

The Federal Republic of Brazil

[Risk Warning]

In 2009, Brazil promulgated a large number of trade-related technical regulations, covering such products as bleaching agents, automobile safety gasbags, fire extinguishers, household table electric fans, pet foods, rubber insulating gloves, dust masks, direct current (DC) electronic ballasts for straight tube, circular tube and compact fluorescent lamps, and food packaging. For instance, on September 4, 2009, Brazil published on its *Federal Official Journal* (Diário Oficial da União) Decree No. G/TBT/N/BRA/343 applying mandatory certification to household and similar electrical appliances, which sets out certain requirements with regard to conformity assessment on household appliances with a rated voltage of no more than 250V for single phase appliances and 480V for other appliances. Mandatory certification is to be conducted by a Certification Body for Products (Organismo Certificador de Produtos or OCP) accredited by the National Institute of Metrology, Standardization and Industrial Quality (Instituto Nacional de Metrologia, Normalização e Qualidade Industria or INMETRO). Chinese enterprises are urged to keep a close watch on the changes in and developments of Brazil's technical standards and to note the adjustments of relevant parameters and requirements so as to make necessary preparations.

Chinese enterprises report that by exploiting loopholes in the terms of payment, some Brazilian importers neither take delivery of nor make payment for the goods, but acquire them at auction 90 days after their arrival at the port. Such a willful misconduct severely violates business ethics. Therefore, Chinese exporters should be wary of this so as to avoid any business losses.

1 Bilateral Trade and Investment

According to the statistics from China Customs, the total volume of the bilateral trade between China and Brazil in 2009 reached US\$ 42.4 billion, down 12.9% over the previous year, among which China's export to Brazil slipped 24.9% to arrive at US\$ 14.12 billion, while China's import from Brazil amounted to US\$ 28.28 billion, a drop of 5.3%. China ran a trade deficit of US\$ 14.16 billion with Brazil. China's main exports to Brazil were electric machinery, electrical and audio-visual equipment and spare parts, mechanical appliances and spare parts, organic chemical products, photo-optical and medical instruments and spare parts, vehicles and spare parts, steel products, and textiles. China's main imports from Brazil included mineral products, plant products, base metals and products thereof, cellulose, paper, animal and vegetable fats, plastics, and rubber.

According to China's Ministry of Commerce (hereinafter referred to as MOFCOM), by the end of 2009, the accumulated turnover of engineering contracts completed by Chinese companies in Brazil had hit US\$ 1.111 billion, and the volume of completed labor service contracts had topped US\$ 1.34 million.

According to MOFCOM, China's non-financial direct investment in Brazil, approved by or filed with MOFCOM, stood at US\$ 71.835 million in 2009. Brazil invested in 30 projects in China in 2009, with an actual utilization of US\$ 52.48 million.

2 Brazil's Trade and Investment Regime

2.1 Trade Administrative Regime and Its Developments

2.1.1 Tariff Regime

2.1.1.1 Tariff Administration

Tariff administration in Brazil is based on *Resolution No. 1343* of December 23, 1994. Affiliated with the Ministry of Finance, the Federal Revenue Secretariat of Brazil (Receita Federal do Brasil or RFB) is the main body for customs affairs, responsible for formulating and implementing customs policies, levying customs duties, and enforcing customs supervision. Brazil, together with other member states in the Southern Common Market (Mercado Comum do Sul or MERCOSUR), fixes a common external tariff (CET) as regards non-member countries, but promotes the free transit of goods except such products as sugar, automobiles and auto parts thereof between member states.

The following five methods are used in customs valuation of imported goods, namely, transaction value of imported goods, transaction value of identical goods, transaction value of similar goods, deductive value based on the retail price after deducting duties and commissions, and computed value arrived at from production costs, profits and other expenses.

In Brazil, tariffs are assessed and levied on CIF basis. When the customs authorities question the values of the goods declared by the exporter, the exporter can provide a new quotation within 8 days and the importer can respond to the new quotation within 30 days.

In order to protect its domestic industries, the Brazilian government assesses and imposes import duties by setting a minimum price or a reference price. Variable duties will be collected by the Customs on goods whose import price is less than the minimum or the reference price; and an additional duty will be levied on dumped or underpriced goods.

2.1.1.2 Average Duties and their Changes

According to Brazil's Customs Tariff Code, the simple average tariff duty of 9,809 eight-digit tariff heading items was 11.5% in 2009. Among them, capital goods cover 1,201 eight-digit tariff headings with a simple average tariff of 10.6%, mainly involving nuclear reactors and spare parts, steam boilers, hot water boilers, gas generators, turbines, engines, liquid pumps, air pumps, vacuum pumps, fans, air conditioners, furnace burners, electric or non-electric refrigerated containers or reefers, centrifuges, dishwashers, pulleys, hoisters, cranes, forklifts and bulldozers. Information and communications technology (ICT) equipment covers 72 eight-digit tariff lines with a simple average tariff of 2.16%, involving typesetting machines and equipments, printing plates and rollers, and auxiliary equipments for digital printing.

Since June, 2009, Brazil has raised import tariffs on 7 steel products. Specifically, the import tariff was raised from zero to 12% on hot-rolled sheets and coils (HS code numbers 72082790, 72083890, and 72083990), cold-rolled sheets and coils (HS code numbers 72091600 and 72091700), and thick carbon steel plates (HS code number 72085200-001); and from zero to 14% on alloy steel bars. In order to raise the added value of the exports, the Brazilian government is contemplating levying a 5% duty on mineral exports. On September 21, 2009, the Treasury Secretary of Brazil announced that the Brazilian government would terminate import tariffs on certain steel products.

Brazil's Chamber of Foreign Trade (*Câmara de Comércio Exterior* or CAMEX) issued *Resolutions No. 38* and *No. 39* on July 13, 2009, extending the validity of the 0%, 2% and 4% ad valorem preferential tariffs on the imports of 273 categories of capital goods and information and communications technology (ICT) products, effective till December 31, 2010. According to *Resolutions No. 41* and *No. 42* issued by CAMEX on August 19, 2009, Brazil lowered the import tariffs on machinery and equipment of 259 types, mainly involving power generation, petrochemical and steel industries. To be specific, import tariffs were cut from 14% to 2% on 250 types of products, and from 8%~18% to 2% on 9 kinds of products. The measure took effect on the release date, valid until December 31, 2010. This was the fourth time in 2009 that the Brazilian government slashed import tariffs on such products, with the aim to make up for insufficient

domestic production, stimulate industrial investment and foster economic growth in the country.

In addition, Brazil has made certain changes to the list of exceptions to the common external tariff (CET) of MERCOSUR, involving 114 tariff headings and impacting mostly capital goods under Chapters 84, 85 and 90, whose tariff duty rate has been lowered from 12%-14% to 2% through December 31, 2010.

2.1.2 Import Administration

The main import measures of Brazil have been codified in the *Consolidation of Ministerial Acts (Imports)* contained in *Ministerial Act No. 17* of December 1, 2003, as amended by ministerial acts on February 2, February 11, and May 3, 2004.

