Foreign Market Access Report

2005

Ministry of Commerce

People's Republic of China

Foreword

The year of 2004 witnessed a rapid development of China's foreign trade. According to the Chinese Customs, China's foreign trade volume exceeded US$1000 billion for the first time, reaching US$1154.74 billion in 2004, up by 35.7%, among which China's export was US$593.36 billion, up by 35.4%, while China's import was US$561.38 billion, up by 36.0%. The trade surplus in 2004 was US$31.98 billion, up by 25.6%. The trade volume of China was the third largest in the world.

As Chinese companies being more exposed to the international competition, China's overseas investment increases remarkably. In 2004, Chinese non-financial overseas investment reached US$3.62 billion, up by 27%. By the end of 2004, the accumulated overseas direct investment of China was about US$37 billion. The volume of completed labour service cooperation contracts was US$3.75 billion in 2004, up by 13%, and that of the newly signed labour service cooperation contracts was US$3.5 billion, up by 13%.

With the fast development of Chinese foreign trade and investment, some trading partners set all kinds of barriers to trade and investment frequently to protect their domestic industry and home market. According to the WTO, a total of 16 countries and regions initiated 57 anti-dumping, countervailing, safeguard and product-specific safeguard investigations against Chinese products. The total value related on these cases is US$1.26 billion, which was the largest in the world. From WTO establishing in 1995 to the first half one of 2004, WTO members initiated 2537 anti-dumping cases, among which 356 cases involved Chinese products, accounting for one seventh of the total. In addition the role of technical barriers to trade, barriers to IPRs of China's trading partners became more important in these partners' trade policy against China. It reveals that China had been coming into the period of barriers to trade. In a certain long period from now on, Chinese companies will face more complicated international trade and investment climate.

In accordance with relevant provisions of the Foreign Trade Law and the Regulations on Administration of Import and Export of Goods, MOFCOM started to compile and publish the Foreign Market Access Report (hereinafter referred to as the Report) as of 2003 on an annual basis. The Report is complied in the course of enabling Chinese enterprises and relevant organizations to have better knowledge on the trade regimes and practices of China's trading partners in the field of trade in goods and services as well as foreign investment, to obtain a full-scaled understanding of competition on global market, and thus to participate in the international competition on an even ground. It also aims at maintaining a equal, fair and reasonable international trade and investment environment according to the WTO rules, and expressing the concerns of the Chinese government and industries over the external environment for trade development.

MOFCOM is now publishing the Foreign Market Access Report:2005.

I. Coverage of the Report

Based upon information provided by Chinese enterprises and government agencies, while taking into account of trade volumes between China and its global trading partners in 2003 provided by the Chinese Customs, the Report covers 22 trading partners of China, including, Egypt, South Africa, Nigeria, Saudi Arabia, Turkey, Thailand, the Philippines, Malaysia, Indonesia, Vietnam, India, the Republic of Korea, Japan, Russia, the European Union, Canada, the United States, Mexico, Brazil, Argentina, Australia and New Zealand. China's export to these trading partners accounted for about 68% of China's total export in 2004.

The Report will evaluate more trading partners of China so as to present a more comprehensive scenario for the development of China's foreign trade and overseas investment.

II. Sources of information and content

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

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

Wherever possible, the Report estimates the impact on China's exports of a specific foreign trade barrier. However, it should be understood that due to technical and information constraints, the estimates on negative effect are made only to parts of the trade barriers to Chinese foreign trade and overseas investment, and have not reflected the consequent impact regarding the loss of potential trade opportunities.

III. Definition and classification of barriers to trade and investment

According to on 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;
- Customs barriers, e.g. procedural obstacles in customs clearance, unjustified charges on imports;
- Discriminatory charge 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 remedy measures, 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 restriction, 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;

- Lack of intellectual property protection, e.g., inadequate intellectual property protection on imported products

- Unjustifiable measures for intellectual property protection, 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 recieved, so it doesn't necessarily mean that the trade parterners covered in the Report don't maintain any barriars to trade and investment of other unmentioned catogories.

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 tacked with respective parties through multi-lateral 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.

The Report is published in Chinese, and the English version is published for reference.

Contents

Argentina

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Argentina in 2004 reached US$4.1 billion, up by 29.3%, among which China's export to Argentina US$850 million, up by 90.6% and China's import from Argentina US$3.25 billion, up by 19.3%. China had a deficit of US$2.4 billion. Chinese exports to Argentina mainly included electro-mechanic equipment, chemicals and light industrial products; main imports included soybean, bean oil, leathers, steel, etc.

According to the Ministry of Commerce (MOFCOM), the turnover of completed engineering contracts by Chinese companies in Russia recorded US$32.42 million in 2004, and the amount of the contracts signed in 2004 was US$3.24 million. The volume of completed labor service cooperation contracts was US$8 million, and that of the newly signed labor service cooperation contracts was US$4.67 million.

So far, China and Argentina have little invested in the other country: Argentine investment in China amounts to nearly US$100 million while Chinese investment in Argentina stays at only US$20 million, mainly contributed by several Chinese funded businesses specializing in marine fishery. After Argentine President Nestor Kirchner's visit to China in July 2004, a few Chinese enterprises became interested in investing in Argentina, and began to explore the possibilities of cooperating with Argentine counterparts in such areas as energy and railway.

In 2004, approved by the Ministry of Commerce (MOFCOM) of China, a non-financial Chinese enterprise was set up in Argentina with Chinese proposed contribution of US$10 million.

On the other hand, according to MOFCOM, Argentine investment projects in China recorded 24, with contracted investment amounting to US$100 million, including paid-in capital US$30.8 million.

2 Introduction to Argentina trade and investment regime

2.1 Legislation on trade and investment

2.1.1 Legal aspect of foreign trade

Argentina, one of the main initiating countries of the Southern Common Market (hereinafter referred to as MERCOSUR), acceded to the GATT, the predecessor of the WTO, as early as October 1967. Argentina's trade policies are basically consistent with the relevant WTO Agreements, and therefore, its domestic market is fully liberalized and it has hardly any special restrictions in its trade with other countries.

2.1.2 Principal laws affecting investment

The Constitution of Argentina and Decree No. 1853 issued in 1993 are the legal foundation for the protection of foreigners' investment rights in Argentina. Other laws governing investment issues include Commercial Companies Law, Civil Code, and Code of Commerce.

2.2 Trade administration

2.2.1 Tariff administration

Import duties are classified into ordinary and special customs duties. The latter mainly apply to the imports from free trade zone of the MERCOSUR. Its imposition is that, based on the rate of import duty of a specific line of commodities, a 21% VAT and a 9% additional VAT are levied on the import. Both of the VATs are imposed on 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 tax paid deducted from the total amount of taxable VATs. However, VAT is not imposed on such imports as personal and household goods, samples and mail, and articles to be used by national, provincial and municipal governments and their affiliates. Presently, the ordinary customs duty is applied on Chinese imports.

2.2.2 Import administration

Import licensing is applied to automobiles only, but pulp, paper products and certain selected goods are subject to provisional import quota.

Most food imports shall be subject to quarantine inspection. The certificate of origin for textiles, footwear and toys shall be certified by Argentine consuls in embassies or consulate in other countries, and the place of origin, exporter, importer and ingredients must be indicated on labels.

Besides, prior governmental approval shall be obtained for the importation of cotton seeds, potatoes as seeds, fresh fishes, dry nuts, hard nuts, drummed apples, livestock, unplucked poultry, eggs, salted fishes, dried fishes, pesticides, goods for domestic animal use, foodstuffs, pharmaceuticals, explosives, firearms, ammunitions, plants and related products, tobacco and glucides. Used tires and worn garments are not importable, but second-hand machinery, meters and instruments, electronic components, AV equipment, transport apparatuses and medical equipment are importable.

2.2.3 Investment administration

Foreign investment is encouraged in Argentina, and presently there are no restrictions over foreign investment in this country. Except for the military area and military

facilities, investors from other countries may carry out investment activities in every field, even in those sensitive sectors, such as petroleum, transportation, broadcasting, telecommunications, newspapers and magazines.
According to the Constitution of Argentina, foreigners and Argentines share the same rights in labor, trade, sale and possession of private properties. The property right of foreigners is inviolable, but shall be subject to certain legal procedures. Foreign economic entities enjoy full rights in establishment of enterprises, profit-making activities of various forms, and disposal of corporate profits. Decree 1853 issued in 1993 stipulates that investment in Argentina by foreign companies is generally not subject to the prior approval of Argentine government and bother foreign and Argentine investors have the equal rights and obligations. Besides, foreign companies may, without being discriminated, take extensive part in privatization projects or make investment in the major sectors of the national economy including telecommunications, petroleum, electric power, natural gas transportation, running water and sewage treatment.; foreign investors have the right to accede to exchange market, or to remit at any time their funds and profits abroad, regardless of the capital volume of their contribution and the areas they have invested in, and without obtaining prior approval; These principles apply to foreign capitals from all other countries.

In banking and insurance, licensing is necessary according special regulations, but foreign and domestic investors are granted equal opportunities. Argentine laws allow foreign investors to operate in local mass media but relevant stipulations shall be observed.

The Argentine government is exploring the ways to liberalize the production of nuclear electricity to domestic and foreign private investors. According to the governmental plan, this area is to be wholly transferred to private businesses. Meanwhile, the government will accord to foreign investors national treatment in the exploration of uranium.

Foreign investors may, by means of merger, purchase any legal entity recognized by Argentine laws, or may freely accede to the domestic market by setting up joint ventures with the described legal entity. Both domestic and foreign companies may enjoy equal treatment when raising money in the domestic market, whether in Argentine or foreign currencies. Foreign companies are also allowed to participate in R & D projects.

Foreigners investing in manufacturing, mining, forestry, and tourist projects may enjoy incentives granted by the central and local governments, such as subsidies and reduction in or exemption from local taxes. Foreign investment projects in small-and-medium-sized enterprises will also enjoy incentives: namely, the maximum export drawbacks at 6%, tariff exemption for import of whole-set equipment, and additional tax returns at 10% for export of whole-set equipment. According to new legislation, all the provinces (23 in all) in Argentina are authorized to establish free trade zones, and four seaports compatible with the development of foreign trade are to be built around the country. Foreign businesses in those localities may enjoy certain tax incentives.

In the fishery sector, the authorities grant limited number of licenses to local companies every year in order to protect the natural sources. Foreign investors, however, may accede into this area by purchasing, or entering into joint venture with, local companies.

Argentina's Commercial Companies Law, Civil Code, and Code of Commerce provide a variety of business forms by which foreign investors are free to structure their business activities: corporations, partnerships, joint ventures, sole proprietorships, branch offices, franchises, or simple agency, or licensing agreements.

2.2.4 Competent authorities

Argentina's foreign trade is in the charge of the Ministry of Economy and Production. The Bureau of State Secretary of Industry, Trade and Mining (a sub-ministry agency) under which is responsible for the enactment of the disciplines and surveillance over the implementation thereof. Under the Bureau there is an Office of State Under-Secretary of Foreign Trade that deals with the routine affairs involved in foreign trade. The said Bureau has offices in every province. The Ministry of Foreign Affairs, International Trade and Religious Affairs is in charge of the negotiations on economic and trade affairs between governments, while the Department of Bilateral Economic Relations participates in the negotiations. Argentina's national customs is also an enforcement body of the regulations and policies governing foreign trade.

Since foreign businesses enjoy the national treatment in Argentina, there is no special body in charge of foreign investment in the government. The Investment and Development Administration under the Bureau of State Secretary of Industry, Trade and Mining mainly functions to provide trade opportunity and to promote foreign direct investment. As a special consultation center, the Administration furnishes information regarding many aspects such as economy, finance, taxation, education, science and technology and law, as well as to help investors solve possible problems that arise in investment projects. In Argentina, another body also involved in investment affairs is the Federal Investment Commission.

3 Trade Barriers

3.1 Tariff and tariff administrative measures

Argentina's tariffs average approximately 11 percent. A statistical fee of 0.5% is added to some products. A limited number of imports are banned altogether, such as re-manufactured auto parts.

Import duties: raw materials and primary produce 2.5%-10%; capital goods 0-10%; durable and non-durable consumer goods 15%-20%; spare parts and semi-finished goods 15%; manufactures 20%-25%.

3.2 Import restrictions

Automobiles and parts are subject to an import licensing regime, while provisional import quota is applied to pulp, paper products and some selected articles.

In 2004, the Argentine government required that foreign exporters of textiles apply to the Argentine government for licenses every month so that it will be able to have an idea about the quantities of the textiles those exporters plan to sell to Argentina. Following the agreement reached between Argentine and Brazilian manufacturers of clothing and textiles, the Argentine government agreed to cancel 95% of the textile. However, the import licensing continues applying to carpeting imports.

In December 2004, Argentina issued two acts that aim to restrict textile and clothing imports from China, where by tight quota administration is applied to the two categories. According to the acts, from then on the import volumes of China's textiles and clothing shall not exceed by respectively 7.5% and 6% of the total import volumes of the said goods that Argentina had throughout the preceding year. Since long ago, Argentina has imposed high tariffs on textiles and clothing from certain countries including China. In fact, it is already very difficult for relevant Chinese product to come into the domestic market in Argentina, and the new measures have intensified those restrictions. The Chinese side expresses its deep concern over those issues.

3.3 Barriers in customs procedures

Argentina has an import monitoring mechanism, similar to an import licensing regime, which affect roughly one-fifth of its imports, principally textiles, toys, and footwear. Chinese firms complain of cumbersome certificate of origin requirements, particularly in the electronics and textile sectors.

3.4 Technical barriers to trade

In early 1998, Argentina began mandating compliance with new safety certifications on a wide range of products. The procedures for compliance often appear inconsistent, redundant and non-transparent. Regulations that require product re-testing are particularly cumbersome and costly and are especially problematic for small-and-medium-sized companies. Argentina's certificate of origin regulations require separate certificates for each of the countries involved in manufacturing the various components of a final product. Argentina's implementation of these measures is not consistent with the notification and comment requirements of the WTO TBT Agreement, which has aroused concern from China.

In January 2004, based on Standard 40020 of Argentine Standards Association and Standard NM301 of MERCOSUR, Argentina enacted a compulsory certification system regarding the basic safety requirements for new bicycles to be launched into the market. The system requires that manufacturers, importers, wholesalers and retailers timely acquire the certificate granted by the certification body evidencing that their bicycles meet the basic safety requirements. As one of the major bicycle-exporting countries, China highly concerns about the new compulsory certification requirements.

On July 6, 2004, Argentina enacted regulations for compulsory certification of lighters, which stipulates that no lighters are allowed to be put on the market or be provided free of charge unless corresponding standards are met and conformity certificate issued by certification bodies are obtained. This certificate will be issued based on the testing report provided by the laboratories qualified for administering certification, and shall cover all the related accessories and parts of this product. This compulsory certification will come into effect in 240 days from June 28, 2004. China is one of the major lighter-producing countries, so related Chinese firms express their concern about the regulations.

3.5 Trade remedies

China and Argentina signed on November 17, 2004 The Memorandum of Understanding between the People's Republic of China and the Republic of Argentina Regarding the Cooperation in Trade and Investment, wherein Argentina officially recognizes China's status as a market economy.

Before China's WTO accession, Argentina was one of the major countries/regions that took trade remedies against China.

On January 7, 2004, Argentine Ministry of Economy and Production announced its final anti-dumping decision on less-than-2.5-liter thermos bottles with the stainless steel liner and other heat preservation containers that are made in China. According to the decision, the involved products shall be subject to an anti-dumping tax not lower than US$10.75 per kg on FOB basis. The decision shall be effective for two years.

In January 2004, Argentina launched an anti-dumping investigation against sunglasses and spectacles frames that are originally made in China. During the defending process, Chinese respondents encountered unfair treatment from Argentine investigating bodies. As then Argentina did not yet recognize China's market economy status, and, as a result, its choice of substituting counties reflected its seriously incorrect knowledge about the actual production of glasses made in China. According to the decision, Argentina chose Brazil as the substituting country for optical frames and sunglasses and Italy for presbyopic glasses. This unreasonable choice finally led to Argentina's judgment of the dumping margin being 342.31%-1933.33%. Lawyers of Chinese respondents pressed Argentina's Fair Competition Bureau for an explanation, but up till now their efforts have brought no consequence. Chinese firms were also baffled by Argentina's special procedures and unreasonable demands with regard to notarization and certification. All these have constituted great difficulties confronting the defense of Chinese firms.

In February 2004, the Argentine government made a final anti-dumping decision against China-produced glyphosate and the related formula products, whereby no anti-dumping measures are to be taken against the said products. As the result of the application filed jointly in April 2002, by Monsanto, a U.S. company having a nearly 50% market share in Argentina, and its local partner Artanol company, the Argentine government decided to initiate an investigation against the above-mentioned products.

In March 2004, Argentine SKF Company to its government an application for an investigation into the circumvention of anti-dumping measures on the part of ball bearings with outside diameters ranging from 30mm to 12mm imported from China. Consequently, an anti-dumping investigation against the products in question was started on June 4, 2001, and eventually Argentina decided to set minimum price limits on the said imports.

The Unfair Competition Department under the Ministry of Economy and Production decided on June 10, 1996 to launch an investigation against twist drills imported from China and started on April 9, 2004, an anti-dumping review on the case. According to its decision made on August 4, 2004, the sanction it previously made to set an FOB-based minimum price limit is to be maintained effective for three years.

On August 24, Argentine domestic firms applied for an anti-dumping investigation against China-exported electromagnetic circuit protectors (automatic circuit breakers).

3.6 Barriers to trade in service

Argentina enacted broad liberalization in the services sector as part of its economic reform program in the 1990s, though some barriers continue to exist. For example, the Argentine government obliges cable/pay television operators to register their programming with a government body. In addition, there are import restrictions regarding the showing, printing and dubbing of films. A further barrier is the practice of charging ad valorem customs duties based on the value of authors' rights, rather than solely on the value of the physical materials being imported, which is the WTO standard

Argentina has committed to allow foreign suppliers of non-insurance financial services to establish all forms of commercial presence. Argentina has also committed to provide substantially full market access and national treatment to foreign suppliers of non-insurance financial services. The only significant remaining issue involves lending limits for foreign bank branches that are based on local paid-in capital, not parent bank capital. This effectively removes the rationale for establishing in branch form.

Most professionals must enroll in local associations or must maintain a local address for a certain period of time prior to establishment of operations. There are nationality restrictions for some internal shipping, private security companies and education providers.

Egypt

1 Bilateral trade

According to China Customs, the bilateral trade volume between China and Egypt in 2004 reached US$1.577 billion, up by 44.7% year on year, among which China's export to Egypt was US$1.389 billion, up by 48.3% year on year, while China's import from Egypt was US$188 million, up by 23% year on year. China had a surplus of US$1.201 billion. China mainly exported to Egypt garments and clothing accessories, textile yarn, knitwear and products thereof, footwear, bags and cases, general industrial machinery, equipment and components, electric power machinery, telecommunications and voice message products, power machinery and equipment. China's main imports from Egypt included natural marble and products thereof, primary plastics, long-staple cotton, flax, iron and steel, aluminum ingot, oil and products thereof, textile yarn, knitwear, processed goods, and non-mental mineral products and so forth.

According to the Ministry of Commerce of the People's Republic of China (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by the Chinese companies in Egypt reached US$73.81 million in 2004, and the volume of the newly signed contracts was US$202 million. By the end of 2004, the accumulated turnover of completed engineering contracts by the Chinese companies amounted to US$363 million with the total contractual value of US$651 million. 92 labor service cooperation contracts were signed with a total contractual amount of US$443million.

Approved by or registered with MOFCOM, China set up three non-financial Chinese-funded enterprises in Egypt in 2004 with a total investment of US$ 6.10 million, of which the contractual investment from the Chinese side reached US$3.04 million. According to the figures published by the Egyptian General Authority for Investment, by the end of 2004, a total of 110 joint ventures and wholly-owned foreign enterprises had been registered and established in Egypt by Chinese enterprises and citizens with a total investment of US$150 million.

Statistics of MOFCOM show Egypt invested in 7 projects in China in 2004 with a contractual investment of US$5.64 million and an actual utilization of US$3.96 million. By the end of 2004, Egypt had accumulatively invested in 39 projects in China with a contractual investment of US$44.27 million and an actual paid-in capital of US$8.14 million. The major investment areas include textiles and garment, bags and cases, stationery and plastic products.

2 Introduction to Egyptian trade and investment regime

2.1 Legislation on trade and investment

Legislation relating to foreign trade administration adopted by the Egyptian government mainly includes the Import and Export Law No. 118/1975, Customs Law No. 66/1963, and the Trade Law No. 17/1999. In 1998 Egypt promulgated the Protection of National Economy from Harmful Practices in International Trade and its implemention rules, which provides regulations on anti-dumping, countervailing and safeguard measures.

The major law governing investment administration in Egypt is Law of Investment Guarantees and Incentives and Its Executive Regulations (No.8/1997). The Prime Minister's Decision 1247 of 2004 amends the provisions of the Executive Regulations of the law.

2.2 Trade administration

2.2.1 Tariff policy

The Customs Authority affiliated to the Egyptian Ministry of Finance manages the issues related with import and export duties, customs valuation and countries of origin. In February 1994, Egypt implemented the Harmonized Commodity Description and Coding System (HS), which replaced the previously used CCCN(Customs Commodity Classification Nomenclature). At present, the Egyptian customs has lowered the average tariff rate by 9% and the tariff categories are reduced to six. Tariff headings have been reduced from 13,000 to 6,000. Meanwhile, the customs has abolished the 1%-4% administrative charges and over 500 unreasonable tariff headings relating to raw materials. The tariff configuration has been simplified and transparency of customs administration enhanced.

2.2.2 Import administration

The principle of encouraging the import of raw materials (low-level processed raw materials in particular), primary products and machinery and electrical products that are in shortage, incapable of being produced and of high technology content is fully reflected in the tariff regime of the Egyptian customs. Generally, the tariff rate for the above products is less than 10%. Tariff rate for other high technology content machinery and equipment used in industry, engineering, and agriculture is about 5%.

On January 1, 1998, the textile import ban was lifted. On January 1, 2002, the Government of Egypt (GOE) lifted the last item on the import ban list: ready-made clothing. In May 2002, most "accessory items" of ready-made clothes were exempted from duties.

2.2.3 Major export administration

All Egyptian products are free to be exported without obtaining export approvals.

To encourage export, the Egyptian customs eliminated the export duties on certain products as of September 2004. However, a certain amount of fees should be paid for the export of raw hides and skins, metal waste and metal scrap.

There is no requirement as to the proportion of local content for export products from Egypt, but the tariff policies include clauses encouraging local content. Article 6 of the Customs Law (Law No. 429/2000) stipulates that a tariff concession of 10%-90% is granted to imported components depending on the proportion of local content in the assembly industry. The higher the local content, the larger the margin of concession. Investment projects in the inland of Egypt (including the newly-established industrial zones and new cities) are not subject to the restriction on export proportion. However, investment projects located in the Egyptian free zones and special economic zones are subject to the restriction on export proportion. Some of these areas are even viewed as foreign territories.

2.2.4 Other relevant regime

Applications in the form of electronic registration certificates should be made by businesses to the temporary admission office of the port for the import of basic materials, semi-manufactured products, as well as raw and supplementary materials for the production of export commodities. The import commodities via temporary admission system are no longer subject to import approval of the customs, but a guarantee with the due customs duty value should be deposited.

2.3 Investment administration

2.3.1 Major investment policies and regulations

The Egyptian Law of Investment Guarantees and Incentives and Its Executive Regulations (Law No. 8 of 1997) encourages foreign and domestic investment in Egypt. The Law provides basic policies, regulations and preferential clauses governing investment. Section One of the General Provisions of the Law specifies 16 industries open to investment including animal husbandry, industry and mining as well as tourism. The 2004 Prime Minister's Decision 1247 amends some provisions of the Executive Regulations of Law No. 8 of 1997.

In 2002, the Government of Egypt promulgated the Special Economic Zone Law of No. 83, permitting the establishment of export-oriented special economic zones engaged in industrial, agricultural and other service activities. Six free zones of Alexandria, Cairo and Suez as well as 12 new cities and a number of industrial zones have been set up nationwide in Egypt. Enterprises located in the special zones enjoy a series of favorable policies.

2.3.2 Tax regime on investment operation

Main taxes in Egypt include salary tax, income withholding tax, unified tax on individual income, corporate profit tax, real estate tax, customs duties, sales tax, stamp tax and development tax. Export commodities enjoy the tax rebate policy which is not applicable to projects in free zones according to the prevailing Egyptian tax regime.

2.4 Competent authorities

The competent authority responsible for trade and investment affairs is the Ministry of Foreign Trade and Industry of Egypt with the affiliated organizations of Foreign Trade Bureau, General Organization for Import and Export Control (GOIEC) and Commercial Representatives. GOIEC is in charge of the inspection of all import commodities. Affiliated to GOIEC, the Administrative Bureau of Countries of Origin does research on trade preferences arrangement and non-tariff barriers, publish information, and conduct business administration of the sections in charge of countries of origin in different departments with further affiliated organizations of the Department of Agreement Research, and the Department Issuing Certificates of Origin to the Arab Countries and the Department Issuing Certificates of Origin to other Foreign Countries. The Department for International Trade Policies is responsible for countervailing measures, emergent safeguard measures and anti-dumping issues.

Affiliated to the Department of Investment, the General Authority for Investment and Free Zones (GAFI) is the executive body of investment, managing foreign investment projects and free zones, taking the responsibility of formulating and amending the Investment Law, improving foreign investment environment, examining foreign investment projects, providing administrative and consulting services and disseminating information to the public.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

Since being a full member of the WTO in 1995, the Government of Egypt has frequently adjusted tariff rates based on its accession commitments. Import duties on a majority of products have been lowered to varying degrees. The current Egypt's weighted average tariff rate is 27.5%.

3.1.1 Tariff peak

Tariff rates for most products range between 5% and 40%, although several types of goods, including larger cars, tobacco, alcoholic beverages, and other "luxury items" are subject to higher tariffs. The ban on the import of textiles and garments was lifted in 1998 and 2002 respectively, but higher import duties are levied on the imported textiles and garments by the Government of Egypt. For example, some imported garments are subject to a tariff of US$300 per piece.

3.1.2 Tariff escalation

Egypt encourages the import of raw materials. Tariff for various kinds of metal raw materials is 5% while tariff for semi-manufactured products stands at around 20%.

3.2 Import restrictions

Egypt no longer requires import licenses for most products, although licenses are still required for some products, such as animal produces.

3.3 Barriers to customs procedures

According to the Egyptian customs, to ensure the release of the products exported to Egypt, all the documents including invoices, certificates of health, analysis reports and certificates of origin should be notarized by the local notary offices and be verified by the embassies and consulates general of Egypt in the said countries. However, the Government of Egypt has only set up its embassy in Beijing and consulate general in Shanghai. Wherever the Chinese export enterprises are, they have to go to Beijing or Shanghai for the notary procedures and other issues. The requirement adds export costs and causes inconvenience to Chinese enterprises.

3.4 Discriminatory imposition of domestic taxes and charges on imports

In compensation for the decrease in customs revenues of fees and charges due to tariff reduction, the Government of Egypt applies a surcharge of 1% to 3% on the inspection of imported goods. In addition, all goods are subject to sales tax ranging from 5 percent to 25 percent.

3.5 Technical barriers to trade

The Government of Egypt requires the imported products be inspected strictly according to the Egyptian standards. According to the Egyptian government, all the food manufacturers and importers should in the first place abide by the product standards and technical specifications of Egypt. Product shelf life is decided by the Ministry of Foreign Trade and Industry. Self-determined periods of use or sales by producers or processors are invalid. The Government of Egypt also requires that taking away the duration from the finishing date to the date of completing all customs procedures, the remaining shelf life for all the imported food should be at least more than 50% of the total shelf life. Otherwise customs release will be suspended. For the import of chemical raw materials used in food, importers should provide the inspection report notarized by the Egyptian embassies and consulates general in the countries of origin. The customs makes an estimation of the date of production indicated on the packaging upon arrival of the shipments. The Chinese side requires the Egyptian side to modify the said regulations to avoid unnecessary barriers to trade.

The annex to the Egyptian Import and Export Law lists 135 categories of goods which must be inspected. According to the policy report submitted to the WTO by Egypt, the mandatory import inspection only covers items relating to security, health and environmental protection, but due to the inconsistent application of the rules by the Egyptian customs, any index is subject to inspection. Once the imported goods are determined not to be in conformity with the standard set by the Egyptian quality inspection department, the goods will be rejected. Stricter inspection standards are generally applied to the inspection of machinery and electronic products in Egypt. If there are US and EU inspection standards available for the said products, the standards are applicable. If not, the Egyptian national standards are applied. Imported products are subject to rejection and a fine if they can not meet the standards. The Chinese side follows closely the Egyptian practices in commodity inspection.

3.6 Sanitary and phytosanitary measures

There are strict restrictions on the use of food additives laid down by the Egyptian Ministry of Health. Over 40 artificial coloring materials are available for food. The scientific name and the concentration content of the coloring materials should be specified in the analysis certificate of any imported food. The use of natural colorings extracted from plants or tree nuts in food should also obtain approval from the competent Egyptian authorities for import.

Egypt requires the Chinese animal quarantine department to provide animal disease quarantine reports by all provinces and municipalities. The requirement has not only caused much inconvenience to Chinese import and export enterprises and quarantine departments but also violated the non-discrimination principle of the WTO. The Chinese side has shown its concern over the rationality of the regulation.

3.7 Trade remedy measures

Second only to South Africa among African countries, Egypt has initiated a total of 11 cases regarding trade remedy measures since 1996, of which 10 are anti-dumping cases while one is related to safeguard measures in the areas of machinery and electronics, light industry, chemical industry and hardware and minerals.

In the anti-dumping investigation against Chinese products, Egypt regards China as a “non-market economy country” and uses a surrogate country to calculate the normal value of Chinese commodities. High anti-dumping duties are levied. The Chinese side feels regretful for this.

3.8 Government procurement

Law No. 89 of 1998 of Egypt provides that government procurement should take into account of both price and technical factors. Meanwhile, Egyptian bidders enjoy preferential policies compared to foreign bidders. In tendering and bidding, if the price offered by the Egyptian bidder is 15% higher than the foreign bidder, it is viewed the same as the one made by the foreign bidder.

3.9 Barriers to trade in services

Egypt participated actively in the Uruguay Round negotiations on services and made commitments in four sectors of construction, tourism, financial services, and international maritime transport.

3.9.1 Financial service

The Egyptian government allows privatization of insurance companies and banks. However, within ten years, the government will not approve any new banking licenses. As a result, the only way a foreign bank can enter the market in Egypt is to purchase an existing bank.

3.9.2 Telecommunications

Telecom Egypt (TE) is still a state-owned monopoly. In February 2003, the new telecommunications law (Law 10) was passed. It stipulates that Telecom Egypt will relinquish its monopoly status as of January 2006. In April 2003, Egypt joined the WTO Information Technology Agreement, which requires the eventual phasing out of tariffs on all IT imports from WTO members.

3.9.3 Transportation service

Maritime and air transportation services are being liberalized. Private concessions can operate businesses and provide services in airports, but private ownership of airports is still not permitted. Private and foreign air carriers may not operate charter flights to and from Cairo without the approval of the national carrier, Egypt Air.

The government applies a licensing fee of 10 percent of revenue with a minimum of approximately $70,000 per year on private express mail operators.

4 Barriers to investment

The commercial sector of Egypt is not open to foreign investment. Foreign investors are not permitted to be engaged in cotton planting either. Military products, tobacco industry, alcoholic beverages and investment in Sinai should be examined and approved by 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.

Foreign nationals are not allowed to register companies operating import and export business or be involved in occupations of business agents dealing with bidding, commercial circulation and tourist guides. The Labor Law of April 2003 stipulates that foreign nationals are not allowed to be engaged in operation activities of employing or recruiting staff for enterprises. In construction and transport services where foreign investment is permitted, Egypt restricts the employment of non-Egyptian nationals to 10 percent of the personnel employed by a company which should be joint ventures with foreign ownership not exceeding 49%.

Egypt restricts foreign nationals to buy land. Companies with a purpose of reclaiming desert should have an Egyptian ownership of no less than 51%. Upon liquidation, the company belongs to Egyptians. The Egyptian agricultural land is basically privately-owned. Other kinds of land belong to the state. Foreigners are not permitted to own land, but foreign-invested projects can acquire land for agricultural use through leasing.

Australia

1 Bilateral trade relations

Australia was the ninth largest trading partner of China in 2004. According to China's Customs, the bilateral trade volume between China and Australia in 2004 reached US$20.4 billion, up by 50.3%, among which China's export to Australia was US$8.83 billion, up by 41.1%, while China's import from Australia was US$11.55 billion, up by 53.8%. China had a deficit of US$2.72 billion. China mainly exported nuclear reactors, boilers, machinery tools and components, electromechanical and electric products, audio-visual equipment and related parts and auxiliaries, knitted or crocheted garments and accessories, non-knitted or non-crocheted garments and accessories, furniture, lightings, outdoor movable houses, iron and steel products. Major imported products of China from Australia included ores, slag and ash, fossil fuels, petroleum oil, asphalt, inorganic chemicals, compounds of precious metals, animal hair such as wool, yarn and woven fabrics of horse hair, cereals, aluminum and aluminum products.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of engineering contracts completed by the Chinese companies in Australia reached US$ 22.35 million in 2004, and the volume of the newly signed contracts was US$ 24.8 million. The volume of completed labour service cooperation contracts was US$1.77 million, and that of the newly signed labour service cooperation contracts was US$5.05 million. By the end of 2004, the accumulated turnover of engineering contracts completed by the Chinese companies in Australia was US$240 million, with a total contractual volume US$260 million, and the volume of the completed labour service contracts has reached US$20.31 million, with the total contractual volume of US$120 million.

Approved by or registered with the MOFCOM, 31 Chinese-funded non-financial enterprises were set up in Australia in 2004, with a total contractual investment of US$230 million by Chinese investors. By the end of 2004, there were accumulatively 256 Chinese-funded non-financial enterprises set up in Australia with a total investment of US$ 700 million from Chinese investors.

According to MOFCOM, Australian investors invested in 736 projects in China in 2004, with a contractual volume of US$2.05 billion and an actual utilization of US$0.66 billion. By the end of 2004, Australia investors had accumulatively invested in 6,809 FDI projects in China with a contractual volume of US$12.04 billion and an actual utilization volume of US$4.08 billion.

2 Introduction to Australian trade regime

2.1 Legislation on trade and investment

2.1.1 Trade-related legislation

Legal framework covering antidumping in Australia consists of the Customs Tariff (Antidumping) Act and the Customs Act. The Customs Tariff (Antidumping) Act provides the major legal basis for antidumping investigations.

Legal framework covering safeguard in Australia consists of the Procedures for Safeguard Measures Investigation and the Act of Production Commission.

Laws governing market order in Australia are Trade Practices Act 1974 and Prices Surveillance Act 1983. While providing definitions on market access, dispute settlement, anti-competition practices, unfair trade practices, code of conduct, consumer protection, product safety and information, product liability, the Trade Practices Act also establishes a separate mechanism regarding access to the telecommunications market and anti-competition. The Prices Surveillance Act lays down surveillance and inspection systems regarding the pricing activities of the enterprises subject to surveillance.

2.1.2 Investment-related legislation

With respect to foreign investment, Australia maintains an examination system, under which foreign projects involving certain sensitive sectors and huge amount of capital are subject to the project report and preliminary examination and approval procedures.

Related laws governing foreign investment include: the Commonwealth Banks Act, Financial Sector (Shareholdings) Act, regulations of the Australian Prudential Regulation Authority (APRA) that provide for foreign market access to the banking sector in Australia; the Commonwealth Broadcasting Services Act that restricts foreign market access to Australian broadcasting services; the Airport Act and the Shipping Registration Act, etc. The Australian government signed with the Chinese government the Agreement on Encouraging and Protecting Investment in Beijing on July 11 1988. On November 17 of the same year, the Agreement of Avoiding Double-taxation was signed between the two sides in Canberra. These agreements have provided protection for Chinese enterprises investing in Australia.

2.2 Trade administration

2.2.1 The formulation of technical regulations

In Australia, technical regulations are formulated by competent government authorities and authorized institutions or commissions. Certain government regulations are enforced upon approval of the Prime Minister, while other formal regulations should be discussed and approved by the Cabinet. Commonwealth regulations are decided by the Council of Ministers and most of the technical regulations are subject to the examination and approval of the Parliament.

2.2.2 Risk analysis for import of products of plant and animal origin

According to Australian laws, the Market Access and Biological Safety Administration (BA) shall determine whether an Import Risk Analysis (IRA) is needed for the import of animal or plant products before they enter the Australian market. IRA is made based on the Import Risk Analysis Process Handbook, made by the Australian Quarantine and Inspection Service (AQIS).

2.3 Competent authorities

2.3.1 Authorities in charge of trade and investment

Australia is a federal country with the cabinet headed by the Prime Minister, and the federal, state and local governments have different competences and authorities. The federal government is responsible for the formulation of national trade policies while the state and local governments work with the responsibility of trade promotion.

The Australian Department of Foreign Affairs and Trade (DFAT) has three subordinate agencies that deal with foreign trade promotion and administration. The Australian Trade Commission (AUSTRADE), works for trade promotion and market development, with its chairmanship concurrently assumed by the Minister for Trade; the Australian Agency for International Development (AusAID) works for management of overseas aid programs, with the leadership of the Minister for Foreign Affairs; and the Export Finance and Insurance Corporation (EFIC) provides finance, insurance, and risk management services for Australian exporters in the development of overseas market.

The Australian Customs Service (ACS) is in charge of supervision of imports and exports, import and export statistics and anti-dumping investigations.

The Australian Department of Agriculture, Fisheries, and Forestry (DAFF) controls the access of foreign animal and plant products to the Australian market and conducts inspections and quarantines. One service within the DAFF, Biosecurity Australia, conducts risk analysis with regard to the access of foreign animal and plant products and makes policy suggestions, and the other, the Quarantine and Export Services is responsible for carrying out import inspection and quarantine policies and measures.

The Foreign Investment Review Board under the Department of Treasury works for examination, approval and administration of foreign investment.

The Australian Competition and Consumer Commission is responsible for promoting market competition, fair trade, and consumer protection.

Investment Australia, co-established by the Department of Industry, Tourism and Resources (ITR) and AUSTRADE, is in charge of attracting and promoting foreign investment. Its mandate is to showcase the sound investment environment of Australia, promote the progress of large-scale investment projects, and providing consulting services for companies investing in Australia. So far, Investment Australia has 15 operations around the world.

2.3.2 Standard-making institutions

The Australian federal government agencies are responsible for making mandatory technical regulations and standards. The National Standard Commission is mainly responsible for affairs regarding the national metrological system. Food Standards Australia New Zealand (FSANZ), the successor to the former Australia New Zealand Food Agency, is in charge of formulating food standards on imported or local products sold in Australia and New Zealand, concerning ingredients, labels, and impurities such as micro-organs in food.

Most non-mandatory standards of Australia are made and publicized by the Standards Australian International Ltd. (SAI), and such standards often serve as the basis for technical regulations.

Conformity assessment in Australia is mainly carried out by 2 nation-wide organizations. The National Association of Testing Authorities (NATA) is responsible for establishment of accreditation standards and accreditation of laboratory qualities. The Joint Accreditation System of Australia and New Zealand (JAS-ANZ) works for certification of management systems, products and personnel.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

Though the overall tariff level in Australia is fairly low, high tariff rates are kept for certain products, typically exemplified by automotive vehicles, textiles, garments and footwear. The Australian government has passed relevant laws to implement a 5% to 7.5% reduction on import duties imposed on textiles as of January 1 2005. The existing level will be maintained till 2009. Import duties on buses and auto components and parts have been reduced to 10%, effective as of 1 January 2005. A further reduction to 5% will be made in 2010. Despite the reduction, tariff rates for automotive vehicles, textiles, garments and footwear remain high compared with those for other products. The tariff peak has adversely affected the Chinese exports, especially textiles.

According to the relevant provisions of GATT1994 on national treatment, the importing country should not levy other taxes or fees on imported duty-paid items in such a discriminatory manner as to protect the domestic products. However, the Customs Tariff (Antidumping) Act provides that the extra consumer tax ‘wine tax’ is levied on imported wine in addition to the import duty. Such unjustified tax policy has increased the cost of wine importers, and therefore weakened the competitiveness of imported wine.

3.2 Technical barriers to trade

Technical standards in Australia are divided into 2 categories, namely mandatory and non-mandatory. Up to now, 6674 standards have been made in Australia, about 2400 of which are mandatory. These standards are maintained and administered by 1519 independent technical commissions made up of 8979 members.

3.2.1 Foodstuffs

According to the Australian Constitution, the authority to administer foodstuff affairs resides in respective states, which makes the Australian foodstuff administrative system very complicated and decentralized. Although the Australian federal government reached an agreement with state governments in 1991 that uniformed national foodstuff standards shall be implemented with regard to the sale of manufactured or unprocessed foodstuffs (imported or homemade) in Australian, the individual parliament of each state made some amendments to the 1980 Food Standards Act. Therefore, the agreement of 1991 failed to solve the above problem.

Besides, Australia also issues a Holding Order on food imports. According to the Import Food Control Act of Australia, a Holding Order shall be issued once the Australian Quarantine and Export Services find that the inspected food does not comply with the relevant Australian standards. Food covered by the Order will be subject to more harsh quarantine procedures and more inspections. At present, the Holding Order on Chinese food is issued on the ground that the labels attached to the foodstuffs imported from China do not comply with the regulations of Food Standards Australia and New Zealand as the information concerning saccharin additives contained in the foodstuffs is missing, or that aflatoxin, pesticide and veterinary medicine residues go beyond standards.

Differences in food standards imposed by different states of Australia have brought about a lot of trouble for Chinese enterprises, and at the same time, make Chinese exporters more susceptible to Holding Orders. Rigorous inspections following the Holding Orders adversely affect China’s food export to Australia. Under the joint efforts made by the governments of Australia and China as well as the exporters, there was a decrease in the number of Holding Orders adopted against Chinese products in 2004. However, the Chinese side remains concerned over the development of the matter.

Australia adopts a harsh approval system and label system regarding bio-tech food, which could only be sold after approved by the Food Standards Australia and New Zealand and listed in the Food Standards Code. In addition, detailed requirements for specific food produced by bio-technology to have mandatory label was made by the Australian United Food Regulation System in December 2001. The mandatory requirements on labels have created an extra burden on manufacturers, packaging enterprises, importers, and retailers, in particular, the importers.

The Review Report issued by Australia on March 24, 2004 called for amendments to the Food Standards Code, adjusting the maximum limit of antibiotics contained in pig and bovine products, antibiotics as well as lasolocid contained in poultry products and eggs, and pesticide and veterinary medicine residues contained in foodstuffs. According to the Code, foodstuffs should not be sold in Australia if the residues contained are found to exceed the stipulated limit. This again raises the hurdle for exports of poultry and eggs from China. Due to the gap between China and Australia in the level of inspection and the differences in inspection standards, it is quite inevitable for different results to be arrived at, leading to unfair treatment to Chinese exporters. Therefore, the Chinese government expresses concern over the matter.

In May 2004, Food Standards Australia and New Zealand made the amendments regarding the content of the indigestive maltodextrin as a measurement of dietary fiber in food, raising the measurable quantity from 50% to 100%. The amendment also required the content of dietary fiber in maltodextrin be added up to the total content of dietary fiber and indicated the figure on the nutrition facts label. Total Chinese exports of this kind to Australia were about US$360,000 in 2003. Therefore, both the Chinese government and related enterprises are concerned over the matter.

In November 2004, Australia issued a more comprehensive regulation on nutrition facts label, which is more demanding on food label. The new regulation requires that nutrition information be indicated on the packaging label, including energy, protein, fat, saturated fat, carbonhydrates, sugar, and sodium, etc. On the label, other information should also be stated, such as consumption instructions, average consumption per time and the quantity of one unit. The new regulation raises the hurdle higher for manufacturers and increases their burden.

3.2.2 Medicine

The security certification or registration procedure adopted by Australia on the import of medicine is not only complicated but also costly and has brought heavy burdens to relevant Chinese enterprises. According to the Medical Appliances Act of 1989, medicines are categorized as Listed Medicines and Registered Medicines. After approval, all medicines should bear their category and registration number on the package. The application for Registered Medicines is both lengthy (generally more than 1 year) and costly (more than AUS$ 10,000 on average). The registration fee for Listed Medicines is AUS$ 400, with an annual fee of another AUS$ 400. If taking into account the fees for consultant, the total expense will exceed AUS$ 1000. Some medicines may have complicated components, which require more evident documents to be furnished in the registration procedure. If including professional fees, the total expense will reach AUS$ 4,000-5,000. Currently, most Chinese traditional medicines in Australian market are “Listed Medicines”.

Besides, it’s required by Australian laws that all manufacturers that supply medicines to Australia should pass Australia's GMP accreditation. So far, fewer than 20 Chinese enterprises have passed the GMP accreditation. For GMP accreditation, 2 officials from Australia should carry out spot investigation. All traveling expenses incurred, including first-class flight and plushy hotel expenses, are to be born by the applicant. Such practices have increased the burden on Chinese manufacturers and impeded their exports to Australia.

3.2.3 Machinery and electronic products

At present, machinery and electronic products have become China's biggest export to Australia, accounting for about 40% of China's total exported goods to Australia.. Certain products have possessed a considerable market share in Australia, exemplified by TV sets, tractors and office equipment. Therefore, market access for these products involves major export interests of China.

However, China's export of machinery and electronic products to Australia is still facing the restrictions of safety certification. It's required by Australia that 63 electromechanical products are subject to safety certification before they are sold in Australia. According the relevant regulations, different products will have to go through different certification procedures. However, generally speaking, the comparatively lengthy period and costly expenses of the above procedures have made it difficult for Chinese enterprises to introduce new products to the Australian market. Australia has already signed an agreement with Singapore that machinery and electronic products from Singapore may be exported to Australia after passing one testing and authentication in Singapore. While this bilateral agreement has helped boost the competitiveness of Singaporean products, it has weakened the competitiveness of products from other WTO members including China.

3.3 Sanitary and phytosanitary measures

An import application shall be filed before animal and plant products from any country enter Australia. Based on the application, the Biosecurity Service of Australia shall conduct an Import Risk Assessment. Goods can only be imported if the risk level after proper control is deemed acceptable by the Australian authority. Otherwise, import is banned if an application is not filed, or an IRA is not conducted, or the IRA isn't finished, or the risk level is deemed unacceptable. In addition, Australia implements import licensing administration over animal and plant products, which means most of the products that have been granted market access also need to obtain an import license before importation.

Such conservative and stringent sanitary and phytosanitary system adopted by Australia has brought great impediment to the access of foreign agricultural products to Australian market, and the mostly affected products of China include fruit, vegetable and certain cash crops.

As the basis for sanitary and phytosanitary measures, Import Risk Assessment (IRA) is a protracted process, and the technical standards involved are ambiguous. The AQIS, the agency conducting IRA, usually deals with one product from one country at one time with the result that many foreign products are unable to get the IRA and the import license in time. Other countries are calling for Australia to comply with the WTO rules of transparency by increasing transparency of the quarantine process. Philippine and EU has appealed successively to the WTO for a ruling on the reasonableness of the results of the IRA, which had served as the basis for rejecting their agricultural products.

In April 2004, the Biosecurity Agency (BA) finished IRA on and granted import permit for lychee and longan from China. In June 2004, the Chinese lychee entered the Australian market for the first time. However, the BA still requires the implementation of risk control measures and phytosanitary procedure on fresh longan and lychee from China and Thailand. Such measures and procedure involve the proper treatment of fruit flies, the implementation of disease-prevention plan in orchards, passing inspections, and obtaining phytosanitary certificate issued by national plant protection organization. Only when the above requirements are satisfied may the import be approved. While welcoming the approval made by the Australian government of the importation of lychee and longan from China, the Chinese side expresses concern over the complexity of the inspection procedure and wishes that the Australian government would simplify the procedure.

On 23 June 2004, Australia publicized the conditions regarding the importation of pork. It is required by the BA that pork may be imported after going through risk control over 10 types of diseases. The Quarantine and Export Services combine the measure with licensing administration and have conducted very strict disease inspection over the importation of Chinese pork, which has greatly affected China’s pork exports to Australia. The Chinese side expresses concern over the matter.

The Australian government further requires that as of 1 September 2004, for imports packed in hard wood, there be marking on the outer packing, indicating that wood package is used after the proper treatment of methyl bromide, in addition to other quarantine standards. Stringent packing requirements of similar kind have constituted barriers to Chinese products in recent years.

3.4 Trade remedies

3.4.1 Antidumping investigations involving Chinese products in 2004

To the end of 2004, Australia has filed 41 antidumping investigations involving Chinese products, the fifth largest complainants in terms of the number of cases launched against Chinese products.

On 10 February 2004, Minister for Justice and Customs agreed with the preliminary determination made by the Australian Customs regarding the antidumping investigation against hot-rolled steel imported from China that dumping has existed and a punitive tariff ranging from 14.1% to 28.8% was imposed on Chinese exports. With the application raised by the Australian Iron and Steel Association for a review, the Minister agreed, on September 9, to reinvestigate the case as suggested by the reviewing official.

On 19 May 2004, the Australian Customs decided to launch an antidumping investigation against silicon imports from China. On October 6, the Customs made the preliminary determination that there was dumping and a temporary antidumping duty ranging from 3.7% to 8.1% is to be imposed. After the investigation, it was held by the Customs that as the purchasing prices for raw materials adopted by two Chinese enterprises involved fully reflected the market economic condition, and the generally accepted accounting principles in China were in line with international standards, there was no evidence showing that market economy didn't play a dominant role in domestic sales. Therefore, the dumping margin was calculated based on domestic selling prices and adjusted prices as normal value. On 16 February 2005, the final determination was made by the Australian Customs that a final antidumping duty were to be imposed, 3.7% on National Silicon Metal Factory of Datong. Shanxi Province, 5.6% on Gather Hope Metallurgical Company Ltd. of Dandong, and 8.1% on other Chinese enterprises.

On 24 December 2004, the Australian Customs issued a notice, deciding to initiate an antidumping investigation against structural pipes originated from China, Korea, Malaysia, and Thailand. The investigated products are round and rectangular carbon steel welded pipes for structural or mechanical use.

3.4.2 Provisions regarding antidumping investigation involving Chinese products in the China-Australia Trade and Economic Framework Agreement

According to the China-Australia Trade and Economic Framework Agreement, during the two years of feasibility study held by the two countries over the bilateral free trade agreement (from 31 October 2003 to 31 October 2005), Australia would not apply Paragraph 15 of the Protocol on the Accession of the People's Republic of China to the WTO, which means in the said period, Australia will grant equal treatment to China and other WTO members in antidumping investigations. In October 2004, Chief Undersecretary of the DFAT expressed the wish to complete the feasibility study on Australia-China Free Trade Agreement six months ahead of schedule (by March 2005) and to submit the report as soon as possible. The Chinese side is concerned over the implications of the future implementation of the Agreement on antidumping investigations against Chinese products.

3.5 Subsidies

In view of boosting the development of Australian textiles, clothes and footwear industry (TCF), the Australian government promulgated the TCF Strategic Investment Plan. According to the Plan, AUS$ 750 million will be appropriated to the TCF industry from 2001 to 2005. In November 2003, the Australian government publicized a support scheme between 2005 and 2015 when it announced the additional tariff-reduction plan. While lowering tariffs on textile products, the Australian government started to provide the textile industry with a subsidy of AUS$740 million as of 1 January 2005 to support its domestic textiles industry.

Public companies and relevant authorities continue to monopolize the export of such agricultural products as wheat, rice, and sugar. Though the former Australian Wheat Board was privatized in 1999 and renamed as the Wheat Export Authority (WEA), the WEA, mandated by the federal government, still maintains control over wheat export. Under the circumstances, Australia still provides a 'de minimis subsidy' to its agricultural exports. Among various agricultural support measures, there has been an increase in income subsidy granted by the Australian government to producers. Besides, certain products receive quite high domestic production subsidy, such as dairy products, sugar, and rice. PSE for sugar is 55% and that for dairy products is as high as 200%. In April 2004, Australia announced a sugar subsidy scheme totaling AUS$444 million to provide restructuring aid to the sugar producers that are excluded from the Australia-US Free Trade Agreement. According to the information provided by the Competition Commission, sugar production only accounts for 1.5% of agricultural production, yet it got a subsidy of 7%. The subsidy to producers may also lead to distortion of agricultural production and trade.

The Australian government implemented the Automotive Competitiveness and Investment Scheme (ACIS) as of January 2001. A total subsidy of AUS$2.8 billion shall be provided to the automotive industry between 2001 and 2005. ACIS aims at encouraging new investment and R & D in the industry and accelerate the restructuring process so as to meet the tariff concession schedule. In December 2002, the government of Australia announced a package, earmarking another batch of subsidy of AUS$4.2 billion to the automotive industry between 2006 and 2015.

3.6 Other barriers

For a long period of time, working visa has been the most serious issue bothering the Chinese-funded enterprises in Australia. With a view to protecting the domestic job market, the Australian government has made strict rules governing the employment of foreign labor as well as the qualifications of companies providing guarantee for foreign labor.

According to relevant laws, foreign-funded companies must hire locals, create job opportunities and provide necessary training to Australian nationals and permanent residents so that they can replace foreign employees.

The Australian Immigration Authority often refuses to issue working visa to Chinese expatriates on the ground that the company falls short of the requirement made on the number of local employees and adequate training for the locals.

Owing to the difficulty in obtaining working visa, business activities of the

Chinese-funded enterprises have suffered negative impact as there is often a lack of Chinese managerial staff and technical professionals.

With regard to the application for short-term business visa , Chinese businessmen are confronted with the same problem of high rejection rate. Many business people who intended to develop business in Australia or participate in fairs and exhibitions have been denied entry to Australian by the Australian Immigration Authority, thereby adversely affecting the development of these Chinese firms. The Chinese government hopes that the Australian government will improve the administration over business visa so as to promote the development of relations between the two countries.

4 Barriers to investment

Foreign investment is encouraged in Australia, but mechanism for examination of foreign investment is maintained at the same time. The dominant criterion of foreign investment examination is "Australian National Interests". But it's considered that the "Australian National Interests" criterion is enabling excessive discretionary power, and certain examination and approval procedures are short of transparency, which have impeded the access of foreign capital into Australia.

4.1 Financial services

A case-by-case examination and approval should be conducted on applications by foreign companies to acquire Australian banks. Approval could only be obtained when the foreign bank together with its parent bank is found in sound financial standing and agrees to observe the relevant agreement made by the Australian Prudential Regulation Authority.

4.2 Media services

Australia has set up a ceiling for foreign ownership in media services:

4.2.1 Commercial television broadcasting services:

Individual foreign company shall hold no more than 15% of shares of the Australian company offering commercial television broadcasting services; total foreign ownership is limited to 20%; the number of foreign directors shall be no more than 20% of the total number of directors; foreign investors are not allowed to hold a majority share of the commercial television broadcasting company.

