 Barriers to investment operation

4.1.1 Dual payment of unemployment insurance

In accordance with Korean laws, enterprises must pay employment insurance(namely, unemployment insurance) for their employees. The Korean side requires Chinese funded enterprises pay insurance for Chinese employees as well as Korean employees. However, Chinese employees who are mostly provisionally dispatched overseas have paid required unemployment insurance in China. The dual payment of unemployment insurance will increase financial burden on Chinese funded enterprises in ROK while Chinese employees are unable to enjoy the benefits from employment insurance paid in ROK. The Chinese side hopes to reach an agreement on this matter with ROK as early as possible to avoid increasing the burden on Chinese funded enterprises in ROK.

4.1.2 Reimbursement of national annuity

In accordance with Korean laws, foreign enterprises in ROK must pay national annuity(namely, endowment insurance) for all employees. As is true of unemployment insurance, Chinese employees in Chinese funded enterprises have paid endowment insurance in China. Repayment of national annuity amounts to dual payment. To settle this problem, the Korean and Chinese sides signed PRC and ROK Provisional Measures Agreement on Mutual Exemption from Endowment Insurance Payment, which took effect on May 23, 2003. In accordance with the agreement, Chinese employees working for Chinese funded companies, offices and other organizations as well as self-employed business persons are exempt from paying national annuity after submitting relevant documents and the Korean side ought to reimburse the national annuity paid by Chinese employees before May 23, 2003. So far, the Korean side has reimbursed a portion of annuity paid by Chinese funded enterprises
during the period from January 2003 to May 23, 2003, but failed to reimburse the national annuity paid before 2003. The Chinese side hopes the Korean side will reimburse the national annuity paid by Chinese funded enterprises before 2003 as soon as possible in accordance with the agreement.
The United States of America

1 Bilateral trade relations

The United States of America (hereinafter referred to as the US) is the second largest trading partner of China in 2006. According to the China Customs, the bilateral trade between China and the US in 2006 reached US $262.68 billion, up by 24.2%, among which China’s export to the US was US $203.47 billion, up by 24.9%, while China’s import from the US was US $59.21 billion, up by 21.8%. China had a surplus of US $144.26 billion. China mainly exported to the US machinery and electronic products; footwear; furniture; automobiles and auto parts; toys; trunks and bags; plastics and products thereof; garments and other textile products; photo optical equipment; steel products and etc. China mainly imported from the US electronic integrated circuits & micro assemble parts; aircraft, powered; spacecraft & launch vehicles; cotton, not carded or combed; soybeans, whether or not broken; automatic data-process machines; waste and scrap of paper or paperboard; parts of balloons etc., aircraft, spacecraft etc; turbojets, turbo-propellers & other gas turbines, parts and etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by Chinese companies in the US had reached US $3.57 billion, and the volume of completed labor service contracts had reached US $2 billion.

According to MOFCOM, China’s total non-financial foreign direct investment (FDI), approved by or filed with MOFCOM, reached US $130 millions in 2006. US investors invested in 3205 projects in China in 2006, with a total contractual investment of US $12.04 billion and an actual utilization of US $2.87 billion. By the end of 2006, US investors had invested in a total of 52, 211 FDI projects in China with a contractual investment of US $124.16 billion and an actual utilization of US $53.96 billion.

2 Overview of trade and investment regime

The US legal system governing trade consists of tariff and customs laws, import and export administration laws, trade remedy laws, security concern based trade legislation, and domestic laws stipulated in order to implement foreign trade agreements. The US Department of Commerce (DOC) is the key agency in the federal government responsible for trade administration and export promotion.
2.1 Trade regime and its developments

2.1.1 Tariff system

2.1.1.1 Amendments to HS

The US is a contracting party to the International Convention for Harmonized Commodity Description and Coding System (HS). Under the Omnibus Trade and Competitiveness Act of 1988, the US President is authorized to amend the Harmonized Tariff Schedule of the United States (HTSUS) based on investigations and suggestion of the US International Trade Commission (ITC) in order to comply with its obligations under the HS Convention. The World Customs Organization (WCO) adopted amendments to the HS Convention in June 2004, which affect 83 chapters and more than 240 headings throughout the nomenclature. These changes are intended to update the nomenclature or clarify the classification of particular goods. ITC proposed final modifications to HTSUS in April 2006, and these modifications are to take effect on January 1, 2007.

2.1.1.2 Rapid progress on bilateral free trade agreements

In recent years, the US has stepped up efforts in its bilateral free trade agreement (FTA) negotiations. In the period from January to December of 2006, the US signed bilateral FTAs with Oman, Malaysia and Peru, making its total number of bilateral FTAs reaching 10. In addition, the US is now negotiating FTAs with Panama, Thailand, South Korea, the Southern African Customs Union, and the United Arab Emirates.

2.1.2 Import administration

The US Customs and Border Protection (CBP) started deploying the Automated Commercial Environment (ACE) in October 2003 to replace the current Automated Commercial System as a part of its modernization plan. In early 2005, ACE was tested at the port of Blaine and Washington. By September 2006, ACE had been used in 49 ports of the US, and will become fully operational in all US ports by 2009. ACE has three features. First, the system connects CBP, the trade community, and participating government agencies by providing a single, centralized, online access point for communications and information related to cargo shipments. Second, the system makes periodic payments available. Importers and brokers can use the system
to make monthly payment to the Customs and CBP, and no longer have to pay duties and fees on a transaction per transaction basis. Third, the eManifest feature is available. At all ACE land border ports, carriers can submit e manifests electronically detailing shipment, carrier, and other information. Carriers may file e Manifests in advance to raise customs clearance efficiency. In 2007, CBP will begin to make the filing of e Manifests mandatory, in a phased approach. Notices that detail which ports will become mandatory and on what dates will be provided at a minimum of 90 days before a mandatory policy is implemented.

2.1.3 Export administration

On July 6, 2006, the US Bureau of Industry and Security (BIS) of DOC issued Proposed Rules intending to amend the current Export Administration Regulations (EAR) in an effort to strengthen control on exports to China which would make a material contribution to the military capability of PRC. According to the Proposed Rules, the revisions focus on three areas:

2.1.3.1 Revision of licensing review policy and license requirements

Section 742.4 (b) (7) of the current EAR states a product list subject to control for national security reasons, i.e. the Commerce Control List (CCL). This rule proposes a new section, Section 744.21 in the EAR to implement a new control on exports to China of certain CCL items that otherwise do not require a license to China when the exporter has knowledge that such items are destined for military end use in China or is informed that such items are destined for such an end use. Applications to export, reexport, or transfer items controlled pursuant to proposed section 744.21 would be reviewed on a case by case basis to determine whether the export, reexport, or transfer would make a material contribution to the military capabilities of China and would result in advancing China’s military activities contrary to the national security interests of the US. The proposed rule defines military end use to mean: incorporation into, or use for the production, design, development, maintenance, operation, installation, or deployment, repair, overhaul, or refurbishing of items described on the U.S.Munitions List (USML); described on the International Munitions List (IML); or listed under Export Control Classification Numbers (ECCNs) ending in “A018” on CCL. According to the proposed new Section 744.21, items for a military end use subject to licensing review include 47 items from nine categories such as materials, chemicals, microorganisms, toxins, computers, avionics, and etc.

In addition, it is also set forth in the proposed Section 744.21 to review license applications for items controlled for chemical and biological proliferation and nuclear nonproliferation when those items are destined to China.
2.1.3.2 Revision of end user certificate requirements

To strengthen implementation of the 2004 end use visit understanding between China and the U.S., the rule proposes to amend Section 748.10 of the EAR by expanding the requirement for End User Certificates. Exporters of all items on CCL that require a license to China and exceed a total value of US $5,000 per single ECCN entry, not merely those exports controlled for national security reasons, would be required to obtain an End User Certificate issued by the Chinese Ministry of Commerce. However, the proposed new requirement does not apply to computer exports. End User Certificates will continue to be required for all computer exports to China. The rule also proposes to eliminate the requirement that exporters submit PRC End User Certificates to BIS as required support documentation provided with the license application. Instead, this rule would require exporters to include the serial number of the PRC End User Certificate in an appropriate field of the license application, and to retain the PRC End User Certificate for a period of 5 years.

2.1.3.3 New Authorization Validated End User (VEU)

The rule proposes to establish a new authorization for validated end users that would allow the export, reexport, and transfer of eligible items to specified end users in an eligible destination, including China. BIS proposes to evaluate prospective validated end users on the basis of a range of specific factors, which include the party’s record of exclusive engagement in civil end use activities; the party’s compliance with U.S. export controls; the party’s capability to comply with the requirements for VEU; the party’s agreement to on site compliance reviews by representatives of the United States Government; and the party’s relationships with U.S. and foreign companies. In addition, the proposed rule would provide a list of eligible items identified by ECCN and a description of how each item would be used by the eligible end user in an eligible destination. Finally, exporters and reexporters who use authorization VEU would be required to comply with record keeping and reporting requirements, and submit annual reports to BIS.

The Proposed Rules is now closed for public comments. BIS is currently reviewing these comments and will make necessary revisions after the review.

2.1.4 The Generalized System of Preferences (GSP)

The GSP program was instituted on January 1, 1976, and authorized under the Trade Act of 1974 for a ten year period. It has been renewed periodically since
then, most recently in August 2002, when President Bush signed legislation that reauthorized the GSP program through December 31, 2006. To help the Congress deliberate on whether to renew the GSP program, the Administration conducted a first review of the program. The Trade Policy Staff Committee (TPSC) issued a notice on October 6, 2005 to seek public comments on how long the Congress should reauthorize the GSP program and whether products from certain beneficiary countries have become competitive enough to graduate from GSP. TPSC started the second phase of its review in August 2006 and asked the Office of the United States Trade Representative (USTR) to solicit public comments. The purpose of the review is to determine if the GSP program is implemented in consistency with the statutory criteria so that more countries can develop their economies and gain benefits by trading with the US under GSP. The relevant statutory criteria include: 1) certain beneficiaries level of economic development; 2) the extent to which they have expanded exports under the program; and 3) their competitiveness both globally and relative to GSP eligible imports. The review will determine whether 13 beneficiary countries including Argentina, Brazil, Croatia, India, Indonesia, Kazakhstan, the Philippines, Romania, Russia, South Africa, Thailand, Turkey, and Venezuela should graduate from GSP and whether any of the 83 existing competitive need limitation (CNL) waivers now enjoyed by products such as peanuts and pesticide from 19 beneficiary countries including Argentina, Brazil and Russia should no longer be warranted. At present, these products enjoying CNL waivers can enter the US market duty free, not limited by a market share cap or annual import level. On December 20, 2006, President Bush signed legislation again that continued the GSP program until December 31, 2008. While reauthorizing the program for all current beneficiaries, the legislation includes new statutory thresholds to graduate products that have reached a level of competitiveness. If a GSP eligible product from a specific country has an annual trade level in the previous calendar year that exceeds 150 percent of the annual trade cap or comprises 75 percent of all U.S., the President should revoke any existing CNL waiver that has been in effect for at least five years.

2.1.5 Trade remedy system

On August 17 2006, President Bush signed the Pension Protection Act of 2006. In Sec 1632, the Act provides for a suspension of new shipper review provision. This bill suspends from April 1, 2006 through June 30, 2009 the option for new shippers to bond for estimated antidumping and countervailing duties (AD/CVD). Importers must submit a cash deposit to cover the total estimated AD/CVD for merchandise exported by a new shipper. This cash deposit provision, however, excludes new shippers from Canada and Mexico.

On October 19, 2006, the US DOC published a notice revising three methodologies in antidumping proceedings involving non-market economy (NME) countries. The revision for Market Economy Inputs and Expected Non-Market Economy
Wages went into effect on the day of publication while the revision for Duty Drawback requested public comments.

2.1.5.1 Market Economy Inputs

In antidumping proceedings involving NME countries, DOC calculates normal value by valuing the NME producer’s factors of production, to the extent possible, using prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. When a portion of the input is purchased from a market economy supplier and the remainder from a non-market economy supplier, and the volume of the market economy input as a share of total purchases from all sources is “meaningful”, and such market economy input purchases also constitute arms length, bona fide sales, and are not dumped or subsidized, DOE will normally use the price paid for the input sourced from market economy suppliers to value all of the input. But the term “meaningful” used is not defined in the old rules and is interpreted by DOE on a case-by-case basis. The revised rule has set a clear threshold for “meaningful”. When the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33% of the total volume of the input purchased from all sources during the period, DOE will use the weighted average market economy purchase price to value the entire input, unless case-specific facts provide adequate grounds to rebut the Department’s presumption. Alternatively, when the volume of an NME firm’s purchases from market economy suppliers as a percentage of its total volume of purchases during the period of review is below 33%, but where these purchases are otherwise valid and meet the Department’s existing conditions (bona fide, not dumped or subsidized, for example), DOE will weight average the weighted average market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases. The new methodology is applied to antidumping investigations and reviews initiated after October 19, 2006.

2.1.5.2 Expected Non-Market Economy Wages

When determining the normal wage rate of NME countries, DOE does not use a surrogate wage rate from a surrogate country at a comparable economic level. Instead, after analyzing the wage data for over 50 market economy countries published in Chapter 5 of the International Labor Organization’s (“ILO”) Yearbook of Labor Statistics, DOE uses regression analysis to estimate the wage rate for NME countries on the basis of inflation rate and per capita gross national income of NME countries, and make necessary adjustments. Such estimated wage rate is used for all antidumping investigations against one country. According to the revised methodology, when estimating the wage rate of NME countries, DOE will,
if conditions allow, expand the basket of countries upon which the regression is based to include all countries for which data are available to ensure accuracy and fairness of the estimate. When using ILO Yearbook of Labor Statistics, DOC will rely on “earnings” including wages and bonuses, not merely “wages”. DOC will only consider ILO wage data collected in recent two years, instead of recent six years to reflect the latest wage level. In addition, each year, the Department’s annual calculation of expected NME wage rates will be subject to public notice prior to the adoption of the resulting expected NME wage rates for use in antidumping proceedings. But comment will be requested only with regard to potential clerical errors in the Department’s calculation in light of its stated revised methodology.

2.1.5.3 Duty Drawback

According to the current rule, when establishing export price and constructed export price, DOC should add the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, if the party can establish that the import duty paid and the rebate payment are directly linked to, and there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the manufactured product. The revision proposes that DOC should allocate the total amount of duty drawback received across all exports that may have incorporated the duty paid input in question, regardless of destination. But if the foreign producer can directly trace particular imported duty paid inputs through the subsequent production process and into particular finished goods that are exported to the United States, this part of drawback need not be allocated, permitting an adjustment to export price and constructed export price for all duty drawback received.

2.1.6 Reorganization of relevant entities

USTR and DOC are the key entities to administer US trade policies. USTR announced in March 2006 the establishment of a China Enforcement Task Force within USTR, which is made up of veteran USTR staffers specializing in intellectual property rights, industrial policies, services, agriculture, investment, WTO affairs and others. The Task Force is responsible for collecting information, overseeing China’s enforcement of international agreements, and preparing and handling potential WTO cases between China and the US. In June of 2006, a new Intellectual Property office was created to handle IPR issues previously covered in the Office of Services, Investment and Intellectual Property. This office will lead efforts by USTR in intellectual property protection, with a special focus on priority countries, including China and Russia.
2.2 Investment administration and its developments

2.2.1 Investment reporting system

The International Investment and Trade in Services Survey Act provides for the collection of information by the Federal Government on foreign investment in the US for analytical and statistical purposes. Foreign investment is required to report to respective competent government authorities, with medium and long term portfolio inward investment reporting to the Department of the Treasury. As to other general foreign direct investment, if a foreign investor has 10% or more voting rights in an US enterprise, including real estate held not exclusively for personal use, an initial direct investment survey report must be filed with the Bureau of Economic Analysis (BEA) of DOC within 45 days after the direct investment transaction occurs. An exemption may be claimed if the new US affiliate has no more than US $3 million in total assets and owns less than 200 acres of US land immediately after being established. In addition, according to the Agricultural Foreign Investment Disclosure Act, any foreign person involved in a transaction of agricultural land shall submit to the Department of Agriculture a report of personal and transaction information not later than 90 or 180 days after the date of such effective date. In addition to initial reports of investment activities, foreign investors in the US also need to provide BEA with quarterly balance sheets, annual financial reports and benchmark survey reports of foreign investment in the US taken every five years.