2.1.2.1 Import Licensing

Brazil applies both automatic and non-automatic licenses to the imports of various products. In 2009, the list of products subject to automatic import licensing covered products under 10 eight-digit level lines, with simple application procedures. Non-automatic import licensing applies to the products under some 3,500 eight-digit tariff lines of the common external tariff (CET), or about 35.8% of all the tariff lines. The list of products subject to non-automatic licensing spanned all the tariff headings except those under Chapters 47, 51, 57, 66, 68, 77, 86 and 91. The majority of products subject to non-automatic import licensing are products that should go through quarantine measures or should be tested by special quality control measures, products that will exert a major impact on local industries, high-tech products, and products that are under strict control of the government like military supplies. Specifically, these products include garlic, mushrooms, most chemical products, most pharmaceutical raw materials and pharmaceuticals, animal and plant products, tires, textiles, glass products, household ceramics, lock sets, electric fans, electronic calculators, magnets, motorcycles, bicycles, toys, and pencils. Non-automatic import licenses are issued by various agencies. The Department of Foreign Trade (Departamento de Comercio Exterior or DECEX), attached to the Ministry of Development, Industry and Foreign Trade (Ministério do Desenvolvimento, Indústria e Comércio Exterior or MDIC), is responsible for the examination and approval of non-automatic import licensing applications. Importers must apply for licenses through the computerized Integrated Foreign Trade System (Sistema Integrado de Comércio Exterior or SISCOMEX) before shipment of the goods from the exporting country. After receiving the applications from the importers and the relevant documents from the Brazilian banks, DECEX will check the information and documents provided by the importers, and then transfer the applications to other relevant departments and institutions for countersignature. After

that, DECEX will decide whether to approve non-automatic import licenses, considering the opinions of all sides and the situations of foreign trade in Brazil. If the license is granted, DECEX will transfer its decision directly to the customs through SISCOMEX. Importation without a license is subject to a fine equivalent to 30% of the customs value of the goods, or of 10% or 20% if the goods are shipped after the import license has expired.

Non-automatic licenses for used machinery, equipment and cargo containers will only be granted if it is proven that the products are not produced in Brazil and cannot be substituted by a similar product currently produced in Brazil, with the notable exceptions to factory's production lines related to specific projects, and spare parts and equipments used for maintenance and repair of communications and informatics goods.

2.1.2.2 Import Prohibitions

Products prohibited from importing into Brazil include: wine (transported in the containers larger than 5 liters), grapes and grape juices (to be used in the production of wine and its derivative products), weapons and ammunitions (privately imported and not intended for the use of the military), endangered animals and plants (as listed in the Convention on International Trade in Endangered Species of *Wild Fauna and Flora* or CITES), used tires (except retreaded tires from other MERCOSUR member countries), used consumer goods (granting of non-automatic import licenses prohibited except for imports for educational and scientific use).

2.1.2.3 Import Quotas

On April 29, 2009, the Chamber of Foreign Trade (CAMEX) decided to reduce the import tariff to 2% on palm kernel oil (MERCOSUR tariff code number 15132910), with a quota amount of 150 thousand tons, valid for 12 months, and to 2% from 12% on carbon steel plates (MERCOSUR tariff code number 15132910), with a quota quantity of 30 thousand tons, valid for 12 months.

In 2009, Brazil decided to slash the import tariff on jute fibers (MERCOSUR tariff code number 53031010) to zero, with a quota amount of 10.5 thousand tons, valid from September 1, 2009 to January 28, 2010. The most-favored-nation (MFN) tariff rate of 8% applies to the out-of-quota imports.

Brazil decided in 2009 to lower the tariff of vinyl acetate (MERCOSUR tariff code number 29153200) to 2%, with a quota volume of 60 thousand tons, valid from September 10, 2009 to September 9, 2010. Above-quota imports shall be subject to an MFN tariff rate of 12%.

2.1.3 Export Administration

All the export procedures of Brazil are codified in *Export Administration Regulations No.12* of September 3, 2003. It has since been amended by ministerial acts on February 16, May 3, and May 12, 2004.

2.1.3.1 Export Prohibitions

In compliance with the United Nations resolutions, Brazil prohibits exports of weapons and military equipments to Iraq, Ivory Coast, Liberia, Sierra Leone and Somalia; the materials and technologies which could lead to the development of nuclear weapons to Iran; and some organic chemicals under HS Chapter 29 to the non-signatories to the *Montreal Protocol*. In addition, the exports of wood in the rough (HS code number 4403) have generally been suspended unless certain specific conditions are met, and are subject to prior approval of the Brazilian Institute of the Environment and Renewable Natural Resources (Instituto Brasileiro do Meio Ambiente E Dos Recursos Naturais Renováveis or IBAMA).

2.1.3.2 Export Quotas and Licensing

Prior authorization is required from various agencies for exports of a relatively large number of products in Brazil. In 2008, 663 tariff headings at the HS eight-digit level were subject to export licensing, accounting for 6.8% of all the tariff headings. Various agencies are responsible for issuing export licenses, including the Brazilian Health Surveillance Agency (Agência Nacional de Vigilância Sanitária or ANVISA), the National Commission of Nuclear Energy (*Comissão Nacional de Energia Nuclear* or CNEN), the Commission of Civil Air Transport Coordination (COTAC), the Brazilian Institute of the Environment and Renewable Natural Resources (Instituto Brasileiro do Meio Ambiente E Dos Recursos Naturais Renováveis or IBAMA), the Ministry of Science and Technology (Ministerio da Ciencia e Tecnologia or MCT), and the Ministry of Defense (Ministério da Defesa or MD). Some products require authorization by more than one agency.

Exports of certain wood (such as pine and imbuia) are subject to specific rules and require prior authorization from IBAMA. Exports of jacaranda from Bahia (HS code number 4407.29.90) are ruled by special norms. *Normative Instruction No. 77* of December 7, 2005 lays down the procedures for exporting wood products and sub-products, including pine and imbuia.

2.1.3.3 Export Control of Sensitive Goods

Law No. 9112 of October 10, 1995 regulates the export control of sensitive (dual-use) goods. Exports of potentially sensitive goods are analyzed by the Inter-ministerial Commission for the Export Control of Sensitive Goods (CIBES), created by *Law No. 4212* of April 30, 2002 and headed by the Ministry of Science and Technology (Ministerio da Ciencia e Tecnologia or MCT). CIBES is in charge of preparing the regulations, criteria, procedures and control mechanism for the export of sensitive goods and their related services. The Commission analyzes requests for an export license in light of international conventions, treaties and non-proliferation regimes with regard to nuclear, chemical, biological and missile-related technologies. The control list, including mahogany, fragrant dracaena and deodar cedar (*cedrus deodara*), are updated regularly and approved by CIBES.

2.1.3.4 Export Incentives and Related Tax Measures

2.1.3.4.1 Export Subsidies

On February 19, 2009, the Ministry of Economy of Brazil expanded the scope of companies qualifying for the government export financing program (PROEX). PROEX, which offers exporters loans at preferential subsidized rates, mainly applies to small and medium-sized exporting companies. In 2009, the Brazilian government lowered the threshold of access to this program, and now companies with an annual turnover of less than US\$ 300 million are eligible for the export financing scheme. This program is expanded to cover some 900 companies, but the actual number of companies benefiting from the preferential arrangement will be determined by the applications made every year.

2.1.3.4.2 Export Drawback

Brazil's export drawback system is mainly governed by *Law No. 37* of November 18, 1966, *Law No. 8804* of January 8, 1992, *Decree No. 4543* of December 26, 2002, and *Ministerial Act of the Secretary of Foreign Trade (SECEX) No. 36* of November 22, 2007 (which sets out the procedures and conditions of the approval for drawbacks).

Brazil's drawback system encourages exports through the suspension, exemption or restitution of tariffs. The system also allows for the suspension of taxes such as the Tax on Industrial Products (IPI), the Contribution to Social Security Financing (COFINS) and the Contribution to Social Integration Program (PIS) paid on imported equipment and spare parts for the production and package of exportable goods. The relevant preferences, once expired, will not be extended.

On April 2, 2009, the Brazilian government announced a new tax concession measure known as “comprehensive drawback”. And agribusinesses are the main beneficiary of this measure. The measure allows for an exemption of 5% of IPI or 9.25% of COGINS/PIS on goods purchased by exporting companies and used for the production of export products. For example, under this export promotion scheme, the Brazilian beef exporters need not pay the above-mentioned taxes when they buy corns and beans as feed. This measure is an important tool for promoting agricultural exports, affecting one third of the annual export volume. At present, Brazil has 9 separate drawback programs in place, each with its own regulations and tax credits, and the Ministry of Development, Industry and Foreign Trade (Ministério do Desenvolvimento, Indústria e Comércio Exterior or MDIC) is considering merging all the drawback programs into a single one.