4.2.2 Prepaid television broadcasting services:

Individual foreign company shall hold no more than 20% of shares of the Australian company offering prepaid television broadcasting services; total foreign ownership is limited to 35%;

4.2.3 Newspaper

A case-by-case examination shall be conducted by the government over applications for acquiring 5% of the shares of a newspaper already in circulation or for issuing new papers. With regard to national or metropolitan newspapers, individual foreign investor shall hold no more than 25% of the shares of the newspaper, and total foreign ownership is limited to 30%.

The above restrictions on ownership as well as the number of foreign directors will exert a negative impact on foreign investors' decisions to enter the media services.

4.3 Telecommunications

Large investment projects in telecommunications are subject to examination and approval on a case-by-case basis, and if not against Australian National Interests, are generally approved. However, Australia still set up a limit of foreign participation in its large-scale state-owned telecommunications company TELSTRA. At present, the government holds 51% of the shares of TELSTRA and limits individual foreign ownership to 5% of the privatized shares with total foreign ownership no more than 35%. This restriction on foreign participation has led to the abuse of monopoly on the part of TELSTRA, the largest telecommunications company. For instance, the company raised the prices for services substantially. Despite the open access to the sector, foreign companies may not be able to compete with TELSTRA owing to the lack of a level-playing field.

4.4 International air transport

Foreign ownership is limited to 49% of the Australian international air transport operators except QANTAS in Australia, of which individual foreign ownership is limited to 25% and total foreign ownership 49% among which equities held by foreign airlines shall not exceed 35%.

Brazil

1 Bilateral trade relations

According to China Customs, the bilateral trade volume between China and Brazil in 2004 reached US$12.36 billion, up by 54.8%, among which China's export to Brazil was US$3.67 billion, up by 71.5%, while China's import from Brazil was US$8.68 billion, up by 48.6%. China had a deficit of US$ 5.01 billion. China mainly exported coal, coke and semi-coke, electro-mechanic products, electric appliances and electronic products, high- and novel-tech products, electronic technology, textile yarn and related products, diode and similar semi-conductor parts, mechanic equipment, meters and instruments. China's major imports from Brazil included iron sand and concentrates, soy beans, steel billet and primarily forged steel pieces, rolled steel, steel plates, paper pulp, soy bean oil, edible plant oil, manganese sand and concentrates, crude oil, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by the Chinese companies in Brazil reached US$ 64.6 million in 2004, and the volume of the newly signed contracts was US$ 120 million. By the end of 2004, the accumulated turnover of engineering contracts completed by the Chinese companies in Brazil reached US$130 million, with that of all the contracts signed US$190 million, and the volume of the completed labor service contracts has reached US$7.76 million, with that of the total contracts signed being US$18.91 million.

According to MOFCOM, 4 Chinese-funded non-financial enterprises were set up in Brazil in 2004, with a total contractual investment of US$5.479 million by the Chinese investors. By the end of 2004, there were altogether 10 Chinese-funded non-financial enterprises set up in Brazil with a total investment of US$14.792 million by the Chinese investors.

According to MOFCOM, Brazilians invested in 36 projects in China in 2004, with a contractual volume of US$88.55 million and an actual utilization of US$16.71 million. By the end of 2004, Brazilian investors had altogether invested in 348 FDI projects in China with a contractual volume of US$390 million and an actual utilization volume of US$120 million.

2 Introduction to the Brazilian trade regime

2.1 Legislation on trade and investment

Brazil has made efforts in the recent years to have all its legislation and regulations available on the Internet and keep them updated regularly, but there is not a comprehensive trade law in Brazil. Its main customs procedures have been codified in

Decree No. 4543 of 26 December 2002, as amended by Decree No. 5138 of 12 July 2004. Its main import measures have been included in the Consolidation of Ministerial Act (Imports) of 1 December 2003, as amended by Ministerial Acts of 2 February 2004, 11 February 2004, and 3 May 2004 respectively, while the main export measures are included in the Consolidation of Ministerial Act (Exports) No. 12 of 3 September 2003, as modified by Ministerial Acts of 16 February 2004, 3 May 2004 and 12 May 2004.

The main investment-related legislation is Brazil's Constitution, which stipulates that any foreign-owned company or joint venture in Brazil shall be treated as its "national industries". The Foreign Investment Law was enacted on 3 September 1962. Brazil's Labour Law is another law concerning investment.

2.2 Trade administration

2.2.1 Tariff system

Presently, the tariffs Brazil mostly range between zero and 35 percent. The average tariff rate remains at 10.4%. The tariff for capital goods is usually 5%, while the tariff for daily consumptions is higher, for example, 32% for household electrical appliances and 35% for toys. The raw materials imported for export production purpose is duty- free.

In Brazil, the tariff is levied on the CIF basis. In case any query is raised on the declared goods value, exporters have 8 days to offer a new price. Importers can respond within 30 days on this new price.

In respect of import tariffs, the following measures are adopted in Brazil to protect national industry and prevent dumping: (1) to set up bottom price or reference price, on basis of which the tariff is levied. If the import price is lower than the bottom price or reference price, the tax on price difference shall be levied otherwise, (2) to apply additional tax upon low priced or dumped goods. If the import is just for trial and for quality and technology testing purpose, importers can apply to the Taxation Administration for tax-payment by installments. The period for such payment shall be the duration for the effective use of the product involved.

Following the tariff reduction made on 17 December 2003 on 1600 items of mechanical and electrical products, Brazilian Foreign Trade Commission added another 200 items to the reduction range on 26 December 2003, covering 1800 items totally them. The tariff rate was lowered by 10 percent, from 14 percent to 4 percent. On 19 February 2004, Foreign Trade Commission declared further tax reduction on the above items, from 4 percent to 2 percent.

Brazilian Ministry of Development, Industry and Foreign Trade declared to abolish, as of 1 January 2004, the additional import duty of 1.5 percent based on the Common External Tariff. This additional duty had been imposed since 1997.

In April 2004, Brazilian congress decided that "tax on social integration" and "tax on social safeguard credit" be imposed on selected imports1 May 2004 as of 1 May 2004.

2.2.2 Import administration

The Brazilian government requires that all imports be 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 procedures are simple and the license is approved automatically. Non-automatic licensing is administered upon those the commodities or imports under the national control . The application form shall generally be submitted before shipment or before customs declaration in some cases. Its approval procedures are complicated, for documents and certificates shall be provided for counter-signature of relevant authorities. The imports subject to non-automatic licensing are mainly the goods needing quarantine and special quality testing, or the goods that may impact domestic industry, or high-tech products, including military provisions that are placed under special national control. Among China's exports to Brazil, products subject to non-automatic import licensing mainly include: garlic, mushroom, most chemicals, most pharmaceutical materials and manufactures, products of animal or plant origin, tires, textiles, glassware, household earthenware and chinaware, locks, electronic calculators, magnets, motorcycles, bicycles, toys, pencils, etc.

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. The importers may submit applications directly, or authorize their agents to submit applications through the Brazilian Foreign Trade Network, and obtain a registration number accordingly. Then the importers or their agents have to present required documents to the designated banks, and pay application fees. The Secretariat of Foreign Trade will go through the examination and approval procedures. Generally speaking, the validity of non-automatic import licenses is 60 days.

2.2.3 Other relevant systems

Since 1 January 1997, Brazil has been managing import by using the Brazilian Foreign Trade Network (SISCOMEX). The authorities in charge of foreign trade such as the Ministry of Development, Industry and Foreign Trade, Taxation Administration under the Ministry of Finance carry out integrated and procedural import regulations including examination of licensing application and collection of tariffs.

In addition to foreign trade governing institutions, SISCOMEX connects importers, customs brokers, forwarders, storage handlers and financial institutions. All the import operations shall be conducted through this system.

The three certificates of origin issued in Brazil are used for the exports to the members of Southern Common Market, Latin American Integration Association, and Generalized System of Preference respectively. The certificates are usually issued by Brazilian Business Association. The Certificate of origin for processed products is issued by Brazilian Industry Association. The validity period of such certificate is 120 days.

2.3 Investment administration

The Brazil government encourages foreign investment and grants foreign companies national treatment. Brazil's constitution stipulates that any foreign-owned company or joint venture in Brazil shall be treated as its "national industries". According to Foreign Investment Law, foreign investment refers to the merchandise, machinery, equipment, or foreign capital for economic operation, which have come into Brazil without being paid for in Brazil's foreign exchange, for manufacturing or service providing purposes, and the ownership of which is vested in the natural person or legal person residing outside Brazil.

Brazilian central bank is the only bank responsible for foreign exchange administration and foreign investment registration. After registration, foreign direct investors may obtain from the central bank a certificate of foreign investment, which shall be produced when foreign investors intend to remit funds, withdraw investment or make reinvestment. Foreign investors who intend to invest in Brazil may simply transfer their funds into Brazil through any bank authorized to handle foreign exchange business, and no other bureaucratic procedures will be involved. Foreign investors may either build factories or purchase Brazilian businesses.

Brazil's legislation allows investment from foreign credits, reinvestment based on profits earned and investment by contributing imported goods, but according to regulations of the central bank, investors must take up relevant formalities for investment registration.

In addition, Brazilian government grants various incentives to encourage foreign investment. For example, foreign firms are allowed to provide funds or services to mass media, bonded warehouse, off-shore navigation, and expressway management. When exporting their commodities made in Brazil to a third country, foreign companies can apply for export credit and insurance. If the added value of exports reaches certain amount, they can get the certificate of origin and enjoy the preferential treatment granted according to the arrangements between Brazil and other countries. Governments at central, state and city levels offer various tax incentives, depending on the contribution the foreign investors render to Brazil. In order to develop north and northeast Brazil, the federal and local governments grant foreign investors (who must be a partner of a joint venture company where the Brazilian partner has the majority ownership,) an income tax holiday of 10 years, and an income tax reduction of 50 percent during the next 5 years. Besides, tax incentives also include exemption or reduction in import duties, taxes on manufactured goods, and some local taxes, such as taxes on commodity circulation.

2.4 Competent authorities

Foreign Trade Commission is the top foreign trade policy-making institution in Brazil. Ministry of Foreign Affairs and Ministry of Development, Industry and Foreign Trade are main administrative authorities governing the sector of foreign trade. Ministry of Agriculture, Ministry of Finance, and Ministry of Health are partly involved in the administration of foreign trade.

2.4.1 Foreign Trade Commission (CAMEX)

The Brazilian Foreign Trade Commission is a foreign trade policy-making body working directly under the President Office, mainly responsible for making foreign trade policies and guidelines, interpreting laws and regulations concerning foreign trade; adjusting tariffs; conducting investigation on unfair trade practices; formulating policies and guidelines of foreign credit and insurance; evaluating the effects on foreign trade of the measures taken in the areas of foreign exchange, currency and finance; developing policies encouraging export trade; determining general principles of foreign trade negotiation and coordinating relations between government and enterprises.

Brazilian Export Credit and Credit Security Committee was established on 16 March 2004. Under the direction of Foreign Trade Commission, it is a standing organization, aiming at streamlining approval procedures, speeding up the release of loans, and promoting foreign trade.

2.4.2 Ministry of Foreign Affairs

The Secretariat of Economic Integration and Foreign Trade under the Ministry of Foreign Affairs is in charge of the affairs involved in foreign trade. Its subordinate Department of Economic Affairs is responsible for the bilateral and multilateral negotiations within the WTO framework.

2.4.3 Ministry of Development, Industry and Foreign Trade

Within the Ministry of Development, Industry and Foreign Trade, the Secretariat of Foreign Trade, is responsible for foreign trade affairs. The main competence of the Secretariat is to implement foreign trade policies, enforce foreign trade administration, and participate in negotiation of international economic and trade agreements. Within the Secretariat there are the Secretarial Office and 4 other departments.

The Department of Trade Practices works on research and analysis of the operation of Brazil's strategic commodities and the related markets, implementing the government's foreign trade plans, approving import and export transactions and issuing documents, and making rules and regulations governing foreign trade.

The Department of Trade Maintenance is responsible for protecting domestic production by examining the applications for anti-dumping and countervailing investigations; suggesting investigations and remedies against anti-dumping practices as well as the implementation of safeguards; providing recommendations on trade protection measures to be undertaken according to WTO agreements; participating in the discussions on the standards and their implementation related to WTO trade protection agreements; joining the international negotiations related to trade protection; and partaking in the investigations conducted by a third country on Brazilian exporters' trade protection, and supporting other Departments for protecting the interests of Brazilian exporters.

The Department of International Negotiations participates in WTO negotiations so as to promote the development of foreign trade and coordinates the preparations of related departments so as to support Brazil's participation in the negotiations on tariffs.

The Department of Foreign Trade Planning and Development is responsible for suggesting and implementing foreign trade policies and plans, providing suggestion on government's agenda in foreign trade, and collecting, analyzing and releasing statistical information in foreign trade.

2.4.4 Federal Taxation Bureau

Subordinate to the Ministry of Finance, it is responsible for Brazilian customs affairs, including making and implementing customs policies, imposing duties, and conducting customs supervision.

2.4.5 National Industry Development Committee and Brazilian Industry Development Office

On January 25, 2005, the Brazilian government declared the establishment of National Industry Development Committee and Brazilian Industry Development Office, two new institutions in charge of industry.

National Industry Development Committee (CNDI) is responsible for making policies guiding industry, science and technology, foreign trade, and project loans, as well as enacting measures for developing industry and infrastructure and improving corporate competitiveness. Made up of 13 ministers, the president of Social and Economic Development Bank, and 14 members representing private-owned companies and working people, it is directly responsible to the President.

Brazilian Industry Development Office, directed by Ministry of Development, Industry and Foreign Trade, is responsible for the promotion of the implementation of industry development policies, especially the policies that can enlarge employment on the basis of the coordination of the policies guiding foreign trade and science and technology. The Office consists of three sectors: Review Committee, Inspection Committee, and Executive Board.

3. Barriers to trade

3.1 Tariff and tariff administrative measures

The average tariff level of Brazil is not high, remaining at 10.4%, while relatively high tariffs are imposed on certain products, which brings about tariff peaks. For example, the tariff on automobiles, toys and personal computers is as high as 35%.

3.2 Import restrictions

Some Chinese companies have complained that the lists of the products covered by import licenses were unduly frequently and arbitrarily adjusted by the Ministry of Development, Industry and Foreign Trade while, excessive requirements were made for materials to be provided in applying for non-voluntary import licenses, and that the examination and approval procedures were unduly complicated, all which posed obstacles to their exports to Brazil.

3.3 Customs clearance barriers

Brazil's customs regime lacks transparency while the clearance fee is very high. Moreover, it is provided by Brazilian laws that for commodities imported by sea, importers shall enter into maritime transportation insurance contracts with Brazilian insurance companies, whose insurance premium averages 1.5% of the total import value. Such premium level runs far higher than the international average, 0.3%, thus subsequently weakening the price advantage of the imports.

3.4 Technical barriers to trade

According to a provisional measure adopted by Brazil's Health Supervision Bureau (ANVISA), imported foodstuffs shall be subject to pre-registration in Brazil, and their packages shall bear the registration number and date. The registration for a single commodity takes seven months. The procedures for agricultural imports license might be as long as one year. Imported medicines, medical apparatus and instruments and agricultural chemicals are all subject to registration. Various tests are needed for the registration of medicines, which takes more than one year and costs high. Some Chinese companies complained that the registration procedure was costly and time-consuming, which in all affect adversely the trade between China and Brazil. The Chinese side expresses its deep concern over those issues.

3.5 Sanitary and phytosanitary measures

In April 2004, Brazil issued the regulation on importing potato seeds, including requirements on registration, documentation, official phytosanitary certificate, additional statement on phytosanitary certificate, inspection, sampling, limitations and inspection requirements against residues and post-entry quarantine. It took effect on June 7, 2004. China concerns about its consistency with related WTO agreements.

In August 2004, Brazil released the instruction on importing and exporting soybean. It prescribed the testing procedures (including procedures of quality requirements, quality and contamination limitation, sampling, and inspection) as well as the conditions on trade, shipment and storage. China expresses its deep concern over this regulation.

3.6 Trade remedies

The statistics published on April 20, 2004, by the WTO Anti-dumping Committee shows that Brazil has launched 109 anti-dumping investigations since 1995. It ranks the eighth among the members initiating the most antidumping investigations. Since its first anti-dumping investigation in December 1989 on products from China, Brazil has filed 21 anti-dumping investigations on Chinese imports up to the end of 2004. A large variety of products from China have been under investigation, including machinery and electronic products, hardware, chemicals, light industrial products, textiles and foodstuffs.

On November 12, 2004, in the Memorandum of Understanding Between the People's Republic of China and the Federal Republic of Brazil Regarding the Cooperation in Trade and Investment, Brazil officially recognized China's market economy status.

Up to the end of 2004, among Brazil's 56 anti-dumping and safeguards cases there were 14 anti-dumpling investigations pertinent to China's imports, accounting for 25%. The commodities under investigation are desktop fan, padlocks, garlic, pencil, glifosato, bicycle inner tube, canned mushroom, aiguille with screw thread, toy, annular magnet, barium carbonate, vacuum flask, magnesium metal and magnesium powder. Among them, aiguille with screw thread and vacuum flask are at the stage of review.

In June 2004, Trade Protection Bureau under Brazilian Ministry of Development, Industry and Foreign Trade declared to initiate antidumping investigation on ball point pens from China, as per the application of BIC AMAZONIA S.A.

On July 22, 2004 Trade Protection Bureau under Brazilian Ministry of Development, Industry and Foreign Trade started to review the case of vacuum flask and liner imported from China, as per the relative laws and the application of M. Agostini S.A. and Sobral Invicta S.A. Anti-dumpling duties were imposed when the review proceeded. The review for liner of vacuum flask has ceased and the relative anti-dumpling duties were declared cancelled on July 22, 2004.

In January 2004, the Brazilian Foreign Trade Commission decided to extend its implementation of safeguard measures on toys for another year to December 31, 2004. Additional duty of 10% shall be imposed on all the toys from countries other than Southern Common Market in addition to a common duty of 20 %.

3.7 Government procurement

Brazil is not a party to the WTO Agreement on Government Procurement. Although, in general, national treatment is afforded to foreign suppliers legally established or represented in Brazil, Brazil's domestic law grants preferential treatment only to telecommunications and informatics products developed within Brazil.

Brazil's Government Procurement Law (Decree No. 8666) limits foreign suppliers in participating directly in government procurement tendering.

3.8 Other barriers

Brazil's strictness on release of working visa is a kind of indirect barrier. Difficulties exist for foreign citizens to obtain working visas in Brazil. Rigorous criteria are enforced in issuing visas to foreigners working in Brazil, especially foreign technicians. A complexity of supporting documents, as many as 12 kinds, is required in application for a working visa.

4 Barriers to Investment

Brazil's investment barriers are covert, mainly manifesting in the profit remittance, investment withdrawal and high taxation.

4.1 Barriers to investment access

4.1.1 Foreign exchange restrictions

Stringent administration on foreign currency is enforced in Brazil. Generally, foreign companies or persons (excluding organizations or individuals enjoying diplomatic privilege) may not open foreign currency account in Brazilian banks, and foreign currencies entering into Brazil are required, on the same day, to be converted into real, the Brazilian currency. Real is the only currency circulating on Brazilian market. Those regulations themselves contain many covert investment barriers. For example, the conversion from foreign currency into real is necessary for foreign investment but Brazil is a place noted for high risk in foreign exchanges.

4.1.2 Foreign investment restrictions

All goods entering into Brazil as a form of investment are subject to non-automatic licensing. Brazilian government does not allow foreign companies to invest in the following fields: nuclear power, medical treatment, superannuation fund, marine fishing, postal services, etc. Foreigners residing outside Brazil cannot buy land in

Brazil. The amount is restricted when foreigners residing in Brazil purchase country land. The land along the border cannot be sold to foreigners. Foreign companies can buy country land for some specific purposes, such as agro-pastoral industry, industrialization, and land reclamation and settlement, which, however, are all subject to approval of the Ministry of Agriculture. Foreign investors cannot develop solely-owned banks or insurance companies, nor hold majority of shares in financial institutions, unless special authorization is given by the President in the interest of the country. Short-term credit of no more than 90 days in Brazil is subject to a financial transaction tax of 5 percent, while credit of more that 90 days is exempted. A small quantity of foreign equity is allowed in Brazilian space companies. Foreigners cannot hold more than 20 percent of total equity in civil aviation companies.

Foreign-ownership restrictions remain in air transport services, and cabotage restrictions apply to both maritime and air transport. Brazil applies a tax on freight with different rates for domestic or international cargoes. A lighthouse fee is applied only to foreign flagged vessels.

4.2 Barriers to investment operation

The remittance of foreign companies' profits is to be made under the supervision of Brazilian central bank. If the remittance exceeds 12 percent of the registered capital, the excessive portion shall be regarded as returns on investment, to which a profit tax of 20 percent is applied. A new registration shall be made with Brazilian central bank upon change in ownership within a foreign invested enterprise. The registered capital is as per the original investment and has nothing to do with actual transferred amount.

4.3 Restriction on investment withdrawal

The foreign investment registered with Brazilian central bank can be withdrawn to home country at any time without pre-approval of the government. If the withdrawn amount is larger than the registered amount, the excessive part shall be viewed as the returns on investment, to which income tax is applied. Prior to the withdrawal of foreign investment, Brazilian central bank shall make an evaluation according to the balance sheet of the company involved, which will be regarded as having an investment deficit when its net assets are negative. Brazil forbids foreign investors to withdraw assets from a deficit company to their home country.

Russian Federation

1 Bilateral trade relations

The Russian Federation (hereinafter referred to as Russia) was the eighth largest trading partner of China in 2004. According to the China Customs, the bilateral trade volume between China and Russia in 2004 reached US$21.23 billion, up by 34.7%, among which China's export to Russia was US$9.1 billion, up by 51% and China's import from Russia US$12.13 billion, up by 24.7%. China had a deficit of US$3.03 billion. China's main exports to Russia were consumer goods including garments, leathers, luggage, footwear and electronic equipment while among the Russian imports were mainly industrial intermediate goods such as metals, fuels, chemicals and timbers.

According to the Ministry of Commerce (MOFCOM), the turnover of completed engineering contracts by Chinese companies in Russia recorded US$ 190 million in 2004, and the amount of the contracts signed in 2004 was US$270 million. The volume of completed labor service cooperation contracts was US$150 million, and that of the newly signed labor service cooperation contracts was US$230 million. By the end of 2004, the accumulated turnover of engineering contracts completed by Chinese companies in Russia had amounted to US$1.2 billion, the accumulated volume of all the contracts signed was US$2.94 billion; and the volume of the completed labor service contracts had reached US$1.05 billion, with that of the contracts signed being US$1.95 billion.

In 2004, 52 Chinese-funded non-financial enterprises, which had either been approved by, or submitted relevant applications for approval of, the MOFCOM, were set up in Russia, with a total contracted Chinese contribution of US$110 million. By the end of 2004, there were altogether 575 Chinese-funded non-financial enterprises in Russia, with a total contracted contribution of US$660 million.

According to MOFCOM, Russian projects in China numbered 145 in 2004, with the contracted amount totaled US$220 million, including US$130 million actually contributed. By the end of 2004, the number of Russian direct investment projects in China had reached 1,687 and the amounts of the contracted investment and actual contribution stood at US$1.1 billion and US$460 million respectively.

2 Russian Trade and Investment Regimes

Russia is now engaged in the negotiations for acceding to the WTO and OECD and is accordingly striving to bring its related laws into conformity with the rules of the two organizations.

2.1 Legislation on Trade and Investment

The policies and laws of Russia's trade and investment regimes mainly include:

2.1.1 Policies and laws affecting the administration of trade regime

Since November 2003, both the Duma and the government of Russian Federation have promulgated a series of trade-related policies and laws.

In November 2003, the Duma approved the *Federal Law Against Special Guards, Anti-dumping and Countervailing Measures Applied to Imports*, which was promulgated under the title *Federal Act No. 165* in December 2003. The law aims to "protect the economic interests of Russian manufacturers in case of the increase and dumping of imports and import of subsidized goods within the customs territories of Russia". In addition, the law has laid down the specific procedures involved in the application and implementation of related measures.

In November 2003, the Duma approved the *Law Governing Adjustment and Surveillance of Foreign Exchange* in order to ensure the implementation of the national uniform policy of foreign exchange and safeguard the stability of Russian Rubles and foreign exchange markets. This law permits Russian natural persons to open accounts at the banks within the territories of the members of either the OECD or the Financial Working Group of Anti-laundering Measures.

The *Law on the Principles Guiding the State Adjustment of the Activities of Foreign Trade* approved in December 2003 replaced the *Law on the State Adjustment of the Activities of Foreign Trade*. This new law aims to bring the areas such as trade in goods, trade in services and trade-related aspects of intellectual properties into consistence with the WTO guidelines and rules as much as possible, and prohibited other State adjustment measures on foreign economic activities than the measures addressing tariffs on trade in goods and non-tariff adjustment, prohibitions and restrictions on trade in services and trade-related aspects of intellectual properties, and economic and administrative measures specified by the new law for the promotion of foreign trade. .

In March 2004, the government of Russian Federation promulgated the *Regulations on the Adjustment of Meat Imports*, which aims to adjust the use of quotas for meat imports and permits Russian importers who hold import licenses for importing meat from a certain country, where serious animal epidemic is prevailing, to import meat from countries not affected by the epidemic.

Other policies and laws that are effective in Russia affecting trade administration mainly include the *Law on Special Permits*, the *Law on Trade Marks, Services Marks and the Names of the Origin of Manufactures, Tariff Schedule*, the *Law on the Certification of Goods and Services, the Law on Advertising*, the *Law Governing the Measures Protecting the Benefits of the Russian Federation in Foreign Trade in Goods*, the *Federative Programs on Export Development*, the *Law on Export Surveillance, List of Products for Foreign Trade and Tariff Schedule*, the *Law on*

Electronic and Digital Signature, the *Customs Code*, the *Leasing Law*, and *Regulations on the Surveillance of Dual-use Commodities and Technologies to be Exported from the Russian Federation*.

2.1.2 Policies and laws affecting the administration of investment regime

Russia's Laws related to investment regime include *Foreign Investment Law*, the *Law Governing Agreements on Product Distribution*, *Code on Land*, the *Law on Transfer of Farming Land*, the *Amendment to and Supplement of Laws and Regulations of the Russian Federation on Certain Mortgage Credits Involved in Housing Development*, the *Law on the Limited Liability Company*, the *Law on Stock Company*, the *Law on the Interest Protection of Legal Entities and Individual Proprietors in the Implementation of State Surveillance*, the *Law on Control of Currencies and Foreign Exchanges*, the *Law on the State Registration of Legal Entities*, and the *Law on the State Registration of the Rights of Immovable Properties and Related Transactions*.

2.1.3 Other related policies and laws

On April 20, 2004, the Russian Council of Federation ratified an agreement on the establishment of a unified economic space covering Russia, Ukraine, Byelorussia and Kazakhstan.

The State Foreign Economic Policies of the government of Russian Federation aims at effectively realizing the integrity with the international system of labor division and turning this process into a long-standing economic task so as to bring about structural reform to Russian economy and safeguard the interests of Russian participants in foreign economic business.

2.2 Trade administration

2.2.1 Tariff system

The tariff rate indicated in Russian Tariff Schedule is the base rate, which is to be imposed on the products imported from those countries enjoying MFNT and on imports from other countries on a double rate basis. The Russian tariff regulations provide for various preferential tariff arrangements. For example, tariff exemption is applied to imports from the members of the Commonwealth of Independent States (hereinafter referred to as CIS) signing free trade agreement with Russia and from the least developed countries. Imports from countries enjoying the General System of Preferences shall be subject to tariff rates that are 75% of the base rate. China is among countries enjoying the General System of Preferences.

Presently, the average rates of Russian import duties range from 10.5% to 11%. Ad valorem duties are applied to the great majority of imports while specific duties and compound duties to limited number of goods. During the recent years, the variety of the goods subject to compound duties has been gradually increasing.

Russia eliminated its export duties in July 1996 but restored imposition as of January 1999 on the following products: coal, petroleum, natural gas, processed oil, certain chemicals, non-ferrous metals, timber, leather, bean, rapeseed, sunflower seed and certain fishery products, etc.

2.2.2 Import administration

According to Gazette No. 21-154 issued in May 1997 by the Ministry of Economic Development and Trade, Russia prohibits, within the territory of the Russian Federation, the sale of imported food without specifications in Russian as of May 1997, and the same measure is applied to other imported products as of July 1998, according to Gazette N01-15/18803 issued by the State Commission on Tariffs of the Russian Federation in October 1998.

In December 1998, Russia promulgated the Regulations on Attaching Authenticity Labels, Statistic Information Labels on Products and Commodities and the Procedure for Collecting Data of Circulation. The document stipulates that as of July 1999, products and commodities listed in the annex to the regulation are prohibited to sell on Russian market without authenticity and statistic labels. The first group of products listed includes mainly alcoholic products, audio-visual products and computer equipment.

2.2.3 Export administration

Export administration is exercised in Russia mainly by the measures including export quotas and licensing.

2.2.3.1 Quota and license administration

The export quota and license administration is applied to the following three categories of products. The first category includes products subject to quantitative restriction under relevant international agreements, such as textile products, certain ferrous metal articles and carborundum; the second includes certain special products, for example, wild animals, pharmaceutical materials, decipher equipment, weapons and dual-use products (or products for both military and non-military purposes), nuclear materials and related installations, precious metals and gems, ore and materials for paleontological collection, semi-gem and related manufactures, anaesthetics, tranquilizers, toxicants and information on energy; and the third includes products in great demand on domestic market. For example, the Russian government decided in October 1998 to apply license administration (without quantitative restriction) on exports of unprocessed (bovine, ovine and other animal) hides and oil producing seeds (sunflower seed, rapeseed and bean) as of November 1998. The allocation of export quota is mainly through tender invitation and public sale. Exporters can obtain additional quota according to their export performance when there are quotas unused. The Special Representative's Office under the Ministry of

Economic Development and Trade stationed in different localities is responsible for issuing export license.

2.2.3.2 Supervision over export of dual-use products

The Russian government promulgated in October 1996 the Regulations on Supervising the Export of Dual-Use Products and Technologies. According to the document, exporters should apply for export license prior to the exportation of dual-use products and technologies. The Russian competent authorities shall examine if the related exportation conform to the international obligations that Russia is committed to.

2.2.3.3 Export contract registration

It is required that all import and export contracts for transactions exceeding US$50,000 be registered as of October 1996. The Special Representative's Office of the Ministry of Economic Development and Trade stationed in different localities is responsible for the registration.

2.2.3.4 Harmonized certificate inspection on exports

Compulsory certificate inspection on the quantity, quality and price of exports came into force as of January 1, 1996. It is required that certificates for export commodities, especially important strategic raw materials, be inspected at the place of shipment to check the consistence of the quantity and quality with what is stated on the customs declaration and the justification for the pricing. The inspection agency shall issue an "Inspected" certificate to the exporter after the inspection. The Customs will not release the exports without the "Inspected" certificate. The requirement is no longer compulsory as of March 1996. Due to technical reasons, the Harmonized Certificate Inspection has not yet been comprehensively implemented. In practice, the inspection is conducted only on such exports as petroleum, processed oil, natural gas, coal, ferrous and non-ferrous metals, timber and fertilizers of ore origin.

2.2.3.5 Administration over exports of processing trade

Processing of imported materials and processing of locally purchased materials solely for export is classified as processing trade and subject to relevant administration. Products of processing trade enjoy certain tax incentives on exportation.

2.2.4 Other Related Administrations

In addition to tariff, import and export administrations, other relevant governances in Russia include:

2.2.4.1 Customs Monitoring

As of January 1, 2004, the amended Customs Code comes into effect, which further streamlines the customs monitoring procedures and improve the efficiency of customs clearance. Meanwhile, the number of relevant legal documents has been brought down from 3000 to 100.

2.2.4.2 Taxation

Russia imposes consumption tax and VAT on imports and exports.

As of February 1993, Russia imposes consumption tax on selected imports regardless of their sources. Currently, the taxable products include wines and alcohols, cigarettes, gasoline, jewelry, and automobiles.

Consumption tax is also levied on selected exports including petroleum and natural gas, as well as those exports under barter contracts. On the other hand, exemption of consumption tax is applied to the goods to be exported to non-CIS countries, and to the exports to Estonia, Latvia and Lithuania, the payment for which is settled in non-freely-convertible currencies.

Imports from non-CIS members are subject to VAT as of February 1993. The taxable basis for VAT at importation is the sum of the price declared at the customs, import duty and consumption tax. The rate is 20%, while 10% for selected food and children's articles. The rate has been brought down to 18% as of January 2004. In addition, VAT is to be levied on the added value accruing in processing and sale of the imports within Russian borders.

Exports to non-CIS countries are exempted from VAT, but this tax is to be levied on exports to CIS members: 20% for ordinary exports and 10% for selected food and children's articles.

2.3 Investment administration

Russia's Foreign Investment Law definitely provides that, unless otherwise specified by the laws of Russian Federation, the statutory treatment for foreign investors within the boundaries of Russia shall not be less than that enjoyed by Russian investors. In addition, Article 9.2 stipulates that foreign investors and foreign-funded business firms that participate in those priority investment projects are entitled to special favorable treatment and legal safeguards that are devised to guarantee the stability of the investment environments so that they will not be affected during a certain period of time by the modifications to Russian laws and regulations.

According to Article 1.3 of The Rural Land Circulation Act, foreign individuals or companies possessing 50% or more of legal capital may lease farming land for a term of not more than 49 years.

It is stipulated by the Taxation Code of the Russian Federation (Part II) that the rate of profit tax be reduced to 24% and the VAT to 18% and that various social payments (medical insurance fees, unemployment insurance fees and endowment insurance fees) be combined into the unified social tax, the rate of which is to be reduced from approximately 40% of the total sum of a firm's payroll to 35%.

2.4 Competent authorities

2.4.1 The competent authorities concerned mainly include:

2.4.1.1 The Ministry of Economic Development and Trade of Russian Federal Government

The Ministry of Economic Development and Trade is the competent authority responsible for trade and investment administration in the government of the Russian Federation, and it is responsible for the study, formulation and implementation of unified foreign economic policies, exercising macro-control over foreign economic activities, maintaining order in foreign trade, and attracting foreign investment.

2.4.1.2 The Commission for Protective Measures for Foreign Trade and Tariff Policies of the Russian Federal Government

Headed by the Finance Minister or Trade Minister, this Commission is mainly responsible for handling anti-dumping cases and deciding whether to take counter measures accordingly.

2.4.1.3 The Commission for Investment Consultation of the Russian Federal Government

Founded in 1994, this Commission is made up of the representatives from foreign firms that have large-scale investment projects in Russia. Directly subordinate to the Russian Federal Government and immediately under the leadership of a Vice-Premier, the Commission promotes the absorption and utilization of foreign investment, conducts regular discussion and analysis and puts forward consultative proposals for the reference of Russian government in its formulation and adjustment of the policies for utilizing foreign investment.

2.4.1.4 The Russian Federal Assets Foundation

The Foundation is a special financial institution under the federal government, responsible for providing services for foreign investors involved in the process of Russia's privatization and helping solve relevant problems. Currently the Foundation has offices in the financial markets in Europe and the U. S., specializing in providing information and consultation services to foreign investors who are interested in Russian corporate stocks and non-movable properties.

2.4.1.5 The National Bureau of Registration under the Ministry of Justice of

the Russian Federation

Founded in June 1994, the Bureau was put under the Ministry of Justice of the Russian Federation in September 1998. Its functions include implementation of the national policies regarding statistics and registration for business entities, foreign representative offices in Russia and Russia's foreign investment, handling the state registration for foreign-funded energy complexes and enterprises with foreign contribution of more than Rubles100,000, handling the appointment formalities for foreign businesses' representative offices in Russia and related registration, compiling and editing the basic documents regarding the regulations and methods related to statistics and registration.

2.4.2 Government-authorized organization

The Chamber of Industry and Commerce of the Russian Federation is an independent non-governmental and non-commercial organization established according to the Constitution of Russia and the Act on The Chamber of Industry and Commerce of the Russian Federation, having branches throughout the country. Its aims are to cooperate with chambers of industry and commerce in all the parts of Russia so as to promote the economic development of Russia and Russia's participation in the global economic integration and to enhance the economic, trade, and scientific and technological relations between the enterprises of Russia and other countries. This organization has and exercises the right of arbitration, and under it there is a bureau of registration which is responsible for approving the applications for registration submitted by representative offices of foreign companies and conducting personnel registration for the said offices, issuing permanent residence permit, and handling formalities involved in the extension of the validity of the said permits and the duration of residence.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

In April 2004, the State Customs Committee of the Russian Federation issued an order on the ground of the existence of discrepancies between customs statistics between Russia and China and the necessity of rectifying the order of importation from China. According to the order, intensified surveillance must be exercised over customs declaration for daily consumer goods in 21 categories to be imported from China. The list includes fur products, textile material and manufactures, carpeting, knitwear, garments and related accessories, footwear, headwear, umbrellas, toys, etc.

As of April 2004, Russian customs increases its assessment by 30% on all imports from China regardless of their categories, and imposes an additional ad valorem duty of US$3.5 per kilogram.

In June 2004, another order was issued by the State Customs Committee that ad valorem duties of US$5 to US$30 per kilogram be levied on leathers and luggage imported from China.

The implementation of the above-mentioned discriminatory measures has obstructed importation of Chinese goods and caused Chinese exporters relatively considerable losses.

3.2 Import restrictions

3.2.1 Import bans

As of September 2004, Russia bans importing animal products from China and re-exporting Chinese animal-based products through Russia to third countries before a negative confirmation is established on the alleged animal epidemics in China. In spite of the fact that a Sino-Russia joint expert group conducted a survey during July and August in the areas where mouth-and-foot disease was believed to spread and that, as a result, it is proved that no such epidemics prevail in China, so far there is no sign of lifting the ban by Russians. China hopes that Russia will suspend the ban at an early date.

3.2.2 Import licensing

Russia places the “experience requirement” on importers of alcoholic beverages. Importers applying to import alcoholic products shall have at least one-year experience in selling alcoholic products on the local market of Russia.

On the other hand, exports of chemical fertilizers, rice, maize and alcoholic products from China to Russia are subject to quota administration, and the application procedures for import quotas of rice and maize are particularly complicated.

3.2.3 Import quota

In October 2003, the Russian government issued two decrees entitled The Implementation of Special Safeguards on Poultry Meats and Import Adjustment of 2004 on Bovine and Swine Meats. According to the decrees, poultry, bovine and swine meats shall be subject to the national quotas during 2004. The quotas, however, were mostly granted to the U.S.A. and some European countries, while China’s portion was very limited.

In January 2005, the Russian government announced the aggregate volume of quota and related specific quota volumes by countries for meat imports during 2005. The aggregate volume is as follows: poultry meat 1.05 million tons (including U.S.A., 771,900 tons; E.U., 205,000 tons; Paraguay, 5,000 tons; other countries 68,100 tons.); swine meat 467,400 tons (including U.S.A., 53,800 tons; E.U., 236,000 tons; Paraguay, 1,000 tons; other countries, 176,600 tons); frozen bovine meat 430,000 tons (including U.S.A., 17,700 tons; E.U., 339,700 tons; Paraguay, 3,000 tons; other countries 69.600 tons); fresh and chilled bovine meat 27,500 tons (including E.U., 27,000 tons; other countries 500 tons). Obviously, China is among the "other countries", so the quantity of quota is very limited. China therefore highly concerns about this problem.

3.3 Barriers in customs procedures

In customs valuation, the Russian authorities establish a high minimum price level for Chinese clothing and household electric and electronic appliances. Meanwhile, the Russian Customs maintains the requirement that imports from China to be transported by rail to Moscow or/and Moscow Province be delivered to the designated 13 railway stations for customs clearance, where the relevant procedures are complicated and efficiency is poor, thereby constituting yet another obstacle for Chinese exports. This requirement therefore is of adversely implication to exports from China, one of the major exporting-country that heavily depends on railway transportation to carry export commodities to Russia.

3.4 Discriminatory fees and taxes on imports

In addition to tariffs, Russia imposes an 18% VAT on imports, a 10% VAT on foodstuffs and children-use articles, 25%-90% consumption taxes on such luxuries as alcohols, alcoholic beverages and beers, cigarettes, jewelry, automobiles, and gasoline. Meanwhile, importers have to pay a fee for clearance formalities at 0.15% of the invoice value, 0.1% of which shall be paid in rubles and 0.05% in the settlement currency. The Chinese side hopes that Russians will gradually remove this discriminatory measure against imports.

3.5 Technical barriers to trade

Currently, Russia still maintains various mandatory decrees and departmental regulations affecting the application of technical standards, of which many are not in conformity with international standards.

For example, the Russian requirement is still in effect that fire retardant bricks imported from China be subject to radiation inspection. The inspection not only consumes both time and human resources but also places additional financial burdens on Chinese exporters. Russia is the only country all over the world maintaining such a requirement.

Besides, Russians still implement intricate registration procedures against herbal medicines imported from China.

Russia's certification system has affected importation of foreign commodities. For example, as the inspection of telecommunication equipment shall concurrently conform to both the standards of the Commission for National Standards and the Ministry of Telecommunication, it takes 12 to 18 months to complete the whole inspection procedures. Russians are reluctant to accept the Chinese certification, so manufacturers of pharmaceuticals and wines and alcohols have to apply for overlapped accreditation, which has brought about unnecessary burdens on Chinese exporters concerned.

3.6 Sanitary and phytosanitary measures

According to Russian requirement, the processing facilities of Chinese meat exporters shall be inspected by designated Russian veterinarians on an individual basis and get their approval prior to exportation. Besides, the exported meat shall be re-inspected, and the official inspection certificate issued by the competent Chinese authority shall become valid only after being endorsed by Russian veterinarians. Ignoring the agreement reached by both sides that the Russian veterinarian's endorsement is required only for Chinese certificates issued for pork and beef, the Russian side demands that the measure shall apply to other products such as other animal meat, poultry meat, casing, etc. This measure challenges in effect the authority of the certificates issued by Chinese veterinarians. Russia's continued application of this measure will only place Chinese exporters in difficulties.

Meanwhile, Russian standards and procedures for certifying imports and the formalities taken by Chinese exporters in applying for Russian certification are intricate and time-consuming, frequently affecting normal trade activities. In addition, Russians will impose additional special demand for inspection on some Chinese imports, thereby bringing about adverse influence on normal trading between Chinese and Russian businesspeople.

3.7 Trade remedies

3.7.1 Anti-dumping measures

Until the end of September 2004, Russia had launched two anti-dumping investigations against imports from China, the products involved being bearings and monocrystalline silicon.

3.7.2 Safeguards

From August 2000 to the end of December 2004, Russians have initiated eight safeguards-related investigations against Chinese imports.

3.8 Export restrictions

Since early 1999, the Russian government has been imposing the provisional export duties on selected principal exports. The commodities subject to export duties include energy products such as coal, petroleum, and natural gas, non-ferrous metals, timbers, leathers, soybeans, rapeseeds, sunflower seeds and some selected foods.

3.9 Barriers to trade in service

3.9.1 Telecommunications services

The Law on Communications effective as of January 2004 stipulates provisions for the alternative telecommunications that connect the network of selective operators and the network of Russian public telephone, by which both the contracts and expenses with regard to alternative telecommunications are placed under the tight regulation of the Federal Ministry of Telecommunications. The Law, however, has not enhanced the transparency of procedures of license issuance. The license is valid for only 5 to 10 years, during which time the telecommunications operators are unlikely to gain returns on ₤ investment.

3.9.2 Construction Services

It is stipulated that only natural persons with Russian nationality can obtain the permit to conduct construction design. Only by jointly providing service with Russian citizens or permitted Russian commercial institutions can foreigners provide construction 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 Educational services

Chinese parties are not allowed to provide services of higher education whether through cooperation or in the form of a joint venture. Besides, Chinese teachers employed by Russian educational institutions find it highly difficult to get the resident permit.

3.9.4 Financial Services

The Law on Banks and Banking Activity of 1996 permits foreign banks to establish subsidiaries in Russia. The law allows the Central Bank to impose a ceiling on the total amount of foreign bank capital calculated as a percentage of the total bank capital in Russia. Since 1997, the Central Bank has required all banks in Russia to have a minimum of Euro 10 million in capital and to keep the percentages of Russian citizens in their clerks and managers at the minimum of 75% and 50% respectively.

3.9.5 Tourist services

Chinese companies are not allowed to run wholly owned tourist companies in Russia.

3.9.6 Transport services

Russia has not yet accorded national treatment to Chinese companies that provide cross border road transportation services. The Russian Ministry of Transportation stipulates that transportation of Chinese products shall be subject to the escort fee. The fee is the premium paid for transportation insurance, so no compensation will be given in case of loss or damage. When a dispute arises, it has to be settled between the cargo owner and the transportation agent. Russian authorities impose on Chinese vehicles undertaking passenger and cargo transportation unreasonable restrictions regarding in respect of the destination in Russia, and the number of passengers or the quantity of goods that they carry within the Russian territories during their trip back to China. Besides, Chinese-funded companies engaged in cargo transportation, forwarding agency, warehouse service and logistics have not been granted national treatment.

The market for passenger and cargo transportation by railway has not yet been opened. Only Russian citizens are allowed to provide maintenance service to railway transportation equipment.

No joint venture is allowed to engage in cargo handling, container yard operation, shipping agency, or customs clearance.

3.9.7 Other barriers in the service sector

Chinese citizens and companies are not allowed to set up enterprises in Russia engaged in system integration and software development.

Chinese service providers in Russia find the procedures involved in exchange and remittance of foreign currencies extremely complicated and the relevant charges unreasonably expensive.

Besides, they also complain that Russia's border procedures for the entry of Chinese service providers in Russian are intricate, costly and time-consuming. The term of the work permit granted to Chinese laborers lasts for only 11 months while the visa allows single entry.

4 Barriers to investment

The major hindrance to foreign investment in Russia lies in the fact that the numerous technical requirements specified in Russian laws and regulations, which have led to discretional enforcement. Besides, as foreign investors have frequently encountered restrictions formed by a series of policies of local governments in such respects as recruitment, corporate purchase and necessary infrastructure development, their objectives have hardly been realized.

The Foreign Investment Law of the Russian Federation stipulates that investment projects with foreign participation of over 10 percent, registered foreign capital of over $4.1 million and a total investment of over $41 million be protected from unforeseeable changes in the tax regime or new limitations on foreign investment.

However, this stipulation only benefits few major foreign investors but in effect still hinders small and middle foreign investors. The lack of corresponding tax and customs regulations means that any protection afforded to investors by this clause is only theoretical.

The Law Governing Agreements on Product Distribution of the Russian Federation specifies provisions for exploration of energy sources and mineral products: the parties to an agreement on product distribution are Russian governments and foreign investors. As there are federal government and local government in Russia, investors have to coordinate with governments at both levels. Each agreement of such a nature shall be turned into an investment project by the Duma and be ratified by a federal act specially issued for this purpose. Hence, the approval procedures become complicated because of overlapped governance.

China therefore hopes that Russia will further improve its investment environment.

The Philippines

1 Bilateral trade and investment

According to China Customs, the bilateral trade volume between China and the Philippines in 2004 reached US$13.33 billion, up by 41.8% year on year, among which China's export to the Philippines was US$4.3 billion, up by 38% year on year, while China's import from the Philippines was US$9.06 billion, up by 43.6% year on year. China had a deficit of US$4.8 billion. China mainly exported mechanical electric products (electric and electronic products, semi-conductor devices), product oil, cereals and cereal powders, coal, yarn and yarn products, etc. The major imported products of China from the Philippines included mechanical electric products (electric and electronic products, semi-conductor devices, integrated circuits and micro electronic components, rectifiers and parts thereof, and inductor and parts thereof), bananas, fresh and dried fruit, nuts, product oil, etc.

According to MOFCOM, the turnover of completed engineering contracts by Chinese companies in the Philippines reached US$130 million in 2004, and the volume of the newly signed contracts was US$250 million. The volume of completed labor service cooperation contracts was US$1.42million, and that of the newly signed labor service cooperation contracts was US$20 thousand. The turnover of completed design and consultancy by Chinese companies reached US$240 thousand, and that of the newly signed design and consulting contracts was US$570 thousand.

Approved by or registered with MOFCOM, China set up 3 non-financial Chinese-funded enterprises in the Philippines in 2004 with a total investment of US$540 thousand. By the end of 2004, a total of 43 non-financial Chinese-funded enterprises had been established in the Philippines with a total contractual investment of US$16.95 million from the Chinese side.

According to MOFCOM, the Philippine investors invested in 241 projects in China in 2004, with a contractual investment of US$680 million and an actual utilization of US$230 million.

2 Introduction to the trade and investment regulatory regime

2.1 Legislation on trade and investment

Currently, foreign trade and foreign investment are subject mainly to such legislations as Tobacco Regulation Act of 2003, Retail Trade Liberalization Act of 2000, Transaction Value Act, Export Development Act of 1994, Electronic Commerce Act of 2000, Food, Drug, and Cosmetic Act, Safeguard Measures Act, Price Act, Anti-Dumping Act of 1999, Countervailing Act of 1999, the Tariff and Customs Code of the Philippines, Consumer Act of the Philippines, Omnibus Investment Code, Foreign Investment Act of 1991, the Special Economic Zone Act of 1995, the Mining Act, the Iron an Steel Act, the Build-Operate-Transfer Act, the Investment and Lease Act, etc.

2.2. Trade administration

2.2.1 Import administration

As a general principle, the Philippine authorities allow import of all products, and impose import restrictions on specific products for such exceptional reasons as public health, national security, international obligations, development and domestic industry rationalization, etc.

Import products are divided into 3 categories, namely products free to import, products restricted from import and products banned from import. Products free to import can be imported without government's pre-approval. More than 130 products, mainly agricultural products, fall within the category of restricted import, accounting for roughly 4% of total import products. Import licenses must be obtained for import of these products from the relevant government authorities. Products banned from import mainly include military weapons and ammunitions, products wholly or partly made of gold, silver or other precious metals or products made of the alloys thereof, and other products and components banned from import according to relevant Philippine laws.

2.2.2 Export administration

The Philippine government encourages export trade by adopting preferential policies towards export-oriented enterprises.

Export incentives include the simplification of export procedures and exemption of additional taxes on export. For the establishment of export processing zones, bonded warehouses and various kinds of industrial parks, incentive measures in the areas of raw materials and customs tariffs are granted by the Philippines.

Earning foreign exchange is also encouraged by the Philippine government. Except for certain products restricted from export due to national interests and subject to laws and regulations, most products are free from export restriction. In addition, the Philippine government exercises valuation regulations regarding anti-dumping and countervailing.

2.3 Investment administration

The Government of the Philippines publishes the Investment Priority Program (IPP) annually aiming at encouraging domestic and foreign investment. Special favorable treatment is adopted to separately administer the domestic and foreign investment in different categories of economic zones, export processing zones and bonded areas.

Besides, the Philippine government also has FINL, either banning excess of foreign investment or restricting the proportion of foreign investment.

In principle, foreign businesses investing in the Philippines can be divided into two categories of applying for preferential treatments or not applying for preferential treatments. Accessible areas for businesses of the former category are very extensive, covering almost all industries in the Philippines. Fields for access by the businesses of the latter category are relatively limited.

2.4 Competent authorities

The Department of Trade and Industry (hereinafter referred to as DTI) is the authority responsible for administering and steering the development of national trade and industry, foreign trade and foreign investment utilization. With focus on SMEs, its main competences include promoting and developing business, lowering the cost of doing business, trade promotion, investment promotion, training, protection of rights and interests of consumers, and being in charge of granting permits and registrations for certain businesses.

The Board of Investment (BOI) under DTI is in charge of foreign investment.

Bureau of Customs (BOC), an affiliation to the Ministry of Finance, is responsible for implementing tariff laws as well as controlling the import and export of commodities.

PEZA exercises administration over and operation of economic zones being treated as separate customs territories.

3. Barriers to trade

3.1 Tariff and tariff measures

The Philippines imposes a 30% tariff on finished automobiles and motorcycles. Executive Order 241 issued in October 2003 extended the validity of the tariff rate through 2007, which not only nullifies the original decree planning to lower tariff to 5% by 2004 but also the previous efforts of trade liberalization. The Chinese side is concerned about this and hopes the Philippine government will respond positively to promote trade liberalization.

3.1.1 Tariff escalation

In October and December of 2003, the Philippines raised tariffs of more than 1,000 products respectively, including chemical fertilizer, cement, garments, footwear, and raw materials, raising the prevailing tariff rates of 3-10% to 5-20%. In the same year, the Philippines raised the tariff of imported sugar from 65% to 80%. All these measures have seriously reduced the competitiveness of relevant Chinese products in the Philippine market.

3.1.2 Tariff quota

Some imports to the Philippines are subject to quantitative restrictions or tariff quotas. Agricultural products subject to tariff quota administration include cereal, livestock and meat thereof, sugar, potato, onion, garlic, coffee bean, tobacco leaf, corn, etc.

3.2. Import restrictions

Products subject to import licensing mainly include automobiles, tractors, cars, diesel engines, gasoline engines, motorcycles, durable consumer products, news publication and printing equipment, cement and products related to health and public security, fresh fruit and vegetables, livestock, meat and meat products.

Restrictions on the import of poultry are made through the animal quarantine certificate and import inspection imposed by the Department of Agriculture of the Philippines. Meanwhile, the Department of Agriculture only issues animal quarantine certificates to the holders of the minimum import quota certificates. As the gradual increase of the minimum import amount of some products often leads to the uncertainty of the issuance of the license, some importers are unwilling to apply for import license. The practice has resulted in barriers to the market access of the relevant Chinese products.

At present, the Philippine authorities impose quantitative restrictions on the import of rice. The import quota for rice is 224,000 metric tons for 2004. The WTO members are holding consultations on the Philippine rice quota and the Chinese government has expressed its deep concern over the issue.

3.3 Barriers to customs procedures

The Philippine government specifies that all importers or their agents should file import declarations to the Bureau of Customs (BOC). The BOC then processes these entries through its selectivity system to classify shipments as low-risk (green lane), moderate-risk (yellow lane) or high-risk (red lane). The BOC requires a documentary review of shipments channeled through the yellow lane, while red lane shipments require both documentary review and physical inspection at the port. But the operation procedures of the Philippine customs are inconsistent with rules and procedures, causing undue and costly processing delays.

3.4 Imposition of discriminatory excise tax on imported goods

The Philippine authorities impose discriminatory tax on imported liquor by levying different duties on imported liquor and domestically-produced liquor. According to the Philippine excise tax regime, the government levies 8.96 Peso/liter on liquor distilled by using the raw materials available locally while the liquor made from imported raw materials is subject to a duty varying from 84 to 336 Peso/750ml on retail price. For low alcohol-contained wine such as 14% or below, the excise tax is 13.44 Peso/liter. 26.88 Peso/liter excise tax is levied on wines with alcohol content ranging from 14% to 25%. If alcohol content of the wine is higher than 25%, the tax of the product is levied as liquor.

3.5 Technical barriers to trade

In February 2004, the Philippines formulated the draft standard for niblets which is applicable to the niblets either packed or in bulk for direct sale to users for making human food or animal fodder. The standard lays down the requirements for ZeamaysindentataL, ZeamaysinduratalI, CeritinaK. Sturt. Syn. Praecox and the other hybrid varieties thereof. The Chinese side will pay close attention to the implementation of the above two standards.