2.2.2 Investment review

The US House of Representatives and the Senate passed two separate bills respectively in July 2006, the National Security Foreign Investment Reform and Strengthened Transparency Act of 2006 and the Foreign Investment and National Security Review Act of 2006 to amend the Exon-Florio Amendment which currently governs review of foreign investment in the US. The two bills both require reforms of the Committee on Foreign Investments in the United States (CFIUS) and strengthened reviews of foreign direct investment in the US, but focus on different aspects as to how to reform and to what extent to strengthen the review. Both bills agree that the Department of the Treasury be the competent authorities of CFIUS. The House’s bill proposed to add two Vice Chairpersons to CFIUS, the Secretary of Homeland Security and the Secretary of Commerce. The Senate’s Bill proposed to add a new Vice Chairperson, the Secretary of Defense. With regard to reviewing process, both bills require that any transaction involving foreign governments controlling ownership receive a special 45 day investigation. The Senate’s bill is even more stringent in other aspects, for example, authorizing CFIUS to prolong the former 30 day review to 60 days, asking CFIUS to present a detailed report to
the Congress and the Administration, and asking the Administration to rank other countries on their compliance with arms export controls.

2.2.3 The Sarbanes Oxley Act

Beginning from July 15, 2006, all foreign companies listed in the US were required to implement the Sarbanes Oxley Act of 2002 (also known as the Public Company Accounting Reform and Investor Protection Act of 2002). The objective of the Act is stated as to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws. The Act has strengthened regulation on the accounting profession and corporate behavior as well as the senior management of public companies. The highlights of the Act include strengthening supervision over the audit of public companies; improving independence of audit by rotating partners and prohibiting auditing firms from providing consulting services; imposing restrictions on the senior management of public companies; improving corporate governance; tightening reporting responsibility; strengthening disclosure of financial reports; establishing criminal responsibility for the senior management and executive staff; and enhancing senior management accountability to financial reporting.

2.3 Trade and investment related systems and their developments

President Bush signed the Stop Counterfeiting in Manufactured Goods Act in March 2006 to strengthen efforts to combat the counterfeiting of goods. The Act has amended Section 2320 of title 18, United States Code to (1) strengthen laws against trading counterfeit labels and prevent counterfeiters from attaching labels and packages to fake products in order to cheat consumers; and (2) strengthen penalties for counterfeiters by requiring courts to order the destruction of all counterfeit products seized, imposing severe penalties on transporting, transferring, or otherwise disposing of counterfeit goods, services or marks for purposes of commercial advantage or private financial gain and requiring convicted counterfeiters to turn over their profits and any equipment used in their operations.

2.4 Measures for specific products

2.4.1 Technical regulations

2.4.1.1 Appliance labeling rules for suspended ceiling fans
The US Federal Trade Commission (FTC) issued appliance labeling rules for suspended ceiling fan on June 23, 2006 as required by the Energy Policy Act of 2005. The new labeling rule requires ceiling fan manufacturers to disclose the following information: the fan’s airflow at high speed; the fan’s power consumption in watts; and the fan’s airflow efficiency at high speed. For fans that are 49 inches or more, the label must display the information: “Compare: 49” to 60 “ceiling fans have airflow efficiencies ranging from approximately  to cubic feet per minute per watt at high speed.” A similar explanation is required for fans between 36 inches and 48 inches. The labeling rule also requires a range of airflow efficiencies at high speed. At the bottom of the label, there should be a Money Saving Tip: Turn off fan when leaving room. The label should be affixed to the product packaging. To obtain this energy efficiency information, manufacturers will have to test their fans pursuant to procedures still under development by the US Department of Energy. The Rule also requires manufacturers to submit reports to FTC including such information as high speed airflow, power consumption, and airflow efficiency for fans of different sizes.

2.4.1.2 Final rule on countries of origin label for socks

FTC has issued a final rule amending the Rules and Regulations under the Textile Fiber Products Identification Act (Textile Rules) to reflect the specific requirements for the disclosure of country of origin of socks contained in the Miscellaneous Trade and Technical Corrections Act of 2004. Effective from March 3, 2006, the following requirements will be applicable to socks included within HTSUS 6111.20.60 (babies cotton knitted socks), 6111.30.50 (babies knitted socks of synthetic fibres), 6111.90.50 (babies knitted socks of artificial fibres), 6115.92.90 (cotton knitted socks, not containing lace or net), 6115.93.90 (synthetic fibre knitted socks, not containing lace or net), and 6115.99.18 (artificial fibre knitted socks, not containing lace or net): the country of origin label must always be placed on the front of the package; if size information for the product also appears on the front of the package, the country of origin marking must be adjacent to the size information for the product; if no size information appears on the package or if the size information appears on the back of the package, the country of origin marking must still be placed on the front of the package; the country of origin marking must be set forth in a manner that is clearly legible, conspicuous, and readily accessible to the consumer, and must be as indelible or permanent as the nature of the article or package will permit; and for socks that are not fully enclosed in a package, but are banded together by a label or hangtag, the country of origin marking must be placed on the front of the label or tag.

The final rule has provided for some exceptions. Socks included in a package that also contains other types of goods are excepted from these requirements, but such packages of multiple items must comply with other relevant subsections of the Textile
2.4.1.3 Interim rule on major food allergen labeling in alcoholic beverages

The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the US Department of the Treasury issued a notice on July 26, 2006, announcing the implementation of an interim rule on Major Food Allergen Labeling for Wines, Distilled Spirits, and Malt Beverages. Pursuant to the interim rule, importers, producers and bottlers of wines, distilled spirits, and malt beverages may make voluntary labeling to tell if their products contain milk, egg, fish, crustacean shellfish, tree nuts, wheat, peanuts, and soybeans, or any food ingredient that contains protein derived from one of these eight foods or food groups. TTB has also proposed mandatory major food allergen labeling for alcohol beverage products as required by the Federal Alcohol Administration Act and requested public comments.

2.4.1.4 New Flammability Standard for Mattresses

The U.S. Consumer Product Safety Commission (CPSC) issued a notice in 2006, announcing the implementation of a new mandatory flammability standard, 16 CFR Part 1633 for mattresses and mattress and foundation sets (“mattress sets”) from July 1, 2007. This federal standard has established two test criteria to measure the spread of flames on mattress or mattress set. In the test using a pair of gas burners, the mattress or mattress set must not exceed a peak heat release rate of 200 kW at any time during the 30 minute test, and the total heat release for the first 10 minutes of the test must not exceed 15 megajoules (“MJ”). All mattresses for sale in the US will have to meet this standard.

2.4.1.5 Proposed rulemaking on labeling requirements for portable generators

The US Consumer Product Safety Commission (CPSC) issued a notice of proposed rulemaking on labeling requirements for portable generators on August 30, 2006. CPSC proposed to require manufacturers to label portable generators with performance and technical data related to performance and safety. The warning label would inform purchasers that: “Using a generator indoors will kill you in minutes;” “Exhaust contains carbon monoxide, a poison gas you cannot see or smell;” “Never use in the home or in partly enclosed areas such as garages;” “Only use outdoors and far from open windows, doors, and vents.” The warning label would also include pictograms. The Commission believes that providing this labeling information will help reduce risks to consumers.

2.4.1.6 New act on certification and energy testing procedure for machinery and
As directed by the Energy Policy Act of 2005 (EPACT 2005), the US Department of Energy (DOE) proposed rules to provide for new energy efficiency and water conservation test procedures for various commercial and industrial equipment. It has announced rules to adopt testing and sampling procedures for products including ceiling fans; ceiling fan light kits; dehumidifiers; medium base compact fluorescent lamps; torchieres; unit heaters; automatic commercial ice makers; commercial prerinse spray valves; illuminated exit signs; traffic signal modules and pedestrian modules; refrigerated bottled or canned beverage vending machines; commercial package air conditioning and heating equipment; commercial refrigerators, freezers; battery charges and external power supplies.

The proposed rule also requires manufacturer of commercial or industrial equipment to provide product conformity statements and certification reports. One conformity statement is required from manufactures to state that their products conform to relevant energy saving requirements. The certification reports must illustrate the energy efficiency, energy consumption or water consumption of every product affected. Distribution transformers, regulated by energy saving rules, are also subject to certification requirements for manufacturers. The rule is now pending for approval.

2.4.2 Sanitary and phytosanitary measures (SPS)

2.4.2.1 Rule to restrict importation into the US of certain live fish, fertilized eggs, and gametes that are susceptible to spring viremia of carp

Effective on October 30, 2006, the US began to restrict the importation into the United States of live fish, fertilized eggs, and gametes of fish species that are susceptible to spring viremia of carp (SVC). Importers of SVC susceptible species must obtain an import permit and a health certificate from the shipment’s region of origin certifying that the live fish, fertilized eggs, or gametes originated in an SVC free region. In addition, these goods have to be imported through designated ports of entry and meeting containment requirements for shipments that are in transit through the United States.

2.4.2.2 New rules allowing the importation of Chinese fragrant pears

On January 9, 2006, the US Animal and Plant Health Inspection Service (APHIS) amended its regulations governing the import of fruits and vegetables, allowing the importation of fragrant pears from China provided they meet a series of strict requirements. As one of the conditions, the pears would have to be grown in a production site surrounding the city of Korla in Xinjiang Province that is registered
with the General Administration of Quality Supervision, Inspection and Quarantine of PRC. The pears would be subject to inspections and APHIS could prohibit the importation of the pears if pests are detected. The exportation could resume if an investigation is conducted and appropriate remedial action has been taken. In addition, fragrant pears would have to be packed in insect proof containers that are labeled in accordance with the regulations and safeguarded from pest infestation during transport to the US.

2.4.2.3 China added to list of countries eligible to export processed poultry to the U.S.

The Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture issued a notice on April 24, 2006 to add China to a list of countries eligible to export processed poultry to the US. The rule took effect on May 24, 2006.

The final rule will allow export from China of processed poultry products derived from poultry raised in the U.S. and slaughtered in FSIS inspected establishments or raised and slaughtered in other countries eligible to export poultry to the U.S. This rule does not make China eligible to export processed poultry products to the U.S. that are derived from birds of Chinese origin slaughtered in China’s domestic establishments.

Certified establishments in China must have procedures in place to ensure that products produced for domestic use are processed at separate times from those produced for export to the U.S. FSIS, through on site reviews, will verify that establishments certified by the government of China are meeting all U.S. requirements.

All processed poultry products exported to the U.S. from China will be subject to FSIS reinspection procedures at ports of entry. These procedures include examinations for product defects; laboratory analyses that will detect any chemical residues or microbiological contamination; proper certification; transportation damage; labeling; general condition; and accurate count.

2.4.2.4 Full Enforcement for wood packaging material regulations

APHIS, in cooperation with CBP, will begin enforcing the third and final phase of the wood packaging material (WPM) regulation on July 5, 2006. All WPM, such as pallets, crates, boxes and pieces of wood used to support or brace cargo, must meet import requirements and be free of timber pests before entering or transiting through the United States. All WPM entering or transiting through the United States must be either heat treated or fumigated with methyl bromide as outlined in the International Standards for Phytosanitary Measures: Guidelines for Regulating Wood Packaging Material in International Trade (ISPM 15). The WPM must also be marked with an approved international logo, certifying it has been appropriately treated. The regulation, however, does not apply to the following list of WPM: worked wood items; wine crates for vintage year prior to 2006; manufactured wood, such as fiberboard, plywood, polywood, strandboard, whisky and wine barrels, and
veneers; loose wood packing materials (such as excelsior, wood wool, sawdust, and wood shavings); WPM made from Canadian or US origin wood (or both) used for trade between Canada and the US.

Any unmarked WPM or any marked WPM that is found to be infested with a live wood boring pest of the families Cerambycidae (longhorned beetle), Buprestidae (wood boring beetles), Siricidae (woodwasps), Curculionidae (weevils) and etc. will be required to be reexported immediately. Shipments containing WPM that violate the rule may be allowed entry only if the CBP port director determines that it is feasible to separate the cargo from the noncompliant WPM. An arrangement to have the noncompliant WPM exported from the United States is required before the cargo can be released to the consignee. All costs associated with the reexportation are the responsibility of the importer or party of interest.

2.4.2.5 Proposed amendments to import regulations on fruits and vegetables

APHIS made an announcement on April 26, 2006 to amend its import regulations on fruits and vegetables, also known as its Q56 Regulations. The amendments include substantive and non-substantive changes. For non-substantive changes, the rule would consolidate into one place the requirements of general applicability, eliminate redundant and outdated requirements such as treatment schedules for imported fruits and vegetables, update terms, and update regulations. Substantive changes to the regulations include:

1. Establishing a “notice based” process to replace the rulemaking based system for import request and for the approval of pest free areas. Currently, APHIS conducts a pest risk analysis for each import request, which is published in the Federal Register for public comment. The public comments are considered, and if appropriate, a final rule to authorize the imports is prepared. The whole process takes 18 months to 3 years. The proposed new “notice based process” would still require a pest risk analysis. However, if the risk analysis shows that the commodity’s risk can be sufficiently mitigated by one or more of four designated phytosanitary measures, the commodity will be eligible for a more streamlined approval process. Under the streamlined process, the pest risk analysis will be published in the Federal Register for public comment for 60 days. APHIS will publish a notice in the Federal Register to announce the issuing of import permits for the commodity. APHIS is proposing a similar “notice based” process for the approval of pest free areas.

2. Providing for the issuance of special use permits for fruits and vegetables. The amendments propose to allow the importation of small lots of fruits and vegetables for special events, such as trade shows, and for scientific research under strict conditions approved by the APHIS Administrator. The proposed amendments are pending for approval.
2.4.2.6 Proposed amendments to import rules on animal byproducts

APHIS announced on August 17, 2006 to amend the regulations governing the importation of animal byproducts to require that untanned swine hides and skins from regions with African swine fever and bird trophies from regions with exotic Newcastle disease go directly to an approved establishment upon importation into the United States.

3 Barriers to trade

3.1 Tariffs and tariff administrative measures

3.1.1 Tariff peak

At 1.4% in 2006, the average applied tariff rate in the United States is relatively low. However, the US imposes high tariffs on certain products, which constitute tariff peaks, including textiles and garments, footwear, certain food and agricultural products, leather products, rubber products, ceramic products, and travelware. For example, the average tariff rate for Chapter 61 and Chapter 62 of HTSUS is over 11%, 8 times that of the average applied rate. Among it, the duty rate for trousers of artificial fibers and ski suit of man made fiber is 28.52% while that for T-shirts of man made fibers and sweaters and vests are as high as 32%.

Within one specific product classification, such as footwear or ceramic products, usually lower tariff rates are applied to high priced products, and higher tariff rates to low priced products. Take products under a single tariff heading as an example. Footwear with outer soles and uppers of rubber or plastics, valued over $3 but not over $6.50 per pair is imposed a 90 cent specific duty and 37.3% ad valorem duty, while footwear with outer soles and uppers of rubber or plastics, valued over $6.5 but not over $12 per pair is imposed a 90 cent specific duty and 20% ad valorem duty. Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers with outer surface of leather, of composition leather, or of patent leather are imposed a tariff rate of 8%, while those with outer surface of plastics 20%. The tariff rate for drinking glasses, other than of glass ceramics: of lead crystal, valued not over $1 each is 15%, while that for drinking glasses, other than of glass ceramics: of lead crystal, valued over $3 but not over $5 each is 7.3%, and for same products valued over $5 is 3%. These items are not only the major items that China export to the US, but are also the necessities in the US. Such tariff structure has weakened the competitiveness of Chinese products and hindered their export to the US market.

3.1.2 Tariff escalation
The US still has a serious problem of tariff escalation. The duty rates escalate with the level of processing for certain finished products or semi-finished products. Take products under a single tariff heading as an example. The duty rate for live bovine animals is free, while that for meat of bovine animals, fresh or chilled, carcasses and half carcasses is 26.4%. The duty rate for precious stones and semi-precious stones, unworked is free per carat, while that for stones and semi-precious stones cut but not set or roughly shaped is escalated to 10.5% per carat. The duty rate for non retail use non twisted spin eurelon 6 single yarn is free, while that for unbleached or bleached pure nylon fabric is 13.6%, and T-shirts, singlets, tank tops and similar garments, knitted or crocheted, of man made fibers 32%. Such a tariff structure has considerably hindered China’s export of higher value-added products such as semi-finished or finished products to the US, and has undermined the interests of Chinese enterprises.