2.1.3.4.3 Special System of Industrial Depots Subject to Standardized Control

The Special System of Industrial Depots subject to Standardized Control (Regime Especial de Entrepasto Industrial sob Controle Informatizado or RECOF) was created by *Law No. 2412* of March 12, 1997 and is administered by *Normative Instruction of the Federal Revenue Secretariat of Brazil (RFB) No. 757* of July 25, 2007. RECOF suspends, for one year with the possibility of an extension, the payment of the Tax on Industrial Products (IPI), the Contribution to Social Integration Program (PIS), and the Contribution to Social Security Financing (COFINS) levied on goods imported for industrial transformation and production of goods for export. Products imported under RECOF also enjoy preferential treatment of expedited customs clearance with no need to complete customs clearance procedures at the port of entry. RECOF is mostly aimed at assembly, transformation and reconditioning activities in the aeronautic industry, the automotive industry, the information and telecommunications industries, and the semiconductors and high technology electronics industries.

The Federal Revenue Secretariat of Brazil (Receita Federal do Brasil or RFB) is in charge of the operation of RECOF. Companies must have capital equal to or above R\$ 25 million in order to be eligible for the RECOF regime. Companies must export products using the imports under the regime for a value of at least 50% of the value of the imports under RECOF. The minimum export amount cannot be less than US\$ 10 million for information and semiconductor companies and US\$ 20 million for other companies benefiting from RECOF.

2.1.3.4.4 Export Processing Zones

Export processing zones (EPZs) in Brazil are regulated by *Law No. 11508* of July 20, 2007 (as

amended by *Law No.11732* of July 20, 2008) and *Decree No. 6634* of November 5, 2008.

Decree No. 6634, which was signed into effect by the Brazilian President Luiz Inácio Lula da Silva on April 9, 2009, provides companies in EPZs with tax preferences and creates a National Council of Export Processing Zones (Conselho Nacional das Zonas de Processamento de Exportação or CZPE), which administers EPZs and grants EPZs concessions according to the regulations. According to *Decree No. 6634*, companies in EPZs are exempted, for the first 20 years, from 7 federal taxes on their imports (including new or used capital goods), including import tariff, the Tax on Industrial Products (IPI), the Contribution to Social Security Financing (COFINS) and the Contribution to Social Integration Program (PIS). The suspension of federal taxes also applies to goods purchased domestically for use by companies authorized to operate in EPZs. In the north and northeast areas of Brazil, companies outside EPZs are also granted exemption from corporate income tax for the first five years and 75% of the corporate income tax for the second five years. Companies in EPZs must export 80% of the turnover related to the sales of goods, and the rest 20% of products may be sold in the domestic market, subject to all the federal taxes imposed. CZPE will take punitive measures such as sales injunction on any company in EPZs which it determines has caused injury to domestic competitors. At present, 17 EPZs have been authorized, and companies wishing to enter EPZs must submit an application to the CZPE in accordance with *Decree No. 6634*.

2.1.4 Trade Remedy System

Trade remedy system in Brazil consists of the following laws: *Decree No. 30* of December 15, 1994, *Decree No. 1355* of December 30, 1994, *Decree No. 9019* of March 30, 1995 (as amended in December 2003), and *Decree No. 1602* of 1995. *SECEX Act No. 59* of November 28, 2001 clarifies the conduct of trade defense investigations with respect to confidential information, time periods, and economies that are not predominately market orientated. The Department of Trade Protection (Departamento de Defesa Comercial or DECOM), which is affiliated to the Ministry of Development, Industry and Foreign Trade (Ministério do Desenvolvimento, Indústria e Comércio Exterior or MDIC), examines applications for investigation or review of an anti-dumping (AD) or countervailing (CV) measure, and decides whether to proceed. The DECOM is also responsible for determining, through an administrative process, the margin of dumping or the amount of subsidy, the existence of material injury or threat thereof or material retardation. The Chamber of Foreign Trade (CAMEX) is responsible for making the final decision, including the use of the “national interest” clause, on the application of provisional AD and CV measures and definitive duties, and for altering or terminating definitive duties as a result of a review. CAMEX is also

responsible for establishing the rules and procedures for contingency measure investigations.

The *Special Safeguard Law Against Chinese General Commodities* remains valid until December 11, 2013. According to the Law, at the request of domestic enterprises or industries for a special safeguard investigation, the Brazilian government should accept the application and consult with the Chinese counterpart within 30 days in an effort to reach an agreement on reducing or removing the industrial injury. If consultations fail, the Brazilian government will initiate an investigation.

2.1.5 Other Relevant Promotion Policies

To respond to the economic crisis, Brazil issued in 2009 a series of taxation and credit adjustment policies: (1) to continue the exemption of the Tax on Industrial Products (IPI) on the following products: construction materials, cars, trucks, motorcycles, white ware (fridges, washing machines and cookware), flour and French *baguette*, and capital goods (such as industrial valves, electronic microscopes, and wind turbine generators), with the total amount of the exemption estimated to reach R\$ 3.3 billion; (2) to cut long-term interest rate from 6.25% to 6%; (3) to reduce the interest of Brazil's National Bank for Economic and Social Development (Banco Nacional de Desenvolvimento Economico e Social or BNDES) on loans for exporting and purchasing capital goods from 10.25% to 4.5%; (4) to establish a credit guarantee fund so as to offer small and medium-sized enterprises (SMEs) preferential loans for purchasing capital goods. The Brazilian federal government will invest R\$ 4 billion in the fund (R\$ 1 billion in 2009 and R\$ 3 billion in 2010), and BNDES and the Bank of Brazil (*Banco do Brasil* or *BB*) are responsible for loan management.

Brazil has officially placed the toy industry in the list of government industrial production and development policy, which means that the toy industry will be granted more special preferential treatments, including the reactivation of government credit support, tax concession, and government procurement for educational purposes. At present, Brazilian-made toys represent 55% of its domestic market and Chinese-produced toys account for 45%. Brazilian toy manufacturers hope to gain by 2010 another 10% of the domestic market share on the basis of the current 55%. In order to protect the domestic toy sector, the Brazilian customs authorities have been trying to blunt the competitive edge of Chinese rival products by resorting to such measures as strengthening the supervision of customs declaration and changing the procedures of automatic import licensing.

2.1.6 Adjustment of the Relevant Agencies

In 2009, the Brazilian Trade and Investment Promotion Agency (Apex Brasil Agência Brasileira de Promoção de Exportações e Investimentos or APEX-Brasil) and the World Bank started to implement a joint program, with the aim to attract more foreign direct investment (FDI) to Brazil by establishing investment promotion institutions in all the states. The Brazilian government will firstly carry out pilot projects in the states of Pará, Pernambuco and Bahia, and gradually expand to other states in the country. The responsibility of such investment promotion bodies is to help foreign investors to meet the local demand for investment.

In 2009, the Brazilian government established an Import and Export Bank (Eximbank), which centralizes the businesses of the Bank of Brazil (*Banco do Brasil* or BB), the Brazilian Development Bank (Banco Nacional de Desenvolvimento Economico e Social or BNDES), the Ministry of Finance (Ministério da Fazenda), and other Ministries. The newly-created Eximbank is mainly responsible for financing export companies.

2.2 Investment Administration Regime and Its Developments

Major laws governing foreign investment in Brazil include the *Foreign Capital Law* and its implementing regulation *Decree No. 55762* of 1965. Other laws relevant to foreign investment in Brazil consist mainly of the *Implementing Regulation of the Foreign Capital Administration Law*, the *Labor Law*, the *Corporation Law*, the *Industry Property Law*, the *Anti-Monopoly Law*, and the *Environment Law*.