According to the Philippine government, local inspection standard for country of origin must be in compliance with Philippine national standards for 75 products, including cosmetics, medical equipment, lighting fixtures, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. Labeling is mandatory for textile fabrics, clothing, linens and garment accessories. The Chinese side is concerned over keeping of the consistency of the said standard with that laid down in the WTO TBT Agreement.

3.6 Sanitary and phytosanitary measures

According to the Philippine regulations, import license of plant quarantine issued by the Department of Agriculture of the Philippines must be obtained in order to export products to the Philippines. Foreign slaughterhouses have to be authorized by the Department of Agriculture of the Philippines before they can export their meat and poultry to the Philippines. All meat products to be exported to the Philippines should have international animal quarantine certificate issued by the animal quarantine department of the exporting country. Only the importers who have registered with the Department of Agriculture of the Philippines and have gained qualifications are allowed to import meat and poultry products. Before dispatched to the Philippines, relevant products must get the import license of animal quarantine issued by the Philippine animal quarantine bureau. Customs release can not be made unless the products are quarantined by the animal quarantine bureau and obtain the import license. Within 48 hours of customs release, the state examining commission on meat products reserves the right to sampling any meat and poultry products transported by ship. The Chinese side urges the Philippine side to increase transparency of the implementation of the regulation so as to facilitate normal trade.

With regard to the Chinese export of hybrid rice seeds to the Philippines, the Philippine government has worked out strict standards of plant quarantine for entering the customs. According to the standards, before the issuance of the import license and actual import, the exporter should arrange the Filipino quarantine officers to make an inspection tour to the country of origin through the department of plant quarantine of the Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China to conduct clarifying work, ensuring that the seeds do not contain any weeds or other adulterants. The certificate should be issued by China National Seed Health Approval Organization and attached with phytosanitary certificate issued by the Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China and weed analysis certificate issued by China National Seed Health Approval Organization. Upon arrival in the Philippines, the products should be subject to examination by the plant quarantine bureau of the Philippines. If anything unusual found, certain measures will be taken to handle the whole lot of products. The Chinese side holds the view that the complex and cumbersome procedures for the inspection of hybrid rice seeds adopted by the Philippines have led to barriers to normal trade. The Chinese side suggests that the cumbersome procedures be properly modified based on relevant inspection standards by the Philippine competent authorities.

As of January 1, 2005, the Philippines started to partially implement Guidelines for Regulating Wood Packaging Material in International Trade and will fully implement the said standard as of June 2005. According to the standard, all wood packaging materials entering the Philippines should be treated according to the standard and be labeled. The Chinese side will pay further attention to the implementation of the standard.

3.7 Trade remedy measures

By the end of 2004, a total of seven cases regarding trade remedy measures had been initiated against China by the Philippines, of which four are anti-dumping cases while three are related to safeguard measures. In April 2004, the Philippine Tariff Commission publicized the research report on the injury done to the industry due to the imports of printed glass, float glass and mirrors to the Philippines and decided to take safeguard measures. In the same month, the Philippines decided to extend the anti-dumping measures against Sodium Tripoly Phosphate imported from China for three years. In October 2004, special safeguard measures were taken by the Philippines against imported onions from China. In November 2004, the Philippine Department of Trade and Industry decided to continue its three-year safeguard measures against imported tiles. The safeguard measures which started in 2002 should have been eliminated in January 2005. The extension will continuously affect tile export from China to the Philippines. The Chinese side is concerned about the impact on the export of the products in question from China caused by trade remedy measures adopted by the Philippines.

3.8 Government procurement

The Philippine government requires counter-purchase if government-owned or controlled institutions or companies want to purchase goods worthy of more than US$1 million and that foreign suppliers should be obliged to purchase Philippine goods worth more than half the value of its supply; otherwise they shall be fined.

The Law on Government Procurement promulgated in January 2003 grants preferential treatments to the purchase of domestically manufactured finished goods and raw materials. Contractors for infrastructure projects must be at least 60 percent Filipino-owned. Such government procurement regulations constitute discrimination against foreign enterprises including the Chinese ones. The Chinese government will pay close attention to it.

3.9 Export subsidies

In December 2003, the Philippines started to implement the export incentives program for domestically manufactured finished vehicles. According to the plan, any auto manufacturer will be entitled to subsidies equivalent to US$400 per unit exported for year one to two of the program, US$300 for year three, and phased down to US$100 by year five. The export subsidy measures have enhanced the competitiveness of the relevant Philippine products. The Chinese side is concerned over keeping of the consistency of the export subsidy measures of the Philippineswith the Agreement on Subsidies and Countervailing Measures of the WTO.

3.10 Barriers to trade in services

3.10.1 Banking

Ten foreign banks are permitted to open full service branches in the form of wholly-owned subsidiaries in the Philippines. Foreign branch 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 six additional branches.

Regulations in the Philippines require that 70% of the total asset and 50% of the total capital of any bank in the Philippines be held by the local party. It is also required that the subsidiary of foreign banks in the Philippines shall not take from or provide to its mother bank and/or other banks loans more than four times of its permanent capital.

3.10.2 Insurance

Foreign-funded insurance companies are not allowed to be engaged in insurance business of government-funded projects. The policy was extended to cover both public and private BOT projects in 1994.

3.10.3 Securities and other financial services

According to the Philippine laws, foreign equity in securities underwriting and insurance companies is limited to 60 percent. Membership on a board of directors of foreign-invested mutual funds are limited to Philippine citizens..

3.10.4 Communications

The Philippines does not provide market access for satellite telecommunications services and limits foreign ownership of telecommunications firms to 40 percent.

3.10.5 Advertising

The Philippine law limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers of advertising agencies must be Philippine citizens.

3.10.6 Public utilities

Relevant laws in the Philippines stipulate contractors of infrastructure works (water, electricity, communications, and transportation systems) must have special license of public utilities and that the Philippine ownership should exceed 60%. Contractors of other projects (i.e. BOT projects) are not subject to such restrictions, but foreign contractors must have relevant qualification certificate issued by the competent authorities of their own countries.

3.10.7 Professional services

The Philippine Constitution reserves the practice of licensed professions of law, medicine, nursing, accountancy, engineering, architecture, customs brokerage to Philippine citizens. The Philippine law also requires that preference be given to Philippine citizens in the hiring of consultants and other professionals necessary for the implementation of projects funded by foreign assistance.

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 Retailing

According to Philippine legislations, retail companies with a registered capital of less than US$2.5 million shall be operated by Philippine citizens. The Retail Trade Act of the Philippines provides investors in the retail sector face a reciprocity requirement, namely only nationals from, or juridical entities formed or incorporated in countries that allow the entry of Filipino retailers, shall be allowed to engage in retail trade in the Philippines.

3.10.10 Express delivery service

Foreign air express couriers and airfreight forwarding firms must either contract with a 100 percent Filipino-owned business to provide delivery services or establish a domestic company with a minimum of 60 percent Philippine-owned equity.

4. Barriers to investment

The 2004 Investment Priority Plan (IPP) of the Philippines stipulates if foreign auto manufacturers want to be granted tax preferences, their investment must reach US$100 million with a minimum export of 10,000 complete vehicles per year, and that the minimum investment amount for motorcycle manufacturers is US$4 million with a minimum export of finished motorcycles of 30,000 per year. These regulations have put up barriers to the access to relevant fields by foreign investors. The Chinese side will pay close attention to it.

The Republic of Korea

1 Bilateral trade relations

The Republic of Korea (hereinafter referred to as ROK) was the fifth largest trading partner of China in 2004. According to the China Customs, the trade volume between China and ROK in 2004 hit US$90.07 billion, up by 42.5%, among which China's exports to ROK were US$27.82 billion, up by 38.4%, while China's imports from ROK were US$62.25 billion, up by 44.3%, with a deficit of US$34.43 billion on China. China's main exports to ROK included clothing and related accessories, yarns, textile fabrics and converted products, chemicals, steel and converted products, corn, coal, aluminum and converted products, television spare parts, spare parts of radio sets and wireless telecommunication equipment, aquatic produce, marine produce, integrated circuit and micro-electronic parts, etc. On the other hand, China's main imports from ROK included integrated circuits and micro-electronics parts, steel and converted products, plastics and converted products, mobile telephones, television parts and accessories, radio sets and spare parts of wireless telecommunication equipment, consumer electronic products and components, organic chemicals, spare parts for automatic data processing equipment, copper and converted products, color display tubes, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts in ROK by Chinese companies recorded US$100 million in 2004, and the amount of the contracts signed in 2004 was US$170 million; the amount of completed labor service cooperation contracts US$280 million and that of the newly signed in 2004, US$230 million. By the end of 2004, the accumulated turnover of engineering contracts completed by Chinese companies was US$ 220 million, with that of all the contracts signed reaching US$410 million, and the amount of the completed labor service contracts had reached US$2.05 billion, with that of all the contracts signed amounting to US$2.57 billion.

In 2004, 19 Chinese funded non-financial enterprises, which had either been approved by, or submitted relevant applications for approval of, the MOFCOM, were set up in ROK, with a total contracted Chinese contribution of US$610 million. By the end of 2004, there were altogether 91 Chinese-funded non-financial enterprises in ROK, with a total contracted contribution of US$910 million.

According to MOFCOM, Korean-invested projects in China numbered 5,625 with the contracted amount hitting US$13.91 billion and actually contributed US$6.25 billion. By the end of 2004, the number of Korean direct investment projects in China had reached 32,753 and the amounts of the contracted investment and actual contribution stood at US$50.56 billion and US$25.94 billion respectively.

2 Introduction to the ROK trade regime

2.1 Legislation on trade and investment

ROK laws related to trade and investment mainly include Foreign Trade Law, Foreign Investment Promotion Law, Tariff Law, Law Governing Trade in Foreign Exchanges, etc., among which Foreign Trade Law and Foreign Investment Promotion Law serve as the basic legal regulations in the fields of trade and investment.

In addition, the Ministry of Industry and Resources announces from time to time specific policies and measures regarding foreign trade and investment in the Import & Export Gazette, the Comprehensive Gazette of Import & Export, and the Special Gazette of Import & Export published either regularly or irregularly.

The Import & Export Gazette is an important instrument by which the ROK government directly regulates imports and exports. The information contained in this publication includes the diversity and quantity of the products under import restrictions, mainly the key strategic products and certain agricultural products.

The Comprehensive Gazette of Import & Export publishes restrictive measures on import/export formulated according to the Foreign Trade Law and the special laws and regulations developed by competent authorities of various sectors concerning import and export administration over certain products. The restrictions published in this Gazette are mainly applied in consistence with WTO regulations to those commodities that are either likely to harm human life, health and safety, or to pollute environment, or contravene international conventions.

The Special Gazette of Import & Export is a management tool used for certain special products that are not covered by the above-mentioned two gazettes but are subject to specially-designed import/export procedures The products involved are mainly those that, after due consultations, the Ministry of Industry and Resources and other competent authorities consider it necessary to impose restrictions on.

In principle, no import or export restrictions are placed on the products that are not covered by the above-mentioned three Gazettes.

2.2 Trade administration

According to the Foreign Trade Law amended on February 8, 1999, ROK foreign trade is fully liberalized as of January 1, 2000. All ROK individuals and companies could be engaged in foreign trade activities. In order to facilitate Customs statistics, the government encourages the implementation of the so-called “Fixed Coding System for Foreign Trade Sector”, by which those engaged in foreign trade are required to apply to the Korean Trade Association for a fixed number, which should be provided when handling customs clearance.

In principle, importation is liberalized in ROK, but ROK government implement the restrictions on the diversity, quantity, amount and locality of the trading partners as well as the licensing procedures for imports and exports by issuing Import and Export Gazette, Comprehensive Gazette of Import and Export, and Import and Export Gazette for Strategic Goods.

The registration for foreign trading enterprises, commodity tendering, licensing, quota distribution, certification of origin are handled by non-governmental trade associations. Importation of the goods subject to quantitative restrictions or special administration shall be recommended by related trade associations.

2.3 Investment administration

On September 16, 1998, the Foreign Investment Promotion Law and its implementing rules were published and an all-round amendment was made on April 7, 2001. Full liberalization and incentive policies are applied to foreign direct investment, and the restrictions in the investment area have been considerably liberalized.

Basically the declaration system is applied to the administration of foreign investment. As to those sectors that restrict foreign investment, the ROK government's main restrictive measure is to set the ceiling limitation for shareholding ratio of foreign investors. Besides, the related administration bodies implement the market access approval system over foreign direct investment in those sectors subject to national protection and state monopoly. All these measures will be collected and then declared by the Ministry of Industry and Resources in the Comprehensive Gazette of Foreign Investment each year.

2.4 Competent authorities

The Ministry of Industry and Resources is in charge of the formulation and implementation of ROK trade and investment policies, while each sectoral administration body is responsible for formulating specific policies and handling specific matters within its jurisdiction.

The Ministry of Foreign Affairs and Commerce is the policy maker for multilateral and bilateral trade as well as the coordinator and organizer of negotiations in foreign trade. The Ministry of Finance and Economy takes charge of formulating and implementing policies for foreign exchanges and related taxation. The Ministry of Agriculture and Forestry makes and carries out the trade policies covering agricultural, forestry and animal products as well as exercises administration over the importation and exportation of the said goods. The Ministry of Ocean and Aquatic Industry is in charge of formulating and implementing trade policies covering aquatic products and regulating aquatic imports and exports. The Ministry of Information and Communications is responsible for making and applying the policies guiding the trade in information and telecommunication products as well as the trade in related services, the open policies and incentive policies for foreign investment in the sector under its administration. The Ministry of Health and Welfare is in charge of formulating and implementing the policies regarding the trade in medicines and health care products, and regulating the importation and exportation of the related products. The Ministry of Culture and Sightseeing is responsible for the formulation and implementation of the trade policies regarding cultural products and related market liberalization as well as regulating the importation and exportation of cultural products.

2.4.1 Ministry of Industry and Resources

The Ministry of Industry and Resources works as the core competent authority for trade and investment administration, responsible for the formulation of and amendment to the laws, regulations, decrees and policies, including the Foreign Trade Law and Foreign Investment Promotion Law, concerning international trade and foreign direct investment, and administers the corresponding regulation. Its functions also include promotion for export and encouragement for foreign investment, enforcement of measures protecting domestic market from injuries incurred by imports, control on export and import of strategic materials and products related to national defense and sophisticated technology, and development of international industrial and scientific cooperation. In addition, this ministry exercises its guidance and surveillance over non-governmental organizations and trade associations such as Korean Trade Association and Korean Chamber of Commerce and Industry.

2.4.2 Trade Commission of ROK

The Trade Commission of Korea is subordinated to the Ministry of Industry and Resources. The Commission is mainly responsible for implementation of trade remedies including anti-dumping, countervailing and safeguard measures, and investigation of unfair trade activities that disturb trade order and recommendation for penalties accordingly.

2.4.3 Department of Customs

The main functions of the Korean Department of Customs include enhancing the facility of trade, cracking down smuggling, stopping illegal trade in drugs and firearms, implementing international conventions on trade in hazardous chemicals and species of wild animals and plants that are on the verge of extinction, prohibiting frauds in the use of the certificate of origin and infringement on intellectual properties, all-around checking illegal transactions in foreign exchanges, and combating money laundering.

2.4.4 Other relevant organizations

2.4.4.1 Korea Trade-Investment Promotion Agency (KOTRA)

Korea Trade-Investment Promotion Agency (KOTRA) was established in 1962 by the Korean Government with the aim of trade and investment promotion. KOTRA is a non-profit organization directly under the guidance and supervision of the Ministry of Industry and Resources, funded by national budget. The Chairman of KOTRA is appointed by the Korean President upon nomination of the Minister of Industry and Resources.

2.4.4.2 Korean Trade Association

Founded in 1946, this is a non-profit non-governmental organization. It became an official member of the World Trade Center and has 86,000 member enterprises. It is the largest economic organization in the sector of foreign trade in ROK. Its services include registration for foreign trading enterprises, trade intermediacy, survey of overseas markets, introduction of both related international and domestic laws and regulations, various special consultations, etc.

2.4.4.3 Korean Small-and-Medium-sized Enterprises Development Society

This organization is subordinate to Korean Department of Small-and-Medium-sized Enterprises and operates on governmental financing. In addition to providing various services for the development of Korean small-and-medium-sized enterprises, it give active supports to export expansion of small-and-Medium-sized enterprises, promotes their international cooperation and guides foreign investment in Korean small-and-medium-sized enterprises.

2.4.4.4 Korean Chamber of Commerce and Industry

The is the largest and oldest non-governmental comprehensive economic entity ever established in ROK. Its membership covers nearly all the large, medium-sized and small enterprises in the industrial and commercial sectors throughout ROK. It operates mainly on the membership fees voluntarily paid by its members. Its chief business items in economic, trading and investment activities include enhancing international non-governmental economic cooperation, promoting export and encouraging foreign investment, and safeguarding the legitimate rights and interests of its members.

2.4.4.5 Korean Export Insurance Corporation

The Korean Export Insurance Corporation is a non-profit insurance institution founded under the Export Insurance Law to provide export risk insurance to exporters. It is funded wholly by national budget, and its operation is subject to the supervision of the Ministry of Industry and Resources.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

The average level of tariff in ROK is under 8%. In the negotiations of the Uruguay Round, ROK was committed to tariff bindings of over 91.7% of its tariff items.

3.1.1 Regulatory duties

According to the Tariff Law, a regulatory duty lower than 100% is, in addition to the basic tariff, applied to the importation of agricultural, forestry, animal and aquatic products whose counterparts are weak in domestic competition or whose importation is likely to result in the disruption of domestic market or injure related domestic industries, or to the products that are subject to provisional protection on such reasons as environmental protection, domestic consumers' interests and the balanced development of domestic industries. Annual regulatory duties schemes are published in the form of Presidential Order after the review of the Ministry of Finance and Economy.

In 2003, 23 products are subject to regulatory duties, including 22 involving Chinese imports. On December 8, 2003, Korean Tariff Review Committee examined the bill entitled The Regulatory Duties and the Application of Elastic Downward Adjustment Tariff, which was announced as a Presidential Order after the parliamentary ratification, and came into effect on January 1, 2004. According to the bill, the regulatory duties are canceled on spun silk, silk fabrics, cotton fabrics and cotton yarns and cut down by 3%-5% on live porgies and perches, frozen squids and inkfish, tricholoma, and bean sauce pies. Among the 20 products subject to the regulatory duties, 11 products including live perches, tricholoma, shrimp sauce, starch noodles, bean sauce pies and blended condiments including chilly sauce are totally or mostly Chinese imports in which Chinese manufacturers enjoy competitive advantages.

The Chinese side holds that both the number of products subject to the reduced duties and the reduced level are quite limited and that the duty adjustment mechanism still poses restriction on relevant Chinese exports to ROK.

3.1.2 Tariff quota

In the negotiations of the Uruguay Round, ROK was allowed to maintain tariff quota on 67 agricultural products such as rice and corn. Out-of-quota tariff rates of certain products are extremely high, e.g. above 200%. For example, out-of-quota tariff rates of sesame, garlic, mung bean, date and green tea are 700%, 364%, 614.3%, 618.3 and 519.3% respectively. Most agricultural products in which China enjoys competitive advantages are subject to tariff quota administration by the ROK Government, and the comparatively high out-of-quota tariff rates have, in fact, impeded the export of related Chinese products to ROK.

3.1.3 Application of tariff items

The Korean customs usually adopt 'main ingredient' or 'import purpose or motive' criteria in deciding the tariff items applicable to 'mixed product', namely those containing various ingredients. This practice frequently results in unreasonably high tariff rates applied to certain products. For example, when Chinese companies export mixed feedstuffs or mixed feedstuff additives to ROK, the Korean customs usually compare the applicable tariff rates for the above products and their main ingredients, and choose the higher one to apply.

3.2 Import restrictions

ROK conducts very strict licensing administration on imports of patent medicines including Chinese traditional and patent medicines. In 1993, the Korean authorities promulgated the Guidelines for Supply-Demand Regulation of Import of Chinese Traditional Medicine Materials, and accordingly regulated the supply and demand of 70 Chinese traditional medicine materials, which accounted for 72% of Korean market share, thereby restricting the export of the above products from China. In December 2002, the Korean customs authorities announced an amendment to the Gazette Regarding the Designation of the Variety and Methods Subject to the Confirmation of the Customs Chief According to Article 226 of the Tariff Law, which requires that the importation of 38 medicine materials used as flavors and pesticides or in medical treatment and sterilization such as radix sophorae, medlar leaves, rhubarb be not allowed unless confirmed by the head of the Korean Association of Medicines Import and Export, while the importation of those can be used as materials of traditional Chinese medicines shall be allowed on strength of the “Inspection Certificate” and “Certificate of Collection of Tested Material” presented to the said chairman. The importation of 21 medicine materials such as medlar seeds, angelica and radix angelicae is allowed against the “Confirmation of Conditions”, “Inspection Certificate” and “Certificate of Collection of Tested Material” presented to the Chairman. The above-mentioned measures increased difficulties for the importation of Chinese traditional medicine materials.

3.3 Barriers in customs procedures

3.3.1 Disposal of arrived goods

According to certain regulations of the Korean customs, written consent of the consignee is required for disposal of imported goods after their arrival at Korean ports. According to complaints by Chinese exporters, in cases the Korean consignee purposely exploits this regulation by refusing to make payments for the goods or to take delivery of the goods, the Chinese exporter generally has no right to unilaterally dispose of the goods. As the goods are not allowed to be shipped back to China, the Chinese exporter usually can do nothing but accept the Korean consignee’s request for lower price or unconditional on-credit sale. It is requested, therefore, by Chinese companies that the Korean authorities amend the above regulations to enable the exporter to have absolute ownership of and disposal right over the arrived goods at Korean ports before the covering payment is made, so as to check the fraudulent practices that injure the normal trading relations between the business people of the two countries.

3.3.2 Intensified inspection of agricultural products and related pre-clearance examination

As of 2002 the Korean customs conducts pre-clearance examination on selected agricultural products under the reason for preventing “duty evasion by lowered-price customs declaration. In July 2003, in order to prevent the impact on Korean farmers by the increase in imported agricultural products such as pepper, garlic, sesame, carrot, etc., the Korean customs further intensified its pre-clearance examination on 18 agricultural products to be imported into ROK such as carrot, fresh (chilled) garlic grains, fresh (chilled) whole garlic, garlic temporarily marinated for storage, dried garlic, pickled garlic, dried mung bean, sesame, wild sesame, seasoned peanut, dried red bean, ginger, soybean for bean sprout, onion, buckwheat, sweet potato starch, frozen chilli, etc. The measures the Korean customs take involve intensified pre-clearance examination of leviable duties or increased ratio of random inspection. Prior to the effectuation of the measure, the average rate of random inspection stayed at 3% to 5% only, but now the rate has risen to 20%, and in case of frozen chilli and blended condiments, 100%. Obviously, the measures have prolonged the customs clearance for related Chinese agricultural imports and increased the risks involved in trade, thereby restricting Chinese agricultural exports to ROK.

3.4 Technical barriers to Trade

3.4.1 Clinical test of medicine’s

According to ROK’s Medicine Law, Law Governing Regulation of Anesthetic Medicines, and related rules of implementation, Korean Department for Food and Medicine Safety requires that the import license be obtained for every batch of import medicines, which shall be subject to the effectiveness and safety examinations by relative Korean authorities. Accordingly, Korean competent departments exercise rigid licensing administration over various import patent medicines including Chinese traditional patent medicines so as to protect their domestic medicine market from possible impact of imports. Chinese traditional patent medicines are treated in the same way as Western medicines, so importers have to apply for the import license and present to the relative authorities the certificates of production and sales, which must be the official documents issued by the Chinese governmental bodies, as well as such information as the detailed description of raw materials used, ingredients, and other specifications. In case of new traditional Chinese patent medicines, the imports shall be subject to unusually strict clinical tests. As the formula of Chinese traditional patent medicines tend to be considered confidential, import licenses are hardly obtainable accordingly. In June 2003, the Korean authorities amended relevant rules and regulations, and thereby require that import be subjected to acute toxicity tests provided in ROK or by independent international laboratories acceptable to Korean authorities. As these tests are time-consuming and expensive, and most Chinese traditional patent medicines are not recorded in Korean pharmacopoeias, it is almost impossible to obtain import licenses for Chinese traditional patent medicines. All the measures mention above have combined to increase the expenses of Chinese exporters, thus obstructing the export of Chinese traditional patent medicines to ROK.

3.4.2 Korean Standards

The Korean Standards is a national standard system formed according to ROK's Industrial Standardization Law. Basically, it is believed to be a voluntary certification system. However, the certification methods applied to the products reported by the Chinese exporters are frequently altered by Korean Administration for Technical Standards (KATS) or the Korean Standard Association without prior notice. Such practices have compelled Chinese exporters to put in double expenses and time for certification, hence increased costs for exports to Korean market.

3.5 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.

3.5.1 Agricultural products

According to the Brief Guide to HS Customs Clearance: 2003, ROK has almost subjected all agricultural products to strict import inspection and quarantine procedures, by which to control the residual pesticides, heavy metal and hormone contained in agricultural imports. If the unqualified rate proved comparatively high, Korean authorities might conduct at any time a batch-by-batch detailed inspection on all the involved agricultural imports. This means that, in addition to the inspection of relevant documents and sensual inspection, Korean authorities would follow relevant regulations to conduct sampling based on certain ratio and lab testing.

When purchasing unpolished rice, the Supply Administration of the Republic of Korea (SAROK)（a specialized agency in Korean government procurement） and the Korean distributor required that the rate of white bad rice for unpolished rice imported from China not exceed 2%, while US No.3 unpolished rice standard is applied to imports from other countries, the white bad rice rate being not more than 6%. In October 2004, the Korean Department for Food and Medicine Safety complained about the excessive content of sulfer dioxide in Chinese steamed rice and then stopped the related clearance procedures temporarily. Meanwhile, they advised local governments and related bodies not to consume Chinese steamed rice for the time being until relative inspections are conducted and other measures are adopted against the said problem

In 2004, in compliance with their Law Governing Plant Epidemic Prevention, Regulations for Implementation of the Law Governing Plant Epidemic Prevention, and the Outline on Plant Imports Inspection, Koreans further intensified their inspection on deepfrozen chilli of Chinese origin. As a result, large quantities of deepfrozen chilli exported to ROK were rejected because they were found to contain leaves and stems or fail to maintain the required temperature. Even limited number of stems or leaves that were found packed in one or two cartons in a single shipping container would lead to the rejection of the complete parcel.

As of June 1, 2004, new regulations were put into effect regarding the inspection on wooden packing for imports. Accordingly, unprocessed wooden packing materials, such as wooden pallets, wooden cases, stow-wood and wooden padding shall receive heat treatment or MB fumigation according to International Standard ISPM No. 15, and sterilization labels are to be stenciled on two surfaces of each packing material or containers. It is of particular concern that for conifer wooden packing from Japan, China's mainland and Taiwan, U.S., Canada, Mexico and Portugal, only heat treatment (with the core temperature of the wood remaining at 56°C for 30 minutes consecutively) is acceptable to Koreans; otherwise, rejection and destruction are the only alternatives.

Chinese exporters hope that Koreans would lift those unreasonable requirements and discriminatory practices with regard to import quarantine and inspection as early as possible.

3.5.2 Chinese traditional medicine materials

In October 1998, Korean Department for Food and Medicine Safety promulgated amendment to Regulation for Administration of Import Medicines, in which it requires that no residue of sulphur dioxide be found in imported Chinese traditional medicine materials (residue lower than 10ppm treated as nonexistence), while no similar requirement is applied to Korean medicine materials. As different standards are in effect applied to imported and Korean medicine materials respectively, the application of this regulation obviously violates the WTO principle of national treatment. On September 5, 2003, Korean Department for Food and Medicine Safety issued Bulletin No. 2003-88, thereby promulgating Notice for Application of Testing Standards and Methods for Sulfur Dioxide Residue in Medicine Materials. According to this Notice, standards for sulfur dioxide residue in import and domestic medicine materials are unified, but the standard for sulfur dioxide residue is still maintained lower than 10ppm. A temporary standard shall become applicable during the one-year transitional period starting from the date of promulgation of the notice. Then, Korean Ministry of Health began on September 5 an investigation on the testing standard against sulfer dioxide residue contained in medicine materials. Actually, in processing of Chinese traditional medicine materials, sulfur fumigation is used for dehydration and prevention of moisture, mildewing and insect biting. The above requirement is groundless scientifically, thereby seriously affecting China's export of materials used for Chinese traditional medicines to ROK.

ROK-produced hairy deer horns are considered by Koreans to be animal by-products while imported counterparts are treated as food or medicine, to which much stricter inspection shall be applied. The inspection on imported deer horns is generally conducted by the institutions designated by Korean Department for Food and Medicine Safety. Its purpose is to detect the ash content. However, the Korean inspectors seem quite discretionary because they tend to take samples from the root of the horns, the part where the aging of the horn is most serious. Thus, the result is usually the excessive ash content and the subsequent demand for rejection put forward by Korean importers. This regulation of Korean Department for Food and Medicine Safety as well as the method applied by Korean inspectors has aroused serious concern on the part of Chinese exporters.

3.5.3. Aquatic products

Currently, the administrative measures Koreans adopt that affect Chinese exports to ROK mainly include:

(1) Pre-clearance inspection: Koreans conduct intensified inspection prior to the customs clearance of certain Chinese imports under the reason that those imports are not up to Korean sanitary standards. As of September 1999, ROK adopted precise test on the live eel and mandarin fish imported from China Mainland and Taiwan, asserting excessive residue of terramycin, oxilinic acid and mercury. Zero-existence standard，which is higher than the internationally recognized standard, is applied to the testing for residual oxilinic acid. This practice, usually lasting for 3-4 days, greatly prolonged time needed for customs clearance, thus reducing the fish's survival rate and hampering Chinese export of live fishes to ROK.

(2) Testing for metal foreign substances

According to the stipulation of "Sino-ROK Sanitary Conditions for Aquatic Products", Chinese frozen aquatic products are to be subjected to metal detecting inspection conducted by Koreans before customs clearance, and zero-existence of metal foreign substances is required; otherwise, the whole parcel involved shall be either rejected or destroyed.

Currently, special import regulation is administered on 6 aquatic products, namely loach, eel (2 varieties), blood clam, scallop and oyster. Chinese companies exporting above 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.

The Chinese side expresses its serious concern over the inconsistence between the ROK measures and WTO SPS Agreement.

3.5.4. Products of animal origin

3.5.4.1 Registration system for production companies

Companies exporting animal products to ROK shall be subject to evaluation and registration conducted by competent Korean authorities prior to exportation. However, the procedures involved are extraordinarily slow, hence inhibiting Chinese poultry exports to ROK.

3.5.4.2 Import quarantine recognition system

This system is applied to all imported animal products according to ROK's Law on Prevention of Epidemic Diseases of Domestic Animals developed in December 2002. According to the system, exporting countries are required to make application and submit relevant documents on its animal diseases, 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-feet-disease, Korean authorities have banned the import of artiodactylous products (including beef, pork and mutton) produced in the whole territory of China mainland. Furthermore, according to the requirements of Sanitary Conditions for Import of Coarse Fodder formulated by Korea'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 ~~Korea~~. 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.

3.5.4.3 Poultry Meat inspection

In June 2001, ROK imposed provisional import ban on certain products from China, due to the fact that it found avian flu pathogen in the products exported by a Chinese company. The ban was conditionally lifted in November of the same year, but, owing to the excessively strict and complicated inspection and quarantine procedures conducted by Koreans (ROK requires that the 45-day precision inspection be conducted on every shipment of poultry meat from China) importers and exporters still have to bear expensive inspection fees and port storage charges. This requirement has increased the import cost and retarded customs clearance. In early 2004, ROK enacted sanitary regulations regarding heat treatment of poultry imports, and the regulations came into effect as of April 1. The inspection conducted under the regulations mainly focus on poultry products imported from avian-flu affected countries. The new regulations require that poultry products receive heat treatment.

The Chinese side expresses its serious concern about the above-mentioned measures adopted by the Korean side.

3.5.4.4 Standards applicable to food additives

ROK's Food Code doesn't provide specific regulations about food additives, stating that the Codex Alimentarius can be referred to for applying standards for food additives. However, in practice ROK hasn't formulated standards for edible salt and additive coagulant in the salt for feedstuffs. According to its Food Code, the Codex Alimentarious can be referred to for relevant standards. ROK's Ministry of Agriculture and Forestry, however, refused to apply international standards under various pretexts. What the Koreans have done has in effect hinders Chinese common salt to be exported to ROK.

3.5.4.5 Regionalization of epidemic-infected area

As far as regionlization 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. If a pathogen that is banned to come into ROK were found out from the animal products made by a certain Chinese enterprise, then the similar products produced in other regions on China mainland would be included in the list of banned products by the Korean competent authorities.

In early 2004, in response to the fact that China confirmed the occurrence of avian flu, Korean Ministry of Agriculture and Forestry declared measures to prohibit import of poultry meat and related products from China. Although the Chinese authorities governing epidemic prevention had previously informed relevant Korean authorities of the occurrence of Type H5N1 avian flu and requested that the non-epidemic areas not be treated as epidemic area, the Korean side still took measures to ban all the said imports from China.

The above practices on the Korean part are not in consistence with the "principle of regionalization of epidemic areas" under the WTO SPS Agreement, and therefore seriously affected Chinese export of animal products to ROK. The Chinese side hopes that ROK will amend its current related rules and regulations at an early date.

3.6 Trade remedies

Up to the end of 2004, ROK has initiated 18 antidumping investigations and two safeguard investigations involving Chinese exports. Most antidumping investigations were concluded with imposition of antidumping duties or price undertakings. The antidumping duty has been imposed on 6 Chinese imports: disposable lighter, alkali battery, silicon-manganese alloy, printing paper, choline oxide and titanium dioxide.

Prior to 1998, ROK had long taken China as a non-market economy but started to take China as a market economy in transition as of 1 January, 1999. In each case, Korean Trade Commission would consider whether to take China's investigated industry as market-oriented industry, and whether to grant market economy status to an individual Chinese respondent. In practice, 10 to 16 questions are included in the investigation questionnaire for application for market economy status. However, specific standards in deciding market economy status are contained in internal working brochures, and have never been made public by the Korean authorities. Hence, whether Chinese respondents may obtain market economy status is mainly decided by the discretion of Korean investigating officials and the responses of the Chinese respondent. The Chinese side deems ROK's regulations about market economy status as lack of transparency. At the Fourth Session of China- ROK Trade Remedies Cooperation Seminar, the Chinese side expressed its concern in this regard, but the Korean side didn't give any explicit reply. During the anti-dumping investigation against Chinese choline oxide and titanium dioxide conducted in 2004, ROK recognized the status of market economy of certain Chinese enterprises and related sectors. In September 2004, China made an official request that ROK recognize China's market economy status at an early date, and ROK agrees to give its due consideration to the request, but so far there has been no consequence.

In practice, the Korean investigating body often refuses to grant market economy status to China's state-owned enterprises on the pretext of such activities as appointment of leading members, raw material purchase, and pricing are all controlled by the Government. For example, in the sodium silicate antidumping investigation in 2003, all the main Chinese respondents were state-owned enterprises. In deciding whether to give market economy status to the Chinese respondents, Korean authorities required them to submit a mass of additional materials apart from filling out the market economy questionnaires. On 27 October 2003, the Department of Fair Trade for Imports and Exports of the Ministry of Commerce of China wrote to the Trade Commission of ROK, introducing the market liberalization of Chinese sodium silicate industry and requesting the Korean authorities to recognize this industry as a market-oriented industry and give Chinese respondents market economy status. Later, this investigation was concluded without prejudice to the Chinese respondents, but the Korean authorities refused to give market economy status to Chinese state-owned enterprises.

3.7 Government procurement

ROK is a signatory country to the Agreement on Government Procurement of WTO. However, 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 contract, which is inconsistent with accepted trade practices. For example, in ROK's public bidding for import of agricultural products under government procurement program, 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 provided in the public bidding import contract that if the Korean side deems prices of agricultural products lower than prices required, it may refuse to effect shipment. 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 Products Trade

Association may carry out quality or quantity inspection by itself, and if the result of either inspection proves not consistent, the goods will be rejected, even though approved at the port of shipment. The above practices have increased risks in Chinese exporters' participating in ROK's public bidding for import of agricultural products under government procurement program, and poses unreasonably heavy burden on Chinese exporters.

Besides, the Korean side has purposely placed some obstructions in its government procurement with a view to protecting its domestic industries and restricting imports. For example, a certain Korean enterprise that used to take part in bidding with Chinese-made air conditioning models such as Chunlan joined in a bidding in 2004 held by the ROK Supply Administration for air-conditioning products. In its invitation to tender, however, the Supply Administration specified that the products to be supplied must be local make. This provision obviously has constituted an unfair treatment to Chinese products, thereby adversely affecting the market access of Chinese imports.

3.8 Barriers to trade in services

3.8.1 Civil engineering

ROK allows foreign civil engineering companies to register in ROK, but forbids them to employ workers from their home country in the contracted construction projects in ROK, which compels Chinese companies to sub-contract their contracted projects to Korean companies.

3.8.2 Financial services

ROK applies different standards of supervision toward 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 a new branches submitted by a domestic bank. Besides, the Korean regulatory measures with regard to the business scope and capitals of foreign banks are not favorable for the business development of Chinese banks. Their requirements restrict the size of loans to individual borrowers and of credits and large loans to groups as well as the size of inter-bank lending and borrowing, which limits the financing ability and asset sizes of Chinese-funded banks in ROK.

Chinese banks also complain that the fee for access to the Won Settlement System charged on foreign banks is dearly high and should be reduced to a reasonable level. It is suggested that the fee be charged differently according to the different working loads of settlement business, or be paid in installment.

3.8.3 Telecommunications

It is provided by Korean authorities that foreign ownership in telecommunications services shall not exceed 49%.

3.8.4 Education

In ROK, educational institutions are listed as non-profit legal entities. Therefore, these educational institutions are prohibited from free money transfer, and are closed to foreign investors. Up to now, no foreign colleges have been allowed to establish branch schools in ROK.

3.8.5 Legal service

Up to now, foreigners are not allowed to set up law offices or conduct legal consultancy in Korea.

3.9 Protection of intellectual property

3.9.1 Formula of Chinese traditional patent medicine

Chinese traditional patent medicines are treated in the same way as Western medicines, so importers have to apply for the import license and present to the relative authorities the certificates of production and sales, which must be the official documents issued by the Chinese governmental bodies, as well as such information as the detailed description of raw materials used, ingredients, and other specifications. According to relevant regulations, the Korean Government will not protect certain data involved in medicines under the specific circumstances in the name of 'public interests', and, as a result, the formulas of Chinese traditional patent medicines have not received effective protection in Korean market.

3.9.2 Forestalled registration of trade marks of famous Chinese teas

Fifty-four famous Chinese tea trade marks, including Tuo, Biluochun, etc., were registered by squatting in ROK. The legal procedures applicable for relevant Chinese companies to invalidate unlawful trade mark registration are both complicated and time-consuming (12 to 18 months). The Chinese side highly concerns about the consistency between the protective system of intellectual properties in ROK and international conventions on the protection of intellectual properties including WTO TRIPs Agreement and Paris Convention..

3.10 Other barriers

3.10.1 Multiple-entry visa

In spite of the agreement signed between Chinese and Korean visa authorities on issuance of multiple-entry visas to business people of both countries, however, in dealing with visa applications submitted by Chinese companies for their resident staff in ROK, the Korean competent authorities are found violating the agreement or operating without transparency. All these have caused much inconvenience to the life and work of Chinese business people in ROK. In addition, Korean authorities often impose fines on Chinese companies, or refuse to issue or extend visas on pretext of cracking down on overstay in ROK.

3.10.2 Transparency in legislation

Koreans are expected to improve the transparency in making and implementing their laws and regulations. For example, Koreans often fail to comply with relevant WTO requirements for timely notification regarding the trade related laws, regulations or implementation rules under formulation or amendment, or sometimes even when the amended laws and regulations are actually being implemented, they have just begun to send notifications to other WTO members. In addition, 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.

3.10.3 Interests Protection for Shipping Companies

No relevant customs regulations are available in ROK for protecting the interests of foreign shipping companies, which subjects Chinese shipping companies to losses of no reason. For example, according to a certain Chinese shipping company, some Korean consignees refuse to take delivery of the consignment (usually of agricultural products of relatively low value) even after making the relevant payment, owing to the market fluctuations or so. Under the circumstances, the Korean customs tend to hold the carrier for the disposal of the goods. Meanwhile, according to their regulations, the responsible shipping company will have to wait at least two years before they are able to auction off the goods. By then, not only the value of most of the goods will have diminished to the minimum, but also the shipping company will have to sustain the accumulated costs for the disposal. The Chinese side therefore hopes that the Korean Customs will make early amendments to relevant regulations so that the legitimate interests of Chinese shipping companies can be protected.

Canada

1 Bilateral trade relations

According to China's Customs, the bilateral trade volume between China and Canada in 2004 reached US$15.52 billion, up by 55%, among which China's export to Canada was US$8.16 billion, up 44.9%, while China's import from Canada was US$7.35 billion, up 68.2%. China had a surplus of US$810 million. China mainly exported machinery and electronic products, clothing and accessories, textile yarn and products thereof, metal products, toys, primary batteries, etc. Major imported products of China from Canada included fertilizers, potassium chloride, paper pulp, iron ore, ethylene glycol, coal, cereals and cereal powders, wheat, waste steel, edible plant oil, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of engineering contracts completed by the Chinese companies in Canada reached US$ 11.95 million in 2004, and the volume of the newly signed contracts was US$ 26.82 million. The volume of completed labour service cooperation contracts was US$0.86 million, and that of the newly signed labour service cooperation contracts was US$10.99 million. By the end of 2004, the accumulated turnover of engineering contracts completed by the Chinese companies in Canada was US$85.83 million, with that of all the contracts signed reaching US$98.77 million, and the volume of the completed labour service contracts had reached US$38.9 million, with that of the total contracts signed reaching US$75.42 million.

According to MOFCOM, 18 Chinese-funded non-financial enterprises were set up in Canada in 2004, with a contractual investment of US$23.48 million from Chinese investors. By the end of 2004, there were accumulatively 173 Chinese-funded enterprises in Canada with total contractural investment of US$470 million from Chinese investors.

According to MOFCOM, Canadian investors invested in 995 projects in China in 2004, with a contractual volume of US$2.2 billion and an actual utilization of US$0.61 billion. By the end of 2004, Canada investors had accumulatively invested in 7936 FDI projects in China with a contractual volume of US$14.19 billion and an actual utilization volume of US$4.53 billion.

2 Introduction to the Canadian trade regime

2.1 Legislation on trade and investment

Canadian laws related to trade and investment mainly include: the Customs Act, the Export and Import Permits Act, the Special Import Measures Act, the Food and Drugs Act, the Consumer Packaging and Labeling Act, the Canadian International Trade

Tribunal Act, the Investment Canada Act, etc. These laws have been in effect since they were enacted in 1985 and no substantive amendments have been made

2.2 Trade administration

2.2.1 Tariff policy

(1) Average tariff level and its trend of development
After years of tariff negotiation and concession, the tariff rate of Canada has been reduced to a comparatively low level. The average MFN tariff rate dropped to 6.8% in 2002. By 2004, the MFN tariff rates for most of the products reached the final bound tariff level, with the rate for agricultural products in terms of the WTO definition bound around 23% (as compared with the rate of 6% for agricultural products as defined by the ISIC), the rate for food, beverage and tobacco as defined by the ISIC about 30%, 2% for mining products, and 5% for other manufacturing products than food, beverage and tobacco.

(2) Tariff administration
The Canadian laws vest the right to import-duty collection with the federal government only. While most of the imports are subject to duty *ad valorem*, which is a certain percentage of the value of the goods, some imports are subject to either specific customs duty or mixed duty. Different tariff rates are imposed on products from different countries. At present, Canada imposes mainly the Most Favored Nations (MFN) tariff rate and the preferential tariff rate.

2.2.2 Import Administration

According the Export and Import Permits Act, Canada imposes import restrictions on four kinds of products, including agricultural products, weapons, iron and steel, textiles and clothing, a total of 172 categories. These are found in the import control list of Canada.

(1) Textiles and clothing: according to arrangements provided by the Agreement on Textiles and Clothing (ATC) of the WTO, the Canadian Government holds periodic negotiations with relevant exporting countries for allocation of import quotas. At the same time, Canada is phasing out quantitative restrictions on textiles and clothing through three stages as agreed and shall have removed all quotas by January 1, 2005.

(2) Agricultural products: Canada exercises licensing administration over in-quota products listed in the import control list. Such goods, if granted the permits, can enjoy fairly low tariff rates. Import permits are issued by the International Trade Canada (ITCan) while licensing administration is conducted by the Import and Export Controls Bureau (EICB).

(3) Iron and Steel products: since 1986, the Canadian government has been implementing monitoring programme over import of iron and steel products

according to the recommendations made by the Canada's International Trade Tribunal. Under this programme, importers are required to obtain import permit for iron and steel products.

2.2.3 Export Administration

(1) Export promotion:
Canada aims at promoting exports to other countries. There are a number of measures such as favorable tax measures and export financing to enhance the competitiveness of its domestic manufacturing industry. In addition, the Canadian government is very keen on providing various kinds of services to Canadian enterprises, including consulting services on business management and export, training, and policy guidance, etc. These services have effectively promoted the export capabilities of Canadian enterprises.

(2) Export restriction:
According to the Export and Import Permits Act of Canada, the Canadian government exercises export control over some products and export areas. An export license needs to be obtained for a product subject to export control or exporting a product to an area subject to export control. At present, the export control list includes the Export Control List, Area Control List, and Automatic Firearms Country Control List.

The export control list was adopted in April 2002 and remains in effect now. According to the list, altogether 8 groups of products are subject to export permits control: Group One, Dual Use List; Group Two, Munitions List; Group Three, Nuclear Non-Proliferation List; Group Four, Nuclear-Related Dual Use List; Group Five, Miscellaneous Goods; Group Six, Missile Technology Control Regime List; Group Seven, Chemical and Biological Weapons Non-Proliferation List; and Group Eight, Chemicals for the Production of Illicit Drugs.

So far Myanmar is the only country in the Area Control List. In the Automatic Firearms Country Control List, there are 16 countries, including Australia, Belgium, Botswana, Denmark, France, Germany, Greece, Italy, the Netherlands, New Zealand, Norway, Saudi Arabia, Spain, Sweden, the United Kingdom, and the United States.

Besides, to protect the environment, Canada maintains export restrictions on hazardous wastes and hazardous recyclable material pursuant to such laws and regulations as the Multilateral Environmental Agreement, the National Environmental and Resource Conservation Programmes, the Convention on International Trade in Endangered Species (CITES), Canadian Environmental Protection Act (CEPA) 1999, and the Export and Import of Hazardous Wastes Regulations. At the same time, export permits need to be obtained for the export of unprocessed fish from Quebec, logs and pulpwood of all species of wood, pancreas glands of cattle and calves, human serum albumin while export restriction is also imposed on unprocessed roe herring.

2.2.4 Other related legalities

(1) Safeguard measures:

Canada incorporated safeguard measures into the Canadian International Trade Tribunal Act in 1984. The International Trade Tribunal has since been in charge of safeguard investigations. Once an application is filed by a domestic manufacturer or manufactures, the Tribunal launches an investigation over like products or products in direct competition with those of the complaining manufacturers. The Finance Canada then reports the result of the investigation to the Cabinet Meeting, which then decides whether safeguard measures shall be introduced.

(2) Anti-dumping and countervailing measures

The Special Import Measures Act and the Special Import Measures Regulations enacted in 1985 constitute the major legal instruments for anti-dumping and countervailing. The Canada Border Service Agency (CBSA) and the International Trade Tribunal are jointly responsible for enforcing the Act and Regulations. While the CBSA is in charge of launching investigations and making preliminary and final determinations on the margin of dumping or the amount of subsidy, the International Trade Tribunal is responsible for determining whether there is a causal link between dumping or subsidy and injury as well as for identifying the existence of injury or threat of injury to the industry.

Canada applies anti-dumping and countervailing legislation in a non-discriminatory manner, except on Chile. Imports from Chile are excluded from anti-dumping measures if the tariff rate for the goods is zero. As of 1 January 2003, all goods from Chile are exempt from the imposition of new anti-dumping duties and any existing anti-dumping orders concerning imports from Chile are terminated.

In June 2004, the Canadian Border Service Agency amended the implementation of Section 20 of the Special Import Measures Act regarding non-market economy. According to the amendment, anti-dumping investigations and administrative reviews are to be initiated on the presumption that Section 20 of the Act is not applicable to the sector under investigation unless there is evidence that suggests otherwise. The determination of the existence of such evidence shall be made on a case-by-case basis.

(3) Technical standards and regulations

Canada maintains technical regulations in areas such as construction, chemicals, pharmaceuticals, energy, food, transport equipment, measuring equipment, medical equipment, telecommunications, the environment, etc. These standards and regulations are embodied in such legal instruments as the National Building Code, the Food and Drugs Act, the Canadian Environmental Protection Act, the Consumer Packaging and Labelling Act, the Energy Efficiency Act, the Electricity and Gas Inspection Act, the Weights and Measures Act, the Telecommunications Act, and the Motor Vehicle Safety Act. So far, differences still exist among various provinces of Canada regarding technical regulations standards. The Standards Council of Canada's Intergovernmental Affairs and Trade (IGAT) Branch has begun to work to reduce the effect of these differences.

(4) Animal and plant health inspection and quarantine
Canada's measures about animal and plant health inspection and quarantine mainly apply in three aspects: animal products, plant products and food safety. The Food and Drugs Act and Regulations are the main legal and regulatory instruments governing SPS food safety issues in Canada. The Health of Animals Act and the Plant Protection Act with their associated Regulations are the main legal and regulatory instruments governing animal and plant health SPS issues in Canada.

2.3 Investment administration

The Investment Canadian Act (hereinafter referred to as 'the Act') is the basic law regulating foreign investment in Canada. The Investment Canada Regulations (hereinafter referred to as 'the Regulations') are supplementary rules which interpret the Act so as to facilitate understanding and application of the Act.

In favor of foreign investment, Canada does not impose restrictions on foreign investment in all ordinary circumstances. The only thing the investor has to do is file a notice with the government prior to investment. However, according to the Act and the Regulations, a review shall be made over any of the following kinds of investment:
(1) a direct acquisition of a Canadian enterprise with an asset above 5 million Canadian dollars (including 5 million Canadian dollars);
(2) an indirect acquisition of a Canadian enterprise with an asset above 50 million Canadian dollars (including 50 million Canadian dollars);
(3) an indirect acquisition of a Canadian enterprise with an asset between 5 to 50 million Canadian dollars where the asset of the enterprise comprises over 50% of the investment turnover;
(4) an investment related to Canada's cultural heritage or national identity;
(5) an investment in uranium industry, financial services or transportation services.

As to the FDI from the WTO members, Canada has practiced relatively less stringent measures, where a threshold is calculated annually for reviewable direct acquisitions by or from WTO investors. The threshold for 2004 was 237 million Canadian dollars. That is, no review shall be made over any direct merge and acquisition of a Canadian enterprise involving an amount below 237 million Canadian dollars. Indirect acquisitions by or from WTO members are not reviewable and what the investors need to do is file a notice with the Canadian government.

2.4 Competent authorities

A governmental reform took place in Canada in December 2003. The former Ministry of Foreign Affairs and International Trade was split into two, namely, Foreign Affairs Canada (FAC) and International Trade Canada (ITCan). The former Investment and Cooperation Agency under Industry Canada was transferred to ITCan. At the same time, the former Canada Customs and Revenue Agency was renamed as Canada

Revenue Agency, which was put in charge of internal taxation affairs. Customs administration was undertaken by a new agency – the Canada Border Service Agency, which also took on some of the important functions previously performed by the Citizenship and Immigration Canada and the Canadian Food Inspection Agency.

After the governmental reform, the authority to administer foreign trade was vested with ITCan, which is mandated to help Canadian enterprises expand into the international market, invigorating business activities in Canada, and to represent Canada in negotiating and supervising trade agreements. The Export and Import Control Bureau under the ITCan is in charge of import and export. Besides, ITCan has other agencies which are responsible for trade services and promotion, such as the Canada Trade Commissioner Service. These agencies offer various kinds of information to enterprises, covering markets, partners, business visits, and local companies.

Health Canada and the Canadian Food Inspection Agency (CFIA) are the two national agencies in charge of inspection and quarantine over animals and plants. The former is responsible for policy development and standard-setting with respect to food safety and nutrition. It is also engaged in food safety risk assessment, research, pre-market review and evaluation. The CFIA centralizes all federally mandated food inspection services related to food safety, and animal and plant health programmes including quarantine services

The Standards Council of Canada (SCC) is the focal point for standardization and conformity assessment in Canada, and operates the Enquiry Point under the TBT and SPS Agreements. The SCC approves national standards and represents Canada in international standards forums.

Besides, other government agencies such as Agriculture and Agri-Food Canada, Industry Canada, Finance Canada, Canada Border Services Agency, Human Resources and Skills Development Canada, Fisheries and Oceans Canada, Health Canada, Canadian Heritage, and Canadian International Development Agency also participate in the administration of foreign trade according to their respective authorities.

With respect to all investments except those that fall within a prescribed type of business activity as set out in Schedule IV of the Investment Canada Regulations, the department responsible for the administration of the Act is Industry Canada. With respect to investments in Canada's cultural industry, the department responsible for the administration of the Act is Canadian Heritage.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak

The Canadian Government still maintains high tariff rates over certain products, which constitute tariff peaks. Among such products there are vegetables (e.g. asparagus, 19% MFN tariff rate, the same hereinafter), alcoholic drinks (e.g. wine, specific duty of 1.41 Canadian dollar per liter plus 19% duty *ad valorem*), certain textiles (16%), certain clothes (19%), certain leather products (e.g. baseball gloves, 15.5%), certain footwear (20%),watercrafts (25%) etc. The high tariff rates for these products have adversely affected China's exports to Canada.

3.1.2 Tariff escalation

In Canada, tariff escalation is quite prominent in food, beverage, tobacco, textiles and leather products. Though there is a zero tariff rate for wool (not carded or combed) and fine or coarse animal hair (not carded or combed), import duties for semi-processed products such as yarn of wool or of fine animal hair (carded or combed) range from 5% to 8%. Tariff rates for woven fabrics rise to a level between 12% and 14%. Coco bean is subject to zero tariff when unprocessed and Coco powder is subject to a rate of 6%. The same thing can be said with raw hides and skins of bovine or equine animal. For most of the unprocessed hides and skins, the tariff rate is zero and for some the maximum rate is 3%. However, the tariff rates for articles of leather escalate to a level between 7% and 15%.