3.1.3 Tariff quotas

The US maintains tariff quotas on imports of certain agricultural products in order to control the quantities of import and protect the interests of domestic producers. Products subject to tariff quotas in fiscal year 2006 included milk and dairy products, infant formula, animal feeds containing milk or milk derivatives, sugar and sugar containing products, peanuts, peanut oil and peanut jam, sweetened cocoa powder, chocolate and chocolate crumb, ice cream, mutton, beef, cotton, and etc. High tariffs are imposed on products exceeding the established quota. For instance, the average tariff rate for in-quota nonfat dried milk is 2.2%, while that for off-quota is 52.6%.

3.2 Import restrictions

The US maintains an import licensing system on products such as fish, wild animals, narcotics, alcoholic beverages, natural gas, and tobacco on the grounds of national security, consumer health, public morality and environmental concerns. In addition, under Section 232 of the Trade Expansion Act of 1962, the US DOC is authorized to self-initiate an investigation or commence an investigation at the petition of interested parties on the effects of imports that threaten to impair national security, and submit a report to the President for him to determine if it is necessary to make adjustment of imports. Since the criteria for determining effect of imports on the national security is not clearly established, and the proof of injury requirement for interested parties petitioning for an investigation is easy to meet, the threshold for initiating Section 232 investigation is very low. China understands that a country has the right to take actions in multilateral or bilateral trade in order to protect its national security. However, these actions should be taken with due diligence to avoid being
used as means to protect one’s domestic industries and to restrict foreign competition. China expresses concerns on the development of this policy and its use.

In addition, the US introduced the Steel Import Monitoring and Analysis (SIMA) system on 2002, which now covers all basic steel mill products into its list of monitored items. All importers of steel products are required to obtain a license from DOC prior to completing their customs import summary documentation. The data collected on the licenses are made available to the public weekly after the DOC review. The purpose is to provide statistical data on steel imports entering the United States 7 weeks earlier than is otherwise publicly available. The System is now valid until March 21, 2009. Since SIMA provides timely information, US steel industry and trade associations will be able to speed up the application for investigations of steel imports in the future. In addition, it is very likely that foreign steel exporters will face more U.S. investigations because of the broad coverage of steel products monitored.

3.3 Barriers to customs procedures

3.3.1 Irrational customs clearance requirements for certain products

The US Customs require that exporters should provide additional documents and information on goods waiting for customs clearance. For certain products, such as items of textiles, clothing or footwear, detailed and complicated information is required, sometimes involving confidential processing information, such as polish and types of dye. When the exterior of a clothing article is made of more than one material, information must be provided on the respective weight, value and surface area of each material. These requirements are usually quite beyond that necessary for normal customs clearance. The formalities are not only complicated but also costly, and have constituted barriers to exporters, particularly to small exporters.

In addition, the liquidation period has been extended up to 210 days, during which the US Customs may still request additional information necessary to establish the classification of the products and the country of origin. The US Customs may extend the liquidation period beyond 210 days without giving a detailed explanation. In some cases a minor problem or error with the invoice is sufficient. As apparel articles often have a short life span (e.g. fashion items must be sold within two to three months) and have to be marketed immediately, if the importer is not able to re-deliver the goods upon Customs request for final tariff determination, Customs will apply a penalty as high as 100% of the value of the goods.

3.3.2 Clearance problems created by anti-terrorism measures
After September 11 Terrorist Attacks, the US government has taken a series of measures against terrorist activities. The US promulgated the Public Health Security and Bio-terrorism Preparedness and Response Act (hereinafter referred to as Bio-terrorism Act) in 2002, and four supporting regulations later including the Prior Notice of Imported Food Shipments in order to enforce the Act. The Container Security Initiative (CSI) was launched and the Advance Manifest Regulation (known as the 24 hour regulation) was issued in the same year. In 2003, the Customs Trade Partnership against Terrorism (C-TPAT) was launched. As a joint government business initiative, C-TPAT aims to build cooperative relationships that strengthen overall supply chain and border security. Participating businesses are asked to establish a security framework according to specific C-TPAT Security Guidelines covering manufacturing, production, warehousing, cargo handling facilities and cargo transportation. These measures have in reality slowed down customs clearance, increased cost for exporters and uncertainty in the export market. According to FDA statistics, by the end of 2006, 1701 shipments from China had been denied entry to the US market. Although the figure was lower than that of the same period in 2005, goods from China still ranked the first among refused shipments. Moreover, when implementing these measures, CBP tends to treat domestic and foreign businesses differently and discriminate against foreign businesses, thus in reality creating distorting effect on trade. While China recognizes the efforts by the US to fight against terrorism, it hopes that the US will treat domestic and foreign businesses equally and minimize the impact on trade.

3.4 Technical barriers to trade

Faced with complicated technical barriers when entering the US market, foreign products must meet various technical regulations for consumer protection and environmental protection. The complicated system of technical standards and governing laws has particularly created stringent market access barriers. For example, machinery equipment must conform to both UL Certification and standards set by state governments, special regulations of city governments and other product safety standards required by insurance companies. Electronic products must meet technical regulations and product standards required at various levels, including the county and city, industry, state and federal. Different states usually have conflicting additional regulations for agricultural and food imports. State standards are usually not consistent with one another and do not use international standards. Many states have very different environmental protection standards from the federal government. Although a number of US standards claim to be technically equal to international standards, the US rarely adopts directly international standards, with some even contrary to international standards. For example, in the US, there are many different standards on electric and electronic products, which are very different from the standards set by International Electrotechnical Commission (IEC) in inflammability and testing methods. “Third party” assessment is commonly used in the US. All electric and electronic products must pass “third party” assessment in
order to enter the US market. Communication equipment must receive ongoing inspection and assessment in its development and production. Although the Federal Communications Commission (FCC) have eased up control, third party assessment is still required for wireless equipment. There are 2700 state and city level governments in the US making regulations asking for safety certification of products. These requirements usually lack consistency and some lack transparency.

3.4.1 Labeling

3.4.1.1 Labeling

Complicated labeling requirements by the US have imposed irrational burdens on imports. For example, the American Automobile Labeling Act (AALA) requires that vehicles must have labels specifying their percentage value of U.S./Canadian parts content and the country of assembly. These requirements can affect consumers purchase decision and lead them to select vehicles made in the US and Canada, thus creating unfair treatment to products from other countries. This has created obstacles for normal international trade and is in violation of Article 2 of the Agreement on Technical Barriers to Trade of the WTO (known as the TBT Agreement).

The US Federal Trade Commission (FTC) requires that manufacturers of certain household electric appliances should make annual energy cost estimate of their products according to the national average energy consumption cost publicized by the Department of Energy, and provide this information on the labels. However, in order to make an estimate of annual energy cost, one needs information such as the number of usages and power load at the time of usage, which can be very different at different hours. Therefore, it is very difficult to make such estimates. Manufacturers have to make frequent changes to their product labels, thus incurring extra costs. The US has also imposed very complicated labeling requirements for textile and leather products, asking that country of origin labels be affixed to products retail packages, and all textile items exported to the US be labeled with generic names, percentages by weight of the constituent fibers present in the wool product if the content of other fiber is over 5%, the total weight of the wool product and importer information as required by the Wool Products Labeling Act of 1939.

3.4.1.2 Country of origin label for fish and shellfish

According to the 2002 Farm Bill of the US, country of origin labels are required for farm raised fish and shellfish, and wild fish and shellfish, including fillets, steaks, nuggets, and other flesh from wild or farm raised fish and shellfish (processed food items excluded). Products for sale must be labeled with information
including country of origin and production steps. Only when the product is derived exclusively from fish or shellfish hatched, raised, harvested, and processed in the United States, or derived exclusively from fish or shellfish either harvested in the waters of the United States or by a U.S. flagged vessel and not substantially transformed abroad, can the item be labeled at retail as “United States country of origin”. If an imported product has not been substantially transformed in the US, it must retain the importing country it declared to the US Customs as country of origin. Imported products substantially transformed in the United States or aboard a U.S. flagged vessel should be labeled at retail as “Imported from country X, processed in the United States.” If a product has changed its identity after being processed in one country, that country should be labeled as its country of origin.

It is the view of China that such country of origin labeling requirements are unduly complicated, not necessary and have no relevance to food safety. Under current Codex Alimentarius Commission (Codex) standards, country of origin labeling is required if the omission of such labeling may mislead or deceive consumers. The above mentioned requirements of the US are of no use to issues of food safety, human or animal health, and are unable to establish the necessity for such measures to avoid misleading or deceiving consumers. Therefore, it is the view of China that such measures are not consistent with the TBT Agreement. Their implementation can only create extra burdens on exporters and are more than necessary to restrict trade.

3.4.1.3Labeling rules for electric appliances

The appliance labeling rules for suspended ceiling fan issued by FTC on June 23, 2006 pursuant to the Energy Policy Act of 2005 require that fan’s airflow efficiency should be labeled. China expresses its concern over this labeling rule. It is the view of China that the labeling requirements in the rules are overly complicated and items requiring labeling are more than necessary, which will create extra burden on exporters and hinder trade.

In 2006, the US filed 61 TBT notifications with the WTO, 6 of which are proposed amendments to product labeling, covering products such as food, pharmaceuticals, cosmetics, containers, and product added with mercury. China will closely watch the developments of these proposed amendments.

3.4.2Energy Star Program

As directed by the Energy Policy Act of 2005 (EPACT 2005), the US Department of Energy (DOE) proposed rules to provide for new energy efficiency for products including fluorescent lamp ballasts; ceiling fans and ceiling fan light kits; illuminated exit signs; torchieres; low voltage dry type distribution transformers;
traffic signal modules and pedestrian modules; unit heaters; medium base compact fluorescent lamps; dehumidifiers; commercial prerinse spray valves; mercury vapor lamp ballasts; commercial package air conditioning and heating equipment; commercial refrigerators, freezers and refrigerator freezers; automatic commercial ice makers; and commercial clothes washers. The rules will amend the minimum energy efficiency for products and expand the Energy Star program to promote energy efficiency. According to this action by the US, products will have to meet energy efficiency standards during 2006 and 2010, with some such as illuminated exit signs required to meet the standard by January 1, 2006 and others such as commercial refrigerators at latest by 2010.

It is the view of China that (1) While the US requires illuminated exit signs and fluorescent lamps meet the Energy Star standards, it does not state whether the importation, sale and use of these products require Energy Star certificates and which organizations are authorized to provide Energy Star certification. (2) No rational explanation is provided as to why the capability of reversible fan action is required for ceiling fans. (3) The requirement that “Ceiling fan light kits shall be packaged with screw based lamps to fill all screw base sockets” is not necessary, and will increase production costs, particularly long distance transportation costs for manufacturers. (4) The requirement that medium base compact fluorescent lamps shall meet minimum initial efficacy prescribed by the August 9, 2001 version of the ENERGY STAR Program Requirements and the testing requirement for lumen maintenance are inconsistent with IEC 60969, and are in violation of the principles of TBT Agreement. (5) The rule that prohibits the manufacture or importation of mercury vapor lamp ballasts beginning from January 1, 2008 is ungrounded. (6) Cooling capacity required for commercial package air conditioning is not expressed in international measurement system. In 2006, China exported to the US US $4.167 billion worth of products subject to the Energy Star Program. Therefore, China attaches great attention to this energy conservation plan and hopes that while aiming for environmental protection and energy conservation, the US should comply with its obligations under the TBT Agreement of the WTO and avoid creating unnecessary obstacles to international trade.

3.4.3 Amendment of Hazard Communication Standard (HCS)

The Occupational Safety and Health Administration (OSHA) of the US Department of Labor (DOL) announced proposed amendments to existing Hazard Communication Standard (HCS) in September 2006 to implement the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). China recognizes that the GHS has been adopted by the United Nations, and there is an international goal for as many countries as possible to implement the GHS by 2008. The action by the US is therefore in line with its international obligations. However, once GHS is implemented, classification of chemicals will need to be re-examined and new labels and safety data sheets (SDS) be made in line with new requirements.
At present, except the SDS developed by International Program on Chemical Safety (IPCS) for over 1, 300 chemicals, many other chemicals do not have complete safety data. It is time consuming and costly to test and obtain safety data. Therefore, China hopes that the US will provide certain exemptions to chemicals covered by GHS, directly use available safety data and establish a shared data testing system to avoid redundant testing, and provide a reasonable grace period in order to avoid creating new obstacles to trade.

3.5 Sanitary and phytosanitary (SPS) measures

In 2006, the US filed 297 SPS measure notifications with the WTO, taking up the most of the total the WTO received in the year.

3.5.1 Food inspection and quarantine

3.5.1.1 Inspection and quarantine for agricultural products

When FDA selects samples of imported agricultural products for inspection, no clear time frame and procedures are provided, which often leads to delayed release of food or feed imports due to the time consuming sampling and inspection by FDA laboratories. Costs such as refrigeration and storage incurred in the delay are borne by exporters. Such practices usually cause severe losses to perishable food and constitute discrimination against foreign products. Moreover, the US also requires that new non-manufactured agricultural products must obtain import license and fresh fruits receive strict inspection. It takes years for a new item to be included into the approved list after the submission of application. Same requirements are needed for other agricultural products from the same production area with same phytosanitary risks. For hardy nursery stock, the US requires that growing plantations must be inspected two years prior to the entry into the US.

3.5.1.2 Automatic detention on imports

Section 801(a) of the Federal Food, Drug, and Cosmetic Act (hereinafter referred to as Section 801 (a)) authorizes the FDA to place automatic detention on imports posing potential hazards. The system of automatic detention can, to a certain extent, help to ensure quality and safety of imports into the US. It is deemed, however, by China that the system is irrational in the following aspects. First, sampling for the purpose of automatic detention does not stress representation of the samples. Inspection conclusions made by the FDA or its recognized laboratories are final and
request for reinspection is usually denied even if inspection organizations in exporting countries do not agree with the conclusion. Secondly, automatic detention can be placed on a certain product from all other countries, or on part of or all producers of a certain product from a certain country, and can be maintained as long as the FDA considers the shipments do not meet required standards, which consequently has a huge adverse impact on the sales and production of businesses affected. Thirdly, costs incurred as a result of automatic detention are fully borne by importers, thus greatly increasing exporters costs as well.

Generally speaking, the US inspection and quarantine procedures are unduly complicated and are based on inadequate scientific grounds. The overuse of inspection and quarantine and even discriminatory measures have increased the cost of importing relevant products, prolonged customs clearance, restrained normal trade and violated Article 5.4 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, which provides that “member should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects”.

3.5.2 Import of fragrant pears

The US Animal and Plant Health Inspection Service (APHIS) amended its regulations governing the import of fruits and vegetables in January 2006, allowing the importation of fragrant pears from China under certain conditions. China welcomes the move by the US to ease import control, but still thinks that the remaining stringent quarantine requirements will considerably increase Chinese exporters costs.

3.5.3 Chemical residue tolerance

The US maintains extremely strict inspections on tolerance of residues of pesticide, veterinary medicinal products and heavy metal in agricultural products. In 2006, the US amended the residue tolerance and added new requirements for 43 pesticides including fenarimol, imazalil, oryzalin, sodium acifluorfen, bifenazate, and endosulfan, involving meat, vegetables and coffee, etc. Many of these residue tolerances are inconsistent with international standards. For example, the tolerance for residues of fenarimol in bovine kidney is lowered from 0.1 ppm to 0.01 ppm, and the tolerance for the combined residues of fenarimol and its metabolites in or on grapes is lowered from 0.2 ppm to 0.1 ppm. However, according to Codex standards, the maximum residue limit of fenarimol is 0.02 ppm in bovine kidneys, and 0.3 ppm in grapes. In 2006, US $440 million worth Chinese products were affected by these pesticide residues limit standards. China hopes that when establishing tolerances for pesticide residues, the US should use international
standards as basis and take into account technical realities of developing countries in order not to distort these standards to barriers to international trade.

3.5.4 Amendments to import regulations on fruits and vegetables

The US issued a notice on May 9, 2006 to propose an amendment to Q56 Regulations of APHIS on the import regulations of fruits and vegetables. If the proposed amendment is approved, structural changes will happen to import regulations on fruits and vegetables, and new procedures for approving import of new items will be established. China will closely watch the development of this legislation, and hopes that the making of the new regulation will be open and transparent on the basis of scientific grounds, in line with relevant WTO rules and not creating restrictions to imports.