2.2.1 Investment Promotion Policies

The Brazilian government encourages foreign businesses to invest in Brazil so as to spur the modernization of domestic industries, explore natural resources, solve unemployment and increase fiscal revenue. The main preferential policies include: granting national treatment to foreign investors, providing tax preferences to foreign capital, and offering export credit and insurance to foreign-invested enterprises which export products manufactured in Brazil to a third country.

Brazil's current Investment Attraction Program (IPA) is based on the restructuring of federal ministries and agencies. Since 2005, the Brazilian Trade and Investment Promotion Agency (Apex Brasil Agência Brasileira de Promoção de Exportações e Investimentos or APEX-Brasil) has been responsible for IPA-related investment promotion. APEX-Brasil aims at promoting the exports of Brazil, with the following targets: to increase the number of export enterprises and diversify their exports, to increase the volume and value of exports, to consolidate existing markets and open up new ones, and to raise export earnings and create employment opportunities. APEX-Brasil

provides training and certification services on business management and foreign trade, and helps the manufacturing and processing sectors to meet the demand of the increasingly competitive international market. In December, 2004, APEX-Brasil established investment facilitation institutions responsible for alluring foreign investment inflows. Sector-specific policies promoting foreign investment are usually handled by the corresponding ministries such as the Ministry of Mineral and Energy, the Ministry of Telecommunication, the Ministry of Transport (Ministério dos Transportes), the Ministry of Development, Industry and Foreign Trade (Ministério do Desenvolvimento, Indústria e Comércio Exterior or MDIC), the Central Bank of Brazil (Banco *Central do Brasil*), and the Ministry of Agrarian Development (Ministério do Desenvolvimento Agrário). Foreign investment policies in certain important sectors have to be approved by the President.

So far, 15 states in Brazil have established state-level investment promotion agencies, such as ANAL in Acre, ADAPT in Amapá, AFEAM in Amazonas, ADERES in Espírito Santo, GOIASFOMENTO in Goiás, ADIPER in Pernambuco, AGN in Rio Grande do Norte, INDI in Minas Gerais, AFERR in Roraima, and AFPR in Paraná.

2.2.2 Tax Policies on Investment and Operation

According to Brazil's plan of encouraging investment in harbors and ports, the Brazilian government exempts harbor machinery and equipment from the Tax on Industrial Products (IPI), the Contribution to Social Integration Program (PIS) and the Contribution to Social Security Financing (COFINS). Harbor machinery and equipment which cannot be produced in Brazil are also exempted from import tariff. The incentive is valid until December, 2010.

The following capital goods and software products are exempted from IPI: capital goods of 14 kinds (such as farm tractors; spare parts of steam boilers, steam turbines and pumps; non-electric industrial or laboratory furnaces; machines for manufacturing leather; metallurgical, coking and casting machines); software CD or DVD master discs for CPU (excluding audio-visual products and other software); and invoice machines.

In order to boost the development of the northwestern and northeastern regions in Brazil, the Brazilian federal government and state governments allow for a ten-year exemption of corporate income tax on foreign-funded enterprises which must take the form of joint ventures with shares controlled by the Brazilian side, and a 50% reduction in corporate income tax will continue for 5 years calculated from the 11th year. Meanwhile, exemption or reduction of import tariff and IPI,

and exemption or reduction of local taxes such as the tax on the circulation of merchandise and on the supply of interstate transportation and communication services (ICMS), will also be granted.

On October 20, 2009, the Brazilian government announced the imposition of a 2% tax on foreign investment in securities to combat foreign speculative capital pursuing short-term gains and to prevent the rapid appreciation of the Brazilian currency against the US dollars which would eventually affect the exports of Brazil. The tax does not apply, of course, to foreign direct investment.

2.2.3 Investment Restrictions and Prohibitions

The Brazilian government has, by amending its Constitution, gradually relieved its monopoly of sectors such as the exploitation of petroleum, natural gas and minerals, and liberalized telecommunications and power generation sectors. (According to the relevant regulations, foreign investment in the Brazilian market through participation in the privatization of Brazilian enterprises can be withdrawn at least 6 years after its entry in Brazil). In addition, Brazil has permitted foreign businesses to provide financing and other services in fields such as the press, customs bonded warehouses, offshore shipping and high way. On January 15, 2007, the Brazilian Vice President Jose Alencar signed a decree opening up the Brazilian re-insurance market to foreign investors. Pursuant to this new decree, both local operators headquartered in Brazil and international operators headquartered elsewhere are granted access to the Brazilian re-insurance market, thereby ending the monopoly of the Brazil National Re-insurance Corporation in the sector. However, in order to protect the interest of domestic companies, the decree also stipulates that 60% of the re-insurance market share should be held by the Brazil National Re-insurance Corporation and other local operators for 3 years after the decree took effect in January, 2007, and then this market share will be gradually reduced to some extent.

2.2.4 Other Investment-related Policies and Measures

Investment in foreign currencies in Brazil does not need prior authorization from the Brazilian government. After transferring the foreign currency into Brazil through a Brazilian bank authorized to be engaged in foreign exchange operations, foreign investors can set up factories in Brazil or acquire existing Brazilian enterprises. The Brazilian beneficiary enterprises should submit the application for foreign investment registration, together with the proof of fund, to the Central Bank of Brazil (*Banco Central do Brasil*) within 30 days after the conclusion of the foreign exchange contract. Investment through foreign credit requires prior approval from the Central Bank of Brazil, and upon approval, symbolic foreign exchange transactions should be

operated. The Brazilian beneficiary enterprise should capitalize the fund and file the application for foreign investment registration with the Central Bank of Brazil within 30 days.

Investment in kind should meet the following criteria:

A) Import Clearance

Goods imported into Brazil as investment are subject to non-automatic import license (locally known as LI). A “similarity test” must be applied to goods that are second-hand (i.e., used) or eligible for tax preferences in the process of customs clearance, and if similar domestic goods are found to be available, the import will be subject to certain restrictions. The imported second-hand goods must be utilized in projects which will promote the economic development of Brazil. The Brazilian Customs Policy Commission, in the Ministry of Finance, can adjust the import tariff duty upward or downward by 30% on machinery and equipment imported for the purpose of investment. The margin of the tariff adjustment is determined by the characteristics of investment areas, the technological level and the degree of wear and tear of the imported machinery and equipment.

B) Asset Integration

Investment in the form of imported goods, machinery, equipment and its spare parts must be integrated into the assets of the target enterprises within 180 days after customs clearance. Before that, the imported goods should be registered as “additional capital” under the name of the investors at the value converted into Brazilian Real (R\$) according to the exchange rate on the day of customs clearance.

C) Share Acquisition

According to the *Corporation Law* of Brazil, the merger of a Brazilian publically traded company through share acquisition can be realized by cash or by exchange offer. A certain number of voting stocks is indispensable in share acquisition so as to ensure the control of the company. The process of share acquisition should be completed and guaranteed by a financial institution. The tender offer should disclose the identity of the bidder, the number of shares to be purchased, the offer price and other terms of payment, procedures of acquisition, and other terms and conditions of acquisition.

2.3 Investment-related Administration and Its Developments

2.3.1 Intellectual Property Rights

Since the 1970s, the Brazilian government has issued *Industrial Property Law* (Decree No. 5772 of 1971) on patents (inventions and utility models), industry designs and models, and trademarks, *Copyright Law* (1998), *Computer Software Protection Law* (1998), *Biosafety Law* (1995) and *Seed Law* (1997). All these intellectual property legislations aim to nurture knowledge innovation and to promote economic growth. Through ceaseless efforts in recent years to revise, update and improve its legal framework, Brazil provides more effective legal protection of intellectual property rights (IPRs). In 1996, Brazil introduced a new industrial property regime and amended its *Industrial Property Law*, which came into force on May 15, 1998. One of the noticeable features of the revised Law is that it clarifies the patents related to chemicals, medicines and foods.