3.1.3 Tariff quota

Tariff quota administration is imposed by the Canadian authorities upon some agricultural products, including dairy products, poultry, meat, eggs and wheat and barley products, which account for approximately 2% of total imports. Very high rates are imposed upon such agricultural products as live poultry, poultry meat, poultry eggs, turkey, whey, butter and cheese. For example, the out-of-quota tariff rate for other dairy foods for smearing is as high as 313.5% and that for meat and edible offal of the poultry of heading 01.05 (fresh, chilled or frozen) as high as 238%, which constitutes a *de facto* quantitative restriction.

3.2 Import restrictions

Special licensing administration has been enforced for products as follows:

(1) Drug and food:
Drug Permits should be obtained for import of any drug subject to import control or restriction, and such permits are applicable for a whole and separate lot of import. The invoice or the duplicate copy of the invoice should be submitted to Health Canada when applying for permits for the import of food, drugs, cosmetics, and hospital or radioactive devices.

(2) Endangered species:
Endangered Species Permits should be obtained for import of animals and plants

regarded as endangered species by the Convention on International trade in Endangered Species of Wild Fauna and Flora. Such permits are issued by Environment Canada.

(3) Firearms and ammunition:
Firearms and Ammunition Permits should be obtained from the local police offices for the import of firearms for legitimate purposes of amusement or sports, while the import of long-barreled guns, including hunting rifles and sporting rifles are not subject to restrictions. Firearms not justified with legitimate purposes of amusement or sports are deemed as attacking arms and are therefore banned from import.

3.3 Technical barriers to trade

3.3.1 The draft proposal to amend the regulations on lighters

On March 13, 2004, the Canadian government published the draft proposal for the amendment to regulations on lighters. According to the proposal, the qualifying phrase "intended for use for cigarettes, cigars and pipes" is eliminated from the definition of lighters. The proposal requires the manufacturers which produce, sell and import non-luxury lighters in Canada (those domestic-made lighters sold under 2.5 Canadian dollars and imported ones under 2.5 Canadian dollars according to Customs valuation) to preserve conformity certificate during a certain period of time to show that the these lighters contain child-resistant measures. At the same time, requirements on the record of the products were also amended to a certain extent. Associating product safety with price is obviously not in line with the TBT agreement under the WTO. Therefore, the Chinese side hopes that the Canadian side will make reasonable amendment so as to comply with the WTO rules.

3.3.2 Issues related to the Natural Health Products Regulations

The Natural Health Products Regulations was put into effect as of 1 January 2004, allowing a transitional period of 2 years for Site Licenses and 6 years for Product Licenses and drugs that are assigned drug identification numbers. Pursuant to the Regulations, all natural health products should register with Health Canada and obtain the necessary license before going to the market. In order to get the license, manufacturers will have to comply with GMP requirements and follow uniform standards regarding packaging and labels that should provide detailed information including medical or non-medical content of the product, sources of content, applicable usage, medicinal effect, recommended use, and any other matter the product involves, such as contraindication and side effect. In addition, Site Licenses should also be obtained for sale of the above products. The Regulations also require the manufacturers of natural health products to provide evidence of safety.

The Chinese side thinks, while the new Regulations play a positive role in helping traditional Chinese medicine secure a legal position in the Canadian market, they raise new entry requirements for producers and exporters of traditional Chinese medicine.

Therefore, the Chinese side remains closely concerned over the matter.

3.4 Sanitary and phytosanitary measures

3.4.1 Food safety

According to the Food and Drugs Act, all imported food and drugs are subject to inspection by sample. The inspectors have the right to confiscate and detain any product that doesn't conform to the Act. They also have the right to inspect the cleared lot of goods at importers' warehouses. At most ports, meat products including the raw skin, are usually sent directly to a separate warehouse for inspection. Once the goods pass the inspection, they are sent back to the Customs warehouse ready to be cleared. Any fee arising therefrom including the transport of the goods between the special warehouse and the Customs warehouse is borne by the importer.

According to the Meat Inspection Act, meat can be imported when the country from which the meat originated or was processed has written approval of their inspection systems and the relevant establishments by the Minister of Agriculture and Agri-Food at the time it was prepared for export. Meat can also be imported if the importer provides an inspector with evidence satisfactory to the Minister that it meets the prescribed standards for imported meat products. Once imported, the meat products should be sent immediately to the inspectors for inspection. No person is allowed to purchase meat products that are not inspected or not up to standard. Any inspector who is designated by the Minister may at any time enter any place, open any package and inspect and take samples of any meat product (including imported meat product). The inspector shall have the right to detain and confiscate any meat product that the inspector believes on reasonable grounds not complying with the Act or the Regulations.

3.4.2 Nitrofuran residue in fish products

The Animal Products Council of the Canadian Food Inspection Agency signed a communiqué in July 2003 on Monitoring Nitrofuran in Imported Fish Products. Health Canada does not set the maximum residue limit for nitrofuran and simply states that should any imported item be found to contain nitrofuran upon inspection, the item will be rejected. At the same time, the communiqué further declares, as long as an item is listed in the import early warning list because it was once found to have contained nitrofuran, that product is subject to compulsory inspection. To remove the item from the list, it will take four randomly selected samples to pass the compulsory inspection at a time. According to the Chinese side, this practice is not built on scientific ground and constitutes a barrier to trade. The Chinese side hopes that Health Canada will set the maximum residue limit for nitrofuran soon and further improve scientific inspection in this regard.

3.4.3 Marking and labelling

All imports to Canada must comply with the Imported Products Labelling Act. If the importer packs the imported products for retail purposes, the imported products also have to comply with the Consumer Packaging and Labelling Act in addition to the Imported Products Labelling Act. According to the Act, three requirements should be met by the imported products regarding labeling:(i) the identity and principal place of business of the person by or for whom the prepackaged product was manufactured or produced for resale; (ii) the identity of the prepackaged product in terms of its common or generic name or in terms of its function; (iii) such information respecting the nature, quality, size…of the prepackaged product. In 2004, sausage casings exported by a Chinese enterprise to Canada were sealed up by the Canadian Food Inspection Agency (CFIA) because the markings were not in conformity with the Canadian standards and the containers of the casings were not properly sealed. The lot was finally released after the business staff working for the General Consulate of China in Vancouver negotiated with the Agency. The Chinese authorities therefore alerts the Chinese enterprises of the Regulations on labeling and its development and are taking a close watch at these Regulations to see whether they go beyond the limit as is necessary for regulation.

3.5 Trade remedies

Canada is one of countries that frequently resort to trade remedy measures, represented by anti-dumping measures. From 1981 to the end of 2004, Canada has filed 28 trade remedy cases against Chinese products, including 22 anti-dumping and countervailing investigations and 1 safeguard investigation. The investigated products are mainly footwear, stationery, and iron and steel products. In 2004, Canada launched 3 countervailing investigations against outdoor barbeques, carbon steel and stainless steel fasteners, and laminate floor from China. Besides, an annual review was made over Chinese bicycles and frames, waterproof footwear and plastic or rubber bottoms, etc. A sunset review was made over women’s boots.

3.5.1 Problems in Canada’s anti-dumping investigations against products from China

Over a long period of time, Canada has been regarding China as a non-market economy. In anti-dumping investigations, the Canadian authorities disregarded cost information of Chinese enterprises, and determined the normal value of the investigated products using the discriminatory ‘surrogate country’ standard, which resulted in unreasonably high anti-dumping duties levied on Chinese enterprises. Among the 17 anti-dumping cases from 1985 to 2002, 5 resulted in an average dumping margin of 60%.

In recent years, there has been a significant change of stance on the Canadian side with regard to China’s market economic status. In the wind-shield anti-dumping investigation of 2002, the investigation authority of Canada granted the Chinese wind-shield industry market economic status. Besides, the Canadian government amended the internal work manual about the implementation of Section 20 of the

Special Import Measures Act. According to the amendment, when conducting anti-dumping investigations and administrative reviews of Chinese products, the Canadian government shall regard the investigated Chinese industry as market-oriented industry and calculate the normal value of the Chinese products in ways that are applied to products from other market economies, unless there is evidence provided by the applicant or the investigation authority suggesting otherwise. In the 3 anti-dumping and anti-dumping investigations against Chinese products in 2004, the investigated industries were all granted the market economic status. The Chinese side welcomes the change of stance made by the Canadian side.

3.5.2 Problems in Canada's countervailing investigations against Chinese products

According to relevant laws and regulations in Canada, countervailing measures are not applicable to non-market economies. Therefore, no countervailing investigations were filed against China before 2004. However, Canada started to initiate anti-dumping and countervailing investigations against Chinese products after the Chinese industries were being given market economy status. Canada has filed 3 anti-dumping and countervailing combined investigations against Chinese products.

(1) The countervailing case involving outdoor barbeques
On April 13, 2004, the Canadian Border Service Agency (hereinafter referred to as CBSA) launched the anti-dumping and countervailing investigation against Chinese barbeques, involving an amount of USD20 million. This became the first countervailing case against Chinese products. On August 27, the CBSA made the preliminary determination that dumping and subsidy existed for barbeques from China with an average dumping margin of 34.6% and amount of subsidy of 16%. After negotiations efforts made by the Chinese side, the CBSA, on November 19, issued a bulletin which announced that the investigation was terminated as the CBSA deemed the margin of dumping as well as subsidy rate insignificant.

(2) The countervailing case involving carbon steel and stainless steel fasteners
On April 28, 2004, the CBSA initiated anti-dumping and countervailing investigations involving carbon steel and stainless steel fasteners originated from China and Chinese Taipei. On September 10, 2004, the CBSA issued the preliminary determination that dumping and subsidy existed for subject products with an average dumping margin of 52% and amount of subsidy of 32%. In the final determination made by the CBSA on 9 December 2004, countervailing duty was set at 31.5%. On January 7, 2005, final determination was made by the Canadian International Trade Tribunal, establishing only carbon steel fasteners caused injury to the Canadian industry.

(3) The countervailing case involving laminate floor
On 4 October 2004, the CBSA launched anti-dumping as well as countervailing investigations against Chinese laminate floor. On 3 December 2004, the CITT made the preliminary determination of injury. Then the CBSA released the preliminary determination on 16 February 2005 that the dumping margin has been estimated at

26.6% and the amount of subsidy 2.01%.

When the Chinese enterprises actively responded to the above cases, the Chinese government were also quite supportive of the investigations made by the CBSA and held many consultations with the Canadian government over the matter. However, unfair practices still existed in the above investigations and those practices do not comply with the Agreement on Subsidy and Countervailing Measures of the WTO (hereinafter referred to as SCM Agreement) as well as relevant Canadian regulations in the following aspects:

(1) As far as the above three cases are concerned, they were launched within six months by the CBSA based on the letters of complaints which lack adequate or accurate information and evidence regarding the qualification of applicant, existence, amount and nature of subsidy, adequate evidence regarding the injury caused by subsidy to the domestic industry, or necessary evidence establishing a causal link between subsidy and injury, which didn't meet the procedural requirements for initiating countervailing investigation laid out in the SCM Agreement and SIMA . This is obviously against Paragraph 2 of Article XI of the SCM Agreement as well as the relevant provisions of SIMA.

(2) Though the Barbeques case was finally dismissed, the determination made by the CBSA, in the absence of solid factual data and governing instruments, of the preferential tax arrangement given to FIEs in China as specific subsidy runs counter to Article II of the SCM Agreement of the WTO and 1.7.1 of Section 2 of the Special Import Measures Act.

(3) During the course of the investigations about the previous two cases, the CBSA issued to the Chinese government altogether 3 government questionnaires and 6 follow-up questionnaires. These questionnaires covered a wide range of areas, including governmental functions, relevant laws and regulations, and trade-related administration. To complete the questionnaires, a huge workload of legal information collection and translation was involved. When the Chinese side submitted the questionnaires, the CBSA refused to use the information provided by the Chinese government on the ground that the investigation authority was unable to calculate the amount of subsidy according to the inadequate information provided by the Chinese side in the questionnaires. Instead, the CBSA did the calculation based on the "best available information". In the case of Barbeques, the CBSA assertively determined the subsidy amount under each subsidy scheme for the product as 2% and the total amount of subsidy as 16% of the export price (the product was found to have received 8 kinds of subsidies). In the case of carbon steel and stainless steel fasteners, the CBSA didn't conduct any on-the-spot investigations and calculated the amount of subsidy by simply comparing the average export price with the production cost which was derived from the information provided by the complainer alone. As a result, a high duty was determined. What the CBSA did was unfair to the Chinese government and enterprises as the practice was not in line with relevant WTO rules The Agency

should have conducted its lawful obligations by determining the case based on adequate information it could have obtained.

3.5.3 Product-specific safeguard measures against China

In March 2003, Canada passed the C-50 Bill, which made some amendments to the International Trade Tribunal Act, the Customs Tariff, and the Export and Import Permits Act so as to comply with the Protocol on the Accession of the People's Republic of China regarding relevant provisions on non-market economy and special safeguard measures.

However, some of the provisions of the C-50 Bill unreasonably loosened standards for implementation of special safeguard measures against China. In Section 30.22 (3) of the Canada International Trade Tribunal Act, 3 conditions have to be met if the Tribunal wants to implement special safeguard measures. However, the provisions on the indication of market disruption or the qualifications of the applicant lack objectivity and increase the discretion of the Tribunal of such adoption. Such provisions are quite subjective and do not comply with the WTO rules of transparency. Therefore, the Chinese side hopes that the Canadian side will bring the relevant standards in line with the WTO rules.

3.6 Government procurement

Canada is one of the signatories to Agreement on Government Procurement of GATT, and is also the only one without opening its government procurement market of all provinces and State-Owned Enterprises.

Various provinces of Canada make their own procurement policies under the general framework of the Agreement on Internal Trade. There are some discriminatory practices in Canadian provincial government procurement. Preferential treatments are given in most provinces:

Under British Columbia's Purchasing Commission Act, British Columbia's Purchasing Commission has power to give a preference in favor of goods, services produced, manufactured or sold in British Columbia, or in a local area. Although in practice no price preference is granted to British Columbia suppliers, the Commission may decide to limit the opportunity to bid.

Priorities are given to local provincial enterprises in Saskatchewan, and in practice, 10% price preference is given to local manufacturers.

Special price preference is given to local products in Manitoba.

In Yukon local-content requirements may be applied for government procurement contracts under Can$ 50,000.

In New Brunswick, a preference may be applied for New Brunswick products, services or suppliers. The relevant authority also applies a policy of reciprocal treatment to bidders from other provinces. The magnitude of the preference margin, by policy, does not exceed 5%, and the actual percentage of the preference depends on factors such as local content.

In Ontario, 10% price preference will be given to providers of Canadian content on the basis of their bidding price, and discriminatory priority principles are allowed when substantial Canadian economic or industrial interests are involved in certain government procurement programs.

In Quebec, purchases of goods and auxiliary services under Can$25,000 are made by the different departments, and suppliers are generally chosen from a list, or are invited to tender; in the latter case, only suppliers from Quebec receive an invitation.

Apart from provincial preferences to local enterprises, federal regional development agencies maintain a number of schemes to promote the participation of small or regional businesses in the procurement process. Under Business Development Program of the Atlantic Canada Opportunities Agency (ACOA), Atlantic-based or medium-sized businesses may receive up to Can$250,000 over a period of two years to help cover the cost of preparing bids and other procurement activities. Incentives of this type are also provided by Canada Economic Development for Quebec Regions.

3.7 Subsidies

The federal government and the provincial governments co-administer and fund a series of nation-wide agriculture support schemes, which can be regarded as domestic subsidy. Support granted by the federal government and the provincial governments account for 55% and 45% of the total support respectively. In recent years, the Canadian government has basically shifted the support from funding the price of individual product to the building of a nation-wide income security system.

3.8 Barriers to trade in services

Canada continues to restrict foreign investment in such service sectors as basic telecommunications, radio and financial services where major national interests, political, economic and cultural sovereignty are involved.

3.8.1 Air transport

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

3.8.2 The publishing and distribution of books and periodicals:

With respect to book publishing and distribution, foreign investment in new businesses is limited to Canadian-controlled joint ventures. With regard to periodical publishing, foreign acquisitions of Canadian-owned and Canadian-controlled periodical publishing businesses are not permitted. Foreign investments in the periodical publishing sector, including investments to establish, directly or indirectly, acquire foreign businesses to produce and sell periodicals in Canada and to access the Canadian advertising services market are allowed if a commitment to the production of majority Canadian editorial content is taken. Foreign investments with regard to the publication, distribution and sale of periodicals are subject to review for net benefit to Canada.

3.8.3 Broadcasting:

The Canadian Radio-television and Telecommunications Commission (CRTC) has the authority to limit foreign ownership in broadcasting businesses. Foreign ownership of a broadcasting programming and distribution undertaking is limited to 20% of voting shares (maximum 33.3% in the case of a parent corporation).

3.8.4 Film distribution:

Foreign acquisition of a Canadian-controlled distributor is not allowed. Foreign investment in new distribution businesses is permissible only for importation and distribution of proprietary products (the importer owns world rights or is a major investor). Direct or indirect acquisition of foreign distribution businesses in Canada by foreign-owned companies is permissible only if the investor undertakes to reinvest a portion of its Canadian earnings in accordance with national and cultural policies.

3.8.5 Bank

Individual ownership of a large bank or insurance company is limited to 20% of voting shares, regardless of nationality. According to some provincial regulations, individual ownership of a trust, credit or securities company is limited to 10% with total foreign ownership no more than 25%.

3.8.6 Insurance agents:

Pursuant to the laws of Prince Edward Island, only residents or corporations established on the island may obtain licenses.

3.8.7 Insurance services and other services auxiliary to insurance

Foreign investors are still subject to hurdle examination of minimum investment. Several provinces continue to review the companies that come to invest. Besides, Quebec, British Columbia and Saskatchewan impose restrictions on non-resident ownership and motor vehicle insurance.

3.8.8 Telecommunications

According to the commitments made by Canada on telecommunications services, foreign ownership of Canadian common carriers is limited to 20% direct, and 33.3% indirect (46.7% combined direct and indirect).

4 Barriers to investment

4.1 Barriers to investment access

Though Canada encourages foreign investment, a variety of laws limit foreign ownership in sectors deemed sensitive, such as fishery, uranium mining, nuclear industry, broadcasting, film industry, financial service, transportation and communications. Foreign banks are not allowed to operate certain commercial banking business. Although the Canadian government is relaxing control and restrictions on certain sectors according to its WTO commitments, various investment restrictions maintained at provincial level also affect foreign participation in, for example, large-scale projects, privatizations, petroleum and gas projects, electric power systems, chicken production, liquor licenses, and mining leases. Several provinces regulate the sale and ownership of land with respect to foreign owners, largely in the agricultural and recreational sectors.

4.2 Barriers to investment withdraw

No restrictions are imposed on withdrawing investment or repatriation of profits on the part of the foreign investors. However, if the foreign investor enjoyed preferential entry policies granted by the government and were committed to a period of investment, the investor is not allowed to withdraw investment within the committed period unless benefits gained from the preferential policy are returned. Income and profits earned by the foreign investor in terms of Canadian dollars can be exchanged into US dollars or any other convertible currency and repatriated abroad. But before repatriation, a withholding tax of 10% shall be paid to the Canadian government. Non-Canada citizens should pay to the government an income tax of 25% on such items as dividend, interest, salary, bonus and service charges like commission. However, such tax can be reduced to 15%, 10%, 5% and even exempted according to different bilateral agreements.

Malaysia

1 Bilateral trade relations

According to China Customs, the bilateral trade volume between China and Malaysia in 2004 reached US$26.26 billion, up by 30.5%, among which China's export to Malaysia was US$8.09 billion, up by 31.7%, while China's import from Malaysia was US$18.17 billion, up by 29.9%. China had a deficit of US$10.09 billion. China mainly exported cereal and cereal powder, maize, machinery and electronic products (electrical appliances and electronic products, integrated circuit and microelectronic parts), vegetables, textile yarn and products thereof, etc. The major imported products of China from Malaysia included machinery and electronic products (electrical appliances and electronic products, semiconductor parts, integrated circuits and microelectronic parts), palm oil, product oil, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of engineering contracts completed by Chinese companies in Malaysia reached US$210 million in 2004, and the volume of the newly signed contracts was US$280 million. The volume of completed labour service cooperation contracts was US$ 9.48 million, and that of the newly signed labour service cooperation contracts was US$3.87 million. The turnover of finished designs and consultations was US$4.64 million and the volume of the newly signed contracts was US$0.78 million.

Approved by or registered with the MOFCOM, 10 Chinese-funded non-financial enterprises were established in Malaysia in 2004, with a total contractual investment of US$7.08 million from the Chinese parties. By the end of 2004, total number of such kind of enterprises in Malaysia reached 115, with an accumulated contractual volume of US$45.95 million from the Chinese parties.

According to MOFCOM, Malaysian investors invested in 352 projects in China in 2004, with a contractual investment of US$1.3 billion and an actual utilization of US$390 million.

2 Introduction to the Malaysian trade regime

2.1 Legislation on trade and investment

Malaysia legislation related with foreign trade and investment promotion mainly includes the Promotion of Investment Act, the Customs Act, the Customs Import Control Regulations, the Customs Export Control Regulations, the Customs (Rules of Valuation) Regulations, the Industrial Coordination Act, the Companies Act, the Domestic Tax Act, the Exchange Control Act, the Countervailing and Antidumping Act (amended), the Countervailing and Antidumping Implementation Rules (amended), the Communications and Multimedia (Universal Service Provision)

(Amendment) Regulations, the Loan (Local) Act (Revised), the Malaysian Maritime Enforcement Agency Act, the Protection of New Plant Varieties Act 2004, and the Fees (Marine Parks Malaysia) (Validation) Act.

2.2 Trade administration

2.2.1 Tariff administration

Mandated by the Customs Act, the Financial Minister of Malaysia shall issue orders on government bulletin regarding the rate of the dutiable items, dutiable prices, etc. and Customs officers shall classify and value these items for tariff purposes.

2.2.1.1 Import duties

Imported raw materials and spare parts that are directly used for producing goods for export can enjoy import duty exemption or reduction. Imported equipment and machineries that are directly utilized in the production or manufacturing lines, or used for environmental or quality control, can enjoy import duty and sales tax exemption or reduction. Imported raw materials and spare parts used to produce products needed by the domestic market may enjoy import duty exemption if there is proof of no domestic production of the raw materials and spare parts in question.

To encourage investment in the promoted areas such as the States of Sabah and Sarawak and the designated Eastern Corridor of Peninsular Malaysia, applications received from 13 September 2003 from companies located in these areas will enjoy a 100% tax exemption on their statutory income during their 5-year exemption period. Full exemption from import duty can be considered for raw material/components, regardless of whether the finished products are meant for the export or domestic market. Besides, investors who have been granted the “Multimedia Super Corridor (MSC)” status may enjoy duty-free importation of multimedia equipment.

A textile agreement has been reached between Malaysia and Thailand, Japan, the Philippines, granting import duty exemption to textiles from countries thereto as of 3 July 2004. Besides, reduced tariff rates or zero tariff are applied to 170 items imported from Vietnam.

2.2.1.2 Export duties

Generally speaking, no export duties are levied on exports except the resource goods, such as crude oil, timber, logs and palm oil, etc.

2.2.1.3 Export refund

Pursuant to the Domestic Tax Act, manufacturers who export manufactured goods may apply for a refund of domestic tax already paid for the purchase of components, spare parts or packaging materials used for the production of the said goods. They may also get the paid import duties refunded upon the approval of the Customs if such duties were levied on the importation of raw materials, components, and packaging materials used for the production of the said goods.

2.2.2 Import administration

In line with the Customs Act and the Customs Import Control Regulations, most items can be freely imported. Only a few classifications of goods are prohibited from import or require a license. Firstly, there are 14 categories subject to import ban. Secondly, there are 411 tariff lines under 40 categories subject to import licensing administration, such as motor vehicles, color photocopiers, sugar, rice and flour, etc. These items can only be imported upon presence of import licenses issued by the competent authorities, endorsed or recognized by the Customs. Thirdly, certain products are subject to automatic import licensing, where the licensing authority imposes control for statistical purposes.

2.2.3 Export administration

The Customs Law and the Customs Export Control Regulation control export by categories. Products forbidden to export include coral, rattans, green turtle eggs and some poisonous chemicals like crocidolite, PBB, 3TC-TP; products subject to licensing control are textiles and those items which need monitoring for health and sanitary reasons, for the protection of animals and plants, and for security and stabling internal demand reasons. These products can be exported only after obtaining export licenses, special permits or endorsed letters from the head of the Customs or government authorities or legal institutions designated by the head of the Customs.

2.3 Investment administration

The government of Malaysia is in favor of introducing foreign investment and developing export-oriented industries. The government offers preferential policies, such as preferential tax policies to foreign as well as local investors in areas like new and high-tech industries, plant improvement in agriculture, tourism and hotel services, environmental protection and scientific research and development, technical training and technology transfer. Pioneer State, Investment Tax Allowance, and Infrastructure Allowance are the major investment incentive regarding taxation.

As of August 1, 2004, foreign investors no longer need to apply to the Foreign Investment Commission for approval when launching investment projects except when the investment involves the merger and acquisition of local firms or the purchase of real estate. However, foreign investment projects in certain restricted areas need to be examined and approved by the authorities governing the industry in order to ensure that foreign investment is in line with the industrial development policy of the country,

2.4 Competent authorities

The Ministry of International Trade and Industry (MIDI) is responsible for the administration and coordination of foreign trade. The Ministry of International Trade and Industry, together with other competent authorities such as the Ministry of Agriculture, the Atomic Energy Licensing Board, the Department of Veterinary Services, etc., issue import and export licenses to products within their respective competences. As far as the import and export licensing administration is concerned, the Ministry of International Trade and Industry works in charge of general products and automatic vehicles, the Ministry of Agriculture is responsible for plant and plant products, the Atomic Energy Licensing Board is responsible for radioactive materials and devices of radioactivity, the Department of Veterinary Services works for animal and animal products. The MIDI also conducts quota administration.

The Malaysian Customs supervise the importation and exportation of goods, and levy tariffs. The Standards and Industrial Research Institute of Malaysia (SIRIM) and the National Productivity Corporation (NPC) of Malaysia are the chief bodies responsible for product quality and technical standards. Mainly British standards are introduced to control product quality. The Trade Practices Unit (TPU) under the MIDI is responsible for countervailing and antidumping investigations. The Foreign Investment Committee deals with the application of foreign investment in manufacturing industries (excluding furniture-making industry).

Examination and approval is adopted for the administration of foreign investment in Malaysia. The Malaysian Industrial Development Authority (MIDA) under the MIDI is responsible for the examination and approval of foreign investment in the manufacturing industry. MIDI also examines and approves investment projects and extends the tax holiday. Investments in other industries or sectors are examined and approved by the Malaysia Foreign Investment Committee together with other relevant ministries. The former is only responsible for examining and approving foreign ownership and the purchase of real estate. Major changes concerning investment promotion policies are co-decided by the relevant authorities of the federal government.

3. Barriers to trade

3.1. Tariff and tariff administrative measures

The average MFN tariff rate is approximately 9.29%.

3.1.1 Tariff peak

As of 1 January 2004, Malaysia formally reduced import duties on automobiles. Duties levied on automobiles that are assembled completely in Southeast Asia dropped from between 42% and 300% to between 70% and 190%. Those on automobiles assembled in Malaysia with imported parts dropped from between 42% and 80% to 25%. Duty for automobiles assembled in Malaysia with parts imported from areas other than Southeast Asia dropped to 35% and duties for complete automobiles imported from areas other than Southeast Asia dropped between 80% and 200%. Despite the reduction, the tariff level maintained between 25% and 200% is still high enough to constitute significant barriers for foreign automobiles to enter the Malaysian market.

3.1.2 Tariff escalation

The level of tariff protection is generally lower on raw materials and increases for those goods that have value-added content. In addition to import duties, a sales tax of 10% is levied on most goods. Neither import duties nor this sales tax is applied to raw materials or machinery used in export production. Still tariff escalation has weakened the competitiveness of value-added imports, adversely affecting the trade liberalization process.

3.2 Import restrictions

In Malaysia, 17% of the total tariff lines, mainly in the construction equipment, agricultural, mineral, and motor vehicle sectors, are subject to non-automatic import licensing administration, which has formed entry barriers to the Chinese products.

Only one Malaysian governmentally controlled company is granted import dealership of rice, together with considerable discretion of regulation in this business.

According to relevant regulations, the MIDI may only grant import licenses to importers of certain steel products upon written statement obtained by the importers on their own account from the local steel plants, evidencing that such imports are unable to be produced by local plants. Be it import license or business license, strict control is maintained by the Malaysian government over items that can be produced locally or over areas in which the government encourages the growth of domestic enterprises. These hidden protective measures, though not stated in the form of law, in practice, have posed a lot of difficulty for foreign products as well as companies to enter the Malaysian market.

3.3 Discriminatory duties levied on imports

After Malaysia's formal reduction of import duties on automobiles on Jan. 2004, an excise between 60% and 100% is levied on all imported automobiles. This tax arrangement has created for foreign automobiles a new barrier to the Malaysian market.

3.4 Technical barriers to trade

Pursuant to the relevant laws of Malaysia, registration and licenses must be obtained from the Drug Control Authority (DCA) for sale of medicine and health-care products.

Special restrictions are imposed on the importation of traditional Chinese medicine and health-care products. Firstly, medicines like Aconitum carmichaeli Debx, Radix Aconiti kusnezoffii, Radix Aconiti Praeparata, and Squama Manitis are banned from import; Chinese traditional patent medicines are not allowed to be mixed with western medicines like antibiotics, hormones, sleeping pills, etc.; secondly, restrictions are also imposed on the indication on the packaging or advertisement of such functions as cancer-preventing, contraceptive, libido boosting, curing diabetes or rheumatism; thirdly, producers of the imported medicine must have GMP certificate. As most of the Chinese producers haven’t started GMP certification, their products (including the liquor containing Chinese medicine) are unable to obtain permits from the Malaysian authorities; fourthly, getting medicines registered is a very complicated process in Malaysia. Before the Chinese medicine enters the market, the exporter must be represented by a company registered in Malaysia in the registration and application process with the DCA. During the process, the exporter shall reveal the prescription to the DCA. The medicine can be imported and sold with MAL’s permit. Normally it takes one to two years, for certain medicine, even three years. Both the representation requirement and lengthy period increase the product cost of the producers. Besides, the Chinese enterprises may incur potential IPR infringement risks by revealing the prescription of the medicine. The Chinese side expresses concern over the matter.

3.5 Sanitary and phytosanitary measures

Registration and examination system is conducted by Malaysian authorities on foreign production companies that export animal products to Malaysia. All Chinese companies exporting animal products should go through the joint registration and examination procedures required by the Malaysian Ministry of Agriculture and Religious Affairs Board to obtain approval for export. According to Article VIII of the Animals Regulations 1962, importers must obtain import licenses from the Department of Veterinary Services under the Ministry of Agriculture or from the Head of the Malaysian National Quarantine Bureau before going through other procedures.

In February 2004, Malaysia issued a bulletin on banning the importation of poultry and wild birds and related products such as eggs, meat, feather and fertilizer from 9 countries or separate customs territories including Japan, the Republic of Korea, Chinese Taipei, and China. The Chinese side remains concerned.

In August 2004, Malaysia started monitoring prohibited medicine and medicine residues contained in the imported animal products for human consumption including bodies, meat together with edible offal and related products of cattle, pigs, sheep, goat, poultry as well as fish and fishery products. Importation of the above products should be accompanied by the hygiene certificate issued by the competent authorities, evidencing that no P constrictor is found in the bodies, meat, edible offal and related products of cattle, pigs, sheep, goat, and no nitrofuran or chloramphenicol is found in the bodies, meat, edible offal and related products of poultry as well as in fish and fishery products. The Chinese side remains concerned in this regard.

3.6 Government procurement

Malaysia is not a signatory to the plurilateral WTO Government Procurement Agreement. The Malaysian government policy calls for procurement to serve national public policy objectives, such as encouraging greater participation of *Bumiputera* (ethnic Malays) in economic activities, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the services sector, and enhancing Malaysia's export capabilities. As far as government procurement is concerned, foreign companies may only join the bidding when they enter into partnership with local firms. Therefore, foreign companies do not have the same opportunity as some local companies to compete for contracts. The Chinese side hopes that competent authorities of Malaysia will create a level-playing field for government procurement biddings.

3.7 Barrier to trade in services

3.7.1 Banking

The Central Bank of Malaysia requires 30% of managerial personnel in foreign-funded banks to be Malaysia nationals. The Central Bank also requires that no more than 40% of the loans to foreign-invested companies and institutions located in Malaysia can be provided by foreign-funded banks and more than 60% provided by local banks. In addition, the existing foreign-funded banks in Malaysia are forbidden to open subsidiaries or provide ATMs, and the Central Bank does not allow new foreign banks to establish branches in the country. Foreign investors are allowed to hold no more than 30% of the share of any local bank in Malaysia. Moreover, representative offices of foreign banks in Malaysia can only employ two foreigners.

3.7.2 Insurance

As part of the 1997 WTO Financial Services Agreement, Malaysia commits itself to allow existing foreign shareholders of locally incorporated insurance companies to increase their shareholding from 49% to 51 %. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies and aggregate foreign shareholding in such companies may not exceed 30%.

3.7.3 Securities

Malaysia currently allows 49% foreign ownership in stock broking companies and a 30% foreign stake in unit trusts. The Securities Commission's ten-year Capital Market Masterplan, released in February 2001, proposed liberalizing foreign participation limits by 2003, at which time foreigners would be permitted to purchase a limited number of existing stock broking licenses and to take a majority stake in unit trust management companies. However, in practice, foreign participation limits remained unchanged. The Chinese side urges Malaysia to meet its commitments to promote free access for foreign investment.

Fund management companies that exclusively provide service to foreigners are allowed to have full foreign ownership, and those that provide service to both foreigners and Malaysians are limited to a foreign ownership of 70%.

3.7.4 Construction services

A foreign architectural firm may operate in Malaysia only as a joint-venture participant in a specific project. Foreign architects may not be licensed in Malaysia but are allowed to be managers, shareholders, or employees of Malaysia firms.

3.7.5 Engineering services

According to the regulations of Malaysia, at least 30% of the share of foreign engineering firms should be held by Malaysian nationals or other ethnic Malays.

Foreign engineers may be licensed by the Board of Engineers only for specific projects sponsored and carried out by the Malaysian company. The license is only valid for the duration of a specific project. Foreign engineers are not allowed to operate independently of Malaysian partners, or serve as directors or shareholders of a consulting engineering company.

3.7.6 Basic telecommunications services

Under the WTO Basic Telecommunications Agreement, Malaysia made limited commitments on most basic telecommunications services and partially adopted the reference paper on regulatory commitments. Malaysia guarantees market access and national treatment for these services only through acquisition of up to 30% of the shares of existing licensed public telecommunications operators, and limits market access commitments to facilities-based providers. Value-added service suppliers are similarly limited to 30% foreign equity. Restrictions on these activities tend to benefit the dominant provider, government-controlled Telekom Malaysia, and created entry barriers for foreign rivals.

3.7.7 Legal services

In Malaysia, foreign lawyers are not allowed to practice law in any name. Their scope of service is limited to advice concerning home country and international law. Besides, foreign law firms are not allowed to have more than 30% of the joint law firm's shares.

3.7.8 Labor services

Malaysia hasn't fully opened its labor market to Chinese companies. As China is not Malaysia's traditional labor exporting country, Malaysia only allows Chinese technical professionals to work in the country. According to the Memorandum for

Labor Cooperation between China and Malaysia signed in September 2003, the Malaysian Government agrees to allow, under certain conditions, the introduction of Chinese technicians into Malaysia working for ancient building maintenance, pottery production and furniture production. Competent authorities from the two sides are now negotiating technical details involving the relevant implementation procedure and conditions.

According to the Internal Ministry, a Malaysian employer is only allowed to recruit foreign labor when no qualified locals could be found in the first place. At the same time, in order to ensure job opportunities for local citizens, ratios between local labor and foreign labor have been set by the authorities for different industries, in the case of the electronics industry 2:1 and furniture production 1:1. However, the ratios are subject to change according to the market demand and supply of labor. It's wished that the Malaysian Government would create a fair employment environment for foreign labor and enhance labor services cooperation with China.

Malaysian government doesn't allow foreign labor to join trade unions, and has therefore limited the legitimate rights and interests of foreign labor. The Chinese side expresses its concern over the matter.

4 Barriers to investment

Generally speaking, investment projects sponsored by the Malaysian government are not open to foreign companies. Besides, foreign investors are not allowed to be engaged in the production and selling of weapons and drugs in Malaysia and restrictions are also imposed on them for the production of liquor and tobacco in Malaysia.

Malaysia encourages foreign direct investment, in particular in export-oriented manufacturing industry and hi-tech industry. Foreign investors are allowed to hold a 100% share of the investment projects in the manufacturing industry. However, foreign ownership is not allowed to exceed 70% in fields such as paper packaging, plastic packaging, metal ram, metal shaping and electroplating, wire packing, printing and the steel and iron industry. At the same time, quite a few restrictions are imposed on individual investment and it is totally within the government's discretion to handle individual cases. Furthermore, relevant laws in Malaysia prohibit exclusive foreign ownership in Malaysia for certain sectors and require at least 2 Malaysian directors on the board of the foreign-funded companies. These measures, in practice, constitute barriers to foreign investment, over which the Chinese side expresses concern.

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 2004. According to the China Customs, the bilateral trade between China and the US in 2004 reached US$169.63 billion, up by 34.3%, among which China's export to the US was US$124.95 billion, up by 35.1%, while China's import from the US was US$44.68 billion, up by 31.9%. China had a surplus of US$80.27 billion. China mainly exported to the US machinery and electronic products, furniture & lighting, toys, footwear, steel products, plastic products, automobiles and auto parts, garments, leather products and suitcases and bags, other textile products, photo-optical equipment, and etc. China mainly imported from the US machinery and electronic products, optical medical apparatus, oilseed feed, spacecraft, plastic products, organic chemical products, cotton, wood pulp, miscellaneous chemical products, steel, leather and etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in the US reached US$240 million in 2004, and the volume of the newly signed contracts was US$ 380 million. The volume of completed labor service cooperation contracts was US$120 million, and that of the newly signed labor service cooperation contracts was US$50 million. By the end of 2004, the accumulated turnover of engineering contracts completed by Chinese companies in the US had reached US$2.02 billion, with that of all the contracts signed being US$2.8 billion, and the volume of completed labor service contracts had reached US$1.9 billion, with that of the total contracts signed being US$1.88 billion.

According to MOFCOM, 97 Chinese-funded non-financial enterprises were set up in the US in 2004, with a contractual investment of US$140 million by Chinese investors. By the end of 2004, a total of 883 Chinese-funded non-financial enterprises had been set up in the US with a total contractual investment of US$1.09 billion.

According to MOFCOM, US investors invested in 3925 projects in China in 2004, with a total contractual investment of US$12.17 billion and an actual utilization of US$3.94 billion. By the end of 2004, US investors had accumulatively invested in 45,265 FDI projects in China with a contractual investment of US$98.61 billion and an actual utilization of US$48.03 billion.

2 Introduction to US trade and investment regime

2.1 Legislation on trade and investment

2.1.1 Legislation on foreign trade administration

The American 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. As a common law country, the US trade legal system is made up of both statutes and precedents. The latter provide the concrete enforcement or useful supplement to statue laws. The statue laws ratified by the Congress are contained in the Statues at Large, and most are now incorporated into Title 19 of the United States Code (USC), while the precedents are carried in various case reports.

Currently, the following laws have constituted the pillars of the US legal system governing trade. The Smoot-Howley Tariff Act of 1930, as amended, is the main law governing tariff rate setting and tariff imposition. It also provides for antidumping and countervailing issues. The Trade Act of 1974, as amended, regulates non-tariff barriers issues, GSP scheme to developing countries, safeguard measures and investigations under Section 301. The Trade Agreement Act of 1979 , as amended, has ratified the Tokyo-round negotiation results, and included the negotiation outcomes on trade remedies, customs valuation, government procurement, and product standards into the US trade law system. The Omnibus Trade and Competitiveness Act of 1988 has strengthened the executive branch’s power to participate in trade negotiations and to take measures against unfair trade practices. It has also amended comprehensively many trade laws existing then, including the countervailing and anti-dumping laws, the Trade Agreement Act of 1979 and Section 301 under the Trade Act of 1974.

Other trade-related laws include the Trade Act of 2002, the Uruguay Round Agreement Act (URAA), the Statement of Administrative Action 1994 for the URAA, the North America Free Trade Agreement Implementation Act 1993, the United States-Canada Free Trade Agreement Implementation Act, the Trade and Tariff Act of 1984, as well as the Trade Expansion Act of 1962.

2.1.2 Legislation on foreign investment administration

The legal system governing foreign investment consists of the following three parts:

2.1.2.1 Legislation on reporting and review requirements

Laws in this area comprise the International Investment and Trade in Services Survey Act, the Agricultural Foreign Investment Disclosure Act, the Defense Production Act of 1950 (commonly known as the Exon-Florio amendment), and etc.

2.1.2.2 Legislation on national treatment and sectoral restrictions

The US places restrictions on foreign investment in energy, mining, fishery and etc., for example, the Atomic Energy Act of 1954, and the Mineral Leasing Act of 1920.

2.1.2.3 Legislation on international investment arrangements

So far the US has signed 38 bilateral investment agreements with other countries and regions, which have taken effect. Meanwhile, many bilateral and regional trade agreements the US has signed also provide for provisions on investment.

2.2 Trade administration

2.2.1 Tariff administration

2.2.1.1 Average tariff rate and changes

The US accords MFN tariff treatment to all but one WTO member (Cuba). Weighted average tariff rate stood at 1.5% in 2003 and 1.6% in 2004. Certain products such as tobacco, peanut, dairy products, sugar and certain footwear are protected by tariff rates as high as 50%-350%. US tariff rates on industrial goods averaged 4% in 2004. In the on-going new round of WTO negotiations, the US has proposed to eliminate tariffs for all industrial goods and substantively cut tariffs on agricultural products.

2.2.1.2 The US tariff system

The US tariff system is based on the US Harmonized Tariff Schedule formulated in accordance with the Harmonized and Commodity Description and Coding System of the Customs Cooperation Council. Most US tariffs are ad valorem duties. Certain imports, however, mostly agricultural products, are levied specific duties, while some others are levied compound duties. Certain products including sugar are subject to the restriction of tariff quota.

The tariff in the US Harmonized Tariff Schedule is presented in two columns. General, most-favored-nation (MFN) rates, referred to in the U.S. provisions as normal trade relations tariff treatment, are in Column 1, as are the “Special” rates. Column 2 lists the statutory rates, which are applied to imports from countries to which the United States does not grant MFN treatment.

2.2.2 Import administration

The US uses tariffs to administer and regulate imports and their amount. However, the US maintains tariff quotas on sensitive products, including agricultural products. In textiles trade, the US removed the quota restriction on January 1st 2005 as scheduled. In government procurement, what is not covered by the Government Procurement Agreement of the WTO is bound by the Buy American Act. In addition, out of concerns for environmental protection, national security, and balance of payment, the Congress has passed many domestic laws authorizing the Executive branch to use such measures as quota, import ban, and import surcharges to restrict imports. These laws include the Marine Mammal Protection Act of 1972 (for animal protection), Section 232 under the Trade Expansion Act of 1962 (for national security), and Section 122 under the Trade Act of 1974 (for balance of payment), coupled with a large number of product standards used in business practices in the US, which to some extent have also played a role in import restrictions.

2.2.3 Export administration

2.2.3.1 Export control

The US maintains export restrictions and controls for national security, foreign policy purposes, to prevent the proliferation of bio-chemical weapons and missile technology, or to ensure sufficient domestic supply. Depending on the type of the product and policy purposes, export control is administered and implemented by the Bureau of Industry and Security (BIS) of the US Department of Commerce, the State Department or the Treasury Department.

BIS of the Department of Commerce is responsible for issuing export licenses to dual-use articles or articles in short supply, under the authority of the International Emergency Economic Powers Act (IEEPA), the Export Administration Act of 1979 (EAA), and the Export Administration Regulations.

The U.S. Department of State is responsible for export control of defense articles and defense services under the authority of the Arms Export Control Act.

The Treasury Department, through export licensing, administers control over the assets of individuals and organizations deemed to represent restricted countries under US trade or economic sanctions, under the authority of the International Emergency Economic Powers Act (IEEPA), the Trading with the Enemy Act, the United Nations Participation Act, and current anti-terrorism measures.

2.2.3.2 Export promotion

The US uses export financing, duty-free treatment for foreign trade zones, duty drawback upon exportation, tax exemption on part of the extraterritorial income for foreign sales corporations, trade adjustment assistance programs and other measures to promote export.

2.2.3.2.1 Export financing

The Export-Import Bank of the United States is the official export credit agency of the United States. Through various types of loans, guarantees, and insurance schemes, it provides financing to exporters and international buyers. In fiscal year 2004, the Export-Import Bank is budgeted to offer US$11.6 billion for export support.

2.2.3.2.2 Foreign-Trade zones

Foreign trade zones are created by the Foreign-Trade Zones Act of 1934. Foreign and domestic merchandise brought into foreign trade zones are exempt from duties, inventory taxes or consumption taxes. Foreign trade zones are divided into general-purpose zones and sub-zones, or special-purpose zones.

2.2.3.2.3 Duty drawback system

The Duty Drawback System is created by Section 313 of the Tariff Act of 1930. Under the Duty Drawback System, customs duties or other taxes levied on imported merchandise or raw materials can be refunded at the time of export.

2.2.3.2.4 Trade adjustment assistance (TAA)

Currently, trade adjustment assistance in the US covers TAA-Workers, TAA-Farmers, and TAA-Firms. The legal authority comes from the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002. The Trade Act of 2002 reauthorizes these three TAA programs through fiscal year 2007 (September 30, 2007). According to the amendments, through years 2003 to 2007, TAA provides health insurance tax credit, and special wage subsidies to workers who age 50 or older. US$20 million every fiscal year is available to be spent on training eligible workers. In addition, US$16 million is available for supporting eligible firms. The budget for helping farmers is as high as US$ 90 million.

2.2.4 Other trade-related tariff systems

Apart from the basic MFN rates, the US accords further preferential tariff arrangements to some countries in accordance with the mutually beneficial free trade agreements between them. Furthermore, most developing countries and least developed countries are eligible for special tariff preferences unilaterally granted by the US according to the tax preference schemes.

2.2.4.1 Reciprocal free trade agreements

The US concluded its negotiations with Australia and Morocco in 2004, thus expanding the number of its free trade agreements to 12. The US is also a member of 5 regional trade agreements including the NAFTA. Members of these mutually preferential free trade arrangements are entitled to more preferential treatment than MFN rates as per agreement. To implement these trade arrangements, the US Congress has enacted relevant laws such as the NAFTA Implementation Act, US-Israel Free Trade Area Agreement Act, etc.

2.2.4.2 Preference schemes

Apart from mutually preferential trade arrangements, the US has also established unilaterally tariff preference schemes, mainly applicable to developing countries and least developed countries, among which the oldest one is the Generalized System of Preferences (GSP) set up in 1976. According to the GSP, around 4,650 products from 135 countries and areas are eligible for duty-free treatment when exported to the US. Algeria and Iraq were added to the beneficiary list of GSP in 2004, while other countries such as Chile, Czech, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Antigua and Barbuda, Barbados, Bahrain will no longer enjoy GSP treatment either because of the signing of bilateral free trade agreements with the US, joining the EU, or graduation from the GSP.

Similar preferential arrangements include the African Growth and Opportunity Act of 2000 (AGOA), which grants duty free treatment to products of sub-Sahara African country origin, the Andean Trade Preference Act and the Caribbean Basin Initiative.

2.2.5 Other relevant systems

2.2.5.1 Customs system

Since the security measures were launched in 2002, the US import procedures have undergone significant changes. New rules require that electronic information must be disseminated to the competent US authorities before cargos are shipped to the US. The US has reached agreement with some foreign seaports to examine US-bound containers. In addition, the Bio-terrorism Act of 2002 requires registration of food facilities and prior notice of imported food shipments to the American Food and Drug Administration.

2.2.5.2 Trade remedy measures

The US trade remedy system covers two aspects: affected imports and affected exports. Remedies available to imports include anti-dumping and countervailing measures against unfair price competition, safeguard measures to regulate imports, and measures against imports infringing US intellectual property rights under Section 337. Trade remedies for export are mainly the application of Section 301.

The current US anti-dumping and countervailing rules are contained in the United States Code: Title 19-Chapter 4-Tariff Act of 1930, while the specific administrative regulations are included in the Code of Federal Regulations, Title 19. The President, under the authority of Sections 201-204 of the Foreign Trade Act of 1974, has the right to take safeguard measures against specific imports. This authorization can be used in the circumstances of import without unfair competition. Section 337 of the Tariff Act of 1930 is usually used to protect the interests of US intellectual property rights owners by barring imported products that allegedly violate US intellectual property rights from entry into the United States. The International Trade Committee (ITC) is the executive body of Section 337, and is authorized to issue exclusion orders to the Customs prohibiting the entry of IPR-infringing goods.

Section 301 of the Trade Act of 1974 are used to enforce U.S rights under current trade agreements and are also used to obtain increased market access for U.S goods and services, and protect American goods from being affected by foreign intellectual property infringements. It has provided the USTR with specific procedures to investigate foreign trade practices that violate IPR, and consult with foreign governments in order to seek a solution. The expanded use of Section 301 is reflected by Super 301, and Special 301 for the purpose of IPR protection. The series of 301 is administered and implemented by the USTR.

2.2.5.3 Impact of political and economic measures on trade

The American government is authorized to impose restrictions or administration on imports and exports out of political or economic safety concerns provided the restriction or control meet the requirements of relevant laws. These laws include the International Emergency Economic Powers Act approved in 1977, which authorizes the President to freeze foreign assets in the US, impose embargoes, or take other appropriate action when there is a threat to the national safety, foreign policy or economic interests of the US. Also included are the Trading With the Enemy Act, whose authority was extended for 1 more year by President Bush on September 10th 2004, the Narcotics Control Trade Act, the International Security and Development Cooperation Act of 1985, the Embargo on Transactions with Cuba, and many other laws.

2.3 Investment administration

Basically, the US places no restriction on investment. In the following sensitive industries, however, there exist some specific regulations.

2.3.1 Aviation

In accordance with the regulations of the US Department of Transportation, foreign ownership of American airline companies are not allowed to exceed 25%, and no less than two thirds of the members of the board of directors in airline companies must have US citizenship. Merger and acquisition of American airline companies by foreign companies must be examined and approved by the US Department of Transportation.

2.3.2 Communication

In accordance with the US Federal Communication Act, if a foreign citizen, company, or government controls one fifth of an American communication company, or over one fourth of the board of directors in a US communication company are foreigners, the American government can refuse its application for business license in the US.

2.3.3 Shipping

Foreign individuals, companies or governments are not allowed to own over 25% shares of shipping companies engaged in coastal shipping or domestic water-borne transportation in the US. Otherwise, the coastal or domestic water-borne transportation rights shall be revoked. Unless approved by the Transportation Secretary, selling US-registered ships to foreign companies is a violation of law and will be investigated accordingly.

2.3.4 Atomic energy

The US Atomic Energy Act places severe restrictions on the participation of foreigners in the production of atomic energy.

2.3.5 Finance

Opening of finance to foreign capital is regulated by laws both at the federal level and at the state level, which are varied and complicated. In general, in accordance with the International Banking Act of 1978, and various state laws, it is strictly controlled for foreign companies to enter the financial sector by means of merger or acquisition.

2.4 Competent authorities

As authorized by the US Constitution, the Congress is responsible for administering foreign trade and collecting tariffs. The Congress, through an array of laws, delegates many functions to the relevant executive bodies, which at the same time, maintain close contacts with major committees of the Congress and with advisory bodies of the private sector.

In the area of foreign trade administration, main responsibilities of the executive branches lie in 3 dimensions, namely, tariff imposition which is handled by the Treasury Department and the Customs Service, import and export administration implemented by DOC, USDA and the Customs Service, and foreign trade negotiations shouldered by the State Economic Committee directly responding to the President and the USTR.

2.4.1 The Congress

As clearly defined in Section 8, Article I of the US Constitution, the Congress shall have power to “regulate commerce with foreign nations” as well as “to lay and collect taxes, duties…”. Therefore, signing free trade agreements, implementing or revising tariff measures and other trade measures must all be based on specific Congress legislation or under special authorization by the Congress.

Congress’s role in trade policy is essentially two-fold: the creation and the oversight of trade laws. To ensure proper implementation of the trade laws by the executive branch, the Congress requires that the executive branch regularly consult with it. The Congress also requires numerous annual reports from the Office of U.S Trade Representative and from the U.S International Trade Commission (ITC) to keep the Congress informed regarding actions taken under various trade laws.

The Senate and the House of Representatives have more than 10 subordinate committees which are trade related, and the key organizations among them include the

House Committee of Ways and Means and the Senate Committee of Finance.

2.4.2 The executive branch

2.4.2.1 United States Trade Representative (USTR)

The predecessor of the United States Trade Representative (USTR) is the Office of Special Trade Representative, established under the Trade Expansion Act of 1962, and was renamed as USTR in 1980. Being the principal trade advisor, negotiator and spokesperson on trade issues for the President, USTR is the cabinet member specifically responsible for coordinating trade and investment policies and for negotiating with other countries in the aforesaid areas. Its responsibility and importance has increased steadily with several new legislations.

In addition, in the Omnibus Trade and Competitiveness Act of 1988, the Congress requested USTR to represent the following bodies or meetings: international trade focused organizations established by the President, and economic summits or international conferences on international trade. USTR is also responsible for designating and coordinating organizations to handle anti-dumping, countervailing and other unfair trade cases actionable under Section 337 and Section 301.

According to the Uruguay Round Agreement Act, the USTR is responsible for all negotiations under the WTO.

The USTR went through structural reforms in June 2003. Division for Chinese Affairs and Division for Japanese Affairs were dismissed and incorporated into the Division for North Asian Affairs. The USTR appoints three ambassador-level deputy trade representatives.

2.4.2.2 Department of commerce (DOC)

The US Department of Commerce (DOC) is the key agency in the federal government responsible for trade administration and export promotion. Its main duties include enforcing foreign trade laws and regulations, implementing foreign trade and investment promotion policies, monitoring the implementation and execution of bilateral and multilateral agreements and providing consulting and training services to US companies.

The International Trade Administration (ITA) and the Bureau of Industry and Security (BIS) are two important subordinated offices affiliated to the DOC. The main functions of ITA include export promotion, trade statistics, tariff information collection, supervision over the compliance of market access commitments and the implementation of international trade agreements or treaties by foreign countries, removal of market access barriers, antidumping and countervailing investigations, etc. BIS is mainly responsible for formulating, implementing and interpreting export control policies in relation to dual-use articles, software and high technology, and issuing export licenses.

2.4.2.3 International Trade Commission (ITC)

The International Trade Commission (ITC) is a federal agency. Its predecessor is the US Tariff Committee created by the Congress in 1916 and renamed as ITC by the Trade Act of 1974. It has extensive investigative power in trade issues.

ITC's main duties include injury investigations for antidumping and countervailing cases, taking action against unfair trade practices such as IPR infringement (which can be vetoed by the President), recommending trade remedies to the President for seriously injured industry affected by import surges.