3.6 Trade remedies

By the end of 2006, the US had initiated a total of 117 anti-dumping investigations against Chinese products, of which 3 were initiated in 2006 against Chinese polyester staple fiber, coated free sheet paper and activated carbon with a total value of US $230 million. In addition, one anti-circumvention investigation was initiated against tissue paper products. In 2006, the US imposed anti-dumping duties on artist canvas and lined paper. Although there were fewer cases of anti-dumping investigations against Chinese products than the previous year, unfair practices by US investigating authorities remain in place.

3.6.1 Problems in antidumping investigations against Chinese products

3.6.1.1 Continued refusal of China’s full market economy status

China continues to be treated as a non-market economy (NME) country in anti-dumping investigations. As a result, Chinese exporters receive unfair treatment in responding to anti-dumping investigations. In the anti-dumping case against Chinese lined paper initiated in 2005, DOC conducted a review of China’s NME status from the aspects of the extent of currency convertibility, the extent to which wage rates are determined by free bargaining; the extent to which foreign investments are permitted; the extent of government ownership or control of the means of production; the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and other factors. In the initial ruling and the final ruling, DOC refused requests by Chinese enterprises involved and determined that China remained a NME country. China expresses regret over the decision by DOC and calls for the US to recognize the achievements China
has made in its construction of market economy system, treat Chinese enterprises request in a fair and objective manner, and grant Chinese enterprises fair treatment.

3.6.1.2 Market Oriented Industry (MOI) and surrogate country

3.6.1.2.1 Market Oriented Industry (MOI)

According to relevant US laws, in antidumping investigations, if the respondent company can prove that its industry meets three standards for Market Oriented Industry (MOI), DOC shall adopt the cost data of this respondent company or its industry in calculation of production cost and dumping margin, rather than adopting a Surrogate Country approach. DOC has developed over stringent standards at its discretion and has provided no specific rules on the procedures of application and on the qualifications for applicants, failing to provide clear guide to responding enterprises and is in violation of provisions set forth in Paragraph 15 of China’s WTO Accession Protocol. In practice, DOC refuses to grant MOI status to Chinese companies under various pretexts. So far, no Chinese respondent has yet won the MOI status.

3.6.1.2.2 Selection of surrogate country and surrogate price for factors of production

To NME countries, DOC usually uses surrogate country data to determine the normal value and set dumping margins. This rule has given DOC great discretion. In practice, India, Pakistan, and Indonesia are usually used as candidates for surrogate country, and regardless of the nature of industry involved, India is usually a favorite choice because of the easy availability of information in India. As a result, on many occasions anti-dumping cases against China have been expanded.

3.6.1.3 Separate rates policy

3.6.1.3.1 Separate rates policy in violation of WTO Anti-dumping Agreement

In anti-dumping investigations against NME countries, DOC imposes a single anti-dumping duty on all exporters involved in the case. However, an exporter is entitled to a separate rate if it is able to demonstrate that it meets certain conditions. DOC shall assign an individually calculated rate to the exporter on the basis of its exporting price, or a rate based upon the weighted average of the rates of the investigated companies. This separate rates policy of DOC in anti-dumping proceedings is insistent with WTO rules. First, Article 6.1 of the Anti-dumping Agreement of the WTO provides that investigating authorities should set separate dumping margins for each known exporter or producer of investigated products unless there are exceptions, which have noting to do with the factor of “NME”. According
to current US practices, a respondent from NME countries is not automatically eligible for a separate rate, but under certain conditions. Secondly, WTO rules governing NME in anti-dumping proceedings are only available in the note to Part 1, Article 6, Annex I of GATT and Paragraph 15 of China’s WTO Accession Protocol, which talks about the issue of price comparability of NME countries in anti-dumping investigations, i.e., whether domestic prices in China or cost data of China shall be used as normal value to calculate dumping margins. These rules do not provide for the adoption of export prices. In addition to the discriminatory practice by US in using surrogate country price for the purpose of price comparability, separate rate practices have further hurt China’s interests under the WTO agreements.

3.6.1.3.2 Technical problems for separate rates policy

The US applied new separate rates application procedures and combination rates policy to China and other NME countries beginning from April 2005. Facts have demonstrated that this practice has created many technical problems. First, it has raised the threshold for Chinese companies to obtain separate rates, and has increased irrational burden on companies. For example, respondents are asked to fill in separate questionnaire and submit separate requests no matter whether they are related, co-owned or foreign-owned. Companies must provide original and translated copies of all documents, which must meet strict requirements of DOC. Secondly, DOC requires exporters to provide Form 7501 issued to US importers by US Customs on the entry of goods, thus shifting the responsibility of providing this document to Chinese exporters. Thirdly, some requirements are not in line with the real situations in China, putting Chinese companies at a loss as what to do. For example, it is required by DOC that the legal name of the company should be the same as shown on customs clearance documents. In reality, some Chinese companies often use company logo or trademark in clearance. It is also required that companies should provide business licenses with expiry date indicated, while some (particularly state-owned) enterprises do not carry expiry date on their business licenses, and enterprises engaged in processing with provided materials even don’t have a business license. It is required that companies provide documents for the appointment of management staff, while many small and medium-sized enterprises in China, particularly family-owned enterprises do not have a procedure for appointment. Fourth, the timeline is over tight, which actually deprives respondents the right to submit supplementary documents. DOC has set a strict timeline for the application of separate rates. China hopes that the US will ease up the timeline requirement so that Chinese companies can better respond to the investigation. Fifth, the combination rate practice has restricted the application of separate rates and has to a large extent hindered competition. It runs counter to market principle and constitutes another discrimination against China.

The above two policies have given DOC more discretion and have made it more difficult for responding companies to obtain separate rates. China hopes the US will
improve these practices in an effort to reduce unnecessary burden on Chinese companies.

3.6.1.4 Zeroing

In accordance with the Tariff Act of 1930, DOC uses zeroing when setting the dumping margin. This methodology has been ruled by the WTO as a violation of the WTO Anti-dumping Agreement. But the US has refused to remove zeroing in its anti-dumping proceedings. In the anti-dumping investigation against Chinese diamond saw blades, the US used zeroing, which has artificially raised the dumping margin and hurt the interests of companies involved. In March 2006, DOC asked for public comments on whether to remove zeroing. China expresses welcome to this move and hopes the US will correct this WTO-violating action at an early date.

3.6.1.5 Increased difficulty and cost for respondents due to new measures

The revision made by DOC in October 2006 on the methodology of calculating market economy input in factors of production is not consistent with its usual practices. In former anti-dumping investigations, if the volume of market economy input accounts for 15% - 20% of total purchases from all sources, DOC would normally use the price paid for the input sourced from market economy suppliers to value all of the input, i.e., determining that the input is “meaningful”. In some cases, even 10% is sufficient to be regarded as “meaningful”. DOC has now revised the share to 33%, much higher than the standards used in former practices. This move will further weaken the possibility for Chinese companies to obtain lower anti-dumping duties.

Moreover, the imposition of cash deposit and the removal of anti-dumping bond for new shippers will make it more difficult and costly for new shippers to export.

3.6.1.6 Increased burden due to irrational double deposit requirement

Under rules of Bond Directive 99 3510 004 of US Customs, importers subject to anti-dumping or countervailing cases must pay continuous bond as a general guarantee, and the minimum amounts are established at 10 percent of the duties, taxes and fees paid by the importer during the previous year. The US CBP made amendments to this Directive on July 9 2004 by considerably raising the amount of bonds. Under the new rules, for importers of specific products subject to anti-dumping or countervailing cases, the continuous bond amount they have to pay are DOC rate at Order multiplied by value of imports of merchandise subject to the case by the importer during the previous year. If, at any time after DOC issues a preliminary affirmative determination, CBP detects sudden changes in declared
values, claimed country of origin, or declared classification, etc., CBP will increase the importer’s continuous bond using the following formula: DOC deposit rate in effect on date of entry x value of imports of merchandise subject to the case by the importer during the previous year. The continuous bonds for new shippers are DOC deposit rate in effect on date of entry multiplied by estimated annual import value of the goods subject to the case. CBP may adjust the rates used in the formulas set forth above to calculate different bond amounts as circumstances warrant to ensure collection of sufficient antidumping and countervailing duties.

At present, this rule is applied only to agricultural or aquacultural products subject to antidumping and countervailing cases. Since dumping rates tend to be higher for agricultural and aquacultural products, this amendment has greatly increased the continuous bond amount. Importers have to maintain the continuous bonds until the final determination of antidumping duties for affected products, a process that may take years in practice, and have to pay cash deposit equal to estimated dumping duties and dumping margins. Such double deposits have raised the cost of agricultural and aquacultural imports to an extremely high level. Under this rule, the US has collected continuous bonds on warm water shrimps and prawns from six countries, including China. It is the view of China that the collection of such continuous bonds are not in line with WTO rules governing provincial measures and imposition of antidumping duties. The US Court of International Court has made an initial decision to prohibit this practice. China hopes that the US will correct this WTO violating rule at an early date.

3.6.2 Problems in anti-circumvention case for petroleum wax candles

In October 2006, DOC published a notice of its affirmative final determination of the anti-circumvention inquiry of petroleum wax candles from China. It has determined that mixed wax candles from China (candles composed of petroleum wax and over fifty percent or more palm and/or other vegetable oil based waxes) are later developed merchandise and should be subject to the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China, and should be imposed the 108.3% anti-dumping duties. This determination has enlarged the scope of products subject to the anti-dumping duties. The anti-dumping investigation initiated in 1985 against petroleum wax candles targeted only candles made of petroleum wax, which was defined by ITC in its Final Determination as "those composed of over 50 percent petroleum wax". Mixed candles ruled circumventing the Anti-dumping Order are a totally different product from petroleum wax candles, and are not products with “minor alterations”, or “a significant alteration of the merchandise involving commercially significant changes”, or “later developed merchandise”. In addition, when US domestic industries petitioned for the anti-dumping investigation, mixed products had been commercially available in the market, and do not constitute “significant technological advancement”. DOC had ruled that mixed candles would not be subject to anti-dumping duties. The US Court of Appeals for the Federal Circuit has ruled
clearly that products excluded from initial investigations should not be included into anti-dumping orders in follow-up investigations. In this anti-circumvention investigation, while DOC was aware that mixed candles had been available in the market, it still used criteria created by administrative bodies (commercial availability) to determine mixed candles as later-developed merchandise. This discretionary determination with no transparency has violated the obligation of the US under WTO Anti-dumping Agreement, and has amounted to abuse of anti-circumvention rules. This is the first anti-circumvention investigation initiated by the US against China. The arbitrary action by DOC in disregard of facts has set a very bad example. China hopes that the US will correct this WTO-violating determination at an early date and grant fair treatment to Chinese enterprises.

3.6.3 Problems in countervailing investigations against Chinese products

On November 21, 2006, at the petition of domestic industries, the US DOC initiated a combined anti-dumping and countervailing duty (CVD) investigation on coated free sheet paper from China. This is the first CVD investigation launched by the US against China since China joined the WTO. The US DOC has all along refused to grant Market Economy status to China and treated China as a NME country in its anti-dumping investigations against Chinese products. However, according to its anti-dumping and countervailing practices over the past 20 years, DOC does not apply CVD law to NME countries, a policy that was ruled affirmative by the US Court of Appeals for the Federal Circuit in 1986 and has remained unchallenged since then. This CVD investigation initiated by DOC against coated free sheet paper from China is inconsistent with its long-standing practices and court precedents, and is in violation of GATT 1994, the Anti-dumping Agreement and the Countervailing Agreement of the WTO by imposing both anti-dumping and countervailing duties on one product. It has constituted unfair treatment to Chinese products. As to the case per se, petitioners are unable to establish that there is a financial contribution to 13 alleged items of subsidies from which businesses have benefited and these subsidies are specific. Therefore, the initiation of the case doesn’t comply with US domestic laws or WTO regulations.

To our regret, the US has decided to initiate the CVD investigation in disregard of China’s concern expressed and proposals made on many occasions. The US has insisted on treating China as a NME country regardless of its enormous achievements in market economy reforms over the past 20 years. On one hand, it uses discriminatory “surrogate country” method in anti-dumping investigations against Chinese products. On the other hand, it initiates CVD investigation against Chinese products. Such dual discriminations against Chinese products, in China's view, is neither consistent with WTO rules, nor with US domestic laws.

3.6.4 Problems in product-specific safeguard measures
Section 421 of the US Trade Act of 1974 (hereinafter referred to as Section 421) sets forth regulations on procedures utilized and entities involved in implementing product-specific safeguard measures against various Chinese products. It is deemed by China that Paragraph 16 of the Protocol on the Accession of the People’s Republic of China to the WTO does not provide sufficiently detailed procedures and entities with regard to investigations related to product-specific safeguard measures and enforcement thereof. Section 421 does not provide detailed regulations related to several important concepts and procedures relating to product-specific safeguard measures. China hopes that the US will make necessary corrections, modifications and amendments to Section 421 so as to bring it in line with the corresponding and relevant WTO rules.

3.7 Government procurement

The Buy American Act of 1933 is the main legal authority governing government procurement. Many discriminatory provisions exist in this law, such as prohibiting certain public agencies from purchasing foreign products and services, applying special standards to local products, requiring preferential price terms for local suppliers, etc. The Buy American Act of 1933 restricts the purchase of supplies by government agencies to those defined as “domestic end products”, i.e. the article is manufactured in the United States, and the cost of domestic components exceeds 50% of the cost of all the components. In making tenders, the bidder must show whether its products are domestic products or foreign products. The Act does not directly prohibit the purchase of foreign products by government agencies. It stipulates clearly, however, that in evaluating price offers, a 6% margin should be added to foreign products. If the domestic competitor is a small business or a business located in a region with surplus labor force, the added margin considered is 12%. For purchases by the Defense Department the price difference must be of at least 50%. Such discriminatory provisions have constituted barriers for Chinese companies to obtain US government procurement contracts. China expresses its concern over this issue.

In addition, many other federal laws also contain requirements to buy American goods. These laws include various fund appropriation regulations, road and transportation laws enacted by the US General Services Administration (GSA), the US National Aeronautics and Space Administration (NASA), and the Tennessee Valley Authority (TVA), as well as the Clean Water Act of 1997, the Rural Electrification Act of 1936, and the Rural Electrification Act of 1938. Many of these laws and regulations contain provisions governing financing for federal purchases from states or local areas, but are nevertheless exempt from the relevant GATT or WTO Government Procurement Agreement after the US submitted application to the WTO.
3.8 Export restrictions

The US maintains a complicated export control system. The US DOC is authorized to regulate the export of dual use goods, technology, and services. The US Department of Defense is authorized to regulate the export of products, services and technological data for military use. In addition, the US Department of the Treasury implements its own export control rules on countries under embargo and on items forbidden for trade. The US has long maintained control over the export of products for military use or products with potential dual uses to China, and also over the export of high technology to China in high tech sectors, such as wireless products, chips, software, security products and radar. In fiscal year 2005, 44 applications for dual use product export to China were refused, making China the second refused destination in all applications. In several strategic economic dialogues and consultations between China and the US, China has raised this issue with the US as one of the important items for discussion.

3.8.1 Proposed rules on export control

The US DOC published its proposed rule to strengthen control on exports to China in July 2006. The proposed amendment has increased items subject to export licenses to China, expanded on a unilateral basis the requirement for exporters to obtain PRC End User Certificates from MOFCOM, and starts to implement the new Authorization Validated End User (VEU) system.

This is the first effort by the US to establish clearly, in the form of rules, its principle of exercising “overall control” on products for military and civil uses. The purpose is to exercise strict controls on exports of sensitive dual use items to China for military use. It is the view of China that the newly added licensing review requirements for 47 items are too stringent. The expanded requirement for exporters to obtain PRC End User Certificates will increase end user visit requests from the US, making it more difficult for certain Chinese projects, and the threshold of US $ 5000 is unreasonably low. The new VEU system has stringent conditions, and may cause differential treatment to enterprises of different nature. Moreover, the new system requires a large amount of paperwork, and is difficult to implement when both MOFCOM and DOC are understaffed to handle these documents. The rule will increase business burdens on enterprises in two countries.

It is the view of China that the proposed new rule will increase uncertainty and cost in US trade with China. It will discourage bilateral trade between the two countries by imposing unreasonable barriers and attached preconditions. It is not in the interest of businesses from China and the US and will hurt the healthy development of trade between China and the US. US control on export of high tech products to China is
one of the major reasons for recent trade imbalance between China and the US. According to statistics from the US Census Bureau, exports to China accounted for only 4.67% and 5.71% respectively in 2004 and 2005 in total US exports of high and new tech products. However, US imports of high tech products from China accounted for 19.16% and 22.79% in 2004 and 2005. In 2003, the US had a deficit of US $21.09 billion in high tech trade with China, and the figure reached US $36.297 billion in 2004. While strengthening export control against China, the US has also restrained the growth of its high tech export. If the US wants to improve its trade imbalance with China, it should change its current move. China urges the US to take into China’s concerns and take constructive measures to expand bilateral trade in high technology and promote the healthy development of economic and trade ties between the two countries.