The National Intellectual Property Office, established in Rio De Janeiro and affiliated to the Ministry of Development, Industry and Foreign Trade (Ministério do Desenvolvimento, Indústria e Comércio Exterior or MDIC), is responsible for matters such as examination and approval of patent applications, trademark registrations, and technology transfers. In 2004, the National Council on Combating Piracy and Intellectual Property Crime (CNCP) was established and composed of members from government agencies, business circles and social organizations.

The legal basis for patent protection in Brazil is Article 5 of Chapter 29 in the *Constitution* and the *Industrial Property Law* No. 9279/96. Any natural person or legal person can file an application for a patent or the registration of an industry design, and the patent granted is valid only in Brazil where the patent is legally protected. An inventor can apply for the patent for invention, utility model or layout design in Brazil. Patent application is allowed for the production methods of chemicals, medicines, foodstuffs, and genetically modified microorganisms. However, patents are excluded for the following: that which is contrary to morals, civility and politeness (inventions which go against or show disrespect to religious faiths), that which disrupts social order (inventions which violate the laws and threaten public security), that which is detrimental to the public welfare (inventions which do harm to physical health), substances produced by means of nuclear transformation (only equipment, machinery, devices and extraction methods which do not change the physical and chemical features of products or substances are patentable), and natural living materials, in part or in whole (with the exception to transgenic microorganisms which satisfy the following three criteria, namely, novelty, creativity and practicality).

Trade secrets (confidential, classified or undisclosed information) are mainly protected in Brazil by Article 195 of the *Industrial Property Law*. In addition, the criminal section of Brazil's *Unfair*

Competition Law and international conventions such as the *Paris Convention for the Protection of Industrial Property* and the *Agreement on Investment Related Aspects of Intellectual Property Rights* (TRIPS) also provide for the protection of trade secrets in Brazil. The revelation, exploitation or use, without proper authorization, of secrets, information or data in the fields of industries, businesses and services by illegal or fraudulent means, either directly or indirectly, after the conclusion of the contract or the establishment of employment relationship (even after the expiration of such contracts) would constitute a criminal offence. However, trade secrets do not apply to information or data widely known to the public and knowledge of the people with general technical skills.

Chapter 5 of the *Constitution* and the *Industrial Property Law* No. 9279/96 provide for the protection of trademarks. International conventions such as the *Paris Convention for the Protection of Industrial Property* and the *Agreement on Investment Related Aspects of Intellectual Property Rights* (TRIPS), to which Brazil is a signatory, also serve as the legal basis for trademark protection in Brazil.

The *Industrial Property Law* No. 9279/96 stipulates that any visually perceptible sign that distinguishes or certifies a good or service, including the shape and the packaging of a product, can be registrable as a trademark, but a trademark consisting merely of colors or the names of colors cannot be registered unless their usage or combination is distinct from others. The protection of trademarks includes the prohibition of: imitating, copying or duplicating the identifiable factors in other trademarks; relevance to or confusion with the trademarks owned by others; unauthorized use of a trademark which is the same as or similar to the trademarks of others; the use of a trademark which is confusing with or similar to the words or titles of literary, artistic or scientific works protected by the *Copyright Law*; and the use of a trademark which is similar to protected industrial designs.

2.3.2 Standardization and Certification Regime

The Brazilian standardization regime falls into four hierarchies: the first level is the National Council of Metrology, Standardization and Industrial Quality ([Conselho Nacional de Metrologia, Normalização e Qualidade Industrial](#) or CONMETRO), the national policy-making body of standardization; the second level is the National Institute of Metrology, Standardization and Industrial Quality (Instituto Nacional de Metrologia, Normalização e Qualidade Industria or INMETRO), which implements standardization policies; the third level includes three separate subsystems, namely, standardization, quality control and product certification, and legal

metrology, which is regulated by the Brazilian Association for Technical Standardization (Associação Brasileira de Normas Técnicas or ABNT), the Brazilian Society for Quality Control (Associação Brasileira de Controle da Qualidade or ABCQ), and the National Institute of Metrology (INPN) respectively; and the fourth level is the consumers in the fields of industry, trade and consumption. INMETRO provides technical support to CONMETRO and implements its national policies regarding metrology and quality.

Founded in October, 1940, ABNT is a non-profit organization (NGO) vested by the Brazilian government to develop standards. Its major activities include formulating the Brazilian Standards (NBR), implementing product quality certification, hosting other standardization-related events, and representing Brazil in international or regional standardization forums. ABNT comprises 58 technical committees on standardization. The standards formulated by ABNT cover such areas as physical health, safety and the environment, and upon approval from the Brazilian government, become mandatory, for example, the compulsory conformity assessment of products such as construction materials, children's bicycles, toys, and automotive safety glass.

INMETRO is Brazil's national standardization and accreditation body. The Brazilian certification regime includes mandatory certification and voluntary certification, most products falling under the latter. However, the number of product categories subject to third-party certification has been increasing in recent years, including medical and electrical *instruments, wires and cables, plugs and sockets, hazardous locations equipment, fire extinguishers, residential hoses and regulators, helmets, and toys*. Products subject to mandatory certification must, after completing conformity assessment, be labeled with the INMETRO mark and the mark of the third party accredited by INMETRO before they can be placed on the Brazilian market.

The relevant government agencies, such as the Ministry of Agriculture, Livestock and Supply (Ministério de Agricultura, Pecuária e Abastecimento or MAPA), the Brazilian Health Surveillance Agency (Agência Nacional de Vigilância Sanitária or ANVISA) and the INMETRO, are responsible for the adoption of sanitary and phytosanitary (SPS) measures and the implementation of quality standards.

2.3.3 Tax System

Brazil has a very complicated tax system, which is composed of three hierarchies, namely, federal taxes, state taxes, and municipal taxes. Federal taxes include income tax, industrial products tax (IPI), import duties, export duties, financial operations tax, provisional financial circulation tax,

and rural land tax; state taxes comprise tax on the circulation of merchandises (ICMS), tax on the ownership of motor vehicles, inheritance and gift tax; municipal taxes cover social service tax, urban property tax, and real estate transfer tax. In addition, enterprises may have to bear other kinds of social expenditures such as social insurance premiums, seniority protection fund, contributions to the social integration program (PIS) and to finance social security (COFINS). At present, the Brazilian government is considering reforming its tax system through the simplification of tax categories based on the progressive principle that the amount of tax levied is in direct proportion to the income. As Brazil adopts a hierarchical tax system enforced at three different levels (federal, state and municipal), tax preferences can only be granted in the specific areas of their competence. However, according to the uniform act, the Brazilian federal government can exempt or reduce taxes on different sectors and regions nationwide.

2.3.4 Government Procurement

Government procurement regime in Brazil is decentralized at three different levels, namely, federal, state and municipal. The Ministry of Planning, Budget and Management (Ministério do Planejamento, Orçamento e Gestão) is responsible for drafting, revising and supervising government procurement regulations and policies. The Department of Logistics and General Services, of the Ministry of Planning, Budget and Management, is vested with the development of public procurement regulations and policies, and the promotion of e-procurement system. The Department of Logistics and General Services consists of Procurement Office, Norms and Standards Office, Information Release and Management Office, and E-Government Office.

The main legislation regulating government procurement in Brazil is contained in the *Tendering Law* (Law No. 8666 of June 12, 1993) and the *E-Procurement Law* (Law No. 10520 of July 17, 2002). As the basic law for government procurement in Brazil, the *Tendering Law* (Law No. 8666 of 1993) regulates the public bidding proceedings of the federal, state and municipal governments for public works, services (including advertising), purchase, transfer and leasing, and the procedures for the signing of administrative contracts by the relevant public entities. In addition, the Law specifies the fundamental principles of bidding, procurement contracts and legal liabilities in government procurement activities. The *E-Procurement Law* (Law No.10520 of 2002) provides specific stipulations on government purchases of general goods and services through electronic information system. Law No. 3555 of 2000, a complementary law to the *Tendering Law* (Law No. 8666 of 1993), stipulates certain provisional measures on government procurement. Law No. 5450 of 2005 offers supplementary provisions to the *E-Procurement Law* (Law No. 10520 of 2002).