2.4.2.4 The Customs Service

The Customs Service is responsible for tariff collection, and execution of over 400 laws and regulations in relation to international trade. In accordance with Section 402 of the Homeland Security Act of 2002, the Customs Service is transferred to the newly established Department of Homeland Security. Its function of tariff collection, however, as authorized by the law, is maintained by the Department of the Treasury.

2.4.2.5 Coordinating organizations

2.4.2.5.1 Trade policy coordinating organizations

Coordination among the Congress and the executive branch is conducted through organizations in three tiers. The primary level is the Trade Policy Staff Committee (TPSC), the Trade Policy Review Group (TPRG), and the National Economic Council. TPSC and TPRG are chaired by the USTR.

The National Economic Council, established by President Clinton in 1993, is the highest-level agency for coordination, reporting directly to the President. It is composed of the Vice President, the State Secretary, the Secretaries of Treasury, Agriculture, Commerce, Labor and other departments. The main responsibility of this committee is to review and assess the memorandums on trade policy issues, special and controversial trade policy issues submitted by the TPRG.

2.4.2.5.2 Investment policy coordinating organizations

The Committee on Foreign Investments in the United States (CFIUS) was formed in 1975 as a coordinating organization for implementing investment policies in the US, e.g., to examine foreign mergers and acquisitions of US companies under the Exon-Florio Amendment.

Notice of merger or acquisition to CFIUS should include information of the acquirer, overview of the transaction, the assets in question and future plans. After the receipt of the notice, CFIUS shall determine within 1 month whether to approve the transaction, or extend the review to 45 days if necessary. The only criterion that CFIUS uses is whether the acquisition will threaten national security. If CFIUS makes a positive determination, the Committee shall submit to the President for review, who shall announce the final decision within 15 days.

2.4.2.5.3 Private sector advisory committees

The system of private sector advisory committees was initially set up under Section 135 of the Trade Act of 1974, and later, having been expanded by the Trade Agreement Act of 1979, and the Omnibus Trade and Competitiveness Act of 1988, it has evolved into the current three-tier system administered by the USTR. The first tier is the Advisory Committee for Trade Policy and Negotiations (ACTPN). The second tier is made up of policy advisory committees representing overall sectors of the economy, such as industry, agriculture and services. The third tier is composed of experts from various fields, responsible for providing specific technical information on trade issue in their respective fields. Members of the second and third tiers are appointed by the USTR or the secretary of the relevant department or agency.

3 Barriers to trade

3.1 Tariffs and tariff administrative measures

3.1.1 Tariff peak

The overall tariff rate in the US is relatively low. However, the US imposes high tariffs on certain products, which constitutes tariff peak. Currently, 7.5% out of the total tariff headings of the US have a tariff rate three times higher than the average tariff rate, and 4.3% have a tariff rate over 15%. High tariffs or tariff peaks are mainly applied to textiles and garments, leather products, rubber products, pottery, footwear and travelware, which are the major export items of China to the US, thus affecting China particularly. Furthermore, within one specific product classification such as footwear or pottery, usually lower tariff rates are applied to high-priced products, and higher tariff rates to low-priced products, thus putting Chinese products which occupy a large share of the low-end market in the US at a great disadvantage.

3.1.2 Tariff escalation

Tariff escalation is a serious issue in the US. For metal products, precious metal and precious stone, the arithmetic average tariff for primary products is 0.43%, for semi-finished products, 1.17%, and for finished products, 6.12%. For textiles and clothing, the arithmetic average tariff for primary products is 7.17%, for semi-finished product, 9.21%, and for finished products, 10.16%. Take products under a single tariff heading as another example. The tariff rate for non-retail-use non-twisted spin eurelon-6 single yarn is 0, while that of unbleached or bleached pure nylon fabric is

13.6%, and knit or crocheted T-shirts made of chemical fiber 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 seriously undermined the legitimate rights and interests of Chinese enterprises.

3.1.3 Tariff quotas

The US imposes 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 2004 included almost all dairy products, sugar and sugar products, peanut and certain peanut products, unprocessed tobacco leaves and processed tobacco, tuna fish, fresh, chilled or frozen beef, cotton, etc. High tariffs are imposed on products exceeding quota. For instance, the average tariff rate for in-quota nonfat dried milk is 2.2%, while that of off-quota is 52.6%.

3.2 Import restrictions

3.2.1 Import bans

According to Article 2, Section 232 of the Trade Expansion Act of 1962, DOC has the right to self-initiate or, based on a request from an interested party or a request from other departments or agencies, initiate Section 232 investigations to evaluate whether the imports threaten to impair the national security, and submit a report to the President, who will decide whether to adjust imports. Since 1980, DOC has completed 16 investigations under Section 232.

Although the Trade Expansion Act of 1962 provides for provisions on factors that need to be considered for determining the injury or threaten of injury to national security as a result of importation, the criteria are very ambiguous. Therefore, the Act grants great discretionary power to the President, DOC and relevant authorities in practice. In addition, when an industry files a petition under Section 232, no evidence of injury is required, which has substantially lowered the threshold for initiating an investigation under Section 232, and made it more difficult to distinguish whether the true intention of the petitioner is to protect national security or to prevent the competition from imports. In order to avoid trade distortions, China hopes that these measures should be implemented in a more prudent manner.

3.2.2 Import quotas

In accordance with the Uruguay Round Agreement on Textiles and Clothing, the US removed all quantitative restrictions on textiles on January 1st 2005. In terms of concrete implementation, however, there still exist the following restrictive measures in the US.

The Committee for the Implementation of Textile Agreements (CITA) declared on December 13th 2004 that for all shipments exported in 2004 that exceed the applicable

2004 agreed quota limit, entry would not be permitted upon the removal of quota. Rather, entry would be permitted to goods in an amount equal to 5 percent of the applicable 2004 base quota limit until all shipments in excess of the quota limits have been entered. In addition, CITA required that all shipments in excess of the quota need to be presented at the moment of opening to ensure the 5% could be distributed proportionally among all products. Shipments in excess of the 5% will have to wait till the following month or later for clearance. The delay will inevitably increase importers' warehousing costs and affect the timely supply of products concerned.

In addition, in the absence of sufficient factual evidences as required by the bilateral agreements, the US authorities have taken unilateral actions to deduct China' s textile quotas at its determination that illegal transshipments exist in China's textile trade. These actions have severely affected China's textile export to the US. In fact, the thorough investigations by China revealed that many such transshipments, alleged illegal by the US, were conducted by exporters from a third country (or area), rather than by Chinese exporters, and a considerable number of cases involved US importers who, in collusion with US Customs Service staff, transshipped Chinese products originally destined to a third country (or area) to the US. Several consultations were held for solving this issue between China and the US, and the US has corrected only part of its practices so far.

3.3 Barriers in customs procedures

3.3.1. Unreasonable customs clearance requirements on certain products

The US Customs Service requires that exporters should provide additional documents and information on goods waiting for customs clearance. For certain products, such as textiles, clothing or footwear, the information required is quite beyond the necessity for normal customs clearance. These formalities, which are complicated and costly, have constituted barriers to exporters, particularly to small exporters.

The US Customs Service also requests confidential processing information for the imports of textiles and clothing under certain circumstances. For example, 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. Such action has resulted in an increase of cost.

In addition, the US Customs Service issued a regulation in January 2003, requiring that all eyeglasses shipped to the US can't be cleared unless a "dropping test certificate" is provided. According to the US Customs Service, eyeglasses include normal eyeglasses and sunglasses. Sample eyeglasses mailed by express delivery are not exempt from the requirements.

3.3.2 Bio-terrorism Act

The US promulgated the Public Health Security and Bio-terrorism Preparedness and

Response Act (hereinafter referred to as Bio-terrorism Act) in June 2002, and the US Food and Drug Administration (hereinafter referred to as FDA) publicized the Registration of Food Facilities and Prior Notice of Imported Food Shipments. While China recognizes the efforts of these laws to fight against terrorism, it is concerned about adverse impact caused thereby, such as slower customs clearance, increased business cost, increased uncertainty in the export market and etc. According to the FDA Import Refusal Report, a total of 1815 shipments from China had been denied entry into the US market by the end of 2004. China expresses concerns over this issue.

3.3.3 Container Security Initiative (CSI) and the 24-hour regulation

To prevent terrorists using containers for terrorist attacks, the US Customs Service launched the Container Security Initiative (CSI) in January 2002, calling for cooperation in anti-terrorism with the Customs of foreign countries. 45 ports from 23 countries had joined the CSI by February 2005. China signed the Declarations of Principle with the US on July 29th 2003 to include the two major container ports of Shanghai and Shenzhen into the cooperation.

To better implement the CSI, the US Customs Service issued the Advance Manifest Regulation, known as the 24-hour regulation on October 31st 2002. The regulation was enforced starting from February 2nd 2003. The 24-hour regulation requires that shipping companies or no-vessel operating common carrier (NVOCC) must notify electronically the US Customs Service of detailed information regarding every container to facilitate the examination by the Customs Service. This regulation would apparently increase the cost of export to the US by container transportation. Some shipping companies had to charge consignors additional fees for the advance manifest in order to shift the increased cost. While China recognizes the anti-terrorist efforts by CSI and the 24-hour regulation, it is concerned about the adverse impact caused to normal trade and trade facilitation.

3.4 Discriminatory imposition of domestic taxes and charges on imports

The US Customs Service levies Harbor Maintenance Tax on all imported goods transported by ship, and the rate is 0.125% *ad valorem*. Many companies have complained that the level of this charge is not comparable to the services provided.

3.5 Technical barriers to trade

3.5.1 General introduction of technical measures on trade

The US has a very complicated and decentralized system of technical standards and governing laws. 17 agencies of the federal government and 84 independent organizations have the right to draw up technical regulations. State or local governments have also enacted many different technical regulations in the areas of manufacturing, transportation, environmental protection, food and drugs. It is estimated that there are more than 400 non-governmental standard institutions and associations in the US today, and more than 50,000 technical standards and regulations have been established by the US official authorities, and another 50,000 by various non-governmental standard institutions, professional associations and industry groups in the US. The US rarely adopts standards formulated by international standard organizations and some US standards are even contrary to international ones. For instance, imports into the US are required to meet not only ISO9000, but also many other conditions. Due to the complicated and dispersed technical standards and governing laws, there is usually a lack of clarity in the administration of these regulations.

The system of certification and conformity assessment in the US is also rather decentralized and complicated. There are currently 55 certification systems in the US, but no uniform quality certification authorities. Government organizations, local government agencies and non-government organizations can all conduct quality certification. In conformity assessment, the US commonly uses the "third-party" method, which has brought unnecessary burdens to foreign manufacturers. Moreover, delays by certain agencies in the examination and approval process have incurred additional costs for the entry of foreign products, including Chinese products.

3.5.2 Technical regulations

3.5.2.1 Regulations on materials from cattle

The Food and Drug Administration (FDA) proposed in July 2004 to require that manufacturers and processors of human food and cosmetics that are manufactured from, processed with, or otherwise contain material from cattle must establish and maintain records sufficient to demonstrate the food or cosmetic is not manufactured from, processed with, or does not otherwise contain prohibited cattle materials. On December 20th, the FDA issued a final rule to prohibit the use of certain cattle material in human food and cosmetics and a draft regulation requiring maintaining records. The draft act has listed in detail prohibited cattle materials, and requirements for manufacturers or processors to use cattle materials. The issuing of the draft act has raised the technical standard for cattle-material-containing food and cosmetics made in China. China expresses concern over this issue.

3.5.2.2 Proposed amendment to regulations regarding the transportation of lighters and lighter refills

The US Transportation Department has proposed to amend the Regulations for the transportation of lighters and lighter refills. This action will amend the definition, examination, testing, certification, and transportation of lighters and lighter refills. The China will closely follow the development and impact of the regulation.

3.5.3 Technical standards

Communication and broadcasting equipment exported to the US must comply with the standards on safety, radiation (electromagnetic compatibility), communication code, and interconnectivity required by the US government, and certified by UL or other authoritative organizations.

The harsh standards on information and communication technology have hindered the entry of foreign companies into the communication service market.

3.5.4 Labeling

The US maintains stringent requirements on food labeling. FDA enacted and revised 22 regulations on food labeling in 1992 and has later made many amendments and supplements to adapt to new developments. Food imports inconsistent with labeling requirements are automatically detained by the US Customs Service regardless of quality. China attaches great concern to the justifiability of the labeling requirement.

3.6 Sanitary and phytosanitary measures (SPS)

The US has accounted for WTO's largest number of SPS measure notifications. In 2004, the WTO received 908 SPS notifications, among which 267 were from the US.

3.6.1 Food inspection and quarantine

The Registration of Food Facilities and the Prior Notice of Imported Food Shipments regulations issued by FDA took effect as of December 12th, 2003. The two regulations require domestic and foreign facilities that manufacture, process, pack, or hold food for consumption in the United States to register with FDA, and require a prior notice to be submitted electronically to FDA 5 days before the arrival of imported food or feed. Unregistered foreign food or feed will be detained when arriving at the port of entry.

According to the regulations, registration by a foreign company must be done through a US agent for thousands of US dollars. It is held by China that the US inspection and quarantine procedures are unduly complicated with no scientific justification. The overuse of inspection and quarantine and even discriminatory measures have increased the cost of importing agricultural products, prolonged customs clearance time, restrained normal import and violated Article 5.4 of the Agreement on Sanitary and Phytosanitary Measures of the WTO, which says that "member should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects".

It is the hope of the Chinese side that the U.S use relevant measures consistent with the SPS Agreement of the WTO. China is also concerned about the adverse impact of these measures.

3.6.2 Penjing plants

The US Animal and Plant Health Inspection Service (APHIS) released unilaterally the Final Rule on the Importation of Artificially Dwarfed Plants in Growing Media From the People's Republic of China in January 2004 and notified the WTO accordingly. The rule requires the Penjing plants for exportation to the US to be grown in approved media free from the contact of soil in the whole growing process, and to be grown in a greenhouse that have mesh screens at least 2 years prior to export. The Rule has seriously violated the regular pattern of plant growing, and is not applicable commercially. It is inconsistent with the bilateral Protocol on the China Export of Penjing Plants in Growing Media to the US, and subsequently rendered the normal trade of this product impossible. China expresses its deep concern over this matter, and hopes the US side amend the rule.

3.6.3 Ya pears

The US suspended imports of Chinese Ya pears at the end of 2003, on the pretext that an exotic Alternaria species was detected in Chinese Ya pears sold in the US market. As a result of the ban, the Chinese exporters and US dealers of Ya pears suffered a great loss. China has since worked closely with the US in a positive manner and has conducted the following research:

3.6.3.1 Identifying the species of *alternaria*

Chinese experts believe that there is no new species of *alternaria kikuchiana tanaka*. The fungus is air-borne and also exists in the US. In addition, it is a post-harvest disease and therefore won't affect the production of Ya pears.

3.6.3.2 Study on effective measures to reduce the occurrence of *alternaria kikuchiana tanaka*.

The collaborated research of experts from the two countries has made substantive progress and found effective measures to reduce the occurrence of *alternaria kikuchiana tanaka*.

The US suspension of the importation of Chinese Ya pears is not based on scientific justification. Regardless of the research findings by experts from China and the US, the US has taken the zero-risk measures and maintained the suspension. China expresses dissatisfaction with the US practice of restricting trade through technical barriers regardless of scientific evidences. It is hoped that the US will correct its practice and resume the import of Chinese Ya pears.

3.7 Trade remedies

By frequently using antidumping and safeguard measures, the US has practically restricted the exports from China. From 1980 to the end of 2004, the US had initiated 110 antidumping investigations and 19 safeguard investigations against Chinese exports, including 5 product-specific safeguard investigations and 12 textile special safeguard investigations. According to statistics from ITC, there have been 59 anti-dumping orders which were made since 1980 and are still in force by the end of 2004. In addition, US has initiated 6 new anti-dumping investigations against imports from China and 12 special safeguard investigations against Chinese textiles in 2004.

There are many discriminatory provisions against Chinese products in relevant US anti-dumping legislations. Many unfair practices that exist in the investigations have also constituted barriers to China's exports to the US.

3.7.1 Existing issues in antidumping investigations against Chinese products

3.7.1.1 China's market economy status

Section 1677 (18), Chapter 4 of the Smoot-Howley Tariff Act of 1930 lays down specific provisions on non-market economy. According to (18) (B), there are 6 factors to be considered in making determinations whether a country is a market economy or not, namely, the extent to which the currency of the foreign country is convertible into the currency of other countries, the extent to which wage rates in the foreign country are determined by free bargaining between labor and management, the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country, 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 such other factors as the administering authority considers appropriate. In spite of China's accession to the WTO, and China's achievements in its market economy development over the years, the US has consistently treated China as a non-market economy and refused to grant market-economy status to China.

The US DOC held a public hearing on China's market economy status for the first time in June 2004. Representatives from industry groups of steel, wood furniture, cookware, paper and manufacturing as well as business representatives spoke at the hearing. Although most recognized the progress and achievements China has made in developing market economy since the reforms and opening up, it was deemed by most people that there was still a gap China needs to fill before becoming a market economy country. Many US officials have spoken publicly on many occasions that unless China takes significant reforms in its labor market and exchange rate mechanism, the US government won't recognize China's market economy status. To push for an earlier resolution of this issue, the Sino-US Joint Commission on Commerce and Trade (JCCT) agreed to set up a working group for China's market economy status. The first meeting of the working group was held in July 2004.

In view of the aforesaid position of the US government, in anti-dumping investigations against Chinese products, the US will continue to use surrogate country prices in determining the normal value of a Chinese product, ruling its normal price as dumping price, and thus inflicting heavy losses on Chinese exports.

3.7.1.2 Market oriented industry (MOI) and surrogate country

3.7.1.2.1 Market oriented industry (MOI)

According to relevant US laws, in antidumping investigations, if the respondent company could prove that its industry meets standards for Market Oriented Industry (MOI), the US antidumping investigation authorities should adopt the cost data of this respondent company or its industry in calculation of production cost and dumping margin, rather than adopting Surrogate Country approach. US DOC has set down a three-prong MOI test as follows: there be virtually no government involvement in production or prices for the industry; the industry is marked by private or collective ownership that behaves in a manner consistent with market considerations; and producers pay market-determined prices for all major inputs, whether material costs (raw materials and parts, public utilities including water, electric power and gas), or immaterial costs (labor force and management fee). However, although in numerous antidumping investigations, Chinese respondents had provided proof for their consistency with the above MOI standards, US investigation authorities refused to grant MOI status, and insisted on using unfair Surrogate Country approach. So far, no single Chinese respondent has yet won the MOI status.

In the color TV set antidumping investigation, a certain Chinese respondent company applied for MOI status twice on behalf of the Chinese color TV set industry. This respondent has provided evidences to DOC, effectively showing that the company is a publicly listed company that is free from state control and doesn't receive subsidies from the government, and that other Chinese respondents also conduct production, pricing and selling in market-economy patterns. However, DOC disregarded the respondent's request, and refused to grant China's color TV set industry MOI status.

In the antidumping case against furniture, the Chinese Light Industry Chamber of Commerce and the Chinese Furniture Association applied for the MOI-status on behalf of the Chinese furniture industry by submitting a 300-page report to illustrate in great detail how the Chinese furniture industry fully complies with three prongs of the MOI test. DOC, however, claiming the submission was too late to give investigation authorities enough time for review, refused to initiate the MOI investigation procedure.

These measures taken by the US have totally disregarded China's achievements in market construction and failed to reflect objectively China's advantages in raw materials and labor cost. As a result, dumping margins were set at an unreasonably high level, and have seriously undermined the legitimate rights and interests of Chinese companies. China hopes the US could correct these discriminatory practices at an early date.

3.7.1.2.2 Surrogate country

To non-market economy countries, DOC usually uses surrogate country data to determine the normal value and set dumping margins. The surrogate country chosen should be at a level of economic development comparable to that of the non-market economy country and is an important producer of the subject product. In practice, the US usually uses India, Pakistan, Indonesia, Sri Lanka and the Philippines as candidates for surrogate country. India is usually a favorite choice because of the easy availability of information in India. In the 7 antidumping rulings in 2004, DOC all used India as the surrogate country. However, certain industries in India are by no means comparable to like industries in China. Therefore, using India as the surrogate country will inevitably lead to unfair rulings against Chinese enterprises. For instance, in the anti-dumping investigation against Chinese color TV sets, India was selected as the surrogate country. The color TV set industry in India, however, is still in a monopoly stage, with small production scale and high costs, while in China, color TV set makers exercise full autonomy in production, participate in free competition, with the whole process of production and marketing under market mechanism. Government intervention in the industry has been practically eliminated. Therefore, using India's standards to measure China's color TV set industry will naturally lead to the wrong conclusion that Chinese color TV sets were sold at an abnormally low price. Likewise, in the investigation against bedroom furniture initiated in 2003, over 99% Chinese furniture makers involved are private enterprises or joint ventures with a fairly high degree of marketization, while the furniture industry in India is rather backward with high labor costs. The value calculated by using India standards is much higher than the normal value of Chinese furniture.

It is the opinion of China that in future cases, when China is still treated as a non-market economy country, the US DOC should refrain from using Indian standards invariably. Instead, based on the specific nature of each case, it should use correct standards to select a right surrogate country in order to come to a reasonable determination of the normal value of the subject product.

3.7.1.2.3 Factors of production and selection of surrogate price

When determining the normal value of a product made by a non-market economy country, DOC mainly uses the factors of production method. If the factors of production method is used, widely applicable prices for production factors in the surrogate country should be adopted. These regulations, however, give great discretionary power to DOC, which may abuse the power to adopt rather unfair prices for production factors against Chinese producers to determine the normal value of Chinese products. For example, in December 2004, in the final ruling of anti-dumping investigation against certain frozen and canned warm water shrimps exported from China to the US, DOC insisted on using the average "single price" of all shrimp products in one certain company to calculate the normal value of the product in question. Such measure as using the average price of a company rather than the average price of the industry not only provided minimum representation, but also offered practically no comparability as the chosen substitute price was not within the investigation period in some cases.

In the color TV set investigation initiated in May 2004, DOC adopted the wage rate of 2001, which was not within the investigation period. In calculating the power price, DOC refused to use Indian price by claiming that data publicized by the Energy Department of the Indian Planning Committee failed to reflect the true consumption price in India. Instead, DOC adopted an unidentified statistical report of the International Energy Organization. The arbitrary action of DOC in selecting substitute prices have deliberately raised the normal value of Chinese products, and have ultimately led to rulings negative to China's interest. Such measures have not only violated the relevant "right and fair" principle set forth in US anti-dumping laws, but also seriously undermined the interests of Chinese companies. China attaches great concern to this issue.

3.7.1.2.4 Producers' profit margins calculation in the surrogate country

When using the surrogate country method, if a surrogate country has many like product producers where some are profitable and others not, DOC normally counts profits of the losing producers as nil. Thus, the average profit margin of the surrogate country is obtained by dividing the sum of all the profit margins by the number of the producers. But in antidumping cases against imports from China in 2004, without prior notice to the Chinese respondents, DOC changed this method all of a sudden with no valid reason. Unprofitable companies were left out from the divisor while the overheads and marketing, management and miscellaneous costs of these unprofitable companies were counted in the relevant statistics, thus resulting in an artificial rise of the profit margin of the surrogate country. Such incongruous means of calculation have put Chinese companies at a great disadvantage. China will continue to monitor the issue.

3.7.1.3 Separate rates

Different from the past practice by DOC applying one-country tariff rate towards all producers from non-market economy countries, the current separate rate policy has made it possible for Chinese respondent company to obtain a lower individual rate or weighted average rate. In practice, however, DOC has in many cases refused Chinese company's application for individual rates in the procedural review under the pretext that the application materials submitted and information provided were not adequate. On July 6th 2004, DOC issued the initial ruling on the antidumping case against warm water shrimp of Chinese origin. Citing the inadequacy of materials and information submitted by Chinese exporters as the reason, the ruling refused to apply weighted average rate towards 32 Chinese companies, and levied a 98.34% anti-dumping tariff on most Chinese exporters. In fact, in current US laws, there is no clearly defined standard to judge whether the submitted information is adequate or not. DOC has a great discretionary power in this regard. As a result, in anti-dumping cases against Chinese enterprises, DOC, while unable to prove from a legal perspective or by facts that the Chinese government has intervened into the business activity of respondent enterprises, has all along used procedural excuses such as inadequate information to refuse substantial review of Chinese enterprises. Consequently, a high all-China rate has been applied to a considerable number of enterprises involved, and great losses on their part have been incurred.

DOC is currently considering adjusting the policy of granting separate rates to Chinese companies. Interested parties have been asked to submit written comments. In the furniture and shrimp cases, the US apparently strengthened the reviewing procedure for separate rates, and refused to grant separate rates to Chinese respondent companies on various pretexts. These policy changes will restrict the ability of Chinese companies and companies from other non-market economy countries to obtain separate rates. It is noteworthy that the US is on the tendency to raise standards towards China and make it more difficult for Chinese companies to obtain separate rates.

The Chinese government, as well as relevant Chambers of Commerce, has submitted several written comments to DOC, urging the US government not to impose barriers to Chinese companies on this issue.

3.7.1.4 Zeroing

In accordance with the Tariff Act of 1930, DOC uses zeroing when setting the dumping margin. In the anti-dumping case against Chinese wood bedroom furniture initiated in 2004, Chinese companies have questioned the methodology of DOC in calculating dumping margin. The US government, however, disregarded the exporters' non-dumping sales in the US, and stuck to the old methodology, which was ruled by the WTO as in violation of the Anti-dumping Agreement of the WTO. China believes that the US practice as such has injured Chinese companies' rights under the WTO Anti-dumping Agreement, and the US should correct this action as soon as possible.

3.7.2 Product-specific safeguard measures

Section 421 of the US Trade Act of 1974 (hereinafter referred to as Section 421) sets forth regulations on procedures and entities of implementing product-specific safeguard measures against Chinese products. It's deemed by China that Paragraph 16 of the Protocol on the Accession of the People's Republic of China to the WTO doesn't provide sufficiently detailed procedural and substantial regulations over implementation and enforcement of product-specific safeguard measures, and that Section 421 doesn't provide detailed regulations over certain important concepts and procedures about product-specific safeguard measures, either. In particular, Section 421 is not consistent with relevant WTO rules in the definition of "significant cause", criteria for "rapid increase", definition of "other related factors", definition of "similar or directly competitive products", etc.

In the 5 product-specific safeguard investigations launched from 2002 to 2004, the US authorities all referred to Section 201 about global safeguard measures, Section 406 about remedies of imports from communist countries and even Section 731 about antidumping investigation in the process of reviewing and ruling. However, it's deemed by China that the procedural and entity requirements for product-specific safeguard measures in Paragraph 16 of the Protocol on the Accession of the People's Republic of China to the WTO are significantly different from relevant provisions of the Agreement on Safeguards and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Agreement on Antidumping) of the WTO, and that the US practice of invoking domestic legislation and precedents about safeguard measures and antidumping could not necessarily guarantee the practice under Section 421 fully consistent with provisions of the Protocol on the Accession of the People's Republic of China to the WTO. It's hoped by China that the US amend Section 421 of the Trade Act of 1974 to bring it into full consistency with relevant WTO rules.

3.7.2.3 Special safeguard measures against Chinese textiles

3.7.2.3.1 Restriction on Chinese textile products

By the end of 2004, the US Committee for the Implementation of Textile Agreements (CITA) had accepted for consideration several requests to restrict or to resume the restriction on Chinese textiles. One petition was received in 2003 based on "market disruption", and a one-year restriction starting from December 24th 2003 was imposed on knit fabric, brassieres, and dressing gowns and robes of Chinese origin. Another one was accepted in July 2004, also based on "market disruption", and a one-year restriction starting from October 29th 2004 was imposed on cotton socks, wool, and man-made fiber socks imported from China. 10 requests have been accepted for consideration by CITA since October 2004 based on the "threat of market disruption", involving Men's & Boys' and Women's & Girls' Cotton Trousers, Men's & Boys' and Women's & Girls' man-made Fiber Trousers, Men's & Boys' and Women's & Girls' man-made fiber knit shirts and blouses, Men's & Boys' cotton and man-made fiber shirts, not knit, cotton and man-made fiber underwear, combed cotton yarn, other synthetic filament fabric, and wool trousers.

It's deemed by China that as set forth by paragraph 242 of the Report of the Working Party on the Accession of China, to adopt special restrictions on Chinese textile products, a WTO member must be able to show that it meets the three conditions, i.e., the existence of market disruption, threatening to impede the orderly development of trade in these products, and the causal link of the two. The materials submitted by US petitioners merely showed a threat of increased imports from China, and failed to illustrate the causal link, and bore other inconsistencies with Paragraph 242. Therefore the implementation procedures of the US restriction measures lack determination on basic concepts such as market disruption, which renders the whole implementation process not conforming to basic requirements for petition. The Chinese government and relevant chambers of commerce have on many occasions expressed strong objection to the US determination of imposing restrictive measures on the textile products imported from China.

3.7.2.3.2 Implementation procedures of restrictions on textile products

Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China (hereinafter referred to as the Procedures), publicized by CITA in accordance with Paragraph 242, came into force as of May 21st, 2003.

It is the viewpoint of China that when any WTO member draws up relevant laws or procedures to implement Paragraph 242, the laws or procedures must be consistent with Paragraph 242, and with the Safeguard Agreement of the WTO, Article 19 of GATT, and other relevant rules. The US Procedures, however, are inconsistent with Paragraph 242 in many aspects, such as the requirements on implementing entities, procedures to implement the measures, determination of the causal link, range of requesting parties, requirements for information supplied by the requesting party, conditions for a reapplication, duty of notice, prior notice, procedures for public comment, and etc. It is the hope of China that the US would make necessary supplements and clarification to the Procedure to bring it in line with WTO rules.

3.8. Government procurement

The Buy American Act of 1933 is the main legal authority for US regulations on 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 his products are domestic products or foreign products. The Act doesn’t directly prohibit 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 lowest domestic offer is from 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 attaches great concern to this issue.

In the Help Rebuilding Iraq program, the US Agency for International Development offered US$1 billion-worth reconstruction contracts in 2003 which were available only to American companies excluding completely international competition. The US government stated clearly in December 2003 that only companies from the US and its 61 ally countries were eligible to bid for Iraq reconstruction contracts, while companies from countries dubious of or opposed to the Iraq War were excluded. Apparently, this action runs counter to the principles of the Government Procurement Agreement of the WTO. For example, the US insisted on contracting an optical fiber communication project originally intended by the Iraq government to be financed by its own budget. The project was eventually cancelled under the pretext of lack of fund. The aforesaid actions of the US have affected China's legitimate rights and interests in Iraq. It is hoped by China that the US would make corrections in a timely manner.

3.9 Export restrictions

The US control on export of technology to China has long existed, and has remained a big issue affecting the trade balance between the two countries. The US government imposes strict controls over exports of products for military use or dual uses to China. The intention is to prevent China from benefiting in nuclear weapons, missiles, chemical and biochemical weapons, and other important military items.

I t is admitted by DOC that China is afforded very few license exceptions in the exports of dual-use products. In fact, over the past few years, China has accounted for the highest volume of export license applications, and the export license application procedure for China is the lengthiest one. In addition, certain products or technologies are basically prohibited from exporting to China or unless meeting the most stringent conditions, for instance, nuclear nonproliferation, missile technology, chemical and biological controls, etc. In the export of High Performance Computer (HPC), the US has ascribed China to the category of Tier III, which means that computers with a hypothetical processing capability over 190,000 MTOPS can only be exported under export licenses. In fact, the standard had remained at 65,000 MTOPS until amended on December 10th 2003. Moreover, all HPC exports and re-exports under license to the PRC China require a PRC End-User Certificate issued by the Ministry of Commerce of China.

Apart from the product-based licensing requirement, the US made an Entity List according to Supplement No. 4 to Part 744 of the Export Administration Regulation (EAR). Entities on the list are subject to license requirements. 19 Chinese entities are on the list by the end of 2004, accounting for one third of the total, only after Pakistan (20 entities from Pakistan), which is under close scrutiny by the US. The US has also asked for wider coverage to visit end-users of high and new technologies exported from the US to China.

On April 1st 2004, the US imposed a two-year sanction against 13 entities including 5 Chinese ones under the assertion that these entities had transferred to Iran equipment and technology falling within export control classification. These entities were denied new export licenses, and were prohibited from any business transaction with the US government. The US had imposed sanctions against a total of 45 Chinese entities in the years from 1999 to 2004.

It is deemed by China that many discriminatory measures are in existence in US export control towards China, which has considerably affected bilateral trade. It is, therefore, hoped by China that the US could review its export control policies and make necessary corrections as soon as possible.

3.10 Subsidies

Ever since Roosevelt's New Deal was implemented, the US government has been providing subsidies to its agriculture. During the GATT negotiations from 1946 to 1947, it was under the insistence of the US that agricultural subsidies were treated as exceptions, thus giving rise to a surge of global protectionism in agriculture over the following half century. On May 13th 2002, President Bush signed the Farm Security and Rural Investment Act of 2002 (FSRI 2002) with a 6-year validity (2002-2007). The supported commodities include 15 items, such as wheat, corn, soybean, cotton, rice, dairy products, peanut, wool, honey, apples and etc.

In the area of domestic support, FSRI 2002 has strengthened direct support to farmers' income and expanded the support coverage through the three measures of user marketing payments, direct payments and counter-cyclical payments. It is estimated that the direct subsidies and counter-cyclical support provided by FSRI 2002 every year can amount to as much as US$11.5 billion, far more than the US$ 6 billion to US$ 8 billion government subsidies every year since 1998.

In the area of export support, according to FSRI 2002, the US continues to provide direct subsidies to the export of agricultural products. The amount of subsidies is on the rise. Support for products with lowest market access will increase from the current US$90 million year by year and reach US$ 200 million in 2007 to be spent on expanding export markets for US agricultural products. US$478 million is spent every year on export promotion projects, providing assistance to US exporters suffering from other countries' agricultural subsidies.

Apart from direct export subsidies, in years from 2002 to 2007, the US will continue to provide export credit. The Commodity Credit Corporation (CCC) provides at least US$ 5.5 billion every year till 2007 to promote the export of processed or high-valued agricultural products. Meanwhile, payment term has been extended from 180 days to 360 days.

After the implementation of FSRI 2002, total agricultural subsidies in the US will hit a record high both in amount and in coverage. As a result, government expenditure on agricultural subsidies will rise substantially, reaching or even exceeding the flooring of Aggregate Measurement of Support committed by the US to the WTO. The implementation of this act will also threaten the position of the US in future trade reforms under the WTO, and lead to stronger resistance from other countries against trade liberalization.

In fact, the implementation of FSRI 2002 has already been challenged by other WTO members. On September 8th 2004, the WTO Dispute Settlement Body issued the panel report for the upland cotton case brought by Brazil against the US, ruling that user marketing payments, marketing loan program payments, direct payments, and counter-cyclical payments provided by US FSRI 2002 are in violation of the Agreement on Agriculture, the Agreement on Countervailing Measures, and GATT

1994. China holds that subsidies under the FSRI Act are not in the category of green-box subsidies. Therefore, the above measures of the US have violated its commitments to the WTO and in the Doha Conference about reducing agricultural subsidies.

3.11 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 to trade in services.

3.11.1 Professional services

Professional services refer to services such as legal consultancy, accounting, auditing, architecture & relevant engineering, consulting, etc. The disparity among states and lack of transparency in the administrative system have constituted barriers to foreign professional service providers.

3.11.2 Telecommunications services

Great progress has been made in market access since the WTO Agreement on Basic Telecommunications Services was implemented in 1998. However, restrictions remain in market access to the US, for instance, investment restrictions, lengthy approval procedures, and conditional market entry. In addition, as each state has the right to stipulate regulations on the rates and approval conditions for non-wireless basic telecommunications services inside the state, and these regulations are usually different from state to state, many difficulties are created to foreign operators.

3.11.3 Insurance

The regulations regarding market access vary from state to state. Each state has its own legal structure governing insurance, maintaining different requirements for registration, indemnity and business operation.

In business operation, there exists the issue of not granting national treatment. Foreign insurance companies are discriminated against in the requirements for registered capital, taxation and management fees.

3.11.4 Banking

With regard to market access, the US places stringent restrictions on market network and business scope of foreign banks. If a foreign bank wants to set up a new branch, it has to go through the application procedures one more time even though it has already established itself in the US. Very often, the US financial regulation authorities do not grant retail business licenses to foreign banks. By September 30th 2004, only 3 Chinese banks, namely, Bank of China, Bank of Communication and CITIC Bank have set up branches in the US. Many Chinese bankers have expressed concerns over the troubles in applying for an approval to establish branches or representative offices in the US. In addition, the restrictions on mergers, acquisitions and holding majority stake of US banks by foreign banks are very rigorous in the US, which has seriously affected the business of foreign banks.

With regard to business operation, there also exists the issue of non-compliance with national treatment. Branches of foreign banks are not allowed to take retail deposits that are less than $100,000 each. This business can only be handled by its subsidiaries in the US. Foreign bank branches established after December 19th 1991 are not allowed to join the federal deposit insurance system, which means that the deposit in foreign banks are not covered by U.S. deposit insurance. These measures have seriously restrained the development of foreign banks in the US.

3.11.5 International and domestic water-borne trade

Shipping is one of the most protected sectors in the US. The Merchant Marine Act of 1920, commonly referred to as the Jones Act, places severe restrictions on coastal shipping and domestic transportation by foreign vessels. Domestic transportation can only be operated by US vessels, and transportation covered by the Federal expenditure must also be undertaken by US vessels.

3.11.6 Visa issue

The increasingly strict visa policies of US have led to the restrictions on entries of natural persons, thus affecting the trade in service therefrom to a great extent. Santagelo Group issued an analytical report entitled “Do Visa Delays Hurt US Business” on June 2nd, 2004 based on a survey of 734 companies. This report identified applicants from China, India and Russia as having the greatest difficulties with timely visa processing from U.S. authorities. The report also found that medium-sized companies suffered the greatest revenue loss, averaging 5 million US dollars per company.

3.12 Inadequate protection of intellectual property

The US is one of the few countries in the world that still use the “first-to-invent” system in patent determination. According to such a system, as long as the applicant can prove he is the first to invent, he will obtain the patent, even if someone is the first to file. Although the system doesn’t violate relevant provisions of TRIPS, it will, however, give rise to uncertainty and unpredictability for patent application, and in real sense, a rise of cost for patent application by foreign companies in the US.

In determining the novelty of a patent being applied, the US follows Section 102 of the US Patent Act. The standard applied to inventions made in the US is different from that applied to inventions made outside the US. For example, it stipulates that an invention is protected as long as it is patented in the US and a person shall be entitled to a patent unless the invention was patented in a foreign country more than one year prior to the date of the application for patent in the United States.

Moreover, according to Paragraph 5, Section 110 of the Copyright Law of the United States, “communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes” is exempt from the protection of IPR. This exemption is also in violation of Article 31 of TRIPS.

3.13 Unjustifiable protection of intellectual property

According to Section 337 of the Tariff Act of 1930 (entitled as Unfair Practices in Import Trade), ITC conducts investigation into asserted unfair trade practices in import, and imposes restrictive measures. In practice, the main target of Section 337 investigation is violations of US intellectual property by foreign companies in the exportation to the US.

In recent years, Section 337 investigations involving Chinese products have risen rapidly. In 2004, among all the Section 337 investigations initiated, 11 were filed involving subject products from China, up by 57% over 2003. Products involved were optical disk controller chips and chipsets, personal computers, pet food treats, plastic food containers, ear protection devices, voltage regulator circuits, components thereof, ink markers, point of sale terminals and components, semiconductor devices and products containing same, digital image storage and retrieval devices, etc.. China has become one of the major targets of Section 337 investigations.

China holds that Section 337 of the Tariff Act of 1930 is inconsistent with relevant WTO rules and discriminates against imports in investigations. The inconsistencies are reflected in two aspects. Firstly, the criteria for adoption of general exclusion order are unduly low, and ITC has great discretion in determining whether to adopt the general exclusion order, which has unjustifiably hurt the interests of the foreign exporters not named as respondents. Secondly, certain Section 337 investigations only name country of origin of investigated products without naming respondent companies, which in fact has deprived involved foreign companies of the right to respond, and undermined the interests of involved foreign companies. In the 1989 GATT Panel report, it was ruled that Section 337 of the Tariff Act of 1930 and practices in Section 337 investigations were not consistent with Paragraph 3, Article 4 of GATT on according national treatment to imports in the application of domestic laws and regulations, nor with Paragraph (d) of Article XX on general exceptions to the protection of IPR. Although Section 337 was later amended, to a great extent, it is still not consistent with Paragraph 3, Article 4 of GATT and relevant provisions in TRIPS. Therefore, China expresses great concern over this issue and the adverse impact thereof on China’s normal trade with the US.

4 Barriers to investment

4.1 Discriminations in taxation

The US legislative body grants special treatment to the so-called "foreign sales corporations"(FSC), authorizing that under certain circumstances, income from foreign subsidiaries of FSC needn't pay tax in the US. The intention of such tax favor is apparently to encourage the export of US manufactured goods. The range of exporters covers all industrial and agricultural sectors, and was recently expanded to cover software industry as well. In some US states, when calculating income tax of foreign enterprises, the local authorities estimate arbitrarily proportion of income generated locally against that generated globally by foreign enterprises. In this way of calculation, incomes earned outside that state will also be levied taxes. Such measures will undermine the competitiveness of foreign companies in the US.

4.2 Conditional national treatment

4.2.1 National security

Section 5021 of the Omnibus Trade and Competitiveness Act of 1988 authorizes the President to investigate any merger, acquisition or take-over that might threaten the national security of the US, as such transactions may lead to foreign control of the company. The investigation is carried out by the Committee on Foreign Investments in the United States (CFIUS) affiliated to the Treasury Department. 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. The denial of foreign capital' rights needn't be reviewed by court, nor compensated.

4.2.2. Exceptions to investment provisions

Bilateral investment treaties and investment provisions in free trade agreements concluded by the United States allow the parties to make exceptions to the national treatment and MFN obligations in certain sectors. In this regard, sectors in which the United States has usually reserved the right to adopt or maintain exceptions to the obligation to accord national and MFN treatment include: atomic energy, customhouse brokers, licenses for broadcast, common carrier, aeronautical radio stations, communication satellites, or submarine cables, as well as fisheries, air and maritime transport, and related activities, financial services, and one-way satellite transmissions of direct-to-home and direct broadcast satellite television services and of digital audio services.

4.3 Sector restrictions on foreign investment

The US places restrictions on investment in energy, mining, and fishery.

4.3.1 Mining

The Mineral Leasing Act of 1920 makes public lands available for leasing only to citizens of the United States, associations of such citizens, or corporations organized under the laws of the United States, with respect to acquiring rights of way for oil pipelines, or leases or interests therein for mining coal, oil or certain other minerals.

4.3.2 Fishery

Foreign-controlled enterprises may not engage in certain fishing operations involving coastal trade. In addition, foreigners may not hold more than a minority of ownership shares in companies owning vessels that operate in U.S fisheries. Corporate organization requirements apply with respect to the registration of flag vessels for fishing in the U.S. exclusive economic zone. Foreign-flag vessels may not fish or process fish in the 200-nautical-mile U.S. exclusive economic zone except under the terms of a governing international fisheries agreement or other agreement consistent with U.S. law.

4.3.3 Atomic energy

The Atomic Energy Act of 1954 prohibits the issuance of licenses to engage in operations involving the use of atomic energy to any entity that is owned or controlled by aliens, foreign corporations or foreign governments.

Mexico

1 Bilateral trade relations

According to China Customs, the bilateral trade volume between China and Mexico in 2004 reached US$7.11 billion, up by 43.9%, among which China's export to Mexico was US$4.97 billion, up by 52.2%, while China's import from Mexico was US$2.14 billion, up by 27.6%. China had a surplus of US$2.83 billion. China mainly exported electrical appliances and electronic products, machinery, articles of apparel and clothing accessories, photographic or cinematographic goods, cotton, vehicles and parts and accessories thereof, iron and steel, optical, photographic or medical instruments and apparatus, man-made filaments, mineral fuels, mineral oils and articles thereof, preparations of meat, of fish or other aquatic invertebrates, toys etc. The major imported products of China from Mexico included electrical appliances and electronic products, machinery, ores, slag and ash, iron and steel, organic chemicals, man-made staple fibres, copper and articles thereof, vehicles and parts and accessories thereof, aluminum and articles thereof, plastics and articles thereof, optical, photographic or medical instruments and apparatus, beverages, spirits and vinegar etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in Mexico reached US$160 million in 2004, and the volume of the newly signed contracts was US$ 150 million. The volume of completed labour service cooperation contracts was US$8.41 million, and that of the newly signed labour service cooperation contracts was US$8.47 million. By the end of 2004, the accumulated turnover of engineering contracts completed by the Chinese companies in Mexico was US$520 million, with that of all the contracts signed reaching US$500 million, and the volume of the completed labour service contracts had reached US$52.27 million, with that of the total contracts signed reaching US$66.97 million.

Approved or recorded by the MOFCOM, 1 Chinese-funded non-financial enterprise was set up in Mexico in 2004, with a total contractual investment of US$30,000 by the Chinese investors. By the end of 2004, there were accumulatively 48 Chinese-funded enterprises set up in Mexico with a total investment of US$170 million from Chinese investors.

According to the MOFCOM, Mexico investors invested in 11 projects in China in 2004, up by 37.5%; with a contractual volume of US$23.44 million, down by 7.97%; and an actual utilization of US$21.29 million, up by 283.6%. By the end of 2004, Mexico investors had accumulatively invested in 72 FDI projects in China with a contractual volume of US$95.1 million and an actual utilization volume of US$41.31 million.

2 Introduction to the Mexican trade and investment regime

2.1 Legislation on trade and investment

The main laws and regulations governing foreign trade in Mexico include Article 131 of the Constitution, the Foreign Trade Act and Regulations on Unfair International Trade Practices, the Customs Law, the General Import Tax Law, and the General Export Tax Law, etc. Over the last six years, no substantive changes were made to these statutes although several amendments were adopted.

The1993-enacted Foreign Investment Law (hereinafter referred to as LIE) is the main law governing foreign investment in Mexico. The LIE establishes that, unless otherwise specifically mentioned in the law, up to 100% foreign investment is allowed in most of the economic sectors. When an authorization is required, the National Commission of Foreign Investment (hereinafter referred to as CNIE) evaluates and makes decisions on the terms of foreign participation using criteria established in Article 29 of the LIE. In addition, the LIE still imposes performance requirements on the foreign investment put in the automotive industry. In case of difficulties in the balance of payments, international transfers may be limited temporarily by the Mexican government.

2.2 Trade administration

2.2.1 Tariffs

In Mexico, there are 7 ad valorem tariff rates on its imported goods, namely, 0%, 5%, 10%, 15%, 20%, 35% and 45%. But 10 items are subject to specific duties (sugars, cocoa with a sugar content higher than 90%, and syrups) and 45 items to compound duties (products such as condensed milk, fruits, prepared food products, and fruit juices). Moreover, the tariff rate in Mexico can be divided into two kinds: MFN and preferential tariff rates.

The items in the Mexican tariff reduction/elimination list are often subject to adjustment. The President has power to modify tariff rates. Tariff changes are issued through Presidential decrees published in the Official Journal.

Mexico exercises a practice of import and export quota system. The quotas are assigned by the Ministry of Economy according to the mechanisms established in the Foreign Trade Act of 1993 and its Regulations, which stipulate that quotas must be allocated through: public bids; other means as stipulated in international treaties signed by Mexico; or by any justified procedure established by the Ministry of Economy. Most agricultural products quotas are reserved to specific countries. Products other than agricultural products may carry a reduced MFN tariff rate provided they have a quota certificate.

Since 1993, Mexico has maintained seasonal tariffs for sorghum, soybeans and safflower seeds without violation of the MFN treatment. For instance, importation is duty free during the following periods: sorghum, 16 December-15 May; soybeans, 1 February-31 July; and safflower seeds, 1 January-30 September.

The Customs Law of Mexico also 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. If the actual imported amount of goods were 10% or more over the amount stipulated in the commercial invoice, or the imported goods were not listed in the commercial invoice, the Customs would confiscate the goods as contrabands and impose a fine on the importer simultaneously. In addition, the Mexican Customs levies value added tax on imported goods.

2.2.2 Import & export prohibitions and licensing system

Mexico conducts import and export licensing administration for certain imported and exported goods. The concerned products for exportation include livestock, petrochemical products, radioactive products, leather and meat of endangered animals, currencies, etc. The concerned products for importation include petrochemical products, motors, large freight carriers and cars, weapons and certain important machineries.

The Ministry of Economy publishes the catalogue or list of commodities under licensing administration through the Official Journal.

Mexico maintains import prohibitions on 17 eight-digit tariff items for reasons of public safety, health, morality or child protection. The concerned products under the 17 tariff items include marijuana and preparations thereof, suctorial medicament, thallium sulphate, biacetyl morphine, glutamate, etc. Mexico also applies import and export prohibitions on a number of products as provided for in United Nations Security Council resolutions.

2.2.3 Rules of Origin

Mexico applies two regimes of rules of origin: a specific origin regime applies to products from all free-trade-zone member countries of Mexico; non-preferential rules of origin apply to products subject to anti-dumping and countervailing duties.

Products such as toys, footwear, textiles, clothing, chemicals, bicycles, electrical and machinery equipment, tools, pipe fittings, and fluorite, when accessed into Mexico, are subject to anti-dumping duties ranging from 52% to 1105% should the exporter fail to provide the certificate of origin. In the case that the value of the above mentioned product is under US$1000, there is no need for the exporter to provide the certificate of origin. In addition to submitting the certificate of origin, a written guarantee issued by a chamber of commerce shall also be attached. The usual practice is to attach the duplicate of the notarized guarantee to the certificate of origin.

2.2.4 Technical standardization

The main law governing technical standardization in Mexico is the Law on Metrology and Standardization, issued in 1992 and amended in 1997 and 1999. Mexican standardization regulations are classified in three categories: technical regulations, standards, and referential standards. Referential standards apply when the federal institutions procure goods and services according to the rules of government procurement.

Besides the Law on Metrology and Standardization, Mexico's sanitary and phytosanitary legal framework is based on the following laws: the Federal Law on Animal Health, amended in 2000; the Federal Law on Plant Protection of 1994; the Internal Regulation of the Ministry of Agriculture, Rural Development, Fisheries and Food, amended in 2001; and the Regulation on Sanitary Control of Products and Services of 1999. In addition, measures to prevent the introduction of diseases into Mexico also take the form of technical regulations.

2.2.5 Trade remedies regime

Mexico's main anti-dumping and countervailing duty provisions are contained in the following laws and regulations: Article 131 of the Political Constitution of the United Mexican States; Foreign Trade Act of 1993 (hereinafter referred to as LCE) and its Regulations; Fiscal Code; Federal Code on Civil Procedures; Customs Law and its Regulations; General Import Tariff Law and its Regulations; Agreement establishing the rules for determining the country of origin of imported goods and the provisions for their certification with regard to countervailing duties; in addition, the regional or bilateral agreements signed by Mexico also contain stipulations regarding anti-dumping and countervailing measures. Mexico noted that in the event of inconsistencies between the WTO Agreements and the LCE, or omissions in the latter, the provisions of the WTO Agreements would prevail.

The Mexican legislation on safeguard measures is made up of various provisions of the Mexican Foreign Trade Act and its Regulations, together with the WTO Agreement on Safeguards and provisions contained in the various FTAs signed by Mexico. In particular, the NAFTA recognizes two types of safeguards: multilateral or global (for imports originating in NAFTA and other parties), and bilateral (when the imported product causing injury originates within NAFTA). The NAFTA requires its members to exempt each other from any global safeguard action unless their exports account for a substantial share of total imports and contribute importantly to the serious injury, or threat thereof.

Moreover, Mexico designated 294 eight-digit tariff items for which it reserves its right to impose additional duties under the Special Safeguard Provisions of the WTO

Agreement on Agriculture.

2.3 Investment administration

Mexico allows foreign investors to invest in most of the economic sectors within its borders, even allowing 100% equity foreign investment to participate in the operation. Foreign investors are free to purchase fixed assets, expand or move the firm and factory, and invest in other new industries or new production lines, except in some reserved and specified sectors .

There are 45 reserved or specified sectors within Mexico, where foreign investment is not allowed or is restricted to participate in. The sectors include petroleum and other hydrocarbons, basic petrochemicals, electricity and generation of nuclear energy, radioactive minerals, telegraph and radiotelegraph services, postal services, bank note issuing and coin minting, control, supervision, and surveillance of ports, airports and heliports.

Beginning on 1 January 2004, sectors which allow up to 100% equity foreign investment participation without the need for a favourable decision from the CNIE include domestic land passenger transportation, passenger transport and freight transport (shipping service and express service are not included); gasoline and gas retailing; radiotelex and telecommunications, television industry other than cable TV; financing associations, lawful development of banking institution and lawyer’s office; and assembly and manufacture of motor parts and fittings.

Any of the following activities require the prior examination and approval of the CNIE for foreign ownership to exceed 49%: port services for ships engaged in inland navigation operations, such as towing, mooring and lighterage; shipping companies engaged in the operation of ships solely for high-seas traffic; concessionaires of aerodromes for public service; private education services, from pre-school to high school levels; legal services; credit check agency, securities classification institutions, and insurance agents; cellular telephone services; the construction of pipelines for petroleum and refined oil products, the drilling of petroleum and gas wells; pipe laying, the construction of railways and roads.

All the foreign investors and the Mexican firms with foreign investment must register in the Foreign Investment Registration Office under the Ministry of Economy; and a few foreign investments shall go through the examination and approval procedure of the CNIE. As to some projects concerning the national security, the CNIE are entitled to halt the foreign investment.

Foreigners planning to invest in Mexico shall apply to the Department of Foreign Investment under the Ministry of Economy for examining and approving of the company investment plan. Should a notice not arrive within 45 days after the application, the investment plan would automatically be treated as already examined and approved.

The LIE allows foreigners to hold higher percentages in the equity holding of Mexican companies in restricted areas through the concept of "neutral investment". The neutral investment mechanism allows Mexican companies to issue shares with no voting rights or with limited corporate rights, which grant their holders only pecuniary rights or limited corporate rights. Such participation is not computed to determine the foreign investment percentage in the capital stock of Mexican corporations. Neutral investment requires, however, a specific authorization from the Ministry of Economy, granted on a case-by-case basis.

The Mexican Constitution establishes a "restricted zone" (100 kilometres wide from the borders and 50 kilometres wide from the coast) in which direct foreign ownership of land is prohibited. The LIE, however, allows foreign participation in a Mexican company through ownership of real estate within the restricted zone for non-residential purposes.

Foreign companies are free to remit their profit, equity, dividend, interest and capital. They can open USD check and deposit account in any legal banks within Mexico, with the minimum beginning amount decided by every individual bank. Individuals can also open USD check account in the northern border strip.

Measures meant to attract foreign investment to Mexico include the following: machinery and mechanical equipment, raw materials, and spares part are duty free; if machinery and mechanical equipment, raw materials, and spares parts were temporarily imported by a company to manufacture or assembly products which shall be exported to other countries, they would be exempted from both duty and value added tax within Mexico; the industries on the priority development list, such as electrical machinery and electronics, can enjoy a preferential tariff rate of 0-5% provided they joined the bonded processing plan.