3.8.2 Export license administration and controlled list

DOC exercises control over the export and reexport of US origin products through export licensing. DOC issues export licenses on the basis of export destinations, levels of cooperation with the US and technological standards of products. Many of these established technological standards have become obsolete. For example, the standards used for the control over the export of computers have already fallen behind technological development, and have hindered the normal trade of technology between China and the US. In addition, obtaining an export license is a time-consuming process in the US. According to Executive Order 12981, the average time needed for obtaining a license is three months, and can last from three months to half a year and sometimes even a year for exports to China, much more lengthy than in other countries, such as Germany and Japan, where 2-3 weeks or a month is enough. Besides, stringent conditions are usually attached to exports to China, such as follow up verification, and additional clause for end use or end user carried in commercial contracts. These have in fact increased the cost of exporting to China.

The US government also maintains control over the destinations and end users of export items through the use of the lists such as the Specially Designated Nationals List (SDN), the Specially Designated Global Terrorists List (SDGT), the Denied Persons List, the Debarred Parties List and the Embargoed Countries List. Export to countries, individuals, or organizations identified on the lists are prohibited or restricted. However, relevant US laws and regulations do not provide clear conditions for the identification of these organizations or individuals. In 2006, 57 new organizations or individuals were added to the Denied Persons List, with 18 from China, accounting for one third of the total.

3.8.3 Sanctions
The US government often uses “proliferation of weapons” as the pretext to impose sanctions on foreign companies, particularly Chinese companies pursuant to its domestic laws. Out of 114 sanctions imposed by US Department of Defense on controlled items in the period from 2001 to 2004, 79 were against Chinese companies, nearly all imposed on the basis of non-proliferation. Companies having links with the Chinese military are the main target of US control and sanctions. In June 2005, President Bush signed the Executive Order 13382, allowing severe economic sanctions to be imposed on entities or individuals providing support or services to weapons of massive destruction proliferators and their supporters. Under this Executive Order, the US Department of the Treasury, citing providing materials and technology to Iran for the use of missiles as a reason, declared in June 2006 to impose sanctions on 4 Chinese companies, prohibiting any business with American companies and individuals, blocking all their properties subject to US jurisdiction, and putting them on the list of entities supporting or serving weapons of massive destruction proliferators. This is the second sanction after the US government imposed one in 2004 on these four companies. In August 2006, the US Department of the Treasury took same action against Chinese subsidiaries of one of these four companies. In December 2006, the US State Department imposed sanctions on another three Chinese companies under the same pretext of proliferation to Iran and Syria. These measures have seriously hurt the reputation of relevant Chinese companies and caused huge economic losses to them.

It is held by China that the Chinese government has consistently pursued a responsible and committed attitude towards the issue of proliferation prevention, and has taken a series of effective measures to strengthen its export control. Unwarranted sanctions on Chinese companies by the US government invoking its domestic laws are in violation of WTO rules, and will not be beneficial to the bilateral cooperation in proliferation prevention. China expresses its dissatisfaction and opposition to these continuous sanctions by the US, and urges the US to promptly cease these actions.

3.9 Subsidies

3.9.1 Agricultural subsidies

The continued high level of agricultural subsidies in the US has remained a concern for other countries. Under the Farm Security and Rural Investment Act of 2002 (FSRI 2002), large amounts of subsidies have been provided to the US agriculture, violating the principle of reducing agricultural subsidies outlined in former laws on agriculture.

The US government, pursuant to FSRI 2002, has increased subsidies to promote export of wheat, wheat flour, rice, barley, eggs, vegetable oil, milk powder,
cheese and other agricultural products through Export Enhancement Programs, Dairy Export Incentive Programs and Export Credit Guarantee Programs. According to the budget for fiscal year 2007 issued by the US Department of Agriculture, a total of US $63 million will be spent on Export Enhancement Programs and Dairy Export Incentive Programs, 2 times more than that in 2006. The budget for Dairy Export Incentive Programs will reach US $35 million, while it was only US $2 million in 2006. The total spending on Export Credit Guarantees, including Short term Guarantees (GSM 102), Supplier Credit Guarantees and Facilities Financing Guarantees will increase by 2% over the previous year. Direct Payments, Counter cyclical Payments, and sales subsidies are the major means of domestic support, whose total spending in 2005 reached US $12.35 billion, up 34% over the same period of 2004.

Although the US has amended its Export Credit Guarantee Program (GSM 102), Intermediate Export Credit Guarantee Program (GSM 103) and Supplier Credit Guarantee Program (SCGP), and has removed the Cotton Support Program (Step 2 program) in August 2006, these subsidies only take up a small share in the large amounts of trade distorting subsidies in the US. For example, step 2 only accounts for 2% in the total subsidies to cotton. The US is one of the largest suppliers of agricultural products in the world, 80% of cotton, 50% of rice, 75% of animal hides and skins, over 30% of soybeans and corn produced in the US are for export. Its subsidy policy will distort international trade for agricultural products. FSRI 2002 will expire in 2007. The US has expressed intentions to reduce agricultural subsidies in making new agricultural laws. China will follow closely the development of US policies on agricultural subsidies.

3.9.2 Other subsidies

In October 2004, the Job Creation Act of 2004 was passed in the US to implement the earlier WTO rulings on illegal export subsidies granted to domestic companies under the US Foreign Sales Corporation Act and the Extraterritorial Income Act. The Job Creation Act of 2004 has conditionally repealed the former tax breaks and, in order to compensate any losses thereby incurred by US domestic companies, has at the same time created a new tax deduction applicable to manufacturers. Since a transition relief is provided to tax breaks, the US hasn’t properly implemented relevant WTO rulings. In addition, the Act has provided a large amount of tax favors to domestic manufacturers, and the favor has been unreasonably expanded to coverage of manufacturing sectors. China expresses great concern with regards to the potential impact this tax reduction program will have on Chinese manufacturers.

3.10 Barriers to trade in services
A great number of restrictive measures exist in the US market for trade in services. Those measures stand as barriers for export of services to the US.

3.10.1 Marine transportation and domestic water transportation

Marine transportation is one of the most protected sectors in the US. No significant policy or legislative changes have taken place with respect to maritime transport since 2004. The Merchant Marine Act of 1920 reserves cargo service between two points in the United States for ships that are registered and built in the United States and owned by a U.S. corporation, and on which 75% of the employees are U.S. citizens. Foreign vessels are restricted in coastal and domestic transportation. However, the Jones Act does not prevent foreign companies from establishing shipping companies in the United States as long as they meet the requirements with respect to U.S. employees. Ownership by foreign individuals, companies or governments of shipping companies engaged in coastal and river transportation in the US is limited at 25%. If foreign ownership is over 25%, shipping companies will be denied rights to undertake coastal and river transportation. Domestic passenger services are subject to similar requirements under the Passenger Vessel Services Act of 1886.

The U.S. international maritime transport market is generally open to foreign competition. Under the Foreign Shipping Practices Act of 1988 (FSPA), however, the Federal Maritime Commission (FMC) is empowered to investigate and address conditions adversely affecting U.S. carriers in foreign trade. Under the Shipping Act of 1984, the FMC exercises special regulatory oversight on ocean common carriers operating in U.S. foreign trade that are owned or controlled by foreign governments. In May 2005, the FMC published an updated list of “controlled carriers” that included four controlled carriers from China. In addition, it is required that all items procured for or owned by U.S. military departments and defense agencies as well as US government financed transportation be carried exclusively on U.S. flag vessels. Unauthorized sale of US registered vessels to foreign carriers will break US laws and will be held legally accountable.

3.10.2 Aviation

There have been no significant policies or legislative changes affecting the air transport sector since 2004. Market access restrictions remain in the form of U.S. ownership and control requirements for aircrafts. Any foreign ownership in a U.S. carrier is limited to a maximum of 25% of voting shares. In addition, the president and 2/3 of the directors and managing officers must be U.S. citizens. The Fly America Act requires U.S. government financed transportation to be on U.S. flag air carriers, but grants authority for the United States to enter into bilateral or multilateral agreements to allow the provision of such services by foreign air carriers.
3.10.3 Insurance

The U.S. insurance services sector is regulated primarily at the state level. Insurance companies, agents, and brokers must be licensed under the law of the state in which the risk they intend to insure is located, and are authorized to offer insurance services only in the state where they are licensed. In addition, in some states, for some types of insurance, insurers must submit rate filings to receive approval from state regulators for the premium rates they may charge. Each state has its own legal structure governing insurance, maintaining different requirements for registration, indemnity and business operation.

The U.S. insurance market is open to foreign direct investment through acquisition of an insurance company licensed in a given state. Market access for foreign companies can only be obtained through commercial existence in a given state. Minnesota, Mississippi, and Tennessee do not have a mechanism for licensing initial entry of a non-U.S. insurance company as a subsidiary. However, if the company has been licensed in one U.S. state except the said three states, it will be accorded such rights in these three states. Thirteen states do not have a mechanism for licensing initial entry of a non-U.S. insurance company as a branch. In practice such requirements often change, and have brought much inconvenience to investors in insurance.

In addition, foreign insurers are not granted national treatment in the requirements for registered capital, taxation and management fees.

3.11 Irrational measures for intellectual property rights protection

Under Section 337 of the Tariff Act of 1930, ITC is authorized to conduct investigation into asserted infringement on US intellectual property rights and other unfair trade practices occurred in the importation of products into the US, and take remedies such as issuing general or specific exclusion orders or cease and desist orders. In recent years, US businesses have frequently used Section 337 investigations against Chinese products in order to curb China’s exports.

By the end of 2006, among all Section 337 investigations initiated by ITC, 58 were filed involving subject products from China. In 2006, 13 investigations were against Chinese businesses, accounting for 39.3% of the total. Products involved were portable power stations and packaging therefore, voltage regulators, ink cartridges, foam footwear, L Lysine feed products, telecommunications or data communications networks, lighters, mobile telephone handsets, peripheral devices, inkjet ink supplies, engines, connection devices for modular compressed air conditioning units and digital multi-meters.
In spite of the amendment to Section 337 in 1994, in China’s view, no substantial changes have taken place. The amended Section 337 of the Tariff Act of 1930 remains inconsistent with Paragraph 3, Article 4 of GATT and relevant provisions of TRIPS, and continues to discriminate against imports in investigations. The inconsistencies are reflected in several aspects. Firstly, Section 337 has provided double remedies to US products by discriminating against foreign companies and violating national treatment principle. Secondly, the criteria for adoption of general exclusion order are unduly low and unclear, thus creating great uncertainty and arbitrariness that have irrationally hurt the interests of foreign exporters. Thirdly, certain Section 337 investigations only name country of origin of investigated products without naming investigated companies, which in fact has deprived involved foreign companies of the right to respond, and undermined the interests of involved foreign companies. Fourthly, the authorization by Section 337 to ITC to self-initiate Section 337 investigation has insufficient grounds, and is inconsistent with TRIPS. China expresses great concern over this issue and the adverse impact thereof on China’s normal trade with the US.

3.12 Other barriers

The US has tightened its visa policy since September 11 terrorist attacks and asked for new requirements such as index finger scans, interviews, and security risk assessment. Due to the lack of visa officers, visa applications have become unduly time consuming. A Chinese application for US visa can take one month on average and 2 months at longest to process, 3 or 6 times longer than that needed for visa to Japan, Australia and EU member countries. Moreover, due to the lack of transparency in visa procedures and great discretion by visa officers, there is great uncertainty in visa application. Many eligible applicants have been refused and normal business visits to US hindered. Such measures have made it difficult for US companies to establish long term stable commercial links with Chinese companies and have injured Chinese companies interest as well as US Companies. According to a survey by the American Chamber of Commerce in China, 44% respondents said their business were affected due to the problem of visa, and the lost business opportunities were estimated at US $1 million to US $10 million. 70% of respondents said they didn’t put meetings in the US for fear of visa problems.

China hopes that the US will improve its visa policy by increasing staff, raising visa issuance efficiency, transparency and predictability so as to ensure the normal commercial exchanges between the two countries.

4 Barriers to investment

4.1 Investment review out of national security concern
The Exon–Florio Amendment authorizes the US President to investigate any merger, acquisition or take over that might threaten the national security of the US. The screening is carried out by the Committee on Foreign Investment in the United States (CFIUS). The law has given no clear definition to “national security” and such investigations tend to be time consuming and costly in legal fees, thus constituting barriers to foreign investment. Moreover, if the President believes the transaction will threaten national security, he can take actions to suspend or prohibit the transaction. There are no provisions for judicial review or for compensation in the case of divestment. With heightened concerns for national security in the wake of September 11th, a noticeable expansion has occurred as to what constitutes a “national security” concern and there are louder calls for tighter review of foreign investment. The Senate and the House of Representatives are currently debating on this issue and have passed separate bills to strengthen the review of foreign investment. China will closely watch its development.

4.2 Discriminations in taxation

Foreign branches in the US or any American corporation that has at least one 25% foreign shareholder are required to maintain or create books and records relating to transactions with related parties. Documents must be stored at a place specified by the US tax authorities and an annual statement filed containing information about dealings with related parties. There are stiff penalties for non-compliance with the provisions. These requirements are onerous. Although their purpose, the prevention of tax avoidance and evasion, is reasonable, they are burdensome and add to the complexity for foreign owned corporations of doing business in the US.

In addition, in many US States, state corporate income tax for foreign owned corporations is assessed on the basis of an apportionment of their total US profits. The formulae and factors for apportioning the profits are established by each individual state and there is no single common method. As a result a foreign company may have to pay tax on the same income in more than one state, giving rise to double taxation and reducing the competitiveness of foreign invested companies in the US.

4.3 Restrictions on market access and investment

Foreign ownership is expressly restricted by US federal laws in certain sectors considered particularly sensitive, such as radio and TV broadcasting, domestic air, marine transportation and fishing. In addition, certain highly regulated sectors, such as banking, insurance, electric and gas, and communications, are subject to discretionary governmental action, especially on the state level. Foreign investment
therein is often subject to a higher level of scrutiny.

4.3.1 Mineral leasing and energy development

Energy resources generally are regulated by both state and federal laws. Exploration and development of energy resources, as well as their refinery, wholesale and marketing are all operated by private companies, which obtain the right to development and production through public tender for leasing or selling. However, the Federal Mineral Lands Leasing Act allows mineral lands owned by the federal government to be leased only to US citizens and to corporations organized in the US. The latter may be foreign owned, but in general a greater than 10% foreign ownership is allowed only to the extent the foreign owners country grants similar rights to US citizens that is, reciprocity is required. The Secretary of the Interior determines what countries do not provide reciprocal treatment.

Under the Mineral Leasing Act of 1920, mineral mining rights to mine coal, oil, oil shale and natural gas on land sold by the federal government are restricted to U.S. citizens, corporations and other U.S. entities. Also, for an alien to obtain an interest in a mineral lease held by a U.S. citizen, the Secretary of the Interior must approve any subleases or assignments of such leases.

4.3.2 Power generation and utility services

The Atomic Energy Act prohibits foreign ownership or control of nuclear power facilities. Only U.S. corporations or partners of U.S. registered corporations may obtain licenses to own or operate hydroelectric power facilities and there is no limit on foreign ownership or control; however, applications where foreign ownership or control is involved are often more highly scrutinized. A company or utility under the jurisdiction of the Federal Energy Regulatory Commission (FERC) must file information annually concerning citizenship, ownership and control.

4.3.3 Land and real estate

Foreign persons are allowed to invest in real estate in the US through buying, selling or leasing. There are special regulations, however, on investment in certain land. As restricted by US laws, land owned by US Land Administration is not allowed for sale to foreign person. Over 30 states, particularly those with extensive farming areas, have laws restricting foreign interests in real estate to different extents. Under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), persons purchasing U.S.real property interests from foreign persons are required to withhold a
certain percent of the amount realized and turn it in to the tax authorities.
Turkey

1 Bilateral trade relations

According to customs statistics in China, the volume of bilateral trade between China and Turkey in 2006 totaled US $8.069 billion, up 65.5% over the preceding year, among which China's exports to Turkey jumped by 71.7% to arrive at US $7.304 billion, while China's imports from Turkey reached US $765 million, an increase of 23.1% over the same period of the preceding year. China enjoyed a trade surplus of US $6.539 billion with Turkey. China mainly exported to Turkey electromechanical products, audio-visual equipment, machinery, motor vehicles and their spare parts, plastics and plastic products, and mineral fuels. China's main imports from Turkey included, among others, mineral products, iron and steel, inorganic chemical products, certain machinery and its components, and chemical short staple fibers.