General Law of Micro and Small Businesses (Complementary Law No. 123 of December 14, 2006) establishes differential treatments in government procurement for mini and small-sized enterprises.

2.3.5 Free Zones

The main harbors in Brazil include Santos, Rio de Janeiro, Paranagua, Recife, and Victoria. Brazil has established various types of free zones in the above-mentioned harbors, for example, free ports, free trade zones, bonded warehouses and re-export zones. Among them, Manaus Free Zone is a well-known one.

2.3.6 Rules of Origin

Certificates of Origin in Brazil are divided into three categories: for exports to MERCOSUR member states, for exports to the member nations of the Latin American Integration Association (LAIA), and for the exports under the Generalized System of Preferences (GSP). Certificates of Origin are usually issued by the Federation of Brazilian Chambers of Commerce (Certificates of Origin for processed goods may be issued by *Brazil's National Industry Federation* or CNI) and valid for 120 days.

(1) Exports to MERCOSUR members. For all intra-MERCOSUR trade, Certificates of Origin should be presented for the following commodities: goods included in the transitional list for non-common external tariff; goods not included in the transitional list but the raw materials and spare parts for the production of the goods are included in the list; goods subject to safeguard, anti-dumping and countervailing measures; and other goods determined by the MERCOSUR Trade Commission. In fact, the above rules cover almost all the goods. The following products may be conferred MERCOSUR origin: products wholly obtained or produced in MERCOSUR and using exclusively MERCOSUR materials; products of which the CIF value of inputs from third countries do not exceed 40% of the FOB value of the final products, in cases of production using non-originating materials and in cases of assembly operations. Stricter specific rules of origin apply to products such as metallurgical goods, telecommunications and integrated circuits.

(2) Exports to LAIA members. LAIA rules of origin are practically the same as those of MERCOSUR, the major difference being that the CIF value of inputs from third countries should not exceed 50% of the FOB value of the final product.

(3) Exports of Brazilian products under the GSP program. Preference-giving countries such as the US and the EU have established their own rules of origin and provided specific rules for goods under different HS code numbers. For example, for exports to the EU from Brazil of non-knitted or non-crocheted apparel to be conferred Brazilian origin, the entire process starting from and including the production of yarn should take place in Brazil.

2.4 Trade-related Technical Measures in 2009

2.4.1 Bleaching Agents Containing Hypochlorite

On January 23, 2009, the Brazilian Health Surveillance Agency (Agência Nacional de Vigilância Sanitária or ANVISA) notified to the WTO *Draft Resolution No. 75* of December 23, 2008 on bleaching agents containing hypochlorite. This technical regulation defines general characteristics, active and coadjuvant substances allowed, presentation form, warnings to be mentioned at labeling of products classified as bleach, bleaching solution containing hypochlorite so as to reduce health risks. The regulation also appealed *Executive Act No. 89* of August 25, 1994.

2.4.2 Accessible Vehicles of Urban Characteristics for Collective Transport of Passengers

On January 30, 2009, Brazil's National Institute of Metrology, Standardization and Industrial Quality (Instituto Nacional de Metrologia, Normalização e Qualidade Industria or INMETRO) notified to the WTO *the Draft Ministerial Act for Manufacture of Accessible Vehicles of Urban Characteristics for Collective Transport of Passengers*, which lays down conformity assessment procedures for accessible vehicles of urban characteristics for collective transport of passengers.

2.4.3 Front Airbags in Vehicles

On March 19, 2009, the Brazilian federal government announced that President Luiz Inácio da Silva had signed an bill, requiring that front airbags be installed on all the motor vehicles placed on the Brazilian market, be they domestically produced or imported. According to the Act, except vehicles destined for export, all the vehicles manufactured in Brazil must be equipped with front airbags, and this rule shall be phased-in to apply to vehicles already sold in the Brazilian market within 5 years.

2.4.4 Fire Extinguishers

On June 4, 2009, Brazil's National Institute of Metrology, Standardization and Industrial Quality (Instituto Nacional de Metrologia, Normalização e Qualidade Industria or INMETRO) issued *Draft Ministerial Act No. 160* on conformity assessment procedures for fire extinguishers. The

Ministerial Act, which applies to fire extinguishers and spare parts, water guns and fire fighting nozzles, sets out requirements and criteria on the procedures for conformity assessment and testing.

2.4.5 Food Packaging

On June 25, 2009, the Brazilian Health Surveillance Agency (Agência Nacional de Vigilância Sanitária or ANVISA) issued *Notification G/TBT/N/BRA/333* amending the relevant technical stipulations on food packaging in *Resolution No. 30* of May 26, 2009. This technical regulation establishes general criteria for the determination of total and specific migration, and applies to the following packages and equipment that get into contact with food: consisting exclusively of plastic; consisting of two or more layers of materials, each consisting exclusively of plastic; consisting of two or more layers of materials, one or more of which may not be exclusively of plastic, where the layer that gets into contact with food is plastic. The regulation entered into effect on the date of adoption.

2.4.6 Table Fans for Residential Use

On July 1, 2009, Brazil's National Institute of Metrology, Standardization and Industrial Quality (Instituto Nacional de Metrologia, Normalização e Qualidade Industria or INMETRO) released *Notification G/TBT/N/BRA/335* entitled "Ministerial Act No. 143, May 25, 2009, issued by INMETRO, on compulsory technical requirements and procedures to assess the conformity of Table Fans for Residential Use". This draft technical regulation and conformity assessment procedure lay down technical requirements for a compulsory labeling of household desktop fans which are marketed in Brazil. It is expected to be approved on January 1, 2010 and to take effect on January 1, 2011. The final date for comments on the regulation is 60 days after notification.

2.4.7 Pet Food

On August 5, 2009, the Brazilian Ministry of Agriculture, Livestock and Supply (Ministério de Agricultura, Pecuária e Abastecimento or MAPA) issued *Normative Instruction No. 30* which adopted stipulations and procedures for product registration, labeling and advertisement of pet food, and for the exemption from registration of products destined for pet food. Imported pet food should be properly packaged, and labels should be written in the Portuguese, Spanish or English language, including product name, production lot, production date, guarantee period, and producer's name and address.

2.4.8 Rubber Insulating Gloves

On August 17, 2009, Brazil's National Institute of Metrology, Standardization and Industrial Quality (Instituto Nacional de Metrologia, Normalização e Qualidade Industria or INMETRO) issued *Act No. 229* adopting technical regulations on rubber insulating gloves. According to the Act, the requirements on conformity assessment shall apply to all the rubber insulating gloves domestically produced or imported within 14 months after the notification of the Act, and to all the rubber insulating gloves placed on the market for wholesale or retail within 24 months after the publication of the Act.

2.4.9 Dust Masks

On August 17, 2009, Brazil's National Institute of Metrology, Standardization and Industrial Quality (Instituto Nacional de Metrologia, Normalização e Qualidade Industria or INMETRO) issued *Act No. 230* which enacted the technical regulation on half face dust filter masks. In accordance with the Act, the requirements on conformity assessment shall apply to all the half face masks domestically produced and imported within 14 months after the notification of the Act, and to all the half face masks placed on the market for wholesale and retail within 24 months after the release of the Act.

2.4.10 Direct Current Electronic Ballasts for Fluorescent Lamps

On September 21, 2009, Brazil's National Institute of Metrology, Standardization and Industrial Quality (Instituto Nacional de Metrologia, Normalização e Qualidade Industria or INMETRO) promulgated *Act No. 267* amending technical standards of direct current (DC) electronic ballasts for straight tube, circular tube and compact fluorescent lamps. All the DC electronic ballasts for straight tube, circular tube and compact fluorescent lamps sold on the Brazilian market must comply with the above standards within 18 months after the publication of the Act.