The Mexican Labor Law stipulates that the ratio between foreign employees and Mexican employees in a foreign company should not be lower than 1:8.

2.4. Competent authorities

The governmental bodies responsible for foreign trade administration are the Ministry of Economy, the Ministry of Foreign Affairs, Ministry of Treasury and Public Credit , the Ministry of Agriculture, the Ministry of Communications and Transport, the National Foreign Trade Bank , and the National Statistics Bureau.

The Ministry of Economy is responsible for foreign trade, making economic and trade policies, and organizing negotiations with relevant foreign countries. The Subsecretaria of International Trade Negotiations is responsible for formulating foreign trade policies and monitoring the implementation of such policies; the

Subsecretaria of Standardization and Industry & Foreign Investment is responsible for administering licenses and addressing rules of origin, for antidumping and countervailing investigation and determining on imposition of antidumping and countervailing duties, for investigating and dealing with injury to domestic industries as caused by different kinds of illegal importation.

Under the Ministry of Foreign Affairs, there is established the Vice-Ministerial Office of Economic Relations and International Cooperation. Five subordinate organizations related to economy and foreign trade are: the Department of International Economic Negotiation, the Department of International Economic Promotion, the Department of Bilateral Economic Promotion, the Department of Economic Cooperation and Development Organization, and the Department of Science & Technology Cooperation. They are mainly responsible for coordinating and dealing with policymaking issues on bilateral trade and economic affairs with concerned countries as well as on economic cooperation organizations. Their focus is to do some liaison and coordinating work in the economic and foreign trade affairs through diplomatic channels, as compared to the work of the Ministry of Economy.

The Ministry of Treasury and Public Credit is responsible for making national economic policies and federal budget, and implementing loan, financial and fiscal administration.

The function of the National Foreign Trade Bank is to promote export trade and maintain trade balance.

Under the leadership of the Ministry of Economy, the Mexican Foreign Trade Commission (hereinafter referred to as COCEX) works as a consultative body. The COCEX comprises representatives of the Central Bank; the Federal Competition Commission; the Ministry of Foreign Affairs; the Ministry of Treasury and Public Credit; the Ministry of Social Development; the Ministry of Economy; the Ministry of Agriculture, Rural Development, Fisheries and Food; the Ministry of Environment and Natural Resources; the Ministry of Health, etc. The COCEX is responsible for holding consultations with all entities of the Federal Public Administration in matters concerning trade policy formulation, including the review of proposed and existing regulations on tariff and non-tariff import measures, export restrictions, and contingency measures. But its opinions and recommendations are not binding.

As to the investment administration, the National Foreign Investments Commission (CNIE) acts as a consultative body on foreign investment and sets guidelines to enforce the legal provisions in this area. The CNIE is chaired by the Minister of the Economy. If an approval is required concerning a foreign investment, the CNIE assesses the qualifications of the foreign investor and makes decisions.

3 Barriers to trade

3.1 Tariff barriers

3.1.1 Tariff peak

Mexico has the highest average tariff rate in the world, with an average tariff rate of 33%. In Mexico, some tariff rates of imported goods can go beyond 35% and even 200%. The products with high tariff rates are mainly animal and plant products, and the highest rate reaching 260%. In addition, Mexico imposes temporary tariffs on certain kinds of commodities.

3.1.2 Tariff escalation

Mexico levies much higher average tariff on processed products than on raw materials. Take textiles for example, the average tariff rate of the processed products is 20% higher than that of the raw materials. Textiles is one of China's major exports to Mexico. The above tariff escalation measures have affected China's textiles exportation to Mexico. Take another example of pharmaceuticals, although the average tariff rate of the semi-processed products is a litter lower than that of the raw materials, the average tariff rate of the processed products is still much higher than that of the raw materials.

3.1.3 Tariff quota

Mexico applies different kinds of tariff quotas schemes to the trade partners with whom Mexico has signed some preferential agreements. The numerous different tariff quotas schemes add complexity to Mexico's import regime.

3.2 Import restrictions

At present, Mexico conducts import licensing administration for certain imported goods, such as petrochemical products, motors, large freight carriers and cars, weapons and certain important machineries, etc., which account for 2.8% of the tariff items in the HS code. The Department of Foreign Trade Service under the Ministry of Economy is in charge of import & export licensing administration.

For used vehicles and used machines, the Ministry of Economy issues import permits only when the foreign product has no domestically produced substitute. The tariff items of the products which are subject to import permits are to be published in the Official Journal, but the introduction of frequent changes to the tariff items and the vagueness of the conditionality of import permits undermine the predictability of access to the Mexican market for the products affected.

Mexico established the Automatic Notice of Importation mechanism in 1998, and in November 2001, the mechanism was applied to imports classified under 86 tariff items originating in some 30 countries (including China) , and included products such as food, chemicals, wood, textiles, clothing, footwear, household articles, toys, bicycles, and iron and steel articles. The list of products and countries covered by this programme is readjusted when the authorities detect evidence of under-invoicing. At the same time, for some products average import prices had converged towards the reference prices estimated by the Ministry of the Treasury and Public Credit. This system has resulted in discriminatory restrictions against imports from certain countries.

In addition, imports of vehicles are subject to permits. In principle, only final assemblers complying with the requirements and conditions established in the Auto Decree may import new vehicles into Mexico. However, new-vehicle dealers established in Mexico's northern border strip and free-trade zones in Baja California and parts of Sonora, may import new vehicles for use in these regions provided they meet a local-content requirement.

3.3 Barriers in customs procedures

As required by the Mexican customs authorities, importers should furnish commercial invoice, bill of lading, packing list and certificate of origin to the customs agent, and the certificate of origin should be authenticated by the Mexican consul in the exporting country. In addition, extra requirements are imposed by the Mexican authorities to transshipment products. For example, transshipment bill of lading should be provided to the customs agent in the case of China's exporting commodities being transshipped via Hong Kong or other ports. If the transshipment bill of lading is not received by the Mexican customs authorities, a certificate should be provided by the economic and commercial office of the Chinese Embassy in Mexico.

Based on Articles 84A, 86A, 144 and 158 of Mexico's Customs Law as well as the regulations to that Law and subsequent supplementary provisions and/or amendments, the Resolution establishing the mechanism to guarantee payment of duties on goods subject to estimated prices by the Ministry of Treasury and Public Credit, the Mexican Government fixes minimum prices, minimum values or estimated prices officially established for more than 300 imported products, and at the same time, requires the provision of a deposit or surety in order to ensure application of this mechanism. These measures indicate neither the process of verification or determination of the customs value of the imported goods, nor the guarantee mechanisms specified in Mexican legislation, therefore, lack the corresponding remedy practices and measures. Shortfall of the process would cause unfair treatment to parties concerned.

3.4 Discriminatory imposition of domestic taxes and charges on imports

According to the Law on the Special Tax on Production and Services published on 1 January 2002 as well as its subsequent amendments and other related measures, Mexico imposes a 20% tax on beverages and syrups that use sweeteners other than cane sugar. At the same time, Mexico's tax measures also impose a 20% tax on services related to the transfer of beverages and syrups, including the commissioning, mediation, agency, representation, brokerage, consignment and distribution of such products. Beverages and syrups sweetened only with cane sugar, and services related to their transfer, are not subject to these measures. The reason is that imported sweeteners other than cane sugar, and imported beverages and syrups made with such sweeteners are like products of Mexican cane sugar and beverages and syrups made with Mexican cane sugar, thus being directly competitive. Mexico's measures discriminate against imported sweeteners other than cane sugar as well as imported beverages and syrups made with such sweeteners.

3.5 Technical barriers to trade

Mexico's official standards are compulsory.

In January 2004, Mexican Ministry of Economy published the Draft Official Standard on Safety Specifications of Match Industry, which is applicable to domestically manufactured and imported matches sold in Mexico.

In February 2004, Mexican Ministry of Communications and Transport published the Amendment to Mexican Official Standard on Safety Specifications and Test Methods of Rubber Industry, which establishes the safety specifications, test methods, commercial information and conformity assessment for new car tyres of domestic or foreign manufacture which are marketed in Mexico.

In June 2004, Mexico established the Official Standard on Pre-Packaged Products, Net Content, Tolerances and Verification Methods, which stipulates the tolerances and test methods for verifying the net content of pre-packaged products and the sampling plans for verifying products which bear a declaration of net content.

In July 2004, the Ministry of Economy issued the Draft Official Standard on Safety Requirements of Portable Lighters, Disposable or Refillable.

China will keep a close watch on the development and implementation of the above mentioned draft documents and standards, and expresses its concern over their WTO-inconsistency, if any.

3.6 Sanitary and phytosanitary measures

In Mexico, the importation of animal and its products, seed plant and other plant materials requires not only permits from the relevant department, but also the submission of sanitary quarantine certificates of animal and plant (in quadruplicate) together with other documents from the exporter. The certificate should be authenticated by the Mexican consulate nearest to the exporter.

In February 2004, Mexico issued the Emergency Official Standard

NOM-EM-006-PESC-2004, which establishes additional aquatic health requirements for the production of live or dead aquatic crustaceans and the products and by-products thereof, including the use of pharmaceutical products in shrimp farming, and for the importation of such crustaceans into Mexican national territory.

In October 2004, Mexico issued the Draft Official Standard PROY-NOM-144-SEMARNAT-2004, which establishes the phytosanitary measures for wood packaging material used in international trade in goods. China will pay continuous attention to the development and implementation of the above mentioned drafts and standards, and expresses its concern over their WTO-inconsistency, if any.

3.7 Trade remedies

Mexico is an active user of antidumping measures. In particular, the antidumping cases have risen sharply since 2001, with China being involved in the largest number of antidumping cases. By the end of 2004, 24 antidumping cases against China remained in force, which make up about 40% of the total cases in which antidumping measures are being applied in Mexico.

In 2004, Mexico initiated 2 antidumping investigations against Chinese products. The involved products are gas-fuelled, non-refillable lighter and hydraulic bottle jacks. Mexico also made a final antidumping case decision on imposing duty of US$0.5 per kilogram, 102.22% and 81.04% antidumping penalty on concrete steel nails, sodium hexameta-phosphate, and carbon steel connections for welding respectively. In the same year, Mexico initiated 5 antidumping sunset review cases against China. The concerned products are brass and bronze padlocks; gas-fuelled, non-refillable lighter; yarn and woven fabrics of synthetic and artificial fibres; pencils; and inner and outer tyre of bicycle. A final sunset review decision was also made to continue antidumping duties on footwear and parts thereof, baby carriage and parts thereof, and furazolidone. And in 2004, Mexico also initiated 5 antidumping cases for annual review, which involved the following products: antibiotic, nucleic acid, tapes and disks, tools and articles of apparel and other made-up textile articles.

In addition, the Mexican authorities, in their anti-dumping investigations, have always been denying China's market economy status. Subsequently, the Mexican authorities have adopted the surrogate country method in determining the normal value of Chinese products. Article 48 of the Foreign Trade Act defines the conditions for a country to be considered a market economy, namely, the currency of the country under investigation is generally convertible; salaries in that country are established through free negotiation between workers and employers; decisions relating to prices, supplies, and investment in the industry under investigation respond only to market signals without significant State interference; such industry uses only one set of accounting records audited according to generally accepted criteria; and the industry's production costs and financial situation are not distorted in relation to the depreciation of assets, debts or other factors.

This stipulation leaves ample room for interpretation, which enables the Mexican government to have a high degree of discretion in anti-dumping investigations. Very often China's responding enterprises found it very hard to carry effective defense, and thus resulted in high anti-dumping duties. For example, in the sodium hexameta-phosphate case, Mexico used the U.S. as the surrogate country to determine the normal value of the product, which gave rise to the imposition of a final 102.22% antidumping duty on the concerned Chinese product. China wishes that the Mexican authorities will appraise correctly the achievements made by China through reform and opening up to the outside world in past years, amend the unfair stipulations of discriminating against China in its antidumping laws and regulations, and also redress the practices of disregarding the real situation of the investigated Chinese products through abusing surrogate country practice as soon as possible.

3.8 Subsidies

At present, the Mexican government provides 26.6 billion Peso (about US$2.3 billion) for farmers producing basic agricultural products through the "target income plan" every year. Other economic support schemes include supply of diesel oil, electricity, etc. These schemes belong to the amber box (trade-distorted subsidy) of the WTO Agreement on Agriculture and affect market price and production. China expresses concern on the possible effect of these measures on the relevant Chinese products.

3.9 Other barriers

3.9.1 Restricting non free trade agreement countries from participating in Mexico's government purchase and project bidding

Bidding in Mexico can be classified into three kinds: domestic bidding, TLC international bidding, and non-TLC international bidding.

At present, the Chinese Petroleum Corporation has generally participated in the second kind of bidding in the Mexican locality, that is, TLC international bidding. As the loans in this kind of bidding projects are mostly funded by the American Import & Export Bank in line with the internal agreement signed between the bidder and the bank, the requirements on the origin of the project products are different.

TLC's influence on Chinese companies lies mainly in the restrictive stipulations on the nationality of the bidder and the origin of the products. The nationality requirement for the legal person can be solved by registering a company locally; but the restrictions on the origin of products in the public purchasing and leasing projects set obstacles to Chinese products.

3.9.2 It is difficult for Chinese companies to apply for visa in Mexico

It is difficult for Chinese companies to apply for visa in Mexico. The Mexican Immigration Office often defers the issuing of visa on different grounds, therefore, Chinese people working in Mexico find it hard to enter the country in time, which can result in an adverse effect on the production of the enterprise and progress of the projects.

South Africa

1 Bilateral trade and investment

South Africa is China's largest trading partner in Africa. According to customs statistics in China, the bilateral trade volume between the two countries totaled US$ 5.91 billion in 2004, up 52.8% over last year, among which China's exports to South Africa stood at US$ 2.95 billion, an increase of 45.5%, while China's imports from South Africa grew by 60.9% to reach US$ 2.96 billion. China had a slight trade deficit of US$ 10 million with South Africa. China mainly exported to South Africa electromechanic 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), in 2004, the turnover of the completed engineering contracts by Chinese companies in South Africa arrived at US$ 22.89 million, and the volume of the newly signed engineering contracts reached US$ 47.81 million. The volume of the completed labor service cooperation contracts by Chinese firms in South Africa stood at US$ 2.76 million, and that of the newly signed labor contracts was US$ 2.20 million. By the end of 2004, the accumulated turnover of the engineering contracts completed by Chinese enterprises in South Africa came to US$ 88.75 million, with that of all the contracts signed amounting to US$ 480 million, and the accumulated volume of the completed labor service contracts reached US$ 53.49 million, with that of the total contracts signed running to US$ 69.16 million.

In 2004, approved by or registered with MOFCOM , 12 Chinese-funded non-financial enterprises were set up in South Africa with a total investment of US $110 million. By the end of 2004, the number of non-financial enterprises invested and established in South Africa by Chinese firms had come to 120, of which the total contractual investment had come to US $240 million.

According to MOFCOM, South African firms invested in 87 projects in China in 2004, with a contractual volume of US$160 million and an actual utilization of US$ 109 million. By the end of 2004, South African companies had accumulatively invested in 421 FDI projects in China with a contractual investment of US$ 490 million and an actual invested capital of US$ 200 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

2.1.1 Legislation on foreign trade

The International Trade Administration Act and the Import and Export Control Act serve as the legal basis for South Africa's foreign trade administration. Under the International Trade Administration Act, the International Trade Administration Commission (ITAC) was established, the competences and administrative procedures were set down for the Commission, the enforcement of certain parts of the Agreement of the South African Customs Community (SACU Agreement) was provided for, and the import and export administration and tariff adjustments under the framework of the SACU Agreement were stipulated.

In addition, legislation concerning foreign trade administration in South Africa includes, inter alia, the Customs and Taxation Act.

2.1.2 Legislation on foreign investment

The Export Credit and Foreign Investments Re-insurance Act and the Exchange Control Amnesty and Amendment of Taxation Laws Act are the two major legislations on foreign investment in South Africa, in addition to the Companies Act and the Financial Institution (Investment Funds) Act. All the areas of foreign investment come under the above laws.

2.2 Trade administration

2.2.1 Tariff Administration

According to its WTO accession commitments, South Africa has significantly reduced its tariff and bound its tariff rates on 95% of the products to WTO binding levels. It has cut back tariff lines from the 80 different levels of the past to eight levels ranging from zero to 30% with exceptions in textiles, clothing and motor industry. In spite of these reforms, however, South Africa's tariff schedule remains complex and can create uncertainty for businesses that export goods to the country.

According to the SACU Agreement reached between South Africa, Botswana, Lesotho, Namibia and Swaziland, these five countries administer a uniform tariff, with South Africa responsible for the administrative affairs of the customs union. Member countries divide tariff receipts among themselves according to a pre-arranged formula. In accordance with the Board on Tariffs and Trade Act, the South African Board on Tariffs and Trade is entrusted with the administration of trade-related tariff and other affairs.

During the Second Meeting of the China-South Africa Economic Relations and Trade Joint Committee on 28 June 2004, the South African side formally notified the Chinese government delegation of the decision reached in a recent SACU ministerial conference to launch negotiations of a free trade agreement between SACU and China.

2.2.2 Import Administration

Any company registered in South Africa's Department of Trade and Industry can engage in import and export trade, with no need to apply for special trading rights. Enterprises engaging in import and export trade can choose, of their own free will, whether or not to register in the Department of Trade and Industry, the benefits of registration being the access to receiving relevant import and export incentive policies.

The imports of most products have been liberalized in South Africa, but certain special products are subject to licensing administration. In accordance with the Import and Export Administration Act, these products include, among others, fish and fishery products, certain vegetables and other agricultural products, certain dairy products, certain red teas, fermented beverages, alcoholic beverages, petroleum and certain petrochemical products, radioactive mineral products, certain footware, waste products, certain medicines and pharmaceutical products, environmentally hazardous products, gambling devices, and arms. Importers applying for a license should register in the Import and Export Administration affiliated to the Department of Trade and Industry. Once issued, the import license will expire on December 31 in the same year.

2.2.3 Export Administration

Export licensing administration is imposed on strategic products, non-regenerable resources, agricultural products, scrap metals and so on. The catalog of products coming under licensing is determined by the South African Trade and Industry Minister and published on government bulletins. The exporters of diamond should register in South African Diamond Commission. According to the amended regulation on waste metals which took effect on 1 August 2003, the export of waste metals, which are deemed national resources, are restricted. In addition, although no clear regulation in this regard exists, the export of ostrich and its breeding eggs is still prohibited.

2.2.4 Other regulations

The foreign exchange regulatory body in the South African Central Reserve Bank is responsible for the administration of foreign exchange, and carries out its policies through "Authorized Dealers" in commercial banks. At the present, the regulation of foreign exchange under the current account has been abolished in South Africa.

2.3 Investment administration

2.3.1 Investment promotion policies

South Africa has tried to promote investment, particularly foreign investment, through a series of programs, which include Skill Support Program, Critical Infrastructure Program, Small and Medium-Sized Enterprise Development Program, Strategic Industrial Program, Foreign Investment Grant Projects, and Industrial Development Zone Program.

2.3.2 Business taxation policies

As from 1 January 2001, South Africa has adopted the policy of taxation according to residence. In accordance with the agreements on the avoidance of double taxation with other countries, non-residents in South Africa still have to pay taxes according to their earnings in South Africa. The South African taxation categories fall into two broad types – direct taxation and indirect taxation. The former includes income tax, corporate secondary tax, capital earnings tax, and endowment tax, whereas the latter includes value-added tax, real estate inheritance tax, stamp tax, consumption and import tax, circulatory securities tax, district service consulting fees, and skill development fees.

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.

2.3.3 Capital account administration

South Africa places no restriction 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. Foreign investors are also required to keep the record of their investment. Generally speaking, no restriction is imposed upon the remittance abroad of investment earnings by non-residents. The payment of dividends by South African companies to non-residents is not subject to the approval of the Reserve Bank, but an audited certificate is needed to demonstrate that the dividends are post-tax earnings or are not subject to the restriction of capital and profits.

2.3.4 Other investment-related laws, policies and measures

Other laws affecting investment in South Africa include the Competition Law as amended in 1998. It provides for approval of mergers if strict criteria are used, such as whether the new firm created would be dominant in its market, the effect of a merger and whether any other reasons in favor of the merger exist. The new law aims to encourage competition between businesses.

Other investment-related laws in South Africa include the Environment Act and the Labor Act adopted on 31 May 2004.

2.4 Competent authorities

The South African Department of Trade and Industry (DTI) is responsible for foreign trade administration, the major functions of which include drafting national trade development plans and setting domestic market competition rules; directing the development of domestic trade; formulating industrial development plans and investment incentive policies; drafting export promotion policies and formulating export credit and re-insurance programs; drawing up preferential policies to attract foreign investment and preparing plans to invest abroad; conducting foreign economic relations and trade negotiations and reaching bilateral and multilateral trade agreements; keeping in close touch with provincial economic development agencies and coordinating trade and investment relations between provinces in the country.

On 15 January 2003, the International Trade Administration Commission (ITAC) was formally established in South Africa to replace the Board on Tariffs and Trade (BTT). While continuing the job of BTT to deal with anti-dumping and countervailing investigations in the SACU region, the ITAC is responsible for import and export administration, licensing administration, restructuring the tariff regimes, supervision of preferential industrial policies, and has the authority to require local importers and exporters to provide information regarding their business activities.

Other governmental organizations relating to trade and investment administration include the National Economic Development and Labor Council and the Board for Regional Industrial Development.

3 Barriers to trade

3.1 Import restrictions

South Africa bans the import of waste products except as raw materials. Besides, the Import and Export Administration under the Department of Trade and Industry should seek the agreement of the relevant competent departments involved prior to the issuance of import licenses. Because of the time taken for the coordination between departments and their unremarkable work efficiency, Chinese firms report that they often face frequent delays when exporting products to South Africa, which adversely affects their normal export business.

3.2 Technical barriers to trade

3.2.1 Regulations on baby foods

A regulation on foods intended for infants and babies was promulgated and put into force by the South African Department of Public Health in May 2004. The regulation provides for specific rules for the labeling of warnings on packaging, including the language used, position placed, the size and height of words, as well as the color and width of warning block. It also requires that guidance be provided graphically as to the preparation of infant foods, the use of measuring spoon, milk cup and milk bottle, and the devices for disinfection. It is required that the labels of sweet condensed milk, condensed milk, skimmed milk powder, whole milk power and milk substitutes should carry a warning "Not for babies". Although the motivation behind the regulation is quite understandable, the exacting stipulations on the warning labels are too demanding, which have significantly affected the sale of products already exported to South Africa and the design and packaging of products intended for the South African market and caused foreign exporters no small inconveniences.

3.2.2 Safety standards for plastic-covered short circuiters

The South African Trade and Industry Department modified compulsory safety standards for short circuiters with plastic cover in January 2004. The new safety standards involve plastic-covered short circuiters with rated alternating current voltage under 1,000 V, rated current under 125 A, and rated breaking capacity under 10 KA. The new mandatory standards have significantly modified the previous ones, placed higher demands on the safety of electromechanical products, and noticeably affected Chinese exporters to South Africa.

3.2.3 Regulations on the grading, packaging and labeling of peanuts

On 16 April 2004, South Africa's Department of Agriculture promulgated a drafted regulation on the grading, packaging and labeling of peanuts. According to the regulation, water content in peanuts should not exceed 7%, foreign exporters should apply to the South African government for a registration code, a label bearing the registration code approved by South Africa should be attached to all the packaging of peanuts. However, the internationally prevailing safety standards for water content in peanuts are under 8.5%, and in comparison, the newly issued South African standards are too exacting. Even if Chinese exports are up to that standards, the quality will drop, such as the de-coating of peanuts, thus affecting the marketing of Chinese peanuts in South Africa. In addition, the complicated procedures in applying for a registration code delays normal trading.

3.3 Trade remedies

South Africa is among the countries that most frequently resort to anti-dumping measures on Chinese exports. By the end of 2004, the South African authorities had initiated 31 anti-dumping investigations on Chinese products, which covered a wide variety of products, ranging from light industrial products, native products and animal by-products, medical and health products, textile products to mineral products. At the end, a high anti-dumping duty has been imposed on most Chinese exports, thus forcing a large number of Chinese products to withdraw from the South African market. Currently, a total number of 12 anti-dumping charges (including sunset review) against Chinese products are still being investigated, and anti-dumping duties have been imposed on 17 categories of products of Chinese origin.

During the Second Meeting of China-South Africa Economic Relations and Trade Joint Committee held on 28 June 2004, the South African side informed the Chinese delegation of the decision by their cabinet to formally recognize China's status as a market economy. South Africa pledged to determine the normal value of Chinese exports according to the prevailing WTO rules in future anti-dumping investigations against China, rather than the relevant stipulations in Article 15 of the Protocol on Accession of China to the WTO. However, up to the present, South Africa has not amended its domestic relevant laws and regulations according to its commitments. The South African International Trade Administration Commission continues to use the previous method, namely, granting specific Chinese companies the market economy status, in anti-dumping investigations against Chinese exports. Adopted in December 2003, the method uses questionnaire survey which requires Chinese companies operating according to market economy mechanism to supply relevant information regarding the normal value of their products. All the information should be furnished on time, and no grace period is extended. In case of the failure to receive detailed information from the Chinese companies, the investigating authorities can make a temporary or final decision based on best available information, including the substitute of normal value. China hopes that South Africa will, according to its own commitments, modify the relevant laws and regulations concerning anti-dumping charges against Chinese exports, thus ensuring the determination of the normal value of Chinese products on the basis of China's status as a market economy.

4 Barriers to investment

In South Africa, certain types of 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 of business earnings distributed to non-residents, and companies with 75% or more of voting rights or controlling sharing or 75% or more of capital, assets or earnings held or represented by non-residents. The limit of loans, namely, the so-called local financial support, is calculated as a percentage as follows according to the valid capital of the company:

$$\text{Percentage of valid capital} = 100\% + 100\% \quad \frac{\text{Shares held by local companies}}{}$$

The definition of the above-said loans covers a broad range, in practice including various kinds of loans and credits such as bank loans, overdraft from banks, credit leases and financial leases, but do not apply to trade credits extended by commodity and service providers. As Chinese companies have shifted from trade investment to manufacturing investment in South Africa, the above measures have greatly restricted Chinese-invested enterprises in their capacity to finance locally.

5 Other barriers

According to South Africa's Maritime Judicial Regulation Act, in the event of any dispute between a Chinese state-owned company and a company from any other countries including South Africa, South Africa can, upon request of the involved companies, detain the vessels of any Chinese state-owned shipping companies. South Africa is the only country in the world applying such a rule. Since 2000, five vessels of a certain Chinese ocean shipping company have been ordered to be detained by the South African law courts because of liabilities disputes between other Chinese state-owned enterprises and a third-country company, which has greatly affected the normal business of the said Chinese shipping company and caused tremendous economic losses.

The above rule, apparently unjustifiable on its own ground, offers too broad a condition to detain Chinese vessels. The Chinese side has repeatedly taken up the matter with South Africa. China asks the relevant South African authorities, by the authorization of the law, to exclude Chinese state-owned shipping companies from the application of provisions regarding detention of "related vessels", to handle appropriately the cases under trial and to prevent any possible damages to the healthy development of economic and trade relations between the two countries.

Nigeria

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Nigeria in 2004 reached US$2.18 billion, up by 17.5%, among which China's export to Nigeria was US$1.72 billion, down by 3.7%, while China's import from Nigeria was US$460 million, up by 546.4%. China had a surplus of US$1.26 billion. China mainly exported machinery and transportation equipment, chemical products, textiles and garments, footwear, foodstuff, petrochemical products, travelware and bags and suitcases, non-metal mineral products, and etc.. The major imported products of China from Nigeria included primary products such as oil and metal mineral products. But since Nigeria formally imposed import bans on certain products in April 2004, exports of these products from China suffered a setback. Currently, the main products China exports to Nigeria are machinery and electronic products, chemical products, certain light industrial products, cellular phones, computer parts, etc..

According to the Ministry of Commerce of the People's Republic of China(hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in Nigeria reached US$490 million in 2004, and the volume of the newly signed contracts was US$ 660 million. The volume of completed labour service cooperation contracts was US$9.28 million, and that of the newly signed labour service cooperation contracts was US$17.35 million.

According to the MOFCOM, 12 Chinese-funded non-financial enterprises were set up in Nigeria in 2004, with a total contractual investment of US$28.24 million from Chinese investors.

According to the MOFCOM, Nigeria invested in 20 projects in China in 2004, with a contractual volume of US$7.8 million and an actual utilization of US$15.83 million.

2 Introduction to Nigerian trade and investment regime

2.1 Legislation on trade and investment

Nigeria is currently formulating laws and regulations on trade remedy measures.

Nigeria's laws governing trade and investment include the Foreign Exchange (Monitoring Miscellaneous Provisions) Decree No.17 of 1995, the Investment Promotion Commission Decree No. 16 of 1995, and the Investments and Securities Decree No. 45 of 1999.

2.2 Trade administration

2.2.1 Tariff policy

The Nigerian customs and excise tariff uses the Customs Cooperation Council Nomenclature (CCCN). Duties are either specific or ad valorem, depending on the commodity, and are payable in Naira upon entry. All imported goods must be insured by a local insurance company.

Import duties must be collected by the Nigerian Customs Service in association with government-appointed accounting and auditing firms and be paid to the Federal Treasury through the selected commercial banks. Tariff rate for special goods is determined by the Federal Treasury.

2.2.2 Import and export administration

According to Guidelines for Imports into Nigeria taking effect as of April 1,1996, all goods exported to Nigeria must obtain Clean Report of Finding (CRF) and Import Duties Report (IDR).

Exporters are not allowed to deal in trade unless registered with the Nigerian Export Promotion Council (NEPC).

2.3 Investment administration

A non-Nigerian may invest and participate in the operation of any enterprise in Nigeria. 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 buy the shares of any Nigerian enterprise in any convertible foreign currency. Investment returns can be freely remitted abroad.

In order to promote investment in strategic or important projects, NIPC has the right to, after consultation with relevant government agencies, formulate special incentives for investment. According to the Nigerian Investment Promotion Commission Decree No. 16 of 1995, the Federal Government can't acquire businesses unless out of national interests or for public needs. In case of acquisition, compensation shall be paid in time according to laws.

In Nigeria, investment is banned in the following areas: arm, ammunition, narcotic drugs, and psychotropic substances.

2.4 Competent authorities

The Ministry of Commerce is Nigeria's trade authority, responsible for the administration of foreign trade, domestic trade and regional trade, the making of trade policies, and the administration of trademarks, patents, anti-dumping and etc.

The Nigerian Investment Promotion Commission (NIPC), an agency of the Federal

Government, is the investment authority in Nigeria, responsible for the making of laws and regulations to attract foreign investment, assisting foreign companies in communication with government agencies, and processing relevant formalities such as registration.

3 Barriers to trade

3.1 Tariff and tariff administration measuers

3.1.1 Tariff rate

The tariff rate in Nigeria averages 30% in 2004, twice more than that of the average of developing countries (which is 11.3%).

3.1.2 Tariff escalation

Tariff escalation is used to encourage domestic industry and agriculture in Nigeria. Lower tariffs are applied to imports of basic raw materials and means of production (including production equipment), while tariffs for industrial products, foodstuff, consumer products and luxury goods are raised. Take textile raw materials as an example. While raw silk, wool and linen are imposed a 15% tariff rate, cotton 5%, cotton thread and cotton yarn 30%-40%, finished textile products and garments are imposed a tariff rate over 55%-75%. The tariff rate is 15% for log, 30% for dale and plywood, and 100% for wooden furniture.

When the Customs Union for West-African Economic Community is launched in July 2005, Nigeria will implement a new tariff schedule consisting of 4 tariff rates: zero for necessities, 5% for primary products, 15% for semi-finished products and 20% for manufactured goods. Meanwhile, to protect domestic industries, manufactured goods will be levied additional duties of no more than 30%. China will follow closely the implementation of the new tariff system and the impact thereof.

In addition, the Nigerian government adjusts tariffs on a frequent basis. The frequent policy changes and uneven duty collection in Nigeria make importing difficult and expensive and create severe bottlenecks for commercial activities.

3.2. Import restictions

In January 2004, the Nigerian government released the latest list of prohibited imports, including textiles, furniture, fresh fruits, plastic materials, men's footwear in leather, leather bags, beef and beef products, pork and pork products, soap and detergents, assembled bicycles, plastic flowers, fresh flowers, cutlasses, axes, pick axes, spades, shovels, wheel barrows, mutton, lamb, goat meat, toothpaste, pencils, ballpoint pens, plastic products, vegetable oil, barite, and bentonite. The newly added 41 items are basically light industry products, accounting for approximately 7% of Nigeria's total imports, and 20% of China's exports to Nigeria. The import ban has exerted adverse impact on the bilateral trade. China has held several consultations with the competent authorities of Nigeria with regard to the import ban. China hopes relevant adjustments would be made to bring it into full consistence with WTO rules.

In addition, the following products remain under import bans: sorghum, millet, wheat flour, cassava, frozen poultry, vegetable oil (in bulk), kaolin, gypsum, mosquito repellent nets and coils, wax-printed fabrics, used clothing, bagged cement, fruit juice in retail packs, pasta, biscuits, confectionery, chocolate, canned beer, bottled water, and second-hand cars more than 8 years old since production.

3.3 Barriers in customs procedures

Nigeria's ports continue to present major obstacles to trade. 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 usually 2 to 3 weeks, far longer than the committed no more than 48 hours.

The Nigerian government announced on July 1st 2002 that it would remove the required pre-shipping inspection and adopt the destination inspection system. For many reasons, however, the removal has been delayed so far. Currently, in addition to duties, importers have to pay 7% surcharges, 1% inspection fee on FOB price, and 0.5% fee on CIF price for planning trade liberalization in the West African Economic Community. Moreover, for the importation of sugar, 5% sugar tax on CIF price is imposed in addition to duties, and for the importation of automobiles and auto parts, 2% National Automobile Commission fee on CIF price is collected. These tax burdens have, to some extent, hindered normal trade. China expresses great concern over this issue.

3.4 Technical barriers to trade

The National Agency for Food and Drug Administration Control (NAFDAC) is responsible for administering and monitoring technical standards governing foodstuffs (including drinks), pharmaceuticals and chemicals (including raw materials). The production, importation and exportation, sales, marketing and advertising of subject products such as processed foodstuffs (including drinks), tobacco, cosmetics, pharmaceuticals and chemicals must be registered with NAFDAC. Registration fee applied to domestic Nigerian products and to imported products, however, is quite different. China expresses regret over this violation of the national treatment principle of the WTO.

In November 2003, NAFDAC issued a notice stating that beginning from November 15th 2003, pharmaceuticals exported from China to Nigeria must pass the sampling test by a certain Chinese company in Tianjin. Imported pharmaceuticals from China shall be seized and destroyed if no conformity certificate issued by that company is presented.

In addition, Nigeria maintains rigorous requirements for registering pharmaceuticals in Nigeria. For instance, the importation of new pharmaceuticals requires clinical test statements, and registration in the origin country and in at least two developed countries. China expresses doubt on the justifiability and necessity of the requirements.

3.5 Subsidies

The Nigerian Export Promotion Council (NEPC) is an agency of the Nigerian government specially to promote the export of non-oil products. Certain incentive policies implemented by NEPC fall into the category of subsidies, particularly the Export Expansion Grant (EEG.). According to the policy, if companies are able to export over 500-thousand-Naira-worth finished or semi-finished products in one year, they are entitled to EEG provided they confirm the receiving of foreign exchange earnings. The amount of EEG can reach 20% of the received foreign exchange earnings. However, many fraudulent practices and falsifications have cropped up in the process of implementation to swindle money out of the subsidies. The policy is therefore suspended at present. China expresses concern over the future execution of the policy and its possible adverse impact on Chinese companies.

3.6 Government procurement

The Nigerian government has committed to adopt open tendering for government procurement. The decision-making procedures, however, are not transparent. The Chinese side is concerned about the possibility for Chinese companies to obtain fair treatment in tendering.

3.7 Export restrictions

The Nigerian government started to apply pre-shipping inspection on the exportation of non-oil products on November 1st 2004, and has authorized Cobalt International Service Co. Ltd. as its inspection agent. Inspection fees are charged as per 1% on FOB prices. This measure will create extra burdens for Chinese importers.

In Nigeria, the following products are banned from export: raw hides and skin, wood in rough, excluding furniture component, railway slippers, floor and ceiling tiles, doors, windows and pallets, raw palm kernels, unprocessed rubber and rubber lumps. In addition, as a member of the Organization of Petroleum Exporting Countries (OPEC), Nigeria is subject to the quota for crude oil production and export.

4 Barriers to investment

The development and improvement of infrastructure such as power, communications, water supply, and transportation is quite slow in Nigeria, and has made it more expensive to invest in Nigeria and has become a bottleneck to the growth of the economy. The arbitrariness and incoherence of policies have also, to a large extent, restrained foreign investment in Nigeria.

The European Union

1 Bilateral trade and investment relations

With the enlargement of the European Union (hereinafter referred to as the EU) to include 25 Member States, the EU became the largest trading partner of China in 2004, and was China's fourth largest investor in terms of its actual investment. According to the China Customs, the bilateral trade between China and the EU (25 Member States) in 2004 reached US$177.29 billion, up by 33.6% year on year, among which China's export to the EU was US$107.16 billion, up by 36.9% year on year, while China's import from the EU was US$70.12 billion, up by 28.8% year on year. China had a surplus of US$37.04 billion. China mainly exported electric appliances and electronic products, machinery, wool and textile products, knitwear, toys, furniture, leather products, bags and cases, plastics, footwear, coke, iron and steel products, organic chemicals etc. Main imports from the EU included machinery, electric appliances and electronic products, autos and auto parts, airplanes, optical photographic and medical equipment, plastics, organic chemicals, iron and steel products, copper and copper products, etc. Germany, the Netherlands, the United Kingdom, France and Italy were the major trading partners of China among the EU Member States. Trade with these five countries accounted for 72.4% of the total bilateral trade between China and the EU.

According to MOFCOM, the turnover of completed engineering contracts by Chinese companies in the EU reached US$ 650 million in 2004, and the volume of the newly signed contracts was US$ 610 million. The volume of completed labor service cooperation contracts was US$88.05 million, and that of the newly signed labor service cooperation contracts was US$88.54 million. Since 1976, the accumulated turnover of engineering contracts completed by the Chinese companies in the EU has reached US$2.1 billion, with that of all the contracts signed US$2.72 billion, and the volume of the completed labor service contracts has reached US$860 million, with that of the total contracts signed US$1.05 billion.

Approved by or registered with MOFCOM, 61 Chinese-funded non-financial enterprises were set up in the EU in 2004, with a total contractual investment of US$89.11 million from Chinese investors. By the end of 2004, there were accumulatively 595 Chinese-funded enterprises set up in the EU with a total investment of US$800 million from Chinese investors.

Statistics of MOFCOM show the EU invested in 2423 projects in China in 2004, an increase of 16.8% year on year, with a contractual investment of US$8.36 billion, up by 42.80% year on year, and an actual utilization of US$4.24 billion, up by 7.9% year on year. By the end of 2004, the EU had accumulatively invested in 18,581 FDI projects in China with contractual investment of US$74.3 billion and actual utilization of US$42.11 billion.

2. Introduction to EU trade and investment regime

The economic integration in the European Community began in the 1950s. On July 1, 1968, tariff union was established among the EC members. The establishment of the European Single Market was basically completed in 1993. The European single currency—Euro, was successfully launched on January 1, 1999, which marked the establishment of the European Economic and Monetary Union among the members of the EU. A series of common policies have been gradually developed and modified during the process of integration of more than 50 years, and among them, those closely related to trade include the Common Commercial Policy, the Common Agricultural Policy, the Common Fishery Policy and the Common Consumer Protection Policy.

The signing of the Acceding Treaty at the EU Summit Meeting in Athens on April 14, 2003 marked the completion of the five-year new round enlargement negotiation of the EU. On May 1, 2004, the EU was expanded to 25 members, with the full membership extended to ten countries of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

2.1. Legislation on trade and investment

2.1.1 Major trade laws

Article 133 of the Treaty establishing the European Community lies at the foundation of the EU Common Commercial Policy. Article 133 provides that the Common Commercial Policy shall be based on harmonization with emphasis on the revision of tariff rates, the conclusion of tariff and trade agreements, the harmonized adoption of trade liberalization measures, export policies and protection. The Nice Treaty of Nice extends the Common Commercial Policy to cover the fields of trade in services, intellectual property rights and investment.

The implementation of the Schengen Agreement has greatly facilitated the free movement of people, goods, capital and service within the EU. By 2004, the Treaty had 25 signatories including 13 old EU members of Austria, Belgium, Denmark, Finland, France, Germany, Italy, Greece, Luxemburg, the Netherlands, Portugal, Spain and Sweden as well as Norway and Iceland. All the ten new EU members are also signatories to the Schengen Agreement, yet the implementation will not be made until 2006 depending on the actual situation of each Member State.

As part of their EU obligations, new member states will have renounced their bilateral trade agreements with third countries or regions upon accession and will have applied all bilateral and regional agreements concluded by the EU. The decision on the EU Common Commercial Policy is made by the European Council of Ministers via qualified majority voting or unanimity and implemented by the European Commission.

2.1.2 Major investment laws

The Treaty establishing the European Community provides that decisions on investment policies be kept within the competence of Member States based on their respective conditions, provided that they are in conformity with relevant treaties or EU laws. Each Member State can formulate its own investment policy regime based on its own conditions.

2.2. Trade administration

2.2.1 Tariff policy

Common tariff policy of harmonized tariff rates and administration are applied to all the EU members. In 1992, the European Council of Ministers approved the Regulation on Establishing the EC Customs Code (Regulation 2913/92/EEC), providing the common tariff regulation including product classification categories, agreed tariff rates, preferential tariff rates and the Generalized System of Preferences), rules of origin and customs valuation. At present, the EU maintains the average tariff rate of 6.5%. The average tariff rate for agricultural products is 16.5%, non agricultural products 4.1%, of which ad valorem and non ad valorem rates account for 90% and 10% respectively. Products with the tariff rate below 10% take 82% of the total duty codes. Zero percent tariff rate products account for 27% of the total duty coades. After the enlargement, all the other new members, except Hungary and Malta, implement the Common External Tariff (CET) upon accession. In general, the weighted average tariff rate based on trade volume has decreased from 9% to 4% of the ten new members.

2.2.2 Import administration

The EU legislation governing imports mainly includes the Regulation on Implementing Common Rules on Imports (Regulation 3285/94/EC) and the Regulation on the Common Import Ssystem for Imports from Certain Third Countries (Regulation 519/94/EC). The EU implements the harmonized import quota administration and has formulated harmonized rules regarding import quota allocation, the principles for import license administration and the procedure for relevant administrative decisions. Upon accession, the new Member States should terminate their original import quota administration and import license administration.

2.2.2.1 Import quota allocation

The EU divides importers into traditional ones and new ones. Import quotas are mainly allocated in the following three ways: priority is given to traditional importers; first come first served; and proportionate distribution. The EU chooses from the above mentioned approaches according to different situations. When none is appropriate, the EU may adopt special administrative measures according to stipulated procedures.

The EU adopts tariff quotas on 89 agricultural products aiming at protecting its agricultural production. The tariff quotas on textiles and clothing were terminated as of January 1, 2005.

2.2.2.2 Import licenseing

Aiming at implementing trade supervision and administering trade volume, the EU has established the license administration which is used in combination with quotas. Products currently subject to license administration include certain agricultural produces imported from other WTO members such as grain, rice, beef , mutton, cow milk and products thereof, sugar, processed fruit and vegetables, banana, plant oil, seeds and wine etc..

2.2.2.3 Import registration

Import surveillance is applied to the importation of certain products from certain countries through the import registration procedure. Currently, import surveillance is applied by the EU to the imports of 20 categories of products from China, including food preparations, ammonium chloride, polyhydric alcohols, citric acid, tetracycline and its derivatives, chloramphenicol, basic dyes and preparations based thereon, vat dyes and preparations based thereon, firecrackers, polyvinyl alcohols, gloves, shoes, ornamental ceramic articles or porcelain or china, certain glassware, zinc (not alloyed, containing by weight less than 99,99 % of zinc), radio-broadcast receivers for automobiles, bicycles, toys, playing cards, brooms and brushes.

2.2.2.4 Textile import administration

On January 28, 2003, the European Council of Ministers promulgated Regulation 138/2003/EC, providing special safeguard measures applicable to China, including the procedures for bilateral consultations and possible adoption of detailed import restrictions.

To adapt to the new situation of the accession of ten new members, the European Council of Ministers issued Directive 487/2004 on March 17, 2004, increasing the quantity of textile quota as of May 1, 2004.

On December 13, 2004, the European Council of Ministers passed the directive, eliminating all the 210 quotas on textiles and garments applicable to the WTO members as of January 1, 2005. Shipments of textiles and garments made before January 1, 2005 are subject to 2004 quota restrictions even if the customs declaration was made after that day.

2.2.2.5 Import administration over agricultural products

Regarding the administration over agricultural imports, quantitative restriction is applied to certain products. Legislation governing imports of agricultural produces includes the Regulation on Measures Necessary to the Implementation of the

Agreement on Agriculture reached in the Uruguay Round (Regulation 974/95/EC) and the Regulation on Trade Arrangement on Certain Processed Agricultural Products (Regulation 3448/93/EC).

2.2.2.6 Border examination and control

The EU requires that access of food and animals from a third country to the EU should be subject to inspection at the EU designated boarder inspection points. In March 2004, the European Commission approved 22 border inspection points in the new Member States, acknowledging that they are in conformity with the EU standard. To meet the needs of the enlargement, the European Commission will approve more border inspection points and the number in the new Member States will reach 37.

2.2.3 Export administration

Legislation governing the EU export administration includes the Regulation on Implementing Common Rules on Export (Regulation 2603/1969) and Regulation on the Export of Cultural Products (Regulation EEC 3911/1992). Only a few products are subject to certain export restrictions of the EU.

Export license administration and end-user monitoring system are applied to the export of certain products and technologies involving nuclear proliferation and weapons of mass destruction by the EU. In recent years, there have been great changes in the regulations governing the export control of products for both civilian and military uses in the EU. The Council Regulation 1334/2000 on the export control over products and technology for dual uses was promulgated on June 22nd, 2000. The regulation strengthens the control over export activities involving invisible products such as software and technologies as well as export activities transmitted or transferred by means of "non-manual method" such as electronic media, fax and telephone. Meanwhile, the export examination and approval is extended to the supply of components, maintenance service as well as various technical services, rather than being limited to the product itself. The regulation still lists China among countries subject to weapon embargo. Products with military purpose are under strict control and basically prohibited to export to China.

2.2.4 Generalized System of Preferences

The Generalized System of Preferences (GSP) of the EU is readjusted every ten years. The current GSP will expire at the end of 2005. The European Commission announced on October 20, 2004 that the EU would reform its present GSP. According to the reform plan, the categories of the EU GSP will be reduced from the prevailing five to three. The new classification includes common GSP, special GSP for the least developed countries and the additional GSP aiming at helping countries weak in competitiveness. More specific provisions of the "graduation clause" have been outlined in the new GSP scheme, which provides if the EU market share of any product from the beneficiaries of GSP exceeds 15%, it will lose GSP treatment. The graduation threshold for textiles and garments is even lower, namely 12.5%. According to the reform plan, beneficiaries such as China and India will lose preferential tariff treatment as of 2006.

The ten new Member States of the EU started to implement the uniform EU GSP plan upon accession. Among the new members, only Poland, the Czech Republic and Slovakia formerly granted GSP to China. After the enlargement, all Member States grant GSP to China.

2.2.5 Trade remedy measures

The EU legislation in the area of trade remedies mainly includes Regulation (EC) 384/1996 on protection against dumped imports from countries not members of the European Union, Regulation (EC) 2026/1997 on protection against subsidized imports from countries not members of the European Union and Council Regulation (EC) No 3285/94 on the common rules for imports (safeguard measures).

The Council Regulation (EC) No 427/2003 of March 2003 on a transitional product-specific safeguard mechanism for imports originating in the People's Republic of China and amending Regulation (EC) No 519/94 on common rules for imports from certain third countries provides for the determination of market distortion and trade diversion, the procedures for investigation and bilateral consultation and the adoption of product specific safeguard measures.

The European Council of Ministers promulgated the amended EU regulations on anti-dumping and countervailing (EC 461/2004) in March 2004, lowering the standards for the registration of anti-dumping and countervailing cases and shortening the period of investigation regarding antidumping and countervailing against other countries. The European Commission is responsible for the investigation of anti-dumping and countervailing in the EU. The result of the investigation is to be submitted and approved by the European Council of Ministers. The former regulation stipulates that for the proposal made by the European Commission to be effective, it must be backed by more than half of the members of the European Council of Ministers and that abstention in voting within the Council of Ministers means vetoing the proposal. The new regulation provides that the proposal by the European Commission is vetoed only when it is definitely opposed by more than half of the members of the Council of Ministers, otherwise it takes effect automatically. In the past, no action taken by the European Council of Ministers on a proposal made by the European Commission within three months means the proposal is vetoed, while the new regulation specifies if no statement is made by the European Council of Ministers within a month, the proposal is automatically approved. Stricter restrictions have been imposed on the period for the investigation and review of antidumping and countervailing cases. The purpose of the amendment to the regulation by the EU is to effectively protect the relevant industries of the new members by taking prompt antidumping measures because the competitiveness of certain industries in some new EU members are rather weak and import trade in the corresponding fields may lead to both severe impact on the relevant industries and high unemployment rate. On the other hand, the EU import quota on textiles and garments is to be completely eliminated in 2005. The adjustment of the antidumping registration procedure by the EU which has always taken rigid quota administration on textiles also serves the purpose of protecting the textile industry of its Member States.

Since May 1, 2004, trade remedy regulations applied to the former 15 EU Member States have been fully applicable to the ten new Member States, where their relevant formerly existing regulations should be terminated. Meanwhile, the trade remedy measures adopted by the EU against any third country or region are automatically applicable to the ten new Member States where the trade remedy measures adopted before accession have been renounced. Before May 1, 2004, the investigations regarding trade remedy measures initiated by the EU are subject to data hereto available from the original 15 Member States while the investigation result is applicable to all the 25 EU Member States.

2.2.6 Other relevant regime

2.2.6.1 Common agricultural policy

The Common Agricultural Policy (hereinafter referred to as CAP), proposed in the Treaty establishing the European Community, is one of the earliest common policies adopted by the EU. The European Commission formally proposed, on June 30, 1960, the Scheme for the Common Agricultural Policy, which has been implemented since 1962. The objectives of the CAP are to improve efficiency in the agricultural sector, to guarantee "fair" income of farmers, to stabilize markets for agricultural produces, to maintain reasonable price levels and to guarantee agricultural product supplies. The major measures adopted by the CAP include the establishment of the Common Agricultural Fund, harmonization of agricultural product markets and prices, subsidies provided for exports of agricultural produces as well as taxes on price differences and import duties adjustable with market supply and demand with the aim to protect the EU agricultural sector from the negative impact posed by cheap imports.

The Council of Agricultural Ministers, in June, 2003, approved the EU Common Agricultural Policy Reform Scheme to change the form of agricultural subsidies, aiming at accomplishing the transformation process of the Common Agricultural Policy from price support to subsidizing farmers' income.

2.2.6.2 Common Fishery Policy

According to the Common Fishery Policy (hereinafter referred to as CFP), the EU decided to extend, as of 1977, its Member States' rights to maritime resources to 200 miles from their coasts in the North Atlantic and the North Sea which are regarded as the common fishing waters subject to the management of the EU. The Member States authorize the European Commission to negotiate fishery agreements with third parties. The CFP was basically formed in 1983, mainly involving the distribution of fishing quotas among the EU Member States, the conservation of maritime resources and the marketing of fishery products.

The European Commission published its reform program on the Common Fishery Policy in May, 2002. The European Council of Ministers approved this reform program by the European Commission in December 2002 and decided the new policy be implemented as of 2003. The new Common Fishery Policy aims at promoting the sustainable development of the fishery ecosystem, environment and economy, assuring the maritime environment of fishery reproduction, protecting the maritime environment and safeguarding the economic viability of the EU fishing fleet. The policy mainly contains the long-term measures on fishery management, policies on fishing fleet development, social and economic measures, the utilization of water and other resources and the participation and decision-making of the shareholders.

2.2.6.3 Common Consumer Protection Policy

Article 153 of the Treaty establishing the European Community lies at the foundation of the EU Common Consumer Protection Policy, which provides, “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 is also provided that consumer protection requirements shall be taken into account in defining and implementing other EU policies, and that apart from implementing the harmonized consumer policy, the EU Member States may formulate more stringent protective measures than the harmonized ones on condition that the contents are in conformity with the provisions laid down in the Treaty establishing the European Community and that the European Commission is notified.

With the aim to establish the single European single market and facilitate the free movement of goods within the Single Market, the EU authorities have formulated a large number of technical regulations, standards and conformity assessment procedures regarding product safety, health, quality, packaging and labeling which constitute an important part of the Common Consumer Policy.

The amended EU Directive 2001/95/EC which took effect as of January 15, 2004 serves as a long-term guiding document in formulating technical regulations and standards. The directive covers the safety requirements of all products apart from products under the jurisdiction of the special law, establishes the procedure for developing European standards and for disposal of products not in conformity with the requirements prescribed by the EU standard, and requires each Member State to establish its own specialized market surveillance department.

In addition, the EU has formulated various detailed technical regulations regarding product safety and quality on electric appliances, chemicals, food, cosmetics, toys and pharmaceutical products.

2.2.6.4 Taxation regime

The Treaty establishing the European Community provides that decisions on taxation regime be kept within the competence of Member States based on their respective conditions provided that they are in conformity with relevant treaties or EU regulations. Therefore, significant differences exist among the taxation regimes of each Member State.

2.2.6.5 Customs administration

The EU started to implement “Customs 2007 Plan” as of January 1, 2003, aiming at assisting new Member States to reach the harmonized standard in implementing the Common Customs Procedures (CCP) and to approach the EU unified level of trade facilitation before December 31, 2007.

After the enlargement, the Customs administration of the new EU Member States is integrated with the EU unified Customs administration system. With the improvement of Customs’ office automation procedures in the EU and the implementation of the security collateral account system, the Customs procedures of the new Member States will be gradually simplified.

2.2.6.6 Transitional trade administrative measures of the new EU Member States

According to the agreement between the EU and some new Member States, certain transitional measures will be adopted by the new Member States in the fields of market access, excise duties and import standards for a certain period of time after acceding to the EU, based on their own specific conditions.

Before 2005, Cyprus and Malta are not to implement the unified EU regulations governing the market access of pharmaceutical products, while its domestic regulations and policies prevail. The transitional period for market access of pharmaceutical products for Lithuania expires before 2006 and before 2007 for Slovenia.

Estonia requires that liquor and cement used for construction meet the domestic mandatory standards.

Latvia requires that labels of all imported produces use its official language and that the country of origin must be mentioned therein along with the ingredients of the produce and additives. Special marking is obligatory especially for alcoholic products and tobacco.