According to the figures released by China's Ministry of Commerce (MOFCOM), by the end of 2006, the accumulative total turnover of the completed engineering contracts and the turnover of the completed labor service cooperation contracts by Chinese firms in Turkey stood at US $260 million and US $16.81 million respectively.

According to MOFCOM, the non-financial foreign direct investment from China to Turkey is US $6.84 million upon the approval or on the record of MOFCOM and companies from Turkey invested in 32 projects in China in 2006, with a contractual investment of US $48.4 million and an actual utilization of US $13.45 million.

2 Trade and investment administration

The Foreign Trade Regulations Law is the major legislation in Turkey in the administration of trade. Other laws pertaining to trade administration include the Law on the Prevention of Unfair Competition by Imports, the Customs Law, the Free Zones Law, the Law on Measures to be taken by the Government Relating to Taxes for the Purpose of Promoting Exports, and the Value Added Taxes Law.

The Undersecretariat of the Prime Ministry for Foreign Trade (UFT) is the leading government body in the administration of foreign trade in Turkey. Other relevant departments are: the General Directorate of the Customs, responsible for formulating customs policies and tariff policies; the Turkish Standards Institution (TSE), responsible for the inspection of industrial products; the Ministry of Industry and Trade (MIT), responsible for the formulation and enforcement of trade related laws.

Turkey is one of the EU associated countries, and launched its EU accession negotiations in October 2005. Although the European Commission has suspended
talks with Turkey in eight negotiating areas such as financial services, customs union and trade in services since December 2006, Turkey will continue to conduct gradual reforms with reference to EU laws and restructure its laws and regulations governing trade and investment.

2.1 Trade administration and its changes

2.1.1 Tariff system

As a result of the customs union formed with the European Union in 1996, Turkey applies the EU common external tariff (CET) to industrial products and agricultural machinery from third countries, and includes into its Generalized System of Preferences (GSP) all industrial products covered by the EU’s GSP regime, offering the same preferential terms as the EU.

Goods imported into Turkey may be subject to five types of charges: customs duty rates, excise duties, the Mass Housing Fund (MHF) levy (on fishery products), special consumption tax (SCT), and the value added tax (VAT). Customs duties fall into five kinds: ad valorem, specific, compound, mixed and formula duties.

In 2006, Turkey revised the Customs Law and significantly reduced or suspended customs duties applied to imports of certain products, including alcoholic beverages, tobacco, animal oil, raw materials and semi-finished goods for textile, some agricultural products and processed agricultural products, mineral water, and hair products.

2.1.2 Import administration

2.1.2.1 Customs procedures

According to the “Commission Decision No.1/2006 of the EC Turkey Customs Cooperation Committee” issued in September 2006 by the EC Turkey Customs Cooperation Committee, trade in goods between Turkey and EU members uses A.TR form, while form EUR1 is required for imports from non-EU countries with which Turkey has free trade agreements. The format of the Turkish customs declaration has been aligned to the single administrative document (SAD) used in the EU for customs procedures. All imported goods must be presented to customs through the SAD accompanied by other pertinent documents.

On September 26, 2006, the EC Turkey Customs Cooperation Committee issued Decision No 1/2006 of the EC Turkey Customs Cooperation Committee, which has specified the measures set forth in the Decision No.1/1999 of the Committee to enable them to better serve the goal of free flow of goods. The Decision has also abolished former corresponding decisions made by the Committee.

2.1.2.2 Rules of origin
Turkey applies two different sets of rules of origin: non-preferential and preferential. The non-preferential rules of origin assign origin to the country where the goods underwent its “last substantial transformation and an important stage of manufacture”. Preferential rules of origin, specifying the standards for processing and added value of the relevant products, are applied to imports from countries with which Turkey has signed bilateral or multilateral trade preference arrangements.

2.1.2.3 Import licensing

According to the Decree Concerning the Execution of Import Surveillance and the Regulation Concerning the Implementation of Import Surveillance, when the import of a particular product causes or threatens to cause an injury to domestic producers of the same or competing products, the Directorate General of Imports of the Undersecretariat of the Prime Ministry for Foreign Trade (UFT) can impose surveillance over the product upon application or by its own judgment. The imported product under surveillance must be accompanied with an import license for the said product issued by the Directorate General of Imports of UFT in addition to other documents as required by the customs laws and regulations.

Turkey bans the imports of narcotics, products that bear a brand name or a commercial title against related international conventions on industrial property rights, silkworm eggs, natural manure used for agricultural aims, computer game machines, etc.

According to the Communiqué of Standardization for Foreign Trade (2006), Turkey places the import of the following products under licensing: certain communication appliances, some products requiring after-sales service certificates, maps, products for civil aviation, and banknotes and commercial notes.

2.1.3 Export administration

Exporters in Turkey are required to register with the Exporters Union and their local business associations.

Turkey prohibits the export of the following products: cultural historical works and wild animals, India hemp, tobacco, tree species of walnut, mulberry etc., products subject to the Vienna Convention for the Conservation of the Ozone Layer, and certain chemicals. Export of products such as natural gas, some electronic devices, and unprocessed olive oil needs to be registered.

In addition, in order to encourage export and pursuant to the decision of the Special Consumption Tax Code No. 5493, deliveries of gasoline in some customs areas started to enjoy exemption from Special Consumption Tax and Value Added Tax granted by the Council of Ministers as of January 1, 2006.
2.1.4 Trade remedies

Based on relevant WTO stipulations, Turkey has established its legal system governing trade remedies. The legislative base for implementing anti-dumping and countervailing measures are the Law on the Prevention of Unfair Competition in Imports, the Act on the Prevention of Unfair Competition in Imports and the Regulations on the Prevention of Unfair Competition in Imports. The Decree on Safeguard Measures against Imports and the Implementation Regulation on Safeguard Measures against Imports serve as legal basis for initiating safeguard measures.

2.2 Investment administration and its development

The major legislations in Turkey governing foreign investment are the Foreign Direct Investment Law, the Decree on Foreign Investment Framework and the Circular of the Decree on Foreign Investment Framework. Other legislation regulating foreign investment includes the Land Registry Act, the Free Zones Law, and the Corporate Tax Law, etc.

The General Directorate of Foreign Investments (GDFI) is the leading government body in the administration of foreign investment in Turkey. The Investment Advisory Council (IAC) and the Coordination Council for Improving the Investment Climate (CCIIC) are in charge of providing advice on the Government’s measures to improve Turkey’s investment climate. The Turkish Investment Support and Promotion Agency (TISPA), newly established in 2007, will fully take in charge of foreign investment promotion affairs according to the Law about the Establishment of Investment Support and Promotion Agency of Turkey approved by the congress.

2.2.1 Investment incentives

Foreign invested enterprises in Turkey enjoy the same preferential policies available for domestic enterprises, and are also under the protection of Law No.6224 of Turkey and the Agreement on the Reciprocal Promotion and Protection of Investments. Foreign investors are required to obtain a preferential certificate of investment from the Undersecretariat of Treasury in order to enjoy the preferential policies.

The Turkish Investment Encouragement System can be divided into three categories, the General Investment Encouragement Program (GIEP), Aids Granted to Small and Medium Sized Enterprises (SMEs) Investments and preferential policies granted to investments in priority development regions. GIEP includes exemption from customs duty and value added tax for machinery and equipment meeting requirements, or access to investment credits and operating credits in different ratio. Aids Granted to SME Investments refer to preferential treatments such as customs duty exemption, value added tax exemption for machinery and equipment and special investment credits granted to companies holding assets not exceeding 950 billion Turkish Liras (US $639.8 billion) with less than 250 employees and operating in the manufacturing, agro industry, tourism, education and health, mining, and software
industries. Moreover, in order to promote balanced regional development and increase employment opportunities in underdeveloped regions, Turkey provides energy support and land use support for investments in underdeveloped areas.

2.2.2 Restricted sectors for investment

Establishment in banking and in the petroleum sector in Turkey requires special permission from the local government. In most commercial fields, there is no restriction on the proportion of foreign capital, but the equity participation ratio of foreign shareholders is restricted to 25 percent in broadcasting and 49 percent in aviation and maritime transportation.

In order to speed up the accession process, Turkey has intensified efforts in recent years to privatize some state owned monopoly enterprises and allow foreign enterprises to take part in bidding. According to the pre-accession economic program of Turkey, the Turkish government will complete the privatization of power distribution network, some ports and monopoly enterprise producing tobacco and alcohol by 2008. In April 2006, to support its EU accession negotiations, Turkey decided to abolish investment encouragement subsidies. Subsidies granted in the past will be invalidated by the end of 2008.

2.2.3 Relevant organizations

According to the Official Gazette dated at February 8, 2006 and No.26074, Turkey has established the Investment Support and Promotion Agency, subordinate to the Development Agency, to help investors acquire necessary license and provide assistance concerning legal procedures.

At the sixth meeting of the Investment Advisory Council for Turkey (IAC) in June 2006, the IAC suggested to set up a Steering Committee to improve the work efficiency of the Coordination Council for the Improvement of the Investment Environment (CCIIE) established in 2001. The Steering Committee consists of six Ministries from government and four leading business associations.

2.2.4 Avoidance of Double Taxation and the Prevention of Fiscal Evasion

According to the Agreement between the People’s Republic of China and the Republic of Turkey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect of Taxes on Income signed in May 1995, on November 18, 2005, the two countries began to grant exemption from income tax, value added tax, sales tax or any other similar taxes levied on enterprises from the other country engaged in international air transport.

2.3 Trade and investment related administration system and its development

2.3.1 Land purchase

On January 7, 2006, Turkey amended Article 35 of the Land Registry Act. The
amended article has cancelled restrictions on land purchase by businesses established under the Foreign Direct Investment Law and operating within Turkish territory, but land purchases in Turkey by businesses founded in foreign countries shall continue to be regulated by the Petroleum Law, the Industrial Zones Law and the Tourism Promotion Law. It has also stipulated that foreigners can only own up to a maximum of 2.5 hectares of land and property in Turkey for residential or commercial use. This threshold may increase to a maximum of 30 hectares if authorized by the Council of Ministers.

2.3.2 Taxation system

In June 2006, the Turkish Parliament approved the new Corporate Income Tax Law. The new law has reduced corporate income tax rate from 30% to 20%, which in turn has reduced the total tax burden on foreign invested companies from 37% to 28%. The new law has also redefined Transfer Pricing and Thin Capitalisation, proposed new rules to address tax haven, and decided to levy a 15% withholding tax on incomes from financial investment.

In March 2006, the government of Turkey promulgated Official Gazette No. 26102 in which the Council of Ministers decided to reduce the Value Added Taxes on some textile products from 18% to 8%, including fiber products such as cotton, wool, silk, and clothing articles made of materials listed above or made of fur, leather, and shoes, bags, suitcases, carpets and etc.

2.3.3 Concerning the government budget

According to the draft fiscal budget for 2007 released by the Ministry of Finance in October 2006, Turkey will make an increase of 15% in 2007 tax revenues. The major source of increased tax revenue is from indirect taxes. For example, the special consumption tax levied on alcoholic beverages and tobacco will increase by 20%. Taxes for land registration certificates, passports and other official documents will also increase by 20%. Meanwhile, the government also hopes to increase revenues of direct taxes such as income tax and corporate tax through effective supervision measures. The draft budget comes into effect on January 1, 2007.

3 Barriers to trade

3.1 Tariff and tariff administration

3.1.1 Tariff peak

The average tariff rate on imports currently stands at 10% in Turkey. However, Turkey imposes much higher tariff rates on certain imports, especially on agricultural products such as meat products, dairy products, fruits, processed fruit juices and vegetables, ranging from 41% to 227.5%. Furthermore, tariff rates are often raised drastically on imports of agricultural products when there is a bumper year or when
there is a large stock of agricultural products in Turkey.

3.1.2 Tariff escalation

Tariff escalation exists in certain sectors in Turkey, such as major product items including wood and wooden products, paper and paperboard, petroleum, coal, rubber and plastics. The average tariff rate for semi-finished goods is 6.4%, while the average tariff rate for fully processed products is raised to 13.6%.

3.1.3 Tariff quotas

Turkey applies tariff-rate quotas (“TRQ”) to rice imports. According to Turkey’s legislation, Turkish importers are required to purchase a certain amount of domestic rice, and only under this condition could they get the import license for a certain amount of imported rice at the import quota rate. This practice has seriously hampered the access of foreign rice to Turkish market. China hopes that the government of Turkey will abolish this unreasonable quota management system. Moreover, the number of tariff quotas, their implementation, the updating of timetables and the issuance of import licenses are not transparent. China expresses concern over these matters.

3.2 Barriers to customs procedures

3.2.1 Import surveillance

Turkey places some imports under customs clearance restriction by means of import surveillance. According to the pertinent Turkish regulations, if the price of imported products subject to import surveillance is lower than the “minimum surveillance prices” (minimum import prices), importers have to apply for import surveillance license issued by the Undersecretariat of the Prime Ministry for Foreign Trade (UFT). In 2006, 14 new product items were added to the surveillance list, involving such Chinese products as furniture, tableware, kitchen utensils, color TV sets and polyethylene. Moreover, UFT issued Official Gazette No. 26399 on January 10, 2007, and decided to put 12 categories of products under import surveillance, including shoes, bags, tableware, kitchen utensils, etc. China is concerned if there are scientific grounds for the calculation of “minimum surveillance price”, rationality for the issuance of surveillance license and legal basis for surveillance measures. In addition, Turkey also implements its surveillance over toy imports by setting quantitative restrictions. Such practices of Turkey have created barriers to foreign products. China expresses its concern over this issue.

3.2.2 Disputes on cargo ownership

According to Turkey’s customs rules, goods imported into Turkey should be cleared and picked up within 45 days after arrival. Otherwise the goods will be confiscated and put on auction where the original importer shall have priority in purchasing them.
As a result, some importers refuse to pick up the imports under various pretexts for the purpose of buying them at a considerably lower price as the legitimate preferential purchaser when the customs put the imported goods on auction. However, this customs regulation runs counter to normal rules and practices in international trade, and puts exporters in an extremely disadvantaged position. Such a regulation has, so far, given rise to many trade disputes, causing heavy losses to foreign exporters including Chinese exporters. The Chinese government has raised this issue with the Turkish customs authorities on a number of occasions, but no satisfactory results have been produced.

3.3 Technical barriers to trade

As required by Turkey, imported products such as toys, medical equipment, machinery, low voltage equipment and electromagnetic exchange products shall be affixed a European conformity sign “CE”. But products from EU, after being affixed the sign, immediately get access to the Turkey market, while same products from other countries have to go through additional testing. This has created an unfair competition between products from EU and those from other countries. China hopes that Turkey, in line with its national conditions, will soon establish its national standards with reference to international standards in order to ensure that no discrimination is caused within WTO members.

Turkey has set up a series of complicated and onerous testing and certification requirements for imports of ceramic tableware. Imported ceramic tableware must go through mandatory testing and certification conducted by the Turkish Standards Institution(TSE). The testing sometimes lasts several months and the cost is very high. Moreover, importers must provide both sanitation records issued by local veterinary offices and product content lists issued by local Chambers of Commerce. China believes that the cumbersome management and multiple tests imposed on ceramic tableware have, in fact, caused unnecessary barriers to the import of ceramic tableware, and China expresses concern over the matter.

Turkey started to implement ISPM 15 to the international standard for Wood Packaging Materials on January 1, 2006. From that time on all Wood Packaging Materials bound for Turkey must be fumigated, debarked, and marked with an approved international mark certifying treatment; otherwise the goods would be sent back or destroyed.

3.4 Sanitary and phytosanitary measures

On January 24, 2006, China and Turkey signed the Animal Quarantine and Animal Health Cooperation Agreement. According to the Agreement, the two sides will take measures to prevent the spread of infectious and parasitic diseases from one country to the other caused by cross border transport of the quarantine of animals and objects may carry pathogens. China hopes that the two sides will strengthen cooperation in inspection and quarantine technology and information; enhance
exchanges of professional and technical personnel, laws and regulations, international standards and management systems.