3 Barriers to Trade

3.1 Tariff and Tariff Administration Measures

On March 9, 2009, the World Trade Organization (WTO) urged Brazil to reduce its import tariffs so as to improve its trade and investment environment. According to the WTO statistics, the 2008 simple average applied MFN rate stood at 11.5%, slightly up from 10.4% in Trade Policy Review of 2004. The highest rate of 35% in Brazil mainly applies to tires, textiles and motorized vehicles.

3.2 Import Restrictions

As of 2009, import licensing in Brazil is still plagued by problems. Non-automatic import

licensing regime affects a wide range of products. The procedures of processing applications for non-automatic import licenses are complicated and involve many government agencies. Although the website of the Ministry of Development, Industry and Foreign Trade (Ministério do Desenvolvimento, Indústria e Comércio Exterior or MDIC) has published product categories subject to non-automatic import licensing, detailed information concerning the requirements for non-automatic licenses and the reasons for rejecting non-automatic license applications is not readily available. Besides, importers often get notified in an informal and unofficial way that the issuance of an import license shall meet the requirement of the minimum import price. This minimum import price was established by the Brazilian government, at the request of and after consultation with domestic industries, and enforced by customs authorities at the border. Meeting the minimum import price is the prerequisite for granting an import license and the basis for calculating customs valuation. The adoption and implementation of the minimum import price lacks transparency, as it has no sound legal grounds and the Brazilian government never discloses any information about the specific level of the minimum import price.

The requirement of the minimum import price mainly applies to the following HS code numbers: 8518.21 (single speaker sound boxes), 8518.22 (multi speaker sound boxes), 8518.29 (others), 9003.11 (plastic spectacle frames), 9003.19 (spectacle frames made of other materials), 9004.10 (sunglasses), 9004.90 (metachromatic glasses), 9603.29 (others, paintbrush, brush pens, and similar pens used in applying cosmetics).

China expresses great concerns about the consistency between the above mentioned Brazilian measure and the relevant WTO rules, especially with regard to the following respects:

3.2.1 Compatibility with Articles 1.3 and 3.2 of the Agreement on Import Licensing Procedures

On October 8, 2007, Brazil explained in its report to the WTO Committee on Import Licensing that its non-automatic import licensing regime aims to protect human, plant or animal health and the environment. However, the affected products from China are not in any way closely related to the above mentioned objectives. Hence, the Brazilian practice does not consist with the product range and the stated purpose in its report to the WTO Committee on Import Licensing. Non-automatic import licensing for Chinese products is, in effect, a trade protectionist measure. Its real purpose is to monitor and supervise trade flows of particular product groups of concern to the Brazilian authorities, followed with related tariff measures. Such a practice constitutes an abuse of non-automatic import licensing and becomes an obstacle to China's trade with Brazil.

Admittedly, Brazil may restrict the trade in certain products for the sake of protecting health and the environment, but this should not become a pretext for trade discrimination and trade protectionism. Moreover, Brazil subjects the issuance of non-automatic import license to the requirement of the minimum import price, and does not make publicly known the exact figure of the minimum price and the reason why such a price should be put in place.

The Chinese side believes that it remains debatable whether the aforesaid practice of the Brazilian authorities is reconcilable with the underlying principle laid down in the preamble to the *WTO Agreement on Import Licensing Procedures* (“non-automatic licensing procedures should be no more administratively burdensome than absolutely necessary to administer the relevant measure”) and Article 1.3 (“The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner”) and Article 3.2 (“non-automatic licensing shall not have trade-restrictive or -distortive effects on imports additional to those caused by the imposition of the restriction”) of the same Agreement.

3.2.2 Compatibility with Article 3.3 of the Agreement on Import Licensing Procedures

The procedure for the Brazilian customs to process applications for non-automatic import licensing is quite lengthy and lacking in transparency. No reasons are provided in the case of rejection. The practice on the part of Brazil to base the granting of non-automatic import license on the minimum import price lacks domestic legal basis, and the minimum price is never made unknown to traders. This contravenes the rule that “Members shall publish sufficient information for other Members and traders to know the basis for granting and/or allocating licenses” under Article 3.3 of the *WTO Agreement on Import Licensing Procedures*.

3.2.3 Compatibility with Articles 5.1 and 8.2(b) of the Agreement on Import Licensing Procedures

The Brazilian non-automatic import licensing procedure of Chinese products exceeds the administrative scope of such procedure, but it has not been notified to the WTO Committee on Import Licensing. For example, Brazil does not inform the Committee of the fact that meeting the minimum import price is the precondition for approving a non-automatic import license. The Chinese side believes that Brazil has failed to fully fulfill its obligations under Article 5.1 (“Members which institute licensing procedures or changes in these procedures shall notify the Committee of such within 60 days of publication”) and Article 8.2(b) (“Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations”) of the *WTO Agreement on Import Licensing*

Procedure.

3.2.4 Compatibility with Articles 1 to 7 of the Agreement on Customs Valuation

Articles 1 to 6 of the WTO *Agreement on Customs Valuation* provide for the rules on customs valuation, but none of the rules makes the minimum import price as a method for determining customs value. Article 7 of the Agreement specifically prohibits customs valuation on the basis of minimum customs values and arbitrary or fictitious values. The Brazilian practice of setting the minimum import price in customs valuation and linking it to the ratification of non-automatic license runs counter to the rules set forth in the *Agreement on Customs Valuation*.

3.3 Barriers to Customs Clearance

On August 10, 2009, *Act No. 12016* on customs clearance entered into effect. This Act has caused great damage on the imports of goods that are perishable or prone to devaluation over time (such as hi-tech products). Before the entry into force of the Act, if imported goods were seized at Brazilian customs because of problems in product classification, the importing company generally could file an application with the court for the release of the seized goods, and in most cases, would have the application granted and have the goods released by paying a certain amount of margin. However, according to the new Act, such a release no longer applies to the seizure of imports, which will make it more difficult for Brazilian importers to ask for the prompt release of their imports.

In addition, pursuant to the relevant Brazilian law, imported goods which are not claimed after 90 days of their arrival will be sold at auction or donated, or if found to be inferior or counterfeit products, destroyed by the Brazilian Federal Revenue Secretariat (Receita Federal do Brasil or RFB). Since October, 2008, a fairly large number of Brazilian importers have decided not to take delivery of their goods imported from China upon their arrival, because fluctuations of the exchange rate have rendered the imports unmarketable. Therefore, a great many Chinese goods are left aside at the customs docks upon their arrival in Brazil, which incurs great losses to Chinese exporting companies.

Chinese enterprises report that by exploiting loopholes in the terms of payment, some Brazilian importers neither take delivery of nor make payment for the goods, but acquire them at auction 90 days after their arrival at the port. Such a willful misconduct severely violates business ethics. Therefore, Chinese exporters should be wary of this so as to avoid any business losses.

3.4 Technical Barriers to Trade

On September 4, 2009, Brazil issued *Notification G/TBT/N/BRA/343* applying mandatory certification to household and similar electrical appliances. The Notification was based on *Ministerial Act No. 228* issued by the National Institute of Metrology, Standardization and Industrial Quality (Instituto Nacional de Metrologia, Normalização e Qualidade Industria or INMETRO) on August 7, 2009, which sets out certain requirements with regard to conformity assessment of household electrical appliances in order to protect consumers against risks arising from household appliances of an electric shock, a short circuit or a fire. On the basis of the international standard IEC 60335, the Act targets household appliances with a rated voltage of no more than 250V for single phase appliances and 480V for other appliances. It also stipulates the range of inapplicability, the standards adopted, conformity assessment procedures, and certification mark. Pursuant to the Act, conformity certification is mandatory and certification can be awarded in either of the following two ways: (1) certification through safety tests plus quality management system assessment; and (2) batch certification. Mandatory certification is to be conducted by a Certification Body for Products (Organismo Certificador de Produtos or OCP) accredited by INMETRO. The certification mark should be attached to the product and its package.