In Slovenia, the characteristics of the product must be described in the Slovenian language and the country of origin must be indicated along with the weight and ingredients, etc.

2.3. Investment administration

The Treaty establishing the European Community provides that decisions on investment policies be kept within the competence of Member States. The Treaty establishing a Constitution for Europe, which was signed by the Heads of State or Government of the 25 Member States in Rome in October, 2004, has made amendments to the trade and investment policies. The Constitution Treaty integrates the jurisdiction over foreign direct investment (including receiving foreign investment introduction and investing outside the country) currently belonging to Member States into the EU Common Commercial Policy, making it the exclusive rights of the EU.

Once the Constitution Treaty has beenis ratified by all the signatory States and the European Parliament, it can enter into force and become effective on November 1, 2006. It means as soon as the ratification procedures are completed, the Member States will shift their sovereignty over foreign investment to the EU, which will lay down laws and regulations governing this area and sign international agreements on behalf of all.

2.4 Competent authorities

Currently, when decisions concerning the CCP (including foreign trade agreement negotiations) are made by the EU, proposals should be tabled by the European Commission in the first place. The European Council of Ministers (sometimes together with the European Parliament) makes decisions after consulting Article 133 Committee. When formulating Common Commercial Policy within the European Commission, the Directorate-General for Trade (hereinafter referred to as DG Trade) shall work together with experts from designated departments of the Member States. Meanwhile, opinions of various stakeholders, in particular the business circles and intermediary agents, shall be sought.

2.4.1. European Council of Ministers

The European Council of Ministers (hereinafter referred to as the Council) is the decision-making body of the CCP. Following the relevant voting procedure, the Council shall decide whether to adopt a policy, initiate negotiations on trade agreements with third countries, approve an agreement, give the European Commission the mandate for negotiation, set up negotiation objectives for the European Commission, etc. During the negotiation with a third country, the European Commission shall inform and consult Member States via Article 133 Committee, and the decision shall be made by the Council, not by any other bodies on its behalf.

When a decision was made by the European Council of Ministers, the principle of “qualified majority” was usually followed while “unanimity” applied in certain specific cases. Beginning from November 1, 2004, the European Council of Ministers began to adopt the new “qualified majority” voting scheme as provided in the Nice Treaty of Nice, which means “qualified majority” is satisfied by 232 and up voters out of the total of 321 voters as well as more than half of the member states. The Constitution Treaty in its ratification process makes further change of the scheme. That is, 55% of the Council members (those members have to come from at least 15 member states and representing 650% or more of the total EU population) are sufficient to establish the required majority. However, the veto of a proposal of the EU Commission or an initiative of the Union Minister for Foreign Affairs requires the negative votes from 72% of the council members (representing 65% of the EU population).

2.4.2 European Parliament

According to the Treaty establishing the European Community, the European Commission shall consult the European Parliament in trade agreement negotiations. In daily work, the European Commission usually informs the European Parliament of its activities in the field of trade affairs. The European Parliament shares with the Council of Ministers the decision-making rights on certain trade legislation.

The power of the European Parliament is greatly enhanced in the part of the Ccommon Ccommercial Ppolicy in the Constitution Treaty. First of all, in the process of formulating Common Commercial Policy, the European Parliament shares equal right with the European Council of Ministers. Both are entitled to amending or vetoing the act. Secondly, in trade agreement negotiations with other countries, the European Commission shall report to the European Parliament at regular intervals. All the agreements reached should be approved by the European Parliament.

2.4.3 European Commission

The European Commission (hereinafter referred to as the Commission) is the executive body of the EU. According to Article 133 of the Treaty establishing the European Community, the competence of the Commission in the trade area includes implementing Council decisions, submitting proposals to the European Council of Ministers for CCP implementation, making recommendations on negotiations and conducting negotiations on trade agreements with trading partners at the mandate of the European Council of Ministers. In certain areas, the Commission has its own decision-making rights such as promulgating the regulations and decisions on antidumping of some products.

DG Trade of the Commission is responsible for the implementation and management of the Common Commercial Policy.

2.4.4 Article 133 Committee

Article 133 Committee refers to the advisory committee set up according to Article 133 of the Treaty establishing the European Community, which is composed of representatives of the Member States. The Commission consults the Committee when formulating the Common Commercial Policy of the EU.

3 Barriers to trade

3.1 Tariff measures

3.1.1 Tariff peak

In 2004, tariff peaks obviously existed in such sectors as food, beverage, tobacco, textile, footwear, etc. For example, in the agricultural sector, tariff peaks were maintained on meat, diary products, processed and non processed grains, processed fruit and vegetables, and some rates reached 209.9%. Tariff peaks impeded the export of footwear, live animal products, poultry and livestock products, and fresh water and sea fishery products from China to the EU.

3.1.2 Tariff escalation

Tariff escalation is applied to textile imports. For example, tariff rates for finished clothes are much higher than those for raw materials of textile products. The EU tariff regime provides that non-preferential suppliers, when exporting to the EU, shall be subject to the following rates: average rate at 0.7% for raw materials, average rate at 5.3% for fiber and yarn, average rate at 6.3% for fabrics and average rate at 11.9% for apparels.

3.1.3 Seasonal duties

Apart from specific duties or mixed duties, seasonal duties are levied on certain fruit and horticultural products. Seasonal duties are adjusted when like products of the EU origin are imported in season. Frequent changes of the tariff rates designed for agricultural produces and horticultural products bring inconvenience to the import of relevant products.

3.1.4 Tariff quotas

The EU applies tariff quotas on the export of canned mushrooms, garlic, dried sweet potatoes and manioc from China. The quota on the imports of agricultural produces from China has not been changed since the EU enlargement, yet the way of allocation has been changed. As to the allocation of quota on canned mushrooms, traditional importers of the 25 Member States can apply for 95% of the total while non-traditional importers can apply for 5% of the total. As to the allocation of quota on garlic, traditional importers can apply for 70% of the total while non-traditional importers can apply for 30% of the total.

Imports of Chinese garlic have been subject to unilateral quantitative restrictions since 1994. The Commission Regulation 1007/2004 which took effect on June 8, 2004 increases the quota on imports of garlic form China. Urged by the Chinese side during the negotiations for the compensation due to the EU enlargement between China and the European Commission, the European Commission made the arrangement for the temporary increase in quota on the imports of garlic from China in October 2004 to ensure the normal trade of China’s garlic export to the ten new Member States.

According to the bilateral agreement between China and the EU, dried sweet potatoes and manioc exported from China to the EU are subject to bilateral quota administration. As the demand for the said products exceeds supply on the Chinese market, the actual volume of export has been much smaller than the quota. Years ago, the Chinese side lifted the export quota administration on the said products; however, the quota is still maintained by the EU side.

3.1.5 The GSP scheme

At present, few products exported from China to the EU can enjoy GSP.

According to the new draft regulation submitted by the European Commission to the European Council of Ministers in October 2004, the “graduation standard threshold” for textiles is a market share of 12.5% in the EU. The GSP granted by the EU to the Chinese textile industry will thus be terminated. The average tariff rate will be increased from the current 9% to 12%. As estimated, this will cause losses of over US$100 million in the export cost to Chinese enterprises. Meanwhile, the European Commission has determined product graduation of 14 categories of Chinese exports including textiles, chemical products, plastic products, leather, wool products, pulp, artificial flowers on shoes, hats and umbrellas, glass and plaster products, pearls, metal products, machinery, automobiles and airplanes, optical photographic medical instruments and equipment, and mixed processed products. All the industrial products except for art collections and works of art are graduated.

3.2. Import restrictions

3.2.1 Surveillance on the import of textiles

In October 2004, the draft legislation by the European Commission was submitted to the European Council of Ministers, stating surveillance measures will be taken as of January 1, 2005 on Chinese textiles products enjoying free trade.

The basis for the EU legislation is Paragraph 242 of the Report of the Working Party on the Accession of China, WTO, which permits other WTO members to use transitional safeguard measures for textile products in consultation with China. However, when initiating negotiations, it is necessary to provide detailed evidence to China. Based on this, the European Commission holds the view that it is essential to adopt surveillance measures for collecting evidence.

What is worth noting is that Paragraph 242 of the Report of the Working Party on the Accession of China, WTO, does not authorize any country to take any surveillance measures. The surveillance measures planned to be adopted by the EU will not affect automatic import permit, but it will add burden to European importers and bring about unnecessary barriers to trade.

3.2.2 Fast response mechanism on antidumping of textile products

The EU takes emergencyt antidumping measures as the necessary substitute and supplement to the transitional safeguard measures on textiles due to the political sensitivity of the transitional safeguard measures on textiles exported from China to the EU. Therefore, DG Trade of the European Commission informed the European textiles and garment organization of the draft "early warning system" on sensitive Chinese textiles and garments in November 2004 so as to help European textile industry to respond promptly to the unfair import and apply for initiating anti-dumping investigation. As estimated, the period will be reduced by half by adopting fast response mechanism compared to the normal anti-dumping investigation procedures (no more than 15 months).

3.3 Technical barriers to trade

The EC has promulgated in recent years a large number of technical regulations, standards and developed conformity assessment procedures. Some contain over-strict requirements, and some even lack sufficient scientific proof, which directly or indirectly constitutes technical barrier to imports.

3.3.1 Technical regulations

3.3.1.1 Directive relating to the restriction on the use of azocolorants

In February 2004, the EU published Regulation 2004/21/EC, amending Directive 76/769/EEC relating to restrictions on or marketing of dangerous substances. Three testing methods for whether the textile and leather articles contain azocolorants are formulated. Member States can evaluate whether the textile and leather articles imported from outside the EU contain azocolorants based on the relevant testing methods.

The formal implementation of the relevant Directive banning the use of azocolorants has already had direct impact on China's garment export. Germany prohibits selling working gloves originated in China with the excuse in the use of the said dyes, while the European Commission sent warnings to consumers regarding the said product within the EU.

Currently, there is no final scientific conclusion as to whether azocolourants in textile and leather products have negative impact on human health.

3.3.1.2 Directives relating to electronic and electric equipment

On February 13, 2003, the EU promulgated the Directive 2002/96/EC on Waste Electric and Electronic Equipment (Directive WEEE) and Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substances in Electric and Electronic Equipment (Directive RoHS), which provide that producers of products placed on the market as of August 13, 2005 should provide security deposit for the expenses incurred in the collection, treatment, recycling and environment-friendly disposal of waste electric and electronic products, and that producers pay for the disposal of waste products (not intended for private household user) placed on the market (historical wastes) before August 13, 2005 according to the market share of the producer. Directive RoHS provides that Member States ensure restriction of the use of lead, mercury, cadmium, chromium VI, PBB and PBDE in electric and electronic products placed on the market as of July 1, 2006.

China is concerned over the effect of the two directives, hoping no negative impact being caused on the bilateral trade in electric and electronic products. China is particularly concerned over the sharing of the cost for the disposal of historical wastes and the method for deposit security as well as the current absence of standard testing methods for the implementation of RoHS directive and the amendment to the exemption list. The delayed publication of the above-mentioned information is not conducive to foreign producers to provide products in conformity with the directive timely, which may impede export and lead to the decline of market share. China hopes that related information will be passed to the WTO and the major EU trading partners to avoid unnecessary impact on international trade.

3.3.1.3 EU Proposal Concerning Registration, Evaluation and Authorization of Chemicals (Draft)

The European Commission passed in October 2003 the draft on the Registration, Evaluation and Authorization of Chemicals (hereinafter referred to as REACH). In January 2004, notification on REACH (draft) was circulated by the Secretariat of the WTO. The main contents of REACH include establishing the European Chemicals Agency, amending relevant EU regulations on chemicals, and shifting the responsibility of providing evidence for ensuring the safety of chemicals from the former public administrative organizations to industries. Not only producers and importers, but all the actors involved in the supply chains have the responsibility to ensure the safe use of chemicals.

The draft REACH directive is the major regulation governing chemicals intended for implementation in 25 EU Member States. Though REACH will play a positive role in strengthening the safety management of chemicals and the reduction of damages caused by chemicals to human health and environment, it will increase the production cost by a large margin for its over complicated registration procedures, expensive testing fees, and lack of protection of commercial secrets. REACH will have great impact on downstream industries as well as international trade in chemicals.

During the period when the draft REACH regulation was reviewed, the Chinese side analyzed the draft and provided comments to the European Commission, pointing out issues in the draft concerning risk assessment of chemicals, information flow, registration procedures, data requirements and sharing, evaluation procedures, authorization procedures. The message of concern of the Chinese side was also passed to the EU at the WTO/ /TBT Committee meetings and China-EU Economic and Trade Joint Committee meetings. The Chinese side will keep track of the amendment content and the approval of the draft, hoping it will be in conformity with relevant

WTO rules.

3.3.1.4 Eco-design Directive on Energy-consumption Products (draft)

The European Commission passed the Eco-design Directive (draft) in August 2003, which introduces the concept of life-cycle environment effect assessment. It is provided that manufacturers or importers assess the product's effect on environment during the whole life cycle at the stage of design, and that design be chosen by balancing the environment performance and product's safety, function and quality to minimize negative effect on environment. The directive provides that manufacturers conduct conformity assessment in pursuant to the implementing details formulated by the European Commission separately and that the CE marking be attached. Otherwise, the product is not allowed to be placed on the market.

The draft directive stipulates that when a product whose manufacturer is a participant to EMS or a product is granted with Eco-label, the product will be regarded as conformiting with the relevant requirement of the directive. As manufacturers outside the EU find it difficult to participate in EMS, the requirement puts products and manufacturers outside the EU in a disadvantageous position.

The Chinese side is concerned about keeping of the consistency of the contents of the draft directive with the relevant WTO rules.

3.3.1.5 The EU Directive on the registration of traditional herbal medicinal products

In April 2004, the EU published the European Commission Directive on the Registration of Traditional Herbal Medicinal Products. Compared with the draft Directive on the Registration of Traditional Herbal Medicinal Products, the following amendments are made: the Directive extends the applicable scope of the registration procedure, relaxes the traditional period of use for the registration of herbal medicine, and revises the discriminative words on labeling. The original indication that "efficacy of this herbal medicine has not been proved by clinical evidence" on the label, production instructions and advertisements is changed into the more objective statement of "the safety and efficacy of the product only relies on the information available from long-term application and experience". The Chinese side hopes the said change will play a positive role for the traditional Chinese medicine to access the EU market.

3.3.1. 6 Amendment to the Directive on the compatibility of electromagnetism compatibility

The EU circulated a notification in October 2003 amending Council Directive 89/336/EEC relating to electromagnetic compatibility. The draft amendment to the Directive was approved and took effect as of January 1, 2004, affecting all equipment either causing electromagnetic interference or subject to electromagnetic interference.

The newly amended directive further specifies the basic requirements all related equipment must meet, namely protection, information and labeling requirements. The newly amended directive also simplifies conformity assessment procedures. In addition, the newly amended directive intends to track the manufacturers to strengthen market surveillance. The study on the directive shows gross differences existing between the requirement of the former directive and the amended one, which has aroused concern of the relevant Chinese enterprises.

3.3.1.7 The EU Directive on environmental responsibility

A consensus was reached between the European Parliament and the European Council of Ministers in February 2004 regarding the final wording of the directive on environmental responsibility. The affected parties include not only the communities, enterprises and individuals in the EU but also the relevant entities in other exporting countries. The importance of the new directive lies in the severe punishment of the doer who damages natural resources according to law. Within three years after the directive took effect, the EU Member States must implement the provisions of the directive by formulating domestic laws. The directive on environmental responsibility is the “minimum harmonization” directive, indicating Members States can draft more rigid regulations. Taking effect in April 2004, the directive covers a wide scope including all the activities involved in previous EU directives. The relevant Chinese enterprises are paying close attention to the implementation of the new directive.

3.3.2 Technical standards

The Committee of European Normalization (hereinafter referred to as CEN) published in May , 2002, Standard for Lighters – Child-resistance for lighters – EN: 13869 (or CR standard), mainly requiring lighters with a unit price less than 2 Euros to install child-resistant device. China is an important supplier of lighters to the EU market. The unit price of the majority of the lighters on the EU market imported from China is less than 2 Euros. The EU CR standard of lighters, which establishes a linkage between the price and the safety of a product, constitutes, in effect, discrimination against Chinese lighters and the relevant industry, impeding the export of Chinese lighters to the EU.

After making representations by the Chinese side, the EU announced that it would not implement the CR standard for lighters and igniters temporarily in April 2004, but meanwhile declared to carry out ISO9994:2002 standard as of June 1, 2004, for lighters and igniters accessing the EU market.

The EU standard for lighters which binds product safety specifications with price is in violation of the relevant stipulations of the WTO TBT Agreement. The Chinese side welcomes the practice that the EU replaces the CR standard which is not implemented temporarily with the international standard and hopes a fair and scientific CR standard for lighters in conformity with the WTO rules will be formulated and implemented by the EU in the future.

3.3.3 Conformity assessment procedure

The EU establishes eight harmonized models and eight derivatives of conformity assessment procedures with respect to different products and criteria. However, differences exist in the implementing measures of Member States, which creates obstacles to the free movement of some products imported from China on the EU market. For example, the Chinese machine tool industry points out that according to the EU regulations, technical specifications of machine tools exported to the EU should meet the relevant standard of CE marking. Though Germany, Italy, the Netherlands, Greece and Spain accept machine tools imported from China which bear CE marking after self-certification according to the criteria of CE marking, the competent authorities of the Nordic countries sometimes require the products to satisfy higher standards before being allowed to be placed on the market. Sometimes modifications have to be made to meet the requirements. These increase the difficulties and uncertainty for Chinese products to gain access to the EU market.

The Commission Directive 2003/66/EC of March, 2003, amends the requirements on energy-efficiency labeling on household refrigerators, providing that refrigerators with energy-efficiency index at 30%-42%, indicating the actual consumption of energy at standard conditions is 30%-42% of the rated energy consumption, be classified as A^{+} and energy-efficiency index below 30% as A^{++}. The directive requires that Member States should include the provisions in their domestic laws no later than 30 June 2004, and that Member States should allow the circulation of new labels, filing and communications with industries no later than 1 July 2004. As the certification for energy-efficiency labeling can only be conducted by the EU accredited certification agents, the change of the requirement increases the certification cost of Chinese exporters by a large margin.

In early 2004, the European Parliament and the European Council of Ministers made a draft proposal on food nutrition and health statement. The draft proposal contains strict requirements for nutrition and health statement on food labels, instructions and advertisements. The regulation provides no health statement is permitted before a scientific assessment on food is made by the independent agency in the EU and that the test results conform to the statement. To coordinate the scientific assessment results of the statements, the assessment is carried out by EFSA. Though the provisions in the draft proposal is helpful to ensure the scientific base for the nutrition and health statement on food labels and advertisements, the restrictions on organizations qualified for assessment and authorization will add cost to production and postpone the products, new products in particular, to enter the EU market. Relevant Chinese enterprises have attached great importance to the effect of the issue.

3.3.4 Traceability labeling on aquatic products

The EU requires all aquatic products sold on the EU market must have traceability labels as of January 1, 2005, otherwise the product is rejected. Traceability labels indicate the management process of production, processing, packing, and transportation of the materials of aquatic products by making use of bar codes and manual readable method. In case there are health and safety problems, the origin of the aquatic products can be found through the traceability labels.

3.4 Sanitary and phytosanitary measures

3.4.1 Complicated food safety regime

The EC has frequently published new or modified existing policies and technical regulations on food safety in recent years. The increasingly complicated food safety regime has in fact become a serious barrier to the imports of food from third countries.

3.4.1.1 New regulations on genetically-modified food labeling

As of April 18, 2004, the EU started to implement new regulations on genetically-modified food labeling, which is the most strictest among the like regulations in the world. It requires all food be attached with relevant labels if genetically-modified organisms exceed 0.9% to ensure the adequate right to know on the consumer side. The regulation is also applicable to animal feed and food of animal origin. The regulation also provides the filing system, requiring genetically-modified products be able to be traced. Documentations regarding the origin, ingredients, and where-to of the products should be kept for five years. At present, internationally accepted standards for genetically-modified food are not available. China hopes the said regulation would not constitute barriers to international trade of the relevant products.

3.4.1.2 Amendment to the directive on labeling of foodstuffs causing allergies

The EU Directive 2003/89/EC relating to the directive on labeling of foodstuffs causing allergies provides all the EU Members States ban the sale of products not in conformity with labeling requirements as of November 25, 2005 and that food sellers should list all the ingredients of the product on the label. To meet the requirements of the directive, the EU further amends the directive on labeling of foodstuffs causing allergies, requiring food labels list multiple ingredients causing allergies. The directive also lists the ingredients of 12 products which may cause allergies, including grains containing gluten, fish, beetled animals, eggs, peanuts, soybeans, milk and milk products (including lactin), tree nuts, mustard, sesame, and sulphite. These ingredients must be indicated on food labels. The EU decision will affect the agricultural export from other countries to the EU to a certain extent.

3.4.1.3 The draft regulation on banning the production and sales of four pesticides

In 2004 the EU issued the draft regulation, banning the production and sales of four pesticides of cresylic acid, dichlorophen, imazamethabenz, ksugamicin and polyoxin. The regulation will take effect as of May 31, 2005. The EU regulation specifies four pesticides be withdrawn from the list of plant pest control products permitted to be used. Within six months of the date of approval, the EU Member States must withdraw all the existing permits for products containing the said active substances. However, the EU will allow a few countries to use them on designated agricultural products for another three years. The permit for using these active substances on designated products by the designated countries must be withdrawn before June 30, 2007 and the inventory must be cleared before December 31, 2007.

The above four pesticides are used in products such as grains, citrus fruit, cucurbits, pears, apples, strawberries, dried grapes, berries, cotton, and tobacco. Some are commonly used in China. Therefore, export from China to the EU will be largely affected.

3.4.2 Standards for pesticide residue limits

The EU draft regulation of 2003 again tightened the standard for aflatoxin contained in grain products. The regulation stipulates the maximum residue limit (MRL) of total aftatoxin in grain products be 10μg/kg. However, the maximum limit set by the Codex Alimentarius Commission is 15μg/kg, and the US FDA 20μg/kg. The proposed EU standard is much stricter than the international standard.

3.4.3 Issues on imports of food of animal origin from China

The EU regulation prohibits the use of chloramphenicol in food production. The EU completely prohibited the import of all products of animal origin from China (with the exception of casings and certain fishery products caught in high seas and landed directly on the EU market) with the pre-context that chloramphenecol had been detected in some food of animal origin and that the Chinese regime of pesticide residue control does not meet its requirements.

The complete ban of the EU on the import of food of animal origin from China lacks scientific and practical proof, extends the scope of restricted products and has affected the export of Chinese products worth over US$ 1 billion to the EU.

With repeated representations and consultations between China and the EU, Vice Director of the Mission Delegation of the European Commission to China announced in Beijing in July 2004 that the EU Member States had approved the import from China to the EU such products as shrimps, honey, royal jelly, rabbit meat and other products of animal origin. Produces of exporters should be inspected by Chinese food safety organization and be granted certificate for each lot of produces meeting the EU food safety standard.

The EU Official Bulletin Journal of August 2004 issued Commission Directive

2002/994/EC, lifting the suspension on certain imports of animal origin from China as of August 31, 2004 including shrimps (cultured shrimps and crayfish), casings, rabbit meat, honey, and royal jelly. However, due to the outbreak of bird flu in China in early 2004, import ban on poultry meat is not lifted. In September 2004, the European Commission announced the extension of the period banning import of poultry products originated in ten Asia countries (including China) from December 15, 2004 to March 31, 2005. In January 2005, the European Commission further extends the period to September 2005. The Chinese side hopes that the EU will lift the ban at an earlier date.

3.5 Trade remedies

3.5.1 The automatic extension of trade remedy measures with the EU enlargement

According to the Acceding Treaty, the EU would extend all the prevailing trade remedy measures to 25 members as of May, 2004 and the previous relevant legislations in the ten new Member States became nullified. The composition of the EU agencies related with trade remedy measures such as the European Council of Ministers, the European Commission, the Advisory Committee is subject to change, and the trade interests of the new Member States will influence the future trade remedy policy and its actual implementation.

Since the EU enlargement, the trade remedy measures adopted by the 15 EU members have been automatically applied to the enlarged EU of 25 members, which means that investigations initiated before May 1, 2004, will base on statistics in the EU of 15 members, but the result will be applied to the EU of 25 members. Meanwhile, the EU does not impose transitional period for anti-dumping products. The date is subject to that of customs declaration and antidumping duties should be charged on products involved in anti-dumping cases as of May 1, 2004 when they access the markets of the ten new members such as Poland. The Acceding Treaty also stipulates the implementation methods for the transitional safeguard measures in the new Member States. That means within three years upon accession, when a certain domestic industry is confronted with possibly persistent threat of material injury, or threat of material injury to the said industry, the new Member States are allowed to apply for emergencyt remedy measures from the EU. Furthermore, to balance the interests of the old and new Member States, the EU also permits the old Member States to apply for emergencyt remedy measures against the new Member States in the same period.

Under the pre-context that the EU enlargement does not alter the existence of trade remedy measures substantively, the EU reviews very few cases actively while for most cases, enterprises of the third country should file request for the revision of cases, which obviously adds the cost to the enterprises responding to the cases. Active reviews have been made only to two cases involving China. They are the cases of color TV sets and ferrosilicon. Previous rulings are maintained for other cases. In recent years, Chinese products have been one of the biggest targets for trade remedy measures in the EU, which has seriously damaged the interests of Chinese enterprises. It plays a destructive role in the trade channels established by Chinese exporters over the years in the ten new EU Member States. Some of the products exported from China may even be driven out of the market. In the meantime, the EU refuses to include the automatic extension of trade remedy measures in the EU enlargement compensation framework under the pre-context of lacking relevant regulations set by the WTO.

3.5.2 Anti-dumping measures

3.5.2.1 The dramatic increase in the number of anti-dumping cases against China

After the enlargement in 2004, the EU has initiated anti-dumping investigations against China with much higher frequency than the previous year. In 2004, the EU initiated 9 anti-dumping investigations against China, accounting for 31% of the total ones cases against the third countries and regional areas, much more than 3 investigations against China in 2003.

3.5.2.2 Refusing to grant China full market economy status

At present, the EU still insists on regarding China as a non market economy in the anti-dumping investigations. For instance, in dealing with the anti-dumping investigation of Glyphosate, the EU refused to grant China market economy status with the excuse of state interference in enterprises. In dealing with the investigation of hand pallet trucks, the EU refused to grant China market economy status under the pre-context that the Chinese responding enterprise did not implement the international accounting standard unilaterally recognized by the EU.

Since the negotiation on China's official request to the EU for the status of full market economy in May 2003, China has, for many times, passed on relevant information to the EU for the technical evaluation by the European Commission. In the preliminary technical evaluation report by the European Commission in June 2004, the EU refused to grant China full market economy status with the excuse that China does not meet four out of five standards for a full market economy. The Chinese side hopes to have the issue solved at the early stage through consultations by the working groups from the two sides.

3.5.2.3 Individual treatment and surrogate country

In dealing with anti-dumping investigations, the EU may determine whether to allow separate rates for Chinese exporters at their applications, and 5 criteria are provided for. In the Commission Regulation 1972/2002, the EU officially includes the 5 criteria determining individual treatment in its anti-dumping legislation.

In 1998, the EU withdrew China from the list of non-market economy countries, but did not grant market economy treatment automatically. It allows individual enterprise to file separate applications. Since the acceptance of Chinese exporters' application for individual treatment in 1999, the EU had granted market economy status to 57 Chinese enterprises by the end of 2004.

Currently, when calculating the normal value of exports with the origin of a non market economy, the European Commission usually chooses as the basis the cost and selling price in a surrogate country of market economy producing like products. There is no doubt that the production situation in the exporting country differs from that in a surrogate country. However, the European Commission allows only 10 days after the initiation of the investigation procedure, for the responding enterprises to comment on the choice of the surrogate country or recommend another surrogate country. The European Commission's choice of surrogate country facilitates it to artificially raise the dumping margins due to the time limit and complexity in choosing a surrogate country.

3.5.3 Safeguard measures against canned citrus fruit

On April 8, 2004, the Commission decision 658/2004 published the final ruling of safeguard measures against canned citrus fruit imported from China. The European Commission held the view that the previous provisional safeguard measures (from November 9, 2003 to April 10, 2004) would in no way decrease the amount of imports. Therefore, the EU decided to implement tariff quota restrictions on canned citrus fruit as of May 1, 2004. The EU expressed its view to allocate special tariff quota to China according to the export amount to the EU between 1999/2000 to 2001/2002.

The negative impact on the relevant Chinese enterprises caused by the practice of special tariff quota on canned citrus fruit from China to the EU should not be overlooked. The Chinese side is concerned with keeping of the consistency of the said practice with the relevant WTO rules.

3.5.4 Trade conflict on China coke export to the EU

In 1999, the EU implemented the anti-dumping measures against coke imported from China and refused to recognize the Chinese responding enterprise market economy status. The anti-dumping duty of 32.6 euros per ton was levied on imported coke from China. The case was suspended in March 2004, but has not been withdrawn.

Since the latter half of 2002, with the development of iron and steel industry at the global level, there has been the short supply of various raw materials. Being the largest coke producer and exporter, the China Chinese government strengthened the control over the total export amount of resource products to ensure the demand of the domestic metallurgy industry. Thus, the EU believed China's restriction policy on the export of coke had affected the normal raw material supply to the EU iron and steel plants. In May 2004, the EU requested that China lift control over the export of coke and that the domestic selling price in China be used as a benchmark for the export price.

The EU adopted anti-dumping measures against the imported coke from China when the market was stagnant, but asked China to lift export control over the coke export when demand for the relevant product in the EU exceeded supply. China expresses concern over the practice of double dual standards the EU applied to the same product from China.

3.6 Subsidies

Large amount of subsidies are provided to certain sectors in the EU at various excuses, which, as a result, puts imported products of competitive sectors in disadvantageous position. Since its birth, the common agricultural policy has been distorting the world market for agricultural products, deteriorating the world market climate and damaging the interests in agricultural sector of developing countries. Though the common agricultural policy has been readjusted frequently, the draft reform program on the common agricultural policy can hardly change the basic situation in which it helps to distort the world market for agricultural produces. Agricultural sector in many developing countries including China will continue to suffer from the large EU subsidies.

3.7 Export restrictions

Over the past 15 years, China has been listed as one of the arms embargo target countries in the EU according to the relevant EU export control regulations. In December 2003, the EU Brussels summit officially included the lifting of the arms embargo towards China in its agenda. Article 7 of the Joint Declaration on the Seventh Sino-EU Leaders Meeting published after the seventh meeting in the Hague between leaders of China and the EU on December 8, 2004 stated that “the EU side believes that it has the political will to lift the arms embargo and will continue to make efforts in this regard.” The Declaration announced the “possibility” of lifting arms embargo towards China before June 2005.

The Chinese side holds the view that the discriminative measures of the EU export control against China has impeded the further development of bilateral relations and that the Chinese side welcomes the political will expressed by the EU on the said issue and hopes the EU will lift its arms embargo towards China as early as possible.

3.8 Barriers to trade in services

3.8.1 Medical service

Doctors of traditional Chinese medicinal science can by no means obtain a practitioner’s license in the EU, and in addition, the medical insurance in the EU does not cover the treatment of traditional Chinese medicinal science (excluding acupuncture and massage).

3.8.2 Distribution

Certain EU Member States impose very strict control over foreign investment in chain stores. It is provided in France that opening a new supermarket should seek not only the approval of the local residents by a voting of all the local residents, but also that of the local retailer's association.

3.8.3 Banking

German legislation governing banking activities provides that apart from the EU, Japanese and US banks, the capital of head-offices of other foreign commercial banks cannot be counted as the capital of their subsidiaries in Germany. The requirements on the qualification of a business executive of the subsidiary of foreign banks in Germany are very strict. It is provided that a business executive shall be a natural person residing in Germany with at least one-year working experience in Germany. Chinese banks complain that under the above mentioned terms, the chief executive sent by the head office to the subsidiary in Germany is prevented from executing his duty for a year, and these requirements greatly affect the daily operation of Chinese banks in Germany.

The UK classifies banks into full-capacity banks, and wholesale banks which can only engage in wholesale financing business, according to the services provided. Currently, there is no Chinese-funded bank that has got the license of a full-capacity bank there.

The French legislation provides that 2% shall be set aside as special risk reserve with regard to financing outside the EU.

The Greek legislation provides that the majority of the board of directors of the subsidiary of foreign banks shall be EU citizens.

The Luxemburg legislation provides that 2% shall be set aside as special risk reserve with regard to financing outside the EU

Italy exercises different treatment with regard to non-EU banks compared with its domestic banks. For example, the competent Italian authoritiesty provides for different requirements on the first subsidiary set up by the EU and non-EU banks with regard to the size of loans to an individual client.

The above mentioned regulations have, to varying degrees, caused inconvenience to the normal operation of Chinese banks in relevant countries. The Chinese side is concerned over them.

3.9 Insufficient protection of intellectual property rights

In recent years, some brands of exports from Chinese enterprises are unfairly registered by European firms. In May 2004, when promoting the Firefly brand in

Germany, the Chinese enterprise named Xiamen Donglin Electronics found the said brand had been registered by Osram of Siemens. Being the major energy-saving light producer in Europe, Osram of Siemens filed the antidumping litigation against the Chinese energy-saving light industry in May 2000. In June 2001, the anti-dumping final ruling was made by the EU, imposing a very high anti-dumping duty of 66.1% on Chinese energy-saving lights. The time when Osram of Siemens registered the Firefly trademark synchronized with that of the final ruling imposing a high margin of anti-dumping duty on the export of Chinese energy-saving lights to the EU. Unfair brand registration is doubtlessly a kind of "double insurance" preventing Chinese products from entering the German market. The Chinese side is concerned over the insufficient protection of the legitimate IPR of the Chinese enterprises in the EU.

3.10 Others

3.10.1 Working visa

The visa policy of certain EU Member States on employees sent by Chinese companies to their invested companies in Europe seriously affects the investment of Chinese enterprises in Europe. Some EU Member States impose high qualification requirements on employees of Chinese-funded enterprises in Europe sent from China, and the visa application procedures are complicated and time consuming. The visa granted usually allows only one entry, or with a term of 12 months or even of 3 months. For example, the employees at representative office of some Chinese enterprises in France can only get a visa for short stay of 3 months, and the French government does not allow them to apply for visa extensions in France. The employees have to go back to China for visa application every 3 months, and the procedure needs about 20 days. The requirement seriously affects the continuity of the work of the Chinese representative offices. In addition, the working visa granting period takes at least 6 months, and some Chinese-funded enterprises in France complained that they had to wait for 2 years for the visa, during which period dozens of documents had to be submitted. These requirements and practices have increased the operations costs of Chinese enterprises in these countries.

3.10.2. Residential permit

Upon arriving in the EU, the managerial staff sent from China to the Chinese-funded enterprises usually encounters additional requirements when applying for residential permit. The competent authorities in certain EU Member States require the Chinese staff to submit various kinds of documents, some of which are not required on staff sent from other countries. The Chinese companies established in Belgium and Luxembourg complain that the application procedures for the residential permit and working permit are very complicated for employees sent from China. Such practices had the effects to impede the investment from China to the EU counties.

4 Barriers to investment

There are only a few restrictions found in investment policies among the EU Member States. Most members grant national treatment to foreign-funded enterprises although some barriers to investment do exist in certain Member States.

France still exercises control over some areas of foreign investment, including activities in the military sector, public utilities sector, and activities relating to public order, public health and public safety. France requires investment in these areas be applied to the competent authorities in advance.

Spain requires investment in the following fields be approved by DG Trade Policy of the Department of Economy (with the exception of investment from other EU members): Such investment falls within the category of “sensitive industry”, such as gambling, television, broadcasting, air transport and national defense; Foreign government investment or investment by foreign enterprises directly or indirectly controlled by the government; Iinvestment by foreign state-owned enterprises.

There is no restriction on foreign investment access to Ireland, butare special regulations governing merger and acquisition by foreign investment in Ireland. are laid down. In terms of corporate mergers and acquisitions, if the acquiring party meets one of the following conditions it should apply to Bureau of Competition of Ireland for approval: the global sales of the related M&A corporations amount to 40 million euros and over; business operations of the related M&A corporations exist in Ireland; The total sales volume of the related M&A corporations in Ireland amount to 40 million euros and over. Merger of the media industry and other special industries are not subject to the restriction on sales amount but should notify the competent authorities.

The Corporate Chartersarticles of association of many Swedish corporations provide the clause of “restriction on the ownership of foreigners”, stipulating at least 60% of the equity and 80% of the voting rights should be retained by the Swedes. If no such clause is included in the Charterarticles of association, the company is regarded as a foreign company which can not own Swedish natural resources such as mines, oil reserves, farms, forests and water resource, neither can they own more than 20% of voting rights of other corporations owning the said natural resources. Foreigners can not possess Sweden-registered ships or airplanes. Foreigners are not allowed to operate Swedish domestic airlines, nor can they hold shares of banks and military factories.

In the UK, foreign business people and foreign shareholding companies enjoy the same treatment as the UK-funded companies in legal terms. They can engage in various kinds of economic activities. However, exceptions exist in the industries owned by the government or controlled by the government bodies.

In the Czech Republic, industries subject to investment restrictions include security banks, asset management companies, passenger airlines, passenger and cargo land transportation, financial bonds underwriting, and construction engineering service. Within seven years following EU accession, foreign nationals are not allowed to purchase agricultural farmland in the Czech Republic.

Hungary restricts foreign ownership in varying degrees in civil aviation, television and broadcasting. Within ten years following EU accession, Hungary prohibits foreigners from purchasing its domestic land.

Foreign investment in banking should gain administrative approval in advance in Poland. Permit should be granted if foreign investment is engaged in the areas of mine exploration, the production and operation of ammunition and military products, tolled highways, broadcasting and television. Most commercial sectors do not have any limits to the cap on foreign ownership, yet in the fields of television and broadcasting, the cap on foreign ownership of non-EU firms is 49%. The cap on foreign ownership in civil aviation is also 49%. No foreign investment is currently allowed in gambling.

Japan

1. Bilateral trade relations

Japan was China's third largest trading partner in 2004. According to the China customs, the bilateral trade volume between China and Japan in 2004 hit US$ 167.89 billion, up 25.7% over the previous year, among which China's exports to Japan accounted for US$ 73.51 billion, gaining 23.7%, while China's imports from Japan registered an increase of 27.3% to arrive at US$ 94.37 billion. China had a trade deficit of US$ 20.86 billion with Japan. China mainly exported to Japan electro-mechanic products, electrical appliances and electronic devices, garments and accessories, new and high-tech products, yarn and its products, clothing of woven fabric, fossil fuels, and mineral oil. China's imports from Japan included, among others, machinery and equipment, electrical appliances and electronic devices, new and high-tech products, electronic technology, diodes and analog semiconductor devices, integrated circuits and micro-electronic components, steel and its products, plastics and its products, and organic chemical products.

As was reported by China's Ministry of Commerce (MOFCOM), in 2004, the turnover of the completed engineering contracts by Chinese firms in Japan totaled US$ 50 million, and the volume of the newly signed engineering contracts reached US$ 40 million; the turnover of the completed labor service cooperation contracts stood at US$ 800 million, and the volume of the newly signed labor service contracts was worth US$ 880 million. By the end of 2004, the accumulated turnover of the engineering contracts completed by Chinese companies in Japan added up to US$ 240 million, with that of the newly signed engineering contracts running into US$ 310 million; the accumulated volume of the completed labor service cooperation contracts amounted to US$ 4.18 billion, and that of the signed labor contracts came out at US$ 5.58 billion.

Upon the ratification or on the record of MOFCOM, 26 Chinese-funded non-financial enterprises were set up in Japan in 2004, with a contractual investment of US$ 27.826 million from the Chinese investors. By 2004, a total number of 276 Chinese-invested non-financial companies had been established in Japan, with an overall contractual investment of US$ 117.441 million.

According to the figures of MOFCOM, Japanese firms invested in 3,454 projects in China in 2004, with a contractual investment of US$ 9.16 billion and an injected capital of US$ 5.45 billion. By the end of 2004, Japan had accumulatively invested in 31,855 projects in China, with a pledged investment of US$ 66.65 billion and an actual capital input of US$ 46.84 billion.

2. Japan's trade and investment regime

2.1 Legislation on trade and investment

The legal framework of trade and investment in Japan consists of Foreign Exchange and Foreign Trade Law (recently amended on 16 February 2004), Export and Import Transaction Law, and relevant government regulations such as Cabinet Ordinances, Ministerial Decrees, Circulars, Notices and Announcements. Among these, Foreign Exchange and Foreign Trade Law is the core of Japan's trade and investment regime, specifying fundamental issues related to the administration of trade and investment, whereas detailed provisions are promulgated through updated Import/Export Administration Ordinance and Import/Export Rules.

The major legislation governing tariffs mainly includes Customs Law, Customs Tariff Law, and Temporary Tariff Measures Law. As the basic legislation on the administration of tariff, Customs Law stipulates tariff collection, customs clearance, procedures for the entry and exit of foreign vessels at Japanese ports, and bonded systems. Customs Tariff Law provides for detailed procedures for setting tariff rates and taxable prices, reduction, exemption and reimbursement of tariff, special tariff systems such as anti-dumping duties, and import bans. In the Tariff Schedule annexed to Customs Tariff Law, all the imports are classified, according to the Harmonized Commodity Description and Coding System (HS) compiled by the World Customs Organization (WCO), into 21 sections, 97 chapters and over 7,200 tariff lines (in 2004). Serving as a supplement to Customs Tariff Law, Temporary Tariff Measures Law stipulates some provisional tariff rates, tariff reduction, exemption or refund, and the generalized system of preferences (GSP).

In addition, Japan has enacted a number of special laws regulating various specific lines of business, which includes, for example, the Law on the Uniform Trademarks for Exports of Small and Medium-sized Enterprises, the Law on the Design of Exported Goods, Food Control Law, Plant Protection Law, Infectious Disease Prevention Law, Fertilizer Control Law, Tobacco Business Law, Monopoly of Salt Law, Monopoly of Alcohol Law, Food Sanitation Law, and Trade Insurance Law.

2.2 Trade administration

Article 1 of Foreign Exchange and Foreign Trade Law provides that transactions in foreign exchange and foreign trade in Japan be, in principle, laissez-faire, and that regulations or adjustments on foreign exchange and foreign trade be kept to the minimum. However, in fact, the Japanese government places various restrictions on import and export trade in the forms of Cabinet Ordinances, Ministerial Decrees, Circulars, and so on.

2.2.1 Import administration

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

Free imports refer to those goods imported into the country that do not need to apply for licensing, submit import statements, and present invoices upon clearing customs. These cover gratis rescue goods, free samples, specified publicity materials, goods not for sale, articles for use of diplomats, personal belongings carried upon entering the country, professional items, personal effects carried into the country when moving house, temporarily discharged cargo, and so on.

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 go through customs formalities. However, Import Announcement No. 3 also provides that goods listed in the Announcement do not need examination and approval for importation when they have been verified by the Minister of Economy, Trade and Industry or when their certificates of origin have been submitted to the customs.

Non-free imports subject to import quotas include: (1) 73 categories of non-liberalized products such as certain aquatic products, narcotics, nuclear fuels, arms and ammunitions; (2) animals, plants and their derivatives specified in Appendix I of the Washington Convention; and (3) ozone depleting substances stipulated in the Montreal Protocol. The Minister of Economy, Trade and Industry authorizes specific foreign exchange banks to examine and approve the importation of goods subject to import quotas.

Non-free imports in the category of specified goods from certain places of origin or shipment include: whales and their products from a country not yet a signatory to the International Whale Fishing Control Treaty; salmons, trouts and the processed products thereof from China's mainland, China's Taiwan province, and North Korea; marine mammals, fish or shellfish, and seaweeds caught by foreign boats and transshipped at sea; silk threads from China and South Korea; silk products (excluding combed and blended silk products) originated in China's mainland, China's Taiwan province, Japan and South Korea but shipped elsewhere; special silk products of Chinese origin but shipped from a country or region other than China; products such as knee blankets, flax bed-sheets, flax tablecloths, and curtains made from silk products (excluding combed and blended silk products) of Chinese and Japanese origin. The imports of such goods are subject to the examination and approval of the Ministry of Economy, Trade and Industry.

Non-free imports requiring prior ratification by the competent ministers cover certain specified medicinal products, textile products, fishery products, and rare wild animals.

2.2.2 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. Japan's trade regime based on Foreign Exchange and Foreign Trade Law, Export and Import Transaction Law and Export Administration Ordinance also provides for export controls, restrictions on the supply of technologies, prior approval and post-export examination.

(1) Security export controls. Products in this category include arms and high-tech products that may be put to military use, and are specifically designated by Foreign Exchange and Foreign Trade Law, Cabinet Ordinances and Ministerial Decrees, the export of which is subject to the approval of the Minister of Economy, Trade and Industry. Generally speaking, the export of arms which are put on the control list – in particular, weapons of mass destruction, nuclear-related items, chemical and biological weapons and their related products, missile-related articles, and conventional weapons – should be ratified by the Minister of Economy, Trade and Industry. The Trade Administration Division under the Ministry of Economy, Trade and Industry is directly responsible for matters concerning security export controls.
(2) Export controls against countries under the UN economic sanctions.
(3) Restrictions on the supply of technologies. The supply by Japanese residents to non-Japanese residents of technologies concerning the designing, manufacturing or use of specified products should be subject to prior ratification.
(4) Export controls arising from some special forms of trade. When the import of products produced outside Japan in the form of processing trade commissioned by a Japanese company poses potential injury to the relevant domestic Japanese sectors, the export of raw materials for the production of these products by the same Japanese company shall be subject to the approval of the Minister of Economy, Trade and Industry.
(5) Export controls for other products. Other categories of products subject to examination and approval before their export include: goods that are in short supply on the domestic market, such as crude oil and nuclear fuels; products that may cause excessive competition and disturb export order, such as fishing boats; products that are prohibited from exporting, such as national treasures and narcotics; products that are, according to international treaties, subject to export controls.

2.2.3 Investment administration

Since the 1990s, the Japanese government has been striving to encourage foreign direct investment in Japan. The Japan Investment Council, headed by the Prime

Minister and composed of cabinet ministers, was set up in 1994. The various branches of the Council consist of officials from more than 20 government ministries and agencies as well as representatives from foreign invested companies in Japan. In May 1997, Japan amended its Foreign Exchange and Foreign Trade Control Law and renamed it Foreign Exchange and Foreign Trade Law, which deregulates the application, examination and approval procedures of foreign investment in Japan and provides for specific deadlines for government ministries and agencies to go through approval procedures. In May 2003, relevant Japanese ministries and agencies established single contact points called “Invest Japan Offices” to promote foreign investment in Japan. In addition, the Japan External Trade Organization (JETRO) also set up in major Japanese cities “Invest Japan Business Support Centers” to serve as a one-stop consolidated business consultation service point for foreign investors.

2.2.4 Competent authorities

2.2.4.1 Government ministries and agencies

Japanese government ministries and agencies involved in trade and investment administration include the Ministry of Economy, Trade and Industry, the Ministry of Finance and its affiliated Japan Customs, and the Bank of Japan. In addition, the Ministry of Foreign Affairs also takes part in the administration of trade and investment.

The Ministry of Economy, Trade and Industry (METI), with regional bureaus and offices in major Japanese cities, is responsible for the formulation and implementation of trade policies and investment promotion polices, and for the examination, approval and licensing of imports and exports. The METI sets up in its Trade Policy Bureau a Multilateral Trade System Department to handle complaints related to WTO affairs.

In principle, Japan’s foreign exchange control is the system of filing and putting on record relevant documents after the transaction. However, this does not apply to exports to and investment in countries under economic sanctions, and trade which may threaten public order and national security. The Ministry of Finance (MOF) is responsible for the examination and approval of matters concerning foreign exchange control, and the compilation of financial statistics.

Japan Customs, an agency affiliated to the MOF, is responsible for the administration of the entry and exit of goods, vessels, aircraft and passengers; the collection of customs duties; the examination and approval of the import and export of certain products; the supervision of bonded areas; and the compilation and publishing of trade statistics.

As the central bank in Japan, the Bank of Japan (BOJ) deals with reports, examination and approval of foreign exchange matters, collects and releases financial data.

2.2.4.2 Other relevant organizations

Originally established in 1958 to promote Japanese exports abroad, the Japan External Trade Organization (JETRO) was restructured on 1 October 2003 according to the Japan External Trade Organization Incorporated Administrative Agency Act dated 31 December 2002. As an incorporated administrative agency, JETRO is a wholly government-funded public institution that works to promote trade and investment between Japan and the rest of the world. The activities of JETRO include: helping foreign businesses to invest in Japan; assisting Japanese small and medium-sized firms to expand their exports; helping foreign enterprises to enter the Japanese market; granting economic aid to developing countries; collecting and analyzing foreign economic, trade and investment information; providing business consultancy services; supporting Japanese companies in their overseas operations; conducting research on developing countries; gathering and supplying relevant information about developing countries; and training professional personnel.

By the authorization of the Minister of Economy, Trade and Industry, the Japan Standardization Association, the Chemical Fiber Association, the Fishery Products Association, the Iron and Steel Union and various exporters and importers associations also play a role in the examination and approval of the import and export of goods in the respective sectors.

The Japan Bank for International Cooperation (JBIC) is an exclusively government-funded policy-oriented financial institution in Japan. Its fundamental mission is to conduct various policy-based financial operations to promote the development of trade, strengthen overseas economic cooperation, and contribute to the stabilization of international financial order and the economic development of developing countries. Its major operations include providing funds or guarantees for the export of heavy machinery and large equipment, for the import of important materials and for overseas economic activities of Japanese firms, and supplying capital for infrastructure projects in developing economies.

3. Barriers to trade

3.1 Tariff and tariff administrative measures

Japan’s average tariff rate stood at 2.4% in 2004, but Japan still maintains exceedingly high tariff rates and some unreasonable tariff administrative measures on certain products.

3.1.1 Tariff peak

With the tariffication of the import of rice and salt, a transitional tariff peak appeared in these two products. As from 1 April 1999, Japan has subjected rice imported outside the framework of minimum access to customs duties. This measure effectively eliminates the competitiveness of imported rice in price and, in effect, blocks the access of imported rice to the Japanese market. In 2001, Japan's Ministry of Finance declared the end of the policy of zero tariff on table salt as well as salt for industrial use and set the basic tariff rate on salt at 0.5 yen per kilogram, but in 2004, a provisional rate of 2.5 yen per kilogram applied to salt.

Japan imposes much higher tariff rates on agricultural and aquatic products than on industrial goods. Over 80% of agricultural and aquatic products are subject to customs duties, mostly at more than 15%, for example – bovine meat; diary products such as cheese; eggs; honey; citrus, grapes, apples, pine-apples, cherries, bananas, and other fruits as well as their related products; beverages such as coffee, black tea and green tea; processed grain products such as corn flour, rice flour, wheat flour and potato flour; starches and products thereof; refined gum; margarine; sugar; chocolate, bakery, and cocoa products; biscuits; tomato ketchup, marmalade, fruit juices and vegetable juices, ice cream, grape juice; cigar and cut tobacco. According to the estimates of the WTO Secretariat, Japan's tariff rates on agricultural products averaged 16.1% in 2004, significantly higher than the average tariff rate of 3.8% on industrial products. Japan's high tariff on the above-mentioned agricultural products impedes the export of the relevant Chinese products to Japan. China is closely monitoring the declining trend of Japanese tariff on agricultural products.

Japan levies a high tariff rate of 17% on the import of *wu long* tea (*woo long cha*), a rate at the same level of the import of green tea, which is also produced domestically in large quantities. *Wu long* tea, a product produced in China only, is among the traditional commodities China exports to Japan. The imposition of a high tariff of 17% on *wu long* tea is obviously a discriminatory trade measure against China. China hopes that Japan will cut the duties on *wu long* tea to an appropriate level so as to facilitate the healthy development of trade in tea between the two countries.

3.1.2 Tariff escalation

Japan escalates its tariff rates on certain products according to their degree of processing. However, the gap in tariff rates between the raw materials of some products and the semi-finished or finished products is too large, in some cases, as high as 30% to 40%.

Tariff escalation is particularly apparent in agricultural, aquatic and food products. For example, tariff on maize flour, wheat flour and potato flour is at 15% to 25%, but tariff on some flour products such as desserts and cookies can go as high as 34%. Some fruits are subject to tariff rates ranging from 16% to 32%, whereas the tariff rates of processed fruit products such as jams, jellies and mashed fruits may be up to 40%. The tariff rates of tea ranges from 3% to 17%, while the tariff rates of beverages made from tea or coffee may go as high as 29.8%. Tariff rates on fishery products normally falls within the range of 2 – 3.5%, but tariff rates applied to dried, salted, smoked, or crushed fish or fish meat are raised to about 10%.

Of industrial products, tariff escalation is more noticeable in textile products. The import of raw materials such as raw silk, cotton, wool and flax is duty-free; however, tariff rates on semi-finished products such as yarn and fabric escalates. In 2004, the actual average customs duties on fabric products and garments were 7% and 9.1% respectively.

3.1.3 Tariff quotas

Japan applied tariff quotas to 20 categories of products in 2004. The Ministry of Agriculture, Forestry and Fisheries (MAFF) administers tariff quotas on 18 categories of products, namely, maize; natural cheese; malt; sugarcane dregs; sugar-free cocoa products; marmalades; canned pine-apples; diary products; skimmed milk powder; sugar-free condensed milk; butter; miscellaneous beans; starches, inulin and starch products; peanuts; konnyaku; concocted food oil; silkworm cocoon; and whey. The Ministry of Economy, Trade and Industry (METI) supervises tariff quotas on the remaining 2 categories of products, i.e., leather and leather shoes.

There is a great demand on konnyaku (Amorphophalus) on the Japanese market, but Japan imposes an annual tariff quotas of 267 tons on Chinese exports of konnyaku, which must be sold to konnyaku processing enterprises in Okinawa alone. In addition, Japan collects a uniform tariff of 40% on Chinese exports of konnyaku within the quota and subjects those outside the quota to a tariff of 2,796 yen per kilogram. These measures have restricted Chinese exports of konnyaku to Japan, and Chinese farmers of konnyaku have, accordingly, suffered heavy losses. China hopes that Japan will end its restrictive import measures on konnyaku from China the soonest possible.

Japan has a very complicated tariff management system, and its transparency leaves much room for improvement. For example, the Japanese authorities, claiming lack of experience, often delay the publication of quota allocation results, or only release the list of enterprises granted quotas without specifying the exact quantity of quotas each receives so that the applicants of quotas could not judge the fairness of the quota distribution by comparing the quotas each enterprise receives. China hopes that Japan will make efforts to improve its transparency in the administration of tariff quotas.

3.1.4 Ad valorem and specific duties

The wide existence in Japan of the combined use of ad valorem duties and specific duties (alternative or compound duties) makes the calculation of customs duties very complicated and causes some difficulties to Chinese enterprises exporting to Japan. Moreover, tariff on products calculated at ad valorem duties is significantly higher than that calculated at specific duties, particularly so for agricultural products. That poses, in a certain extent, an obstacle to the growth of trade between China and Japan.