3.5 Trade remedies

By the end of 2006, Turkey had launched altogether 63 trade remedy measures against China, including 41 anti-dumping investigations, 16 safeguard measure investigations and 6 special safeguard measure investigations, which made Turkey the fourth largest user of trade remedy investigations against China.

3.5.1 Anti-dumping

3.5.1.1 Anti-dumping in 2006

In 2006, Turkey initiated 5 anti-dumping investigations against China, involving conveyor belt of vulcanized rubber, synthetic staple fiber, granite, plywood and firebrick, and reviewed 3 anti-dumping investigations against pipe cast fittings, woven fabrics of synthetic staple fibers and electric wall clocks. In the same year, Turkey issued its final determinations on 9 anti-dumping investigations against Chinese exports of corduroy, motor, pentaerythritol, composite wood flooring, plywood, air conditioner, polyethylene phthalate, steel pipe cast fittings and granite, and imposed anti-dumping duties on the above-mentioned Chinese products. Among these final determinations, the one on granite has decided to impose an anti-dumping duty of US $90 per metric ton on Chinese granite, and the one on plywood has decided to impose an anti-dumping duty of US $240 per cubic meter.

In March 2006, Turkey initiated an anti-circumvention investigation against stranded wires and cables from China, and finally levied an anti-dumping duty of US $1 per kilogram in December. This is the first anti-circumvention investigation initiated by Turkey against China in recent years.

3.5.1.2 Refusal to grant China the market economy status

Turkey's anti-dumping legal system is basically based on that of EU, and also adopts the five standards used by EU in judging the market economy status. Turkey has pledged in bilateral talks to accord Chinese enterprises the market economy status on a case-by-case basis. However, the Turkish investigating authorities have, up to the present, granted no Chinese enterprises responding to anti-dumping charges the market economy status. In addition, Turkey has refused to grant Chinese enterprises the market economy status merely on the basis of its industrial or national policies, and has never given separate tariff rates to Chinese enterprises that have responded to anti-dumping investigations. China hopes that, proceeding from its actual conditions, Turkey will grant at an early date the market economy status or a separate tariff rate to Chinese industries and enterprises involved in anti-dumping cases.
3.5.1.3 Lack of transparency in anti-dumping investigation procedures
There is a lack of transparency in Turkey's anti-dumping investigation procedures, with notices often given not in a timely manner, information not fully disclosed to enterprises responding to anti-dumping charges, and extent of injury determined without any explanation. Enterprises involved are unable to obtain information in a timely manner. In addition, according to the reports of Chinese enterprises, the cost for responding to anti-dumping investigation cases is high and the procedure is complicated. These factors above have made it more difficult for Chinese enterprises to deal with anti-dumping investigations.

3.5.2 Safeguard measures
In 2006, the Undersecretariat of the Prime Ministry for Foreign Trade (UFT) adopted 5 general safeguard measures, involving motorcycle, shoes, electric iron, vacuum cleaner and salt. These safeguard measures mainly adopted the form of tariff quotas for three years. In August 2006, Turkey, under the pretext of injury to its domestic industries, announced to adopt safeguard measure investigations against imported motorcycles, and meanwhile implemented provisional safeguard measures to levy deposits ranging from US $200 to US $300 on imported motorcycles.

As stipulated in Article 6 of WTO's Agreement on Safeguard Measures, provisional safeguard measures only can be taken in the form of increase in tariff rates. However, Turkey's adoption of deposit money levied on imports of motorcycle has expanded the form of trade remedies in provisional safeguard measures, and has violated relevant regulations. Imports of motorcycle and rubber boots from China take up more than 90% in the imports of these products in Turkey, thus the provisional safeguard measure and general safeguard measures adopted this time are clearly against Chinese products, and have affected greatly relevant Chinese exports to Turkey. China is concerned over such issues as frequent use of safeguard measures and expanded scope of safeguard measures, and hopes that Turkey can strictly abide by the stipulations in relevant WTO agreements and use safeguard measures in a reasonable manner.

3.5.3 Transitional product-specific safeguard measures
Without briefing the Chinese side and seeking consultations with China, Turkey decided in August 2005 to initiate special safeguard investigations against float glass from China according to the Regulation on Safeguard Measures against Imports from the People's Republic of China. Although China had taken the matter up with Turkey on several occasions, Turkey made its final ruling in April 2006 recommending the adoption of special safeguard measures against Chinese float glass for three years, and used the form of tariff quotas to restrict imports of float glass from China.

Despite the small amount of money involved in this case, the Turkish government, regardless of the many representations and all necessary efforts made by China,
insisted on taking special safeguard measures, and thus has made itself the first country to adopt special safeguard measures against Chinese products. China expresses great regret for and strong dissatisfaction with this action by Turkey. China has repeatedly stressed that the application of special safeguard measures require stringent conditions, and holds that there exists serious deficiency in the determination made by the Turkish government in this case. The data and facts in the determination are unable to support Turkey’s conclusion that there exists market disruption. China hopes that Turkey can bear the overall situation of bilateral economic and trade relations in mind and immediately correct improper practices in order to remove the adverse effects. China still hopes to resolve the issues properly through friendly consultations.

On August 15, 2006, Turkey initiated special safeguard investigations against polyvinyl chloride (PVC) and ceramic tiles and ceramic wall tiles (tile) from China, without briefing the Chinese side and seeking consultations with China. At the same time, it implemented provisional special safeguard measures for 200 days and imposed provisional deposits of US $320 per metric ton and US $270 per metric ton respectively on the two products. China is deeply concerned over the two special safeguard measures cases, and has held intensive talks with the Turkish side. During the talks, the Chinese side has expressed hopes that Turkey will excise restraint in adopting discriminatory safeguard measures, and has as well sought ways to address Turkey’s concerns so as to avoid creating obstacles to the healthy development of trade between the two countries. Positive progress has been made in these talks.

3.5.4 Transitional textile special safeguard measures

In December 2004, immediately after promulgating the Regulation on Surveillance and Safeguard Measures against Textile Specific Imports, Turkey announced that in accordance with the above regulation, 42 items of textile products of Chinese origin would be placed under import quota restrictions, which was later extended to 44 items in 2006. In December 2006, Turkey circulated an official gazette to announce that imports of textile from China had caused or threatened to cause market disruption, and thus decided to continue the quota restriction on 44 items of textile products imported from China in 2007.

According to Paragraph 242 as contained in the Report of the Working Party on the Accession of China (Paragraph 242), any WTO members should first demonstrate the presence of “market disruption” before they can adopt transitional textile safeguard measures against Chinese exports. However, Turkey did not provide any substantial supporting information in the announcement of the imposition of special safeguard measures. China demands that Turkey should fully comply with Paragraph 242 as well as relevant WTO rules and take due prudence when considering the initiation of safeguards against Chinese products. At the same time, Turkey has authorized the Secretariat of the Istanbul Union of Exporters in Textiles and Garments to administer the allocation and management of quotas. As the Istanbul Union could be the applicant to the Turkish government for safeguard measures against Chinese textile
products, China is extremely concerned with the fairness of the Istanbul Union in its administration of quotas.

3.6 Barriers to trade in services

According to relevant laws of Turkey, foreigners are prohibited from engaging in public health, lawyers, auditing, and other professions, including doctor, dentist, nurse, pharmacist, notary, certified public accountant, lawyer and pharmaceutical plant manager, and private security guard.

Many Chinese invested companies in Turkey report that Turkey applies very strict standards to the issuance of working visas to Chinese business people and that it is sometimes difficult even for a Chinese businessperson who has been living in Turkey for a long time to get a work permit. In recent years, it has become increasingly difficult for Chinese business people to be granted a work permit, which has caused much inconvenience to Chinese enterprises in Turkey. Chinese expresses its concern over the matter.

3.7 Insufficient intellectual property rights (IPR) protection

In recent years, Turkey has strengthened the protection of intellectual property rights (IPR) by making greater efforts to crack down on piracy and increasing the penalties. However, frequent changes in Turkish laws have reduced predictability of laws and efficiency of the implementation of IPR protection. In addition, Chinese enterprises have experienced other problems in Turkey such as illegal registration of trademarks owned by these companies. China expresses concern over these matters.

3.8 Government Procurement

The Public Procurement Act of Turkey stipulates that local bidders, compared to joint ventures, can enjoy a price priority of 15%. This provision constitutes discrimination against foreign bidders. Meanwhile, the requirement for eligibility certification in bidding for government procurement involves high cost and complicated procedures, and has made many enterprises unable to participate because of the difficulty to obtain certification, and has thus reduced the fairness of open bidding.

4 Barriers to investment

In 2006, Turkey has adopted a series of measures to improve its investment environment. In the appraisal list of investment destinations most favored by multinationals in UN’s “World Investment Report 2006”, Turkey ranked No.32. However, there are still some obstacles to foreign investment in Turkey.

Turkey currently restricts investment in such sectors as civil aviation, maritime transport, road transport, airport services, broadcasting, power, finance companies, tourism, education and national defense. Moreover, establishment of foreign invested
companies in Turkey requires special permission license pursuant to local industrial regulations or must meet some mandatory requirements, for example, joining in chambers of commerce or business associations.
Vietnam

1 Bilateral trade and investment

According to customs statistics in China, the bilateral trade volume between China and Vietnam in 2006 climbed by 21.4% over the previous year to total US $ 9.95 billion, among which China’s exports to Vietnam accounted for US $ 7.46 billion, up 32.3%, while China’s imports from Vietnam dropped by 2.6% to reach US $ 2.49 billion. China enjoyed a surplus of US $ 4.97 billion in its trade with Vietnam. China mainly exported to Vietnam fossil fuels, mineral oils and their products, machinery and equipment, steel and related products, chemical fertilizers, cotton, textile products, garments and accessories, and motor vehicles. China’s imports from Vietnam included, among others, minerals, mineral oils and their products, rubber and related products, electrical machinery, electrical apparatuses, audio video appliances and their spare and component parts, timber and timber work, fruits, furnaces, mechanical devices and their spare parts.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by Chinese companies in Vietnam had reached US $ 1.92 billion, and the volume of completed labor service contracts had reached US $ 260 million.


2 Vietnam’s trade and investment regime

On 11 January 2007, Vietnam became a member of the World Trade Organization (WTO). At present, the major laws pertaining to trade and investment in Vietnam include, inter alia, the Law on Customs, the Law on Trade, the Law on Import and Export Taxation, the Law on Investment, the Law on Enterprises, and the Law on Competition.

2.1 Trade administration regime and its recent changes

2.1.1 Tariff administration

On the basis of Customs Modernization, Development and Reform Program for 2004—2006, the Vietnamese government has set forth objectives, tasks and measures of customs reform for the period 2006—2010. According to the 2006—2010 program,
Vietnam is working to build a stable and transparent regulatory regime for customs administration, with a total investment of US $77.06 million during the five years to build a modern customs administration structure in lines with international standards, to promote electronic customs system, and to improve customs clearance and risk control.

In an effort to comply with relevant rules of the WTO, Vietnam has, beginning in 2002, based its customs valuation on real trading prices of imports, and abolished in 2004 the requirement of minimum import prices for all products. Currently, Vietnam administers three different categories of tariff rates: common tariff rate, most favored nation (MFN) tariff rate, and preferential tariff rate. The preferential tariff rate mainly applies to imports from countries and regions with which Vietnam has signed bilateral or regional trade agreements, including ASEAN specific preferential tariff rate, US Vietnam Trade Agreement preferential tariff rate, and China ASEAN Free Trade Area preferential tariff rate. Common tariff rate, which is 50% higher than the MFN rate of duty, applies to countries that have not established normal trade relations with Vietnam. On the other hand, the MFN tariff rate is chiefly applicable to imports from countries which have entered into normal trade relations with Vietnam.

The simple average MFN tariff rate currently stands at approximately 18.2% in Vietnam, with agricultural products averaging 24.5% and non-agricultural products averaging 15.7% respectively. Pursuant to the Protocol on the Accession of Vietnam to the WTO, Vietnam will lower the MFN tariff rates for 10,600 products within the five years after it joined the WTO, cutting the general tariff level by 22%. Imports whose tariff rates will be significantly cut include textile products, fish and fish products, wood products, paper, power machinery and equipment. In addition, Vietnam levies a specific tariff rate on a small number of products.

On 8 February 2006, Vietnam’s Ministry of Finance further reduced the MFN tariff rates for component parts of certain electrical appliances. For example, the MFN tariff rate for television flat screens has been cut from 15% to 5%, television voltage transformers from 5% to 3%, loudspeakers from 20% to 10%, and capacitors to 0%.

According to the Early Harvest Program (EHP) under China ASEAN Free Trade Agreement, Vietnam has applied special preferential import tariff rates to certain products of Chinese origin since 2004. On 12 June 2006, the Vietnamese Ministry of Finance released the special preferential tariff rates applicable to products originating in Chinese in 2006, which range from 0% to 90%, with reductions in tariff rates for most imports.

According to the Law on Value Added Tax and the Law on Special Sales Tax that went into force on 1 January 2006, Vietnam subjects imported products to value added taxes, and certain imports such as tobacco, alcohol and vehicles to an additional special consumption taxes. The value added tax collected at the customs valuation of imports plus tariff rate is in most cases 10%, with 5% for agricultural products. In
addition, the Vietnamese customs house levies a certain sum of customs clearance charges, depending on the categories of imports.

2.1.2 Import administration

The Vietnamese government adopts different approaches to different categories of imports, including banned imports, imports subject to quotas, licensed imports and free imports.

In January 2006, Vietnam promulgated the Implementation Rules for the Law on Trade (No.12/2006/ND-CP), and annulled the Decision on Management of Import and Export of Goods in 2001—2005 that was released in 2001. In addition to abolishing tariff quotas for such products as cotton, tobacco and milk, the Implementation Rules eliminated the ban on the import of motor bicycles and motor tricycles with engines with capacities over 175cc and subject them to import licensing.

According to the Implementation Rules for the Law on Trade (2006), goods prohibited from import into Vietnam in 2006 mainly include weapons, ammunitions, explosive materials, firecrackers, second hand consumables, right hand drive motor vehicles, second hand automobiles, cultural products banned from diffusion, garbage, waste materials, toxic chemical substances, and refrigerating machinery using chlorofluorocarbon (CFC). Imports subject to licensing from the Vietnamese Ministry of Trade include, among others, products under supervisory control of international conventions of which Vietnam is a signatory, motorcycles (motor bicycles and motor tricycles) with engines with capacities greater than 175cc, and sporting guns. In addition, a certificate of inspection must be obtained from the Vietnamese Ministry of Agriculture before importing such products as veterinary drugs, plant seeds and animal semen, insects, plant and animal genes. Imports such as table salt, eggs, crude sugar and refined sugar are subject to tariff quotas.

According to Decree No.69/2006/QD-TTG issued by the Vietnamese Prime Minister, Vietnam revised its regulation, effective as from 1 May 2006, on the import of formerly banned second hand automobiles: If they can still run for 6 months to 5 years with a mileage of no less than 10,000 kilometers, second hand automobiles are allowed into the country (only pre-owned automobiles produced after 2001 can be imported in 2006), subject to a specific tax ranging from US$ 3,000 to US$ 25,000. On 15 January 2007, the Vietnamese Ministry of Finance issued Decision No.05/2007/QD-BTC, increasing the specific tax to the range of US$ 6,300 to US$ 26,250.

2.1.3 Export administration

Vietnam encourages the export of most categories of products, its export encouragement measures including subsidization of agricultural exports, export
incentives to major exporting companies, provision of export credit and simplification of export procedures. According to the Implementation Rules for the Law on Trade(2006), Vietnam bans the export of products such as weapons, ammunitions, explosive materials, historical relics, cultural items prohibited from dissemination, round timber logged from domestic natural forests, wild and rare fauna and flora, rare and precious aquatic products, encryption machines and software used for the protection of State secrets, and toxic chemicals. In addition, the export of products under supervisory control of international conventions which Vietnam has signed or joined, mineral products, textile products and garments, seeds of rare plants and the young of rare animals are subject to export licensing from the Ministry of Trade, the Ministry of Industry or other relevant government ministries and agencies.

In September 2006, Vietnam’s Ministry of Fisheries released its regulation on the import and export of fisheries products. According to the regulation, the export of 23 categories of aquaculture products such as reeves shad, pipefish (syngnathinae), black eel, whale, hard corals, blue corals and black corals is placed under a ban.