Production certification in Brazil falls into two types: mandatory and voluntary, and INMETRO is the leading authority for administering certification. Products subject to mandatory certification include medical devices, circuit breakers, *hazardous locations* equipment, household plugs *and sockets*, household switchers, wires and cables, and electric ballasts for fluorescent lamps, while voluntary certification covers household electrical appliances, consumer electronics (audio and video products), IT equipment, and lamps. The afore-mentioned Act subjects household electrical appliances to mandatory certification, which means that the Brazilian authorities have realized the importance of the safety of household electrical appliances in safeguarding the interests of consumers. Though the Act is still in the stage of being drafted and seeking comments from various interested parties, it warrants the attention and calls for prior preparations of household appliance companies which have entered or prepared to enter the Brazilian market.

Since August 27, 2007, Brazil has put into force new and stricter rules for imported toys (Safeguards 082/07). The new Decree No. 326, which went into effect in November, 2009, requires that all lots of toys imported into Brazil should be tested, and without a certification issued by the local certification authority, imported toys cannot be cleared at the customs. However, spare parts of toys which are imported for further processing and not placed on the

market as toys do not need to be certified. A certification label should be affixed to all the imported toys before they can be sold in Brazil. The certification label can only be affixed to products which have passed laboratory tests, and cannot be printed on the product packages in advance of the tests. The new Act recognize and accepts test reports (based on toy safety standards of MERCOSUR *NM 300*) issued by Brazil-accredited laboratories in other countries, but a Portuguese version of the original text, whether translated abroad or in Brazil, should be presented, with the signature authorized by the issuer of the test report and his contact information. Enterprises which have started the certification procedure or held a valid certification before the promulgation of this Act can follow the INMETRO regulations contained in *Decree No. 326* of August 24, 2007 and *Decree No. 376* of October 5, 2007 for 12 months after the date of the release of this Act (November 3, 2009). Although the new Act has relaxed some of the earlier requirements, it is still very complicated and cumbersome, thus imposing much inconvenience on the exporters.

3.5 Trade Remedy Measures

In 2009, Brazil initiated 4 anti-dumping proceedings against Chinese products in sectors such as steel and textile, including synthetic fiber carpets, synthetic fiber knitted fabrics, table glassware, and manual rivet guns. Since the first launch of anti-dumping investigation against China in December 1989, Brazil has, by the end of 2009, conducted a total of 47 cases of anti-dumping investigations concerning products such as electric machinery, hardware, chemicals, light industrial products, textiles, and foodstuffs.

3.5.1 Cases of Anti-dumping Investigations

Brazil launched 4 new cases of anti-dumping investigations against Chinese exports in 2009, as summarized in the table below:

Table 1: Initiation of New Anti-dumping Investigations by Brazil against China in 2009

No.	Date of Initiation	Product Implicated	HS Code No.	Progress
1	May 14	Synthetic fiber carpets	63014000	Under investigation
2	November 3	Synthetic fiber knitted fabrics	60041020, 60049020, 60069020, 60064100,	Under investigation

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			60064200, 60064300, 60064400	
3	November 24	Table glassware	70134900	Under investigation
4	December 30	Manual rivet guns	82055900	Under investigation

3.5.2 Problems in Trade Remedy Investigations against China

The Brazilian government officially recognized China's market economy status (MES) in the *Memorandum of Understanding and Cooperation in Trade and Investment between the People's Republic of China and the Federal Republic of Brazil*. However, in practice, Brazil still treats China as a non-market economy according to *Decree No. 1602* issued in 1995, and uses the export price of a third country as the basis to determine the normal price of Chinese products. Brazil has not amended its relevant laws and regulations regarding China's MES, neither has Brazil rectified its mistakes in imposing anti-dumping measures against China, all of which has led to material injury to the legitimate interests of Chinese exporters.

In its anti-dumping investigations and sunset reviews involving China, Brazil determines the normal price of Chinese exports on the basis of prices of a third party, which includes both developing and developed countries. Labor and production costs in industrialized nations such as Japan, France and Germany are much higher than those in China. The determination of the normal price of Chinese exports based on price data in these developed countries greatly deviates from the reality. It is irresponsible to establish, on the grounds of such computed normal export price, the existence of the dumping of Chinese products. This is most pronounced in the anti-dumping cases of Chinese exports of ballpoint pens and disposable syringes launched by Brazil in 2008. In the anti-dumping investigation against ballpoint pens originating in China in 2008, Brazil used France as the substitute country for determining the normal price of China's exports and concluded that the relative dumping margin of the implicated Chinese product was 783.5%. In the anti-dumping investigation into Chinese exports of disposable syringes in 2008, Brazil adopted the price of Mexican exports to France as the basis to establish the normal price of the Chinese product, and put the absolute dumping margin of the involved Chinese product at US\$ 14.9 per kilogram and the relative dumping margin at 683.9%. In the anti-dumping proceedings against manual rivet guns from China in 2009, Brazil, choosing Germany as the analogue country, set the normal value of Chinese exports as US\$ 45.14 per kilogram and the Chinese export price as US\$ 2.33 per kilogram. Although the definitive ruling has not been made, the absolute dumping margin thus calculated reaches as much as US\$ 42.81 per kilogram and the relative dumping margin is a

staggering 1837%.

In addition, in determining the normal value of Chinese exports, Brazil's data collection is often very hasty and arbitrary. In the anti-dumping case of Chinese shoes and boots in 2008, the normal value was set at US\$ 31.96 per pair, which was based on the information submitted by the Brazilian complainants and the invoices of footwear from 4 Italian companies. Such kind of data collection was unscientific and the normal value determined in this way cannot correctly reflect the real-world situations. As Italian-made footwear enjoys traditional branding advantages and is highly value-added, the market price in Italy does not serve well as the reference price in determining the export price of Chinese footwear. Because of the arbitrary way of handling the case by the Brazilian authorities, it is found that the absolute dumping margin of Chinese products was US\$ 25.99 per unit. In the anti-dumping case of SDS aiguilles originating in China, Brazil only referred to the price quotation of a German company and set the normal value of Chinese SDS aiguilles at US\$ 10.57 per piece. The decision was made without conducting any practical analysis and comparison, thus lacking reliability and accuracy.

3.6 Government Procurement

Brazil is not a party to the WTO *Plurilateral Agreement on Government Procurement* (GPA), with limited degree of openness to the public works market. Although in general national treatment is afforded to foreign suppliers (legally established or represented in Brazil), preference may be given to goods and services produced in Brazil as a criterion for deciding between identical offers. For example, due to lack of transparency in government procurement, Brazilian public entities such as not-for-profit hospitals are inclined to purchase products or services supplied in Brazil.

4 Barriers to Investment

4.1 Barriers to Investment Access

Foreign investors having no commercial presence such as office, branch or subsidiary in Brazil are not allowed to invest directly in the Brazilian domestic aviation sector. Foreign investment in the Brazilian civil aviation enterprises is capped at 20%. Only companies run by Brazilian citizens and companies legally established in Brazil can own vessels flying the Brazilian national flag.

In the field of road freight transport, foreign investors' ownership of voting shares cannot exceed 20%. Foreign-capital enterprises shall exist in the form of joint-stock companies and can only issue registered stocks. Only companies with over half of the voting shares held by nationals of

the 7 members of the *International Road Transport Agreement* and of the 12 members of the Latin American Integration Association (LAIA) can operate in the field of international road transport.

4.2 Barriers to Investment Operation

A heavy tax burden, a huge number of tax legislations, a wide variety of tax categories, sometimes with discrepancies between and among them, all these have posed problems to foreign investors in Brazil. Therefore, Chinese enterprises eyeing the Brazilian market are strongly advised to note and understand the taxation system in Brazil before making an investment there.