In September, the Vietnamese Ministry of Industry raised the resource export tax on coal to 5%—10%.

2.1.4 Trade remedies

Vietnam is gradually setting up its trade remedy mechanism to embrace relevant WTO rules. In April and August 2006, Vietnam promulgated the Anti-Dumping Law and the Countervailing Duty Law respectively, providing for the submission of complaints, procedures for investigation, and measures against dumping and subsidies, and designating the Ministry of Trade as the competent authorities investigating alleged cases of the dumping and subsidizing of imported goods. So far, Vietnam has not initiated a single antidumping or countervailing measure on any imports.

2.2 Investment administration regime and its recent changes

The Law on Investment that went into effect on 1 July 2006 provides a uniform legal framework of investment administration for both domestic and foreign investors. According to relevant provisions in the Law on Investment, foreign investors may, of their own accord, invest in any industries and sectors not prohibited by law, are entitled to the same preferential treatment and protection as domestic investors, are not required to give priority to purchase and use domestic goods and services, and are not subject to the rate of local contents in production.

The Law on Investment also provides special stipulations on banned, restricted and encouraged investment sectors. According to the law, the banned investment sectors remain unchanged, but the restricted investment sectors have been relaxed, for example, investment in air freight, railroad transport, ocean carriage, construction of seaports and airports, and forestation is no longer restricted. The Vietnamese government will provide preferential terms in taxation, loss transfer, depreciation of
fixed assets, land use and other investment supports for specially encouraged investment projects as defined in the Law on Investment such as new materials, new energy, high tech products, biological technology, information technology, machinery production, crop and plant cultivation, aquaculture, processing of agricultural, forest and aquatic products, salt manufacturing, breeding of new plant and animal varieties, applied high technology, modern techniques, environmental protection, research and development, invention of high technology, labor intensive sectors, infrastructure, construction and development of major projects, education, training, medical services, physical culture, ethnic cultural projects, traditional handicraft, and projects in socio economically backward areas, industrial zones, export processing zones, high tech parks and special economic zones.

In addition, Vietnam has shifted from investment licensing towards an investment registration regime. Foreign investors can register in a province level investment administration agency and obtain a certificate of investment for projects under Vietnamese Dong 300 billion (around US $ 18 million) in sectors not restricted by law.

According to Decree No. 78 regarding the procedures of foreign investment issued in August 2006, foreign investment in banking, insurance, finance, credit, newspapers and magazines, radio, television, telecommunications with a capital of over Vietnamese Dong 150 billion (about US $ 38 million) is subject to the approval of the Vietnamese Prime Minister. Foreign invested enterprises in Vietnam must register in the Ministry of Planning and Investment and obtain a certificate of foreign investment before investing overseas in a sum under Vietnamese Dong 15 billion (around US $ 0.9 million). Investment outside Vietnam with a sum exceeding Vietnamese Dong 15 billion is subject to a certificate of foreign investment issued by the Ministry of Planning and Investment after its examination and ratification.

2.3 Administration regime related to trade and investment and its recent changes
As a member of the World Intellectual Property Organization(WIPO) and a signatory of the Paris Convention for the Protection of Industrial Property, the Berne Convention on Copyright Protection of Literary and Artistic Works, the Geneva Convention, the Brussels Convention, the Madrid Agreement on International Registration of Marks, Vietnam is working to improve its domestic legal framework for the protection of intellectual property rights(IPR). At present, Vietnam has enacted the Law on Intellectual Property, the Law on Copyright, the Document of Border Control on Intellectual Property Protection of Imported and Exported Products, and the Decree to Establish the Association for Combating Counterfeiting and Piracy and for Intellectual Property Protection of Enterprises with Foreign Investment.

In addition, Vietnam promulgated in 2006 the Law on Franchising, the Law on Real Estate and the Law on Securities, all of which took effect in January 2007.

In January 2006, the Law on Amendment of and Addition to A Number of Articles of the Law on Value Added Tax and the Law on Special Sales Tax went into force.
According to the relevant stipulations, liquors, beer, tobacco, automobiles, gasoline, and poker cards are subject to an excise duty ranging from 10% to 75%. Consumers who have suffered losses because of natural calamities, war and other force majeure can apply for excise tax exemption or reduction. In addition to extending the range of products exemptible from value added tax, the Law reduces the value added tax for preliminarily processed cotton to 5%, sets the excise tax for spirits over 40° v/v and cigarettes at 65% and for bottled and canned beer at 75%.

3. Barriers to trade

3.1 Tariff and tariff administration

3.1.1 Tariff peaks

Although Vietnam has cut its customs tariff rates for certain products originating from China in accordance with China ASEAN Free Trade Agreement, Vietnam, in general, still maintains a high import tariff level, with tariff rates for some sensitive products far exceeding the average rate, for example, 50% to 90% for automobiles, 90% for motorbikes, 70% for bicycles, 50% for poultry meat, 50% for beef, 50% for domestic animal offals, 40% for refined cane sugar, 40% for spices, 35% for vegetables, 35% for cereals and cereal products, 50% for beer, 50% for wine, 50% for alcoholic beverages, 55% for refractory bricks, 45% for hosiery, 45% for home electric appliances. The high tariff policy adopted by Vietnam poses a serious barrier to the import of some of China's competitively priced products, over which China expresses great concern.

3.1.2 Tariff escalations

Tariff escalation in Vietnam is most prominent in foodstuffs, tobacco, textiles, leather, home electric appliances and motor bicycles. For example, the import tariff for component and spare parts of dish washers is merely 5%, but for dish washers 45%; parts and components of sewing machines 0%, sewing machines 45%; preliminarily processed rapeseed oil 5%, refined rapeseed oil 35%; raw tobacco leaves 30%, cigars and cigarettes 100%; fur materials 0%, fur products 35%; cotton and cotton yarn 0%—20%, cotton fabrics 40%; fiber flax and synthetic silk 0%, linen and synthetic silk textiles 40%.

3.1.3 Tariff quotas

As of 2006, customs quotas in Vietnam applied to imports such as chicken eggs, tobacco, sugar and table salt. Under Decision No. 02/2006/QD BTM of the Vietnamese Ministry of Trade, import quotas for raw tobacco, table salt and sugar stood at 38,204, 200,000 and 40,000 tonnes respectively in 2006, with the import quota for chicken eggs subject to demand.

3.2 Import restrictions
Vietnam has eliminated quantitative restrictions for imported products. However, certain products such as motor bicycles and motor tricycles with engines with capacities over 175cc, second-hand automobiles, anesthetics, toys, gasoline, glass, iron products, plant oil, sugar, motorbikes and nine-seat motorized vehicles still remain on the mandatory import license list in 2006.

Currently, Vietnam not only subjects second-hand automobiles to import licensing, but also allows their import via only 4 points of entry: All the imported second-hand automobiles must clear customs at Quảng Ninh Province, Haiphong City, Da Nang City and Ho Chi Minh City.

In 2006, the Vietnamese Ministry of Post and Telecommunications issued a decree, banning the import of seven categories of second-hand electronic and communications products, including computers, CD duplicators and copiers, data processors, calculators, ticket issuing equipment, automatic data processing devices and other intelligence devices, transmitting devices for wireless telephones, telegrams and audiovisuals, cameras and voice recorders. The decree also prohibits the import of spare and component parts for the aforesaid products.

Although Vietnam allows, beginning in 2006, the import of two and three-wheel motor vehicles with engines with capacities over 175cc into the country, it is required that the importers register in the Ministry of Public Security and that the imported vehicles be used in the armed forces, public security and motor racing. The above import restrictions hamper the export of relevant Chinese products, over which China is very concerned.

3.3 Barriers to customs clearance

To align itself with the relevant provisions of the WTO Customs Valuation Agreement, Vietnam started to base its customs valuation upon transaction pricing in 2002. However, at present, the efficiency of customs clearance still leaves much room for further improvement. It takes an average of eight hours for a shipment to clear customs after the submission of declaration. According to the new regulations, Vietnam adopts different customs clearance procedures for different categories of goods based on the assessment of their risks. Green Passage mainly applies to goods exempt from inspection and ensures prompt customs clearance. Yellow Passage chiefly applies to goods with medium-level risks and subjects goods to document verification before allowed entry. High-risk goods must pass through Red Passage and are permitted to enter the country only after customs officials have checked the documents and the goods.

3.4 Technical barriers to trade

Vietnam is in the process of establishing national technical standards system. Currently, there are three different quality standards in the country: national standards,
standards published by governmental ministries and agencies, and corporate standards. The Vietnamese Ministry of Science and Technology publishes regularly a list of imports and exports requiring mandatory quality control. The listed items are subject to inspection when passing through customs. Exporters and importers must have permits from the functional agencies or a receipt showing that an inspection is in process for the controlled items at the time they go through customs. The Vietnamese technical standards system is complicated and not always transparent, which makes it difficult for exporters to gain access to the relevant information and poses a barrier to export to Vietnam.

The Vietnamese Ministry of Public Health requires that imported pharmaceuticals can be put on the domestic market only after registration. The registration is valid for five years, and when expired, must be renewed. Vaccines manufactured by foreign countries can be registered in Vietnam only after they have completed clinical tests. In addition, medicinal raw materials with a validity period of less than three years are prohibited from being imported into Vietnam unless they are imported within six months after their production. China is very concerned about such restrictions.

3.5 Government procurement

Vietnam has not joined the WTO Government Procurement Agreement. According to the new regulations released by the Vietnamese government in 2006, government agencies and entities that use government budgets to purchase information technology products can hold international biddings only when domestic supplies fail or when the cost of domestic supplies exceeds the intended purchase prices of the bidding. A foreign contractor participating in an international tender must have a partnership with a Vietnamese contractor and enter into an engineering contract offering at least 30% of the contract value to the Vietnamese contractor. Vietnam will provide incentive policies to foreign contractors investing in projects that give a high ratio of contract value to the Vietnamese contractors. In addition, Vietnam requires that the bid winning foreign company should give priority to employing local technicians and workers, send only a small team of managerial and technical staff from abroad to operate the project, and commit to train local personnel. Priority should also be given to the Vietnamese market regarding the purchase of raw materials, equipment and machinery necessary for the construction project. The relevant regulations on government procurement in Vietnam are obviously discriminatory.

3.6 Export subsidies

To bring itself in line with the relevant WTO rules, the Vietnamese government has gradually reduced and limited its direct financial support and export incentives, and replaced the old policy with long term credit for suppliers of raw materials and with export credit to importers of Vietnamese goods. However, the Vietnamese government still provided in 2006 financial subsidies and export incentives through the Export Promotion Fund administered by the Ministry of Finance to exporters of aquatic products, rice, tea, coffee, black pepper, pork, processed fruits and vegetables,
processed cashew nuts, timber (excluding timber work), handicraft and so on. In addition, Vietnam provides financial support such as short term credit guarantee and medium and long term investment credit to domestic enterprises. The Chinese side expresses concern over the consistency between the export subsidy policy of Vietnam and the WTO Agreement on Subsidies and Countervailing Measures.

3.7 Barriers to trade in services

3.7.1 Professional services

Foreign firms participating in the auditing sector in Vietnam must take any of the three forms: private enterprises, partnership enterprises, and foreign invested enterprises. Foreign auditing firms are permitted to set up branch offices in Vietnam. Firms participating in accounting activities must take the forms of limited liabilities companies, partnership companies and private companies; permission is not yet granted for foreign accounting firms to establish branch offices in Vietnam. In order to establish an accounting or auditing firm in Vietnam, there must be at least five individuals with the accountant or auditor qualifications certified by Vietnam and with at least one year of practicing experience in Vietnam.

Vietnam allows offshore foreign law firms to operate in Vietnam in any of the three forms: foreign law firms, branch offices, and foreign Vietnamese law partnership. Foreign law practices are now permitted to provide legal consultancy services and other legal services. However, participation by foreign law firms in Vietnamese court proceedings are still prohibited. To provide consultancy on Vietnamese laws, a foreign law practice must employ a Vietnamese lawyer or employ a foreign lawyer who has been issued with a certificate to practice in Vietnam, possesses a Vietnamese university law degree, and has been issued with a certificate of satisfaction of conditions for providing consultancy on Vietnamese laws.

3.7.2 Advertising

Vietnam allows foreign advertising service firms to establish joint venture advertising agencies with Vietnamese partners, or to cooperate with domestic advertising service providers to engage in advertising activities in Vietnam. However, foreign investment in the joint venture advertising companies is not allowed to exceed 51%.

3.7.3 Construction

Vietnam has not agreed to provide market access for the cross border supply of construction and related engineering services, and branches of foreign construction companies are not permitted in Vietnam. Solely foreign owned construction enterprises are only allowed to provide services to foreign invested enterprises or to engage in construction projects invested by foreign countries.
According to the relevant Vietnamese regulations, foreign bidders can participate in the tender for a construction project in Vietnam only if they submit a joint bid with a Vietnamese partner or commit to subcontract the project to local firms. The bid winning foreign company must give priority to employing local technicians and workers, and can only send a small team of managerial and technical staff from abroad to operate the project. In addition, priority should be given to the Vietnamese market regarding the purchase of raw materials, equipment and machinery necessary for the construction project. All these regulations constitute a major obstacle to the operations of foreign invested construction enterprises, limiting and restricting foreign access to the Vietnamese construction market.

3.7.4 Telecommunications

Foreign telecommunications companies are not allowed to provide network infrastructure services in Vietnam. Cross border supply and foreign invested commercial presence for provision of basic telecom services is currently restricted to Business Cooperation Contracts (BCCs) with Vietnam’s gateway operators. Likewise, foreign investment in the provision of value added telecom services is currently restricted to BCCs with Vietnamese partners. In the Protocol on the Accession of Vietnam to the WTO, Vietnam has agreed to allow the establishment of joint venture telecommunications enterprises with foreign investment not exceeding 51%.

3.7.5 Distribution

Vietnam allows joint venture enterprises in its distribution sector; however, foreign investment in the joint venture should not exceed 49%. Furthermore, Vietnam does not allow foreign invested distribution service providers to engage in the purchase and sale of products such as cement, tires, motorcycles, automobiles, liquors and chemical fertilizers.

3.7.6 Banking

Foreign banks may open representative offices, branch offices and joint venture commercial banks with up to 50% foreign ownership in Vietnam. Foreign invested banks are not allowed to conduct credit business in Vietnamese Dong.

3.7.7 Securities

Vietnam does not allow 100% foreign invested securities companies. Foreign investment in the stock market is restricted to representative offices or joint ventures with Vietnamese partners, in which foreign capital may not exceed 49%.

3.7.8 Shipping
Vietnam has eliminated the licensing requirements for foreign shipping lines to operate to and from Vietnam, but it still requires foreign shipping lines to enter Vietnam using Vietnamese agents. In addition, discrimination between domestic and foreign commercial ships in fees and charges relating to docking, warehousing, piloting and cargo handling has not been put to an end. All this increases freight expenses and import costs.

4 Barriers to investment

At present, the process of investment registration is still very exacting and time consuming in Vietnam. For example, although there is a clearly defined time limit, which ranges from 5 to 30 working days, for Vietnamese governments at various levels to process foreign investment applications, foreign investors still often complain that the application procedures for investment projects are too cumbersome and lengthy. In some cases, it takes up to several months, half a year or even longer to be granted a permit.

The Implementing Regulations for the Law on Foreign Investment provides that the Vietnamese government encourages foreign investment in prospecting, exploiting and finely processing mineral resources, but restricts foreign investment in mining and processing petroleum and rare and precious minerals. During the negotiations between China and Vietnam on the exploitation projects of aluminum ore in Dak Nong and iron ore in Quy Xa, Vietnam only agrees to cooperate in joint ventures in which the Vietnamese partner shall have a controlling share. The Vietnamese government also decides that joint ventures with foreign partners would be permitted for mining projects with an annual output of over 1 million tonnes of aluminum oxide and for aluminum metallurgical plant project to be established after 2010, on condition that the Vietnamese side shall have a controlling share. In addition, Vietnam restricts foreign investment in iron and steel, cement and coal sectors to joint ventures or business cooperation contracts (BBC).

Vietnam imposes restrictive measures on the employment of foreign nationals in Vietnam. According to the relevant regulations, no more than 3% of the total number of employees in Vietnamese enterprises may be foreigners up to a maximum of 50 foreign employees. Foreign representative and branch offices in Vietnam are not subject to this maximum limit, but the approval of the chairman of the relevant people’s committee is required for the employment of foreign labor.