3.1.5 Generalized System of Preferences

Japan makes annual readjustment in the application of the preferential rates under the generalized system of preferences (GSP), mostly reducing the number of products entitled to GSP rates. In recent years, Japan has time and time again eliminated its application of GSP rates to a number of products of Chinese origin, which has exerted a great negative impact on Chinese producers and exporters of the products involved. China is very concerned with such Japanese moves.

3.2 Import restrictions

3.2.1 Import quotas on silk

In Sino-Japanese trade in silk, every year the Japanese authorities do not distribute all the import quotas on the ground that the Japanese importers have limited capacity to import. In October 2004, Japan committed itself to putting an end to quantitative restrictive measures against silk products from China's mainland when the Sino-Japanese Silk Trade Agreement expires at the end of the year and fully liberalizing trade in silk products as from 1 January 2005. China hopes that Japan will fully implement its commitments.

3.2.2 Rice tendering regime

According to the Uruguay Round Agreement, Japan should ensure the minimum access of foreign rice to its market through the general bidding (GB) and the simultaneous buy and sell (SBS) programs. Problems in these programs include:

(1) Rice imported into Japan under the GB method accounts for a significant proportion of the total imported rice, but the tendering process fails to ensure market access in the true sense of the term. As most of the quotas under the GB method is allocated to specific countries directly designated by the Food Agency under the Ministry of Agriculture, Forestry and Fisheries, the tendering process is marred with government interference and lacks transparency. As a result, Chinese companies have won only an extremely small portion of all the quantity of rice put under bidding, which contrasts sharply with the competitiveness in price, quality and taste of Chinese rice. China managed to win only a negligible 7,000 tons of rice in GB in 2004.

(2) In the tender for foreign rice under the SBS method, the importers have to sell the rice won in the bid at the amount demanded by domestic customers to the Food Agency, and the Food Agency will then re-sell the rice at an internally fixed

mark-up to domestic wholesalers. Moreover, the amount of rice imported through the SBS scheme is subject to frequent adjustments and readjustments by the Food Agency.

China believes that the unreasonable practices in the import of rice dull the edge of the competitiveness of Chinese rice on the Japanese market. And China will continue to monitor closely the measures taken by the Japan authorities to reform its import rice tendering regime and to improve its transparency.

3.2.3 Import restrictions on laver

Pursuant to Foreign Exchange and Foreign Trade Law and the Import Administration Ordinance, the Ministry of Economy, Trade and Industry subjects the import of laver (*nori*) to quotas. According to the Notice on Import Quotas on Laver issued by the Ministry, import quotas and licensing procedures apply to dried and seasoned laver, and the place of origin is limited to the Republic Of Korea. The restrictive measure on the origin of laver blocks the export of Chinese laver to Japan.

On 22 April 2004, the Chinese government initiated its trade barriers investigation into Japanese import administrative measures on laver. During the investigation, the relevant government ministries in the two countries held three rounds of consultations and negotiations, and the Japanese side promised to take effective measures within reasonable period of time to respond to Chinese concerns. On February 21 2005, Japan's Ministry of Economy, Trade and Industry released its 2005 quota scheme of laver import. According to the scheme, the restriction on the country of origin was abolished and the country-specific quota of laver import was replaced by a global quota, while the quota volume for 2005 was restricted to 400 million. On February 28, the MOFCOM of China ended its trade barriers investigation on Japanese import administrative measures on laver. China hopes that the technical negotiations between trade associations concerned on both sides will help to bring China's export of laver to Japan back to normal on the earliest date.

3.3 Barriers in customs procedures

Chinese enterprises report that fresh and live products exported to Japan are often delayed in customs clearance, which incurs heavy losses to them.

3.4 Technical barriers to trade

3.4.1 Traditional Chinese medicines and tonic foods

In Japan, products with medicinal value are classified into medicines and foods. According to the circular issued by the Drug Bureau within the Ministry of Health, Labor and Welfare, products with medicinal value may be classified as medicines.

Accordingly, many products classified as health-enhancing foods in China are defined as medicines when exported to Japan, because of the medical or disease preventive functions described in the introductions to the products, and thus are subjected to the strict rules governing the importation and marketing of medicines in Japan.

According to the Pharmaceutical Affairs Law, medicines are divided into over-the-counter (OTC) medicines and prescription medicines. OTC medicines, accounting for about 10% of the medicine market in Japan, are sold only at drug stores and not available at hospitals. They can be purchased by consumers, but the expenses incurred are not covered by the medical insurance. On the other hand, prescription medicines, making up roughly 90% of the drug market in Japan, are sold only at hospitals at the prescription of doctors and covered by the medical insurance. At present, the overwhelming majority of the traditional Chinese medicines exported to Japan have not been listed as prescription medicines, and can only be purchased by consumers at their own costs, thus greatly restricting the sale of the traditional Chinese medicines on the Japanese market.

Furthermore, as most traditional Chinese medicines are processed using animal or plant materials, their import is sometimes subjected to unreasonable checking and quarantine procedures.

Technical barriers to trade in Japan have long restricted the export of the traditional Chinese medicines and tonic foods to Japan, and China is very concerned with the issue.

3.4.2 Label of origin of food

According to the Law Concerning the Standardization and Proper Labeling of Agricultural and Forestry Products, commonly referred to as the Japan Agricultural Standards Law (JAS Law), all the food products sold in Japan shall bear a mark of origin as from December 2000. Since 2003, Japan has required all imported rice to carry a label specifying its variety, origin of production, name of producer, identification code and so on. In December 2003, the Ministry of Agriculture, Forestry and Fisheries issued once again a notice, demanding the imported fresh and live products such as livestock to mark its place of origin. In April 2004, the Ministry revised its quality mark criteria regarding processed food: extending the scope of processed food required to bear a mark of origin and stipulating that processed food not required to bear such a mark should not carry any misleading information as to its origin.

The Japanese authorities often conduct inspections on the quality and origin of aquatic products, and even go so far as to conduct DNA tests on eels marked “produced in Japan” and publish the results of such tests on their official websites. As the Japanese government has long been advocating the consumption of domestically produced food and as the Japanese media tend to exaggerate the hazardous residues of pesticides in Chinese agricultural products, many Japanese consumers have been misled to believe that Chinese agricultural products are not safe. Therefore, the above measures constitute a great barrier to the export of relevant Chinese farm products to Japan, and China is very concerned with the issue.

3.4.3 Cosmetics

Japan subjects imported products to strict examination and approval procedures as to their health effect, sanitation, packaging and labeling. For example, cosmetic products exported to Japan must, first, meet the Japanese Standards of Cosmetic Ingredients (JSCI), Japan's Specifications and Standards for Food Additives (JSFA), and Japan Pharmaceuticals (JP). If they fail in one item of the standards, the Japanese authorities will refuse to grant licensing to the products on that ground. Second, all imported cosmetics are subject to the rules as laid down in the Pharmaceutical Affairs Law. Ratification is needed before the import or production of any cosmetics, and if hormone is contained in the cosmetics, application should be filed to the Minister of Health, Labor and Welfare. The qualifications of the applicants are also stipulated, allowing only persons residing in Japan, including foreign legal persons and foreign representatives in the country, to have the qualifications. If the quality of the products is up to the standards, but the applicant does not have the proper qualifications as required, licensing will still be denied. Third, the requirements on the packaging and labeling of products by the relevant Japanese laws are too complicated and confusing. If any defect is found in the packaging and labeling, the import of the products will be rejected. China is very concerned with the impact of these measures on Chinese exports of cosmetic products to Japan.

3.5 Sanitary and phytosanitary measures

China is the second largest supplier of agricultural and food products to Japan. The persistence of the Japanese authorities in taking some unusual and unnecessary quarantine measures on Chinese exports of agricultural products negatively affects China's trade with Japan in relevant products.

It is stipulated that all imported agricultural products be examined by local quarantine authorities set up by the Ministry of Health, Labor and Welfare. The import quarantine inspections are of two kinds, monitoring inspection and mandatory inspection. The MHLW draws up an annual monitoring inspection plan in advance, specifying such matters as product categories to be inspected, sampling rates, inspection items, and inspection methods. The local quarantine authorities are to implement the plan. The results of monitoring inspection do not much affect customs clearance, but if the products are found not up to the relevant standards, the sampling rate will be increased to a higher level, usually at 50%. If the products are still found not up to the relevant standards in this second round of monitoring inspection, mandatory inspection will follow. The MHLW will designate an organization to carry out the mandatory inspection and ask it to prepare an inspection report. Products under mandatory inspection are not allowed to clear the customs until the inspection report has been produced. Products, having cleared inspection by the MHLW and placed on the market, sometimes have to go through the sampling inspections carried out by the local health agencies. If substandard products are detected, all the products will have to be recalled by the importers and the retailers.

3.5.1 Agricultural chemical residues in foods

3.5.1.1 Provisional standard system

According to the Food Sanitation Law as amended in May 2003, Japan is planning to put in place the Provisional Standard System on Residues of Pesticides, Veterinary Drugs and Feed Additives in Foods (the so-called "positive list system") within three years, a system to prohibit the importation and distribution of foods that contain agricultural chemicals above a certain level even if maximum residue limits (MRLs) have not been established. Since 2003, the Drugs and Foods Bureau under the MHLW has started to formulate a provisional MRLs for agricultural chemicals in foods. In October 2003 and August 2004, the MHLW released respectively its first and second draft of provisional MRLs for comments from relevant countries and concerned parties. The second draft specified the MRLs for a total number of 669 pesticides, veterinary drugs and feed additives. Based on public comments, the second draft will be submitted to the MHLW Drugs and Foods Sanitation Council for review and approval, the result of which will also be reported to the WTO. China is watching very closely the transparency of the provisional standard system, the scientific bases for such standards, and its possible consequences on trade.

3.5.1.2 MRL for chlorpyrifos in spinach

According to the provisional standard system, the maximum residue limit (MRL) for chlorpyrifos in spinach is 0.01 ppm. Only a small number of countries in the world designate such an exacting MRL for chlorpyrifos in spinach. Both the Codex Alimentarius Commission (CAC) and the US have not set such a MRL, and the EU sets chlorpyrifos MRL at 0.05 ppm. According to statistics, the average daily intake of spinach per capita in Japan is 22.8g, whereas that of radish and cabbage is 47.3g and 37.4g respectively. However, the chlorpyrifos MRLs for the two are set in Japan at 3.0 ppm and 1.0 ppm respectively, 300 and 100 times higher than that for spinach. The Chinese side considers that MRLs should be established according to the daily intake of the relevant food in question. In this case, China is very concerned with the consistency of chlorpyrifos MRL in spinach fixed by Japan with the risk assessment principle as provided in the WTO's Agreement on the Implementation of Sanitary and Phytosanitary Measures (SPS Agreement).

In July 2002 and May 2003, on the ground that chlorpyrifos contained in frozen spinach from China exceeded the MRL, the MHLW twice demanded Japanese importers to exercise “self-discipline” in the import of spinach of Chinese origin, which amounted to a de facto import ban. On 17 June 2004, the MHLW lifted conditionally the import ban on frozen spinach from 27 Chinese processing factories. However, Chinese exporters report that the Japanese procedures of inspection and quarantine are too complicated and lengthy, customs clearance sometimes could take as long as 3 months since the date of arrival upon Japanese ports, and the port surcharges thus caused add greatly to the export costs of Chinese enterprises.

It is noted that the effect of shrinking and concentration occurs in frozen vegetables, and accordingly, MRLs should, if necessary at all, be applied differentially to processed and unprocessed vegetables. In the absence of a separate MRL for chlorpyrifos contained in frozen spinach, the Japanese authorities applied MRL for fresh spinach to frozen spinach and adopted restrictive measures against imports from China. The Chinese side is showing great concern with the impact of such a practice on the normal bilateral trade in vegetables.

3.5.1.3 Certain aquatic products

On 3 July 2003, the MHLW abruptly announced, without any prior notice to the Chinese side, to impose mandatory enofloxacin inspection on imports of roasted eel from China, and the MRL is set at 0.05 ppm. The list of mandatory inspection released by the MHLW on 31 March 2004 still subjects roasted eel of Chinese origin to mandatory inspection. On 2 August in the same year, on the grounds that several batches of Chinese roasted eel were found to exceed the enofloxacin MRL, the MHLW strengthened the mandatory inspection of Chinese roasted eel, increasing the number of eel to be inspected from one to two.

3.5.2 Harmonization with international standards

Japan’s Food Sanitation Law provides that additives in foods be examined and approved by the MHLW, only approved additives be used in the production of foods, and the production or importation of foods with unratified additives be banned. The MHLW’s Guidelines on the Designation of and the Standards for Food Additives and its annexes further stipulate that companies provide complete testing documents to demonstrate the safety and effectiveness of food additives along with their application. The testing fees are to be borne by the applicants, and the examination and approval procedures usually take one year. As some food additives, already accepted by the UN Food and Agriculture Organization (FAO) and the WTO and hence widely used in countries around the world, have not been included in the list of approved food additives in Japan, the export of foods containing these additives to the Japanese market tends to be extremely difficult, if not impossible.

The Food Sanitation Law as amended in May 2003 provides that the sale of imported agricultural products be banned if containing pesticides whose MRLs have not yet been established in Japan. By July 2004, Japan has set MRLs for 242 pesticides. According to the amended law, the import of agricultural products containing pesticides whose MRLs have not been determined in Japan is prohibited, even if the amount of the residue does not go against international standards and is not harmful to human health. China is greatly concerned with the inconsistency of the Japanese technical regulations with international norms.

3.5.3 Quantitative restrictions on plant quarantine

According to the Notice on Normalizing Quarantine Inspections of Imported Plants, the Miminstry of Agriculture, Forestry and Fisheries requires that quarantine agencies at harbors and airports set ceilings on their daily quarantine workload, the ceilings being the average daily workload based on the two months with the largest imports during each of the past three years. Such a limitation of daily quarantine workload hinders the exports of plant products, particularly fresh vegetables, and Chinese exports of fresh vegetables are greatly affected.

The MAFF explains that such a measure is taken in order to guarantee food safety and to allow for the handling capacity of quarantine agencies. In the past, however, Japan had been transferring quarantine staff from other agencies to help those facing a sudden increase in workload in order to ensure efficient and timely quarantine on imports. The daily workload ceilings set by the Japanese authorities impede Chinese exports of vegetables to Japan and amount to a quarantine barrier in disguised form.

3.5.4 Inspection and quarantine procedures

In most cases, after the food products subject to inspection and quarantine in Japan are sent to the quarantine center, say, in the morning, only preparations for testing will be made in the morning, for example, peeling peanuts or slicing food into smaller pieces, and instrumental analysis regarding pesticide residues and food additives will not be started until the afternoon. Confirmatory laboratory analysis will be conducted in case of suspected data. The complicated and onerous quarantine procedures often lead to delays in customs clearance.

Approximately 700 pesticides are currently used around the world. The Yokohama Imported Food Inspection and Quarantine Center, with all its best equipment and well-staffed personnel, is only able to test about 60 pesticides. Because of the intimidating workload involved in the testing of these 60 pesticides, there still seems to be a lack of equipment and human resources, thus affecting the smooth progress of inspection and quarantine.

3.5.5 Plant fumigation

According to Clause 2, Article 5 in the Plant Protection Law, the quarantine authorities would fumigate or burn and destroy the fresh flowers when they are found to carry specified pests or harmful plants. However, only 14 pests and 4 harmful plants are listed in Appendix II to the Guidelines on Import Plant Quarantine, and those not listed in the appendix would be dealt with on the basis of the same regulation. This provision gives too much discretion to the inspectors and results in widely differing implementation standards. Therefore, it is often difficult for importers to decide whether their plant products need to be fumigated. Because of the limited capacity in dealing with requests of plant fumigation in the quarantine center, importers often have to wait for days until their fresh plants have deteriorated .

3.5.6 Inspection and quarantine on imported poultry meat

On 27 January 2004, Japan declared to temporarily suspend the import of poultry meat from China on the grounds that China had been struck with the epidemic of Avian Influenza H5N1 (bird flu). On 7 April 2004, Japan announced to lift the import ban on thermally processed poultry meat from China and agreed to resume the import of Chinese thermally processed poultry meat with conditions. The imports were limited to 35 Chinese poultry processing factories approved by the Japanese government. However, there are hundreds of Chinese factories which produce thermally processed poultry meat specifically for the Japanese market, and many of them have stopped production or are operating under capacity because of their inability to export their products to Japan. The interest of Chinese farmers raising poultry has also been greatly affected. Although China handed over to Japan a recommended list of 112 Chinese thermal poultry processing factories in May 2004, Japan, using various excuses, refused to entertain any applications from new enterprises.

As to the problem of resuming the import of fresh and frozen poultry meat from China, Japan claims that China resorted to contain the spread of bird flu by the injection of vaccine so that it is yet to be proved that China's poultry does not carry the virus. Accordingly, Japan refused to recognize China as a clean country free of bird flu. However, according to the hygiene standards implemented by the two countries in the past, 90 days after the outbreak of the last case of bird flu has been effectively put under control will be sufficient for the affected country to be deemed a clean country and the export of poultry from that country could be resumed. On 16 February 2004, the last case of poultry affected by bird flu was killed. In the first half of 2004, China proposed to Japan that the two sides start to discuss and revise the existing poultry hygiene standards so that the traditional trade in fresh and frozen poultry meat between the two countries could be resumed as soon as possible. However, Japan has yet to give a formal response. The suspension of the traditional trade in poultry meat has caused tremendous losses to relevant enterprises in China as well as in Japan, with which China is showing great concern.

3.5.7 Japan's inactivity in accepting the registration of China's new artiodactyl thermal processing enterprises

By 10 October 2001, a total number of 91 artiodactcyl thermal processing enterprises in China have gone through the registration procedures of Japan's MAFF. Since March 2001, China on several occasions has recommended nearly 70 artiodactcyl thermal processing enterprises for registration with the MAFF, and invited Japanese officials to China to conduct field inspection and registration formalities. However, Japan only re-examined the enterprises that have already been registered, and has never considered to accept the application of newly recommended enterprises. Japan's inaction in accepting the application of examination and registration of China's newly recommended artiodactcyl thermal processing enterprises has obstructed China's normal exports to Japan in this particular field, which constitutes a barrier to trade. China hopes that Japan will send officials to China to start the examination and registration procedures so as to facilitate the normal development of trade in thermally processed artiodactcyl meat.

3.5.8 Frequent enforcement of mandatory inspection

On 29 August 2003, the MHLW issued the Notice on the Enforcement of Mandatory Inspection on Imported Foods, nullifying, according to the amendment to the Food Sanitation Law, the previous provision that Cabinet Order be issued prior to mandatory inspection on imported goods. Mandatory inspection is now applied to imported goods previously only subject to sampling inspection. The new measure involves 8 categories of food from 7 countries and regions, among which 9 kinds of food in 2 categories from China are affected, namely, processed pork products (including edible pork products), dried fishery products, instantly frozen food, processed bean products, refreshments, processed nuts, processed seeds and preserved vegetables. Not long after, tests on sodium cyclamate in processed poultry meat (limited only to meat products for human consumption) were also added. The number of companies whose products are subject to mandatory inspection of this item is 56 in China's mainland, 2 in China's Taiwan province, and 1 in Vietnam. Although the mandatory inspection applies only to specific product categories and enterprises believed to have violated Japan's relevant regulations, not targeting all the Chinese products of the same category, the batch-by-batch mandatory inspection is too time- and money-consuming, thus eliminating the competitiveness of the Chinese exports in terms of price and quality.

The list of mandatory inspection released on 31 March 2004 by the MHLW includes 26 product categories of Chinese origin. On 30 April, the MHLW announced to subject litchi and its processed products from China to mandatory inspection of methamidophos MRL. On 13 October, the MLHW declared to place unmatured beans of Chinese origin under mandatory inspection of the MRL for chlorpyrifos. On 2

November, the MLHW ordered to put royal jelly imported from China under mandatory inspection of streptomycin MRL.

On 17 June 2004, the MLHW announced to subject Chinese-style vermicelli (*harusame*) from China to mandatory inspection of the MRL for SF-“BPO”. Considering the fact that SF-“BPO” can be used in the production of Chinese-style vermicelli in a number of other countries (such as Singapore) and in the production of wheat flour in Japan, China urges Japan to take a scientific, objective and fair attitude, to inform Japanese consumers in a correct manner, and to treat Chinese exports of vermicelli fairly. In addition, taking into account the Japanese concerns, the Chinese authorities have asked relevant enterprises to stop using SF-“BPO” in their production of Chinese-style vermicelli for export to the Japanese market. On 18 November 2004, Japan announced to put an end to such a mandatory inspection. Relevant Chinese companies have, however, expressed their concern over Japan’s frequent mandatory inspections.

3.5.9 Import quarantine of flowers and plants

China is currently the fifth largest exporter of flowers and plants to Japan. However, Japan’s MLHW tends to adopt various restrictive measures in disguised form and exacting quarantine standards against flowers and plants imported from China. For example, if harmless pests that do not come under quarantine items are found, all the imports are ordered to be destroyed. In that case, the Chinese exporters will have to bear the costly expenses of the destruction of the flowers and plants. Moreover, if they fail to deliver the goods on time, they will have to pay a heavy penalty to the Japanese importers. On the other hand, when the Japanese domestic production cannot meet the market demands, the MLHW will relax its restrictions on Chinese imports. China hopes that the MLHW will, according to the WTO’s Agreement on the Implementation of Sanitary and Phytosanitary Measures (SPS Agreement), formulate and implement reasonable and stable quarantine standards on imported flowers and plants.

3.5.10 Sodium cyclamate

Japan requires that no food should contain the additive of sodium cyclamate. As from January 2003, Japan’s MHLW has begun to impose sampling inspection of various Chinese exports of food for sodium cyclamate. On 17 October 2003, the MHLW decided to subject soy sauce and vinegar imported from China to the same inspection of sodium cyclamate. Based on the results of laboratory tests and risk assessment of international organizations such as the Codex Alimentarius Commission (CAC) as well as their own research, the US, the EU, Canada and a number of Asian countries including China allow the use of sodium cyclamate in food as an additive within specified quantity. China believes that the current restrictive measures adopted by Japan against food containing sodium cyclamate are not based on sound risk assessment and conclusive scientific evidence, and far exceed the necessity for ensuring human health and safety. And China hopes that Japan will take into account the scientific research and results of international organizations such as the CAC regarding sodium cyclamate, and formulate reasonable requirements as to the maximum amount of sodium cyclamate in food in reference to its amount allowed in other countries.

Once the presence of sodium cyclamate is detected in food exported by a Chinese company to Japan, the MLHW will put the company on a black list and subject all its exports to a batch-by-batch mandatory inspection of sodium cyclamate. Even if no sodium cyclamate has been found in subsequent batches of exports, the MLHW will still refuse to remove the company from the black list. China thinks that such measures lack sound scientific basis, far exceed the need to protect human, animal and plant health and safety, and seriously affect China's trade in food with Japan. Therefore, China hopes that the Japanese authorities will base their administrative measures for sodium cyclamate upon scientific evidence and risk assessment in order to minimize the effect on the normal trade between the two countries.

3.5.11 Amendment to the Enforcement Ordinance of the Food Sanitation Law

In May 2004, Japan amended the Enforcement Ordinance of the Food Sanitation Law, adding 57 new infectious animal diseases to the list of epidemic animal diseases not allowed into the country. It is stipulated in the amendment that meat products carrying these diseases not be imported, sold as food, processed, used or stored. Some of the newly added 57 animal epidemics, if properly treated, do not pose any threat to human health. China is very concerned with the impact of the implementation of the newly amended law on bilateral trade in meat products.

3.5.12 Establishment of a notification system for the importation of animals possibly carrying pathogens of infectious diseases

In October 2004, Japan's MHLW decided, based on the Law Concerning the Prevention of Infectious Diseases and Medical Care for Patients of Infectious Diseases, to introduce a new notification system for importation of animals that have a possibility of carrying pathogens of infectious diseases. According to the newly-established notification system for the importation of animals, a person who imports animals possibly carrying pathogens of infectious diseases shall, before the importation, notify the MHLW in a written form giving all the necessary information concerning the animals such as their species name, use, quantity, origin, history, exporter and importer. In addition, a health certificate issued by the government authorities of the exporting country shall be attached to the notification form. The system designates live terrestrial mammals, live birds and carcasses of rodents as animals that shall be notified before their importation. The new system is to take effect as from 1 September 2005. China will be watching closely the development in this regard.

3.6 Trade remedies

By the end of 2004, Japan has initiated four trade remedy measures to restrict Chinese exports to Japan, namely, the anti-dumping investigation on siliconmanganese, the safeguard investigation on cotton silk, the safeguard investigation on green Chinese onion (allium fistulosum or *negi*), fresh mushroom (lentinus edodes or *shiitake*) and rush for tatami matting (*igusa*), and the safeguard investigation on towels.

Of all the major trading partners of China, Japan is one of the few countries that seldom launch safeguard investigation on Chinese exports. However, every safeguard investigation initiated by Japan involves an important Chinese product in trade with Japan and affects a large amount of trade volume. For example, the anti-dumping investigation on siliconmanganese involving the least amount of trade volume still comes to nearly US$ 50 million, whereas the rest three safeguard investigations each put more than US$ 100 million's worth of products at risk.

For the past three years since China's accession to the WTO, the economic and trade relations between China and Japan have not been much affected by the Japanese trade remedy measures against Chinese exports. However, the exports of some Chinese products to Japan will inevitably have a notable impact upon the relevant industries in Japan, and the Japanese government has come under mounting pressure from domestic industries to adopt some trade protectionist measures against Chinese exports. In recent years, China has receivedpre-warning messages on many occasions that Japan might initiate anti-dumping or safeguard investigations on eels, chemical fibers, bicycles and textile products imported from China.

Up to date, Japan has not acknowledged the status of China as a complete market economy, which is not conducive to the rapid development of bilateral trade. China hopes that Japan will, from the view of further promoting economic and trade relations between the two countries, acknowledge China's status of a complete market economy as early as possible.

3.7 Export restrictions

Since 2002, Japan has put in place the so-called "catch-all" security safeguard export control regime. Under the regime, the Japanese government collects relevant information and makes up a"catch-all" list of foreign companies subject to export control. Japanese companiesshall seek "prior consultation" with the METI, which amounts to a de facto licensing procedure, before exporting sensitive goods or technologies to a foreign company named on the list. On 30 March 2004, the METI released its third series of "catch-all" list. Without any conclusive evidence, Japan put 14 Chinese companies on the list, which severely affects the normal business operations of the Chinese companies involved. The Chinese side has repeatedly taken up the issue with the relevant Japanese authorities, but so far no satisfactory reply has been produced.

In addition, the restrictions on the supply of technologies as stipulated in the Foreign Exchange Order cover a wide range, and the criteria for technologies subject to examination and approval before export lack transparency. In the licensing process, the exporting company is asked to provide the government with a large number of various documents, some involving its business secrets. It often takes a lengthy period of time before an approval is granted, which greatly adds to the cost of both importers and exporters. These restrictive measures impede the investment and technology cooperation between Chinese and Japanese companies.

3.8 Barriers to trade in services

3.8.1 Construction and engineering

Although Japan has a well developed construction industry, the Japanese government offers great protection to its domestic construction market. Internal tender is held for large-scale construction projects, while international tender is invited for only a limited number of construction projects such as the construction of gardens, civil engineering, embassy and corporation buildings. The demanding requirements on foreign bidders cover construction period, technological level and human resources. According to the Immigration Control and Refugee Recognition Law, Japan does not allow foreign construction workers entry into Japan, and only permits managerial and technical staff of the bid-winning foreign company to enter Japan. Both the exorbitant cost of labor and the high offer of subcontractors add to the construction costs of the bid-winning foreign companies. Because of this, some bid winners from foreign countries are eventually forced to withdraw from the projects.

3.8.2 Transport

Japan allows companies from other WTO members to set up in Japan logistics and transport companies, including international freight forwarding companies, which can sign and issue multimodal transport bills of lading (B/L) in the name of their parent companies. However, Japan adopts a reciprocal principle in its treatment of solely Chinese-funded logistics and transport companies, namely, the Japanese government will not permit Chinese-invested logistics and transport companies in Japan to sign and issue a B/L, if the Chinese government does not permit Japanese-invested logistics and transport companies in China to sign and issue a B/L. By the end of 2004, a total number of 53 Japanese companies have been granted by China's Ministry of Transportation the Non-Vessel Owning Ocean Carrier (NVOOC) Qualification Certificate, accounting for 3.2% of the total certificates issued. However, the Chinese-funded companies are still not permitted to sign and issue B/L in Japan. The practice of the Japanese government runs counter to the principle of most favored nation treatment and the principle of reciprocity and seriously affects the development of multimodal transport operations of the Chinese companies in Japan.

3.8.3 Financial sector

Japan adopts nonprudent measures in the field of trusteeship services. For example, trustee services can only be provided by an entity with a legal person status registered in Japan; the savings or deposits collected by the branches of foreign-funded banks can not be covered by the Japanese savings insurance.

3.8.4 Business visa

Japan has always adopted very strict standards when issuing short-term business visas to the Chinese, and since 2004, the examination standards have become even stricter. Visa applications by the Chinese business people, planning to go to Japan to take part in an international trade fair or to pay a visit to a Chinese invested enterprise in Japan at its invitation, are often subject to a prolonged approval period without any apparent reason or rejected and delayed on the ground of incomplete application materials. The inability of the Chinese business people to arrive in Japan on time has resulted in the loss of business opportunities and economic losses. In addition, work visas of the Chinese personnel in Chinese-funded companies in Japan have to be renewed each year, and the requirements for renewal application materials are too arbitrary, change almost year by year, and lack transparency, which has brought great inconvenience to their business operations. Sometimes the Chinese business people going to Japan for training programs under the equipment import contract cannot obtain a visa, thus affecting the smooth execution of the contract. China hopes that the relevant Japanese authorities will improve their efficiency and transparency in business visa issuance and create a more favorable environment for the visits of business people between both countries.

3.9 Unjustified protection of intellectual property

To prevent the outflow overseas of high-quality plant species and to protect domestic agriculture, the Japanese Diet passed an amendment to the Agricultural Seeds and Seedlings Law on 10 June 2003, which came into force on 1 July 2003. The amendment includes the extension of the scope of activities subject to prosecution and punishment, covering infringement upon not only agricultural seeds and seedlings but also harvests thereof, and the raise of penalties to strengthen law enforcement against intellectual property rights violations. Correspondingly, Japan also amended its Customs Tariff Law, requiring that the customs may ban the imports of agricultural products, if they are found to intrude upon the Japanese cultivator’s rights, that is, the exclusive right acquired through the registration of a new plant breed, including the right to produce, license, import and export the seed or the harvest thereof.

Since December 2003, Japan has, on the ground to protect the intellectual property rights of Japanese rush (*igusa*) specie “hi-no-midori”, subjected Chinese exports of *igusa* products to sampling inspection. The inspection covers not only the tatami matting that the Kumamoto Prefecture filed for protection, but also all the other categories of *igusa* products, which slows the speed of customs clearance and seriously affects trade in *igusa* products. It should be noted that no evidence of infringement has been detected in the Japanese inspection. Therefore, China urges Japan to put an end to the unreasonable all-inclusive inspection as soon as possible.

In 2004, Japan, through DNA testings, decided that two species of red beans imported from China were suspected of infringing upon Japanese intellectual property rights and asked relevant Japanese importers to take adequate measures to prevent importing suspected red beans from China. In case of suspected red beans, they should be DNA tested. If the situation does not improve, Japan will, according to Customs Tariff Law, ask the customs to ban the imports of Chinese red beans, and take criminal procedures against any companies in violation of the import ban. The relevant importers' associations are also considering independent inspection of red beans from China. China is watching closely the Japanese measures on Chinese exports of red beans.

China is a major supplier of agricultural products to Japan. To meet Japan's demanding requirements on the quality of agricultural products, many of the seeds of fruits, vegetables, flowers and plants, and mushrooms for export to Japan have been directly introduced from Japan or converted from Japanese seeds. Japanese companies often import agricultural products from China on condition that they are of Japanese plant species. China is very concerned with the impact of the implementation of this amended law on trade in agricultural products between the two countries.

3.10 Others

One of the problems troubling Chinese-funded companies in Japan is that of social security insurance and pension insurance for its Chinese staffworking in Japan. According to the relevant Japanese laws and regulations, these employees should take up social security insurance and join pension insurance in Japan, but they have already been covered by social security and pension insurance in China. Therefore, the double insurance, as a result, adds to the costs of Chinese-invested companies in Japan. In addition, according to the relevant Japanese regulations, the annuities paid by the Chinese employees will not be refunded when they come back to China before their period terminates in Japan. China hopes that Japan will amend the relevant regulations to relieve the burden on Chinese-funded enterprises in Japan.

Saudi Arabia

1. Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Saudi Arabia in 2004 reached US$10.3 billion, up by 40.7%, among which China's export to Saudi Arabia was US$2.78 billion, up by 29.3%, while China's import from Saudi Arabia was US$7.52 billion, up by 45.5%. China had a deficit of US$4.75 billion. The major products exported from China to Saudi Arabia included clothing and accessories, machinery and equipment, knitted garments, yarn and products thereof, embroidered clothing, electric appliances and electronic products, metal products, non-woven clothing, battery, footwear, etc. The major imported products of China from Saudi Arabia included crude oil, liquefied petroleum gas, primary plastics, glycol, primary polyethylene, iron ore and refined ore, steel, steel plates, styrene, primary polypropylene, etc..

According to the Ministry of Commerce of China (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by the Chinese companies in Saudi Arabia reached US$120 million in 2004, and the volume of the newly signed contracts was US$190 million. The volume of completed labour service cooperation contracts was US$13.43 million, and that of the newly signed labour service cooperation contracts was US$5.28 million. By the end of 2004, the accumulated turnover of engineering contracts completed by the Chinese companies in Saudi Arabia was US$310 million, with that of all the contracts signed US$880 million, and the volume of the completed labour service contracts had reached US$83.88 million, with that of the total contracts signed US$96.89 million.

According to MOFCOM, 2 Chinese-funded non-financial firm was set up in Saudi Arabia in 2004, with a contractual investment of US$1.35 million from Chinese investors. By the end of 2004, there had been a total of 7 Chinese-funded enterprises set up in Saudi Arabia with a total contractual investment of US$6.76 million from Chinese investors.

According to MOFCOM, Saudi Arabian investors invested in 10 projects in China in 2004, with a contractual investment of US$42.32 million and an actual utilization of US$7.01 million. By the end of 2004, Saudi Arabian investors had accumulatively invested in 45 FDI projects in China with a contractual volume of US$120 million and an actual utilization volume of US$68.11 million.

2. Introduction to Saudi Arabia trade and investment regime

2.1. Legislation on trade and investment

Saudi Arabia is currently seeking membership in the World Trade Organization (WTO). In order to lay the foundation for a better climate conducive to foreign enterprises, Saudi Arabia has embarked on a wide-ranging restructuring of the entire economy. The legislation and regulations promulgated over the past few years include Import Licensing Guidelines & Procedures, Sanitary and Phytosanitary Measures, Foreign Investment Law, Law on Ownership of Real Estate by Non-Saudis, Saudi Arabian Standards Organization Technical Directives, Negative List excluded from Foreign Investment, Trade Information Act, Anti Money Laundering Law, and Capital Markets Law. Regulations under review include Commercial Agency Regulations, Companies' Law, Unfair Competition Law, Anti-dumping Law and Customs Valuation Guidelines.

2.2. Trade administration

2.2.1 Tariff policy

The tariff rate in Saudi Arabia averages 5% (ad valorem CIF price). Based on domestic market situations, different tariffs are levied as per product category.

The following products are duty free, e.g., livestock and meat (fresh or frozen), unroasted coffee, cardamom, tea, barley, sugar, rice, and corn.

Customs duties of 20% are imposed on some imported commodities for the purpose of protecting the national infant industries, including furniture, cooking salt, mineral water, and plastic pipes.

Wheat, flour, dates, and long-life milk imports have a 100 percent tariff.

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.

There are health and sanitation regulations for all imported foods. The Ministry of Commerce and Industry has issued a number of directives aimed at preventing outdated goods from entering the Kingdom and requiring point of origin labeling.

The importation of certain articles requires special approval by Saudi authorities, including agricultural seeds, live animals and fresh and frozen meat, books, periodicals, movies, and tapes, religious books and tapes, chemicals and harmful materials, pharmaceutical products, wireless equipment, horses, products containing alcohol (e.g., perfume), natural asphalt, etc..

Electrical appliances exported to Saudi Arabia must conform to quality standards of the Saudi Arabia Standards Organization (SASO). The power system for civil use in Saudi Arabia is either 110V or 220V with 60-hertz frequency. Electrical appliances need to be installed with automatic voltage adapter switches. Instruction manuals for electrical appliances should be in both English and Arabic, illustrating procedures for operation and installment.

Agency system is required by Saudi Regulations on trade. A foreign trade company must appoint a local trade company as its agent (i.e. guarantor) in order to establish and register a trading company, or to open a bank account in Saudi Arabia in the name of the agent for the purpose of economic and business activities. Foreign companies can provide technological services or after-sales services, but are not allowed to engage in trade in goods.

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.

The Saudi Arabian Monetary Agency (SAMA) is the Kingdom's central bank. Its functions are to issue national currency, supervise commercial banks, manage foreign exchange reserves, conduct monetary policy for promoting price and exchange rate stability and promote the growth and ensure the soundness of the financial system.

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.

According to the Foreign Investment Law, solely foreign funded enterprises or joint ventures are allowed in Saudi Arabia. Except sectors outlined in the Negative List excluded from Foreign Investment, foreign capital can invest in all other sectors. The amount of capital invested shall not be less than 25 million Saudi Riyals for agricultural entities, 5 million for industrial entities, and 2 million for service entities. Foreign investors are not required to look for local partners and are allowed to own company assets. Solely foreign funded enterprises are entitled to apply loans from the Saudi Arabia Industrial Development Fund.

Other investment-related laws include the Executive Rules of the Foreign Investment Act, Tax Law, and Real Estate Law.

2.4 Competent authorities

The Saudi Arabian Ministry of Commerce & Industry is responsible for foreign trade. The mandate of the ministry in the area of trade affairs includes the formulation and implementation of trade policies, laying down trade laws and regulations, bilateral and multilateral negotiations on economic and trade issues with other countries and international organizations, settlement of trade disputes and other existing issues, the administration over local business organizations such as the National Chamber of Commerce and the instruction to and supervision over commercial activities in the country.

The Saudi Arabian General Investment Authority (SAGIA) is responsible for investment administration, reporting to the Supreme Economic Council (SEC). The Board of Directors established under SAGIA is made up of deputy ministers and private business representatives. The mandate of the Board is as follows:

(1) Prepare the Kingdom for formulating policies to develop and promote foreign investment, and report to SEC;
(2) Propose on the execution plan and guarantee system to improve investment climate in the Kingdom, and report to SEC;
(3) Make decisions on foreign investment application;
(4) Supervise and evaluate implementation of domestic and foreign investment and prepare reports regularly;
(5) Propose the negative list excluded from foreign investment, and report to SEC

3. Barriers to trade

3.1 Tariff and tariff administration measures

Saudi Arabia continues to impose a 12% protective tariff rate on 176 imported products, a measure agreed at the Ministers' Meeting in 2001. Businesses affected by unfair competition from imported goods can present evidences to the Saudi industrial authorities, which will conduct investigation to verify the case, and submit to the Tariff Protection Committee to set an appropriate protection tariff rate. Saudi Arabia applies tariff protection to its agriculture based on seasonal changes.

3.2 Sanitary and phytosanitary Measures

As an Islamic country, Saudi Arabia requires content certificates and consumer protection certificates for food imports. Meat imports are limited to beef and mutton (fresh or frozen), while official quarantine certificates must be presented to show the cattle or sheep are slaughtered in the Islamic manner. Special documents are required for imports of grain, seeds, animal feed, livestock, pets, horses, fruit, vegetable and electrical appliances, with articles valued lower than US$2000 an exemption.

The Ministry of Commerce & Industry announced on September 4, 2004 that it would suspend imports of chicken from Hong Kong and Taiwan of China, Cambodia, and the Laos in accordance with the quarantine standards of EU on poultry imports in order to prevent the spread of bird flu. The announcement followed an earlier suspension of chicken imports from South Korea, China, Japan, Viet Nam, Thailand, the Philippines, Pakistan, and Indonesia for the same reason. It is deemed by the Chinese side that EU standards do not stand for international standards. Moreover, many problems have existed in practice. It is inappropriate for the Saudi government to adopt EU measures before safety assessment is conducted. China hopes that the Saudi government conduct tests and inspections to reevaluate safety conditions of relevant Chinese exports.

3.3 Barriers to trade in services

Foreign companies must provide 25% of its job openings to Saudi citizens and set lowest wage standards. Otherwise foreign staff in foreign companies will be denied working visa. Application for Saudi visa usually takes a long time, from 15 days to 2 months. A 10-million-Riyal-project can provide visas for 40-70 expatriates. Women are denied working visas in engineering projects. The granting of working visa in Saudi Arabia is arbitrary, and strictly restrictive to jobs such as drivers, cooks and ordinary laborers.

4. Barriers to investment

Foreign companies are allowed to register solely foreign invested businesses in Saudi Arabia. Chinese companies, however, are required to present “Qualification Certificate”, a classification certificate for submitting tender and contracting projects, after having registered and obtained investment permit. Procedures for applying “Qualification Certificate” are complicated. Performance of the parental company is not recognized and reexamination is required for the subsidiary. This practice has seriously affected the business development of Chinese companies. China expresses concern over the justification of this measure. It is hoped that the Saudi government give Chinese companies the same treatment with companies from other countries.

Domestic companies in Saudi Arabia pay a 2% religious tax and enjoy exemption from income tax. Although profit tax for foreign companies has lowered from 45% to 20%, it is still considerably higher than that for domestic companies. China expresses concern that Chinese companies haven’t been granted national treatment in Saudi Arabia, and asks the Saudi government to narrow the gap between tax rates applicable to Chinese companies and that to Saudi domestic companies.

Thailand

1. Bilateral trade and investment

According to China the Chinese Customs, the bilateral trade volume between China and Thailand in 2004 reached US$17.343 billion, up by 37% year on year, among which China's export to Thailand was US$5.8 billion, up by 51.6% year on year, while China's import from Thailand was US$11.54 billion, up by 30.8% year on year. China had a deficit of US$5.74 billion. Major Chinese exports to Thailand included machinery and electronic products (electric and electronic products, semiconductor components, as well as machinery and equipment), new and hi-tech products, parts for automatic data processing equipment, hand-held or vehicle-carried phones, yarn and products thereof, steel, product oil, gasoline, etc. China's main imports from Thailand included machineryelectric and electronic products (electric and electronic products, semiconductor components, integrated circuits and micro-electronic components), crude oil, primary plastics, natural rubber, steel, etc.

According to MOFCOM, the turnover of completed engineering contracts by the Chinese companies in Thailand reached US$170 million in 2004, and the volume of the newly signed contracts was US$370 million. The volume of completed labor service cooperation contracts was US$37.38 million, and that of the newly signed labor service cooperation contracts was US$8.06 million.

Approved by or registered with MOFCOM, China set up 17 non-financial Chinese-funded enterprises in Thailand in 2004 with a total contractual investment of US$28 million. By the end of 2004, a total of 262 non-financial Chinese-funded enterprises had been established in Thailand with a total contractual investment of US$2902 million from the Chinese side.

According to MOFCOM, Thailand invested in 162 projects in China in 2004 with a contractual investment of US$790 million and an actual utilization of US$180 million.

2. Introduction to trade and investment regulatory regime

2.1 Legislation on trade and investment

Thai legislation related with trade and investment mainly includes Controlling Importation and Exportation of Goods Act of B.E. 2522 (1979)，Customs Act, Export Standard Act (N0. 2) of B.E. 2522 1979, Plant Detention Act, Anti-Dumping and Countervailing Duty Act, B.E. 2542 (1999), Safeguard Measures Act, B.E. 2542 (1999), Foreign Business Act, B.E. 2542 (1999), Investment Promotion Act, Foreign Economic Act, Counter Trade Act, Direct Sales and Direct Marketing Act, B.E. 2543 (2002), Electronic Transactions Act, B.E. 2545 (2002), Business Association Act, Trade Competition Act, B.E. 2542 (1999), etc.

2.2 Trade administration

2.2.1 Import administration

The free import policy is in place in Thailand. Any importer able to open a letter of credit can conduct import business. Thailand applies administrative measures such as import ban, tariff quota and import license. Products subject to import ban mainly include those related with public health and national security. Tariff quota is applied to 23 agricultural produces such as longan, but it is not applied to imports from ASEAN members. There are two approaches to import licensing administration, namely import licensing applied to ordinary products and that applied to special products. Products subject to import licensinge are not permitted to call at ports without the approval from the Thai Ministry of Commerce.

2.2.2 Export administration

The Thailand economy is export oriented. Apart from products subject to export registration, export licensing, quota, export duties, export ban or other restrictive measures, most of products can export freely to other countries. There are currently 45 classes of controlled goods. Those that are subject to export tax include rice, skins and leathers, teak and other kinds of wood, rubber, scrap steel or iron, and hiders.

2.2.3 Foreign exchange control

Thai implements the foreign exchange regime of free convertibility. There in no restriction on transaction between the Thai bahtths and foreign currencies. Only a few transactions should be approved by the Bank of Thailand.

2.3 Investment administration

Thai legislation provides that any natural or legal person without Thai nationality shall enjoy the same rights and liabilities of a Thai company when conducting business in Thailand unless otherwise stipulated in laws. According to Foreign Business Act promulgated in 1999, fields available for foreign investment access are divided into three categories. Foreigners are forbidden to do business in the first category for special reasons, and the category involves such sectors as planting, animal husbandry, forestry, media, etc. The second category involves sectors related to national security, or to possible negative impact on local arts, culture, customs and local craftsmanship, or to possible damages to natural resources or ecological environment such as the production and sales of weapon and components, repairing industry, domestic transportation and air transportation. Foreign investment in this sector shall seek business license from the competent Thai government agencies. The third category related to those sectors that Thai industry is not as competitive as foreign investors such as rice mill, rice powder and other plant powder production, aquaculture, lime production, accountancy service, legal service and catering. Foreign investment in the area shall seek the approval from the Commission for Foreign-operated Enterprises and the Business license signed by the Director-General of the Department for Business Registration. The five encouraged foreign investment areas include agriculture and agricultural produces, direct development of technology and human resources, public infrastructure, environmental protection and other designated industries.

2.4 Competent authorities

The major competent authorities responsible for trade and investment affairs include the Ministry of Commerce, the Investment Promotion Committee of the Ministry of Industry and the Department of Customs. The Ministry of Commerce is responsible for the formulation and implementation of policies concerning foreign trade administration and export promotion. The Ministry of Foreign Affairs is in charge of part of trade administration. The Investment Promotion Committee of the Ministry of Industry is responsible for the formulation and implementation of policies and plans concerning investment promotion, the examination and approval of the encouraged investment projects, as well as providing consultation and one-stop comprehensive investment services for foreign investors. In addition, the Research Institute of Industrial Standards affiliated to the Thai Ministry of Industry is responsible for the formulation and implementation of standards. The Thai Central Bank is responsible for foreign exchange administration and authorizes commercial banks to conduct business concerning the payment and reception of foreign exchange.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

The average tariff of Thailand is 14.6% and 16.8% for WTO Members and non-WTO members respectively.

3.1.1 Tariff peaks

Currently Thailand imposes 30% tariff on a multitude of import goods, including agricultural produces, auto and auto parts, alcoholic beverages, fiber and some electronic products. An import duty of 60% is levied on silk products, woolen products, cotton and textiles products and some other fiber knitwear. Import duties on motorcycles and some vehicles for specific purposes reach or exceed 80%. For rice, the rate is 52% and 216% for dairy products.

3.1.2 Tariff escalation

Tariff escalation exists in Thailand. Zero percent tariff is applied to the import of a majority of products such as industrial raw materials and necessities, and medical equipment. 1% tariff is applied to some selected raw materials, electronic parts and components, and means of transport used in international transportation. 1% tariff is also imposed on some chemical products such as ammonium chloride, calcium chloride and magnesium. 5% tariff is applied to primary and capital goods. Intermediary products are levied 10% tariff. Generally, manufactured goods are imposed 20% tariff and special products which need to be protected are levied 30% tariff.

3.1.3 Tariff quota

According to the WTO Agreement on Agriculture, Thailand applied tariff quotas to 23 agricultural produces, namely longan, coconut pulp, milk, butter, potatoes, onion, garlic, coconut, coffee, tea, dried capsicum, maize, rice, bean, onion seeds, bean oil, bean cake, sugar cane, coconut oil, palm oil, instant coffee, local tobacco slices, and silk. Low tariff rates are applied to in-quota imports of the products, and high tariff rates are applied to out-of-quota imports. For example, the tariff quota assigned to garlic import in only 64.6 tons. The in-quota rate is 27%, while the out-of-quota rate is 57%.

High tariffs and tariff quota measures maintained by Thailand have impeded the market access of competitive Chinese products to the Thai market. The Chinese side will watch closely the implementation of the tariff concession measures, and it is hoped that Thailand will open as soon as possible the market for agricultural produces currently subject to tariff quotas.

3.2. Import restrictions

Import licenses are required for at least 26 categories of items, including raw materials, petroleum, industrial materials, textiles, pharmaceuticals, and agricultural items. Imports of used motorcycles and parts and gaming machines are prohibited. Imports of products must meet burdensome regulatory requirements, including extra fees and certificate-of-origin requirements. Imports of food, pharmaceuticals, certain minerals, arms and ammunitions, and art objects require special permits from relevant ministers. Thailand requires detailed and often proprietary business information about the manufacturing process and composition of the food be provided in applications for food product registration. The Bureau for Food and Drug Administration of Ministry of Health requires that import licensing administration is applied to imports of food, drugs and certain medical equipment. Import license for food shall be renewed every three3 years, and recertification is required for each renewal, as well as the stamping at the Commercial Councilor's Office of the Chinese Embassy to Thailand. Additional charges should be paid when the relevant documents have reached the Bureau. Import license for drugs shall be renewed every year, and the same fees shall be paid. The above requirement causes great burden on Chinese exporting enterprises.

3.3. Barriers to customs procedures

After China's accession to the WTO, the Thai government changed its former practice of one-stop import license issuance. In obtaining a license for raw silk imports, the importer shall apply to the Ministry of Agriculture for examination and approval, and then get the license at the Department of Commerce. In March, 2003, the Thai Ministry of Commerce promulgated a new decree, stipulating that the state trading company affiliated to the Ministry of Agriculture be in charge of the management of import quota for raw silk.

3.4. Technical barriers to trade

3.4.1 Certification requirement

The Thai government requires a compulsory certification of 60 products in ten sectors, including agricultural produces, construction materials, consumer goods, electronic appliances and accessories, PVC pipe, medical equipment, LPG gas containers, surface coatings, and vehicles.

The Bureau of Food and Drug Administration under the Thai Ministry of Health requires that all imported food, drugs and certain medical equipment meet the relevant standards, inspections, labeling and certification requirements. The imported products shall have labels in the Thai language, indicating the product name, weight or volume of content, date of production and invalidation, and the labels shall be approved by the Bureau of Food and Drug Administration under the Thai Ministry of Health. The above provisions incur a lot of unreasonable burden on the Chinese exporting companies.

3.4.2. Technical standards

In 2004, Thailand proposed to formulate compulsory standard on electric water heaters. The deadline for evaluating the proposals was early August 2004. The safety requirements proposed should be applicable to household fast heating electric water heaters or like products providing hot water with a temperature lower than the boiling point. Among which the nominal voltage of single-phase electric appliances should not exceed 250 volt and that of other electric appliances should not exceed 480 volt. What is worth noting is that the standard is not applicable to electric appliances for boiling water, water heaters with storage tanks, special electric appliances for industrial purposes, electric appliances used in special environment such as dusty conditions or commercial vending machines. As Thailand did not insist that domestic producers, distributors or importers should abide by and implement the relevant standards in the past and the Thai standards are often written in Thai language, the Chinese side is concerned about it and hopes that the Thai side will provide the English version so that it is convenient for importers to consult the relevant standards.

3.5. Government procurement

Thailand is not yet a signatory to the WTO Agreement on Government Procurement. The series of restrictions set by the Thai government in its government procurement tenders on foreign bidders lead to the fact that Chinese companies either cannot go for bidding or find it difficult to win. For example, the tender invitation documents often stipulate that foreign products be refused. The government agencies in charge of the procurement change the bidder's qualification requirements from time to time, and they are entitled to accept or refuse at any time part or all of the bidding. The technical requirements are even subject to changes during the bidding process. Thus the competent government agencies control, to a larger extent, the result of the biding. Bidders have no right to complaint about the tendering results. The Chinese companies complain that the above practices put them in an unfair position in the bidding.

According to Counter Trade Act promulgated in May , 2000, foreign winners of a government procurement contract exceeding 300 million bahts (US$7.3 million) must buy back Thai produces in barter trade at a value no less than 50% of the value of the government procurement contract. The provision increases the operational cost of the winning foreign companies. The Chinese side hopes that the competent Thai authorities will create a fair and level playing field for foreign participation in the Thai government procurement.

3.6. Barriers to trade in services

3.6.1. Legal service

According to the regulations of the Thai government, foreign banks are limited to three branches in Thailand and only one of which may be in Bangkok. Foreign banks must maintain minimum capital funds of 125 million bahts invested in government or state-owned enterprise securities or deposited directly with the Bank of Thailand.

Foreign-funded banks are forbidden to use the electronic network of the Thai local commercial banks. Equity investment by foreign banks shall not exceed 25% of the actual capital return.

The above measures have put the foreign-funded banks and Thai-funded banks on an unequal footing and impeded foreign investment to access the Thai market.

3.6.2 Construction

Construction is a restricted sector in Thailand. Foreign ownership in construction companies should not exceed 49%. Foreign-funded construction companies are not allowed to be engaged in civil engineering projects. To participate in medium and large scale projects, foreign bidders should form joint ventures with one or several local companies to go through qualification examination and bidding in the name of a joint corporation. Chinese enterprises complain that the Thai side excludes Chinese companies by applying some special clauses in bidding for large projects. In the meantime, practices violating regulations such as "encircling the bidding" are popular in Thailand. The Chinese side is concerned about it.

There are strict restrictions on the managerial staff brought in by the foreign contractors. It is stipulated that companies with a registered capital exceeding 100 million bahts should employ at least 4 local workers for employing one foreign national, and that those with a registered capital of less than 100 million bahts should employ at least 5 local workers for employing one foreign national.

3.6.3 Telecommunications service

The Thai government has allowed foreign participation in the telecommunications sector since 1989, but state-owned enterprises continue to control the market. Thailand committed to fully liberalize its telecommunications sector by January 2006 and the National Telecommunications Commission (NTC) was founded in 2004. Although some adjustments have been made in the telecommunications sector, no major adjustments have been made in the areas of operation licensing, linking each other's net, competition, adjustment of tariff or standard formulation.

3.6.4 Legal service

Current Thai law prohibits foreign equity participation in Thai law firms in excess of 49 percent, and foreign nationals are prohibited from practicing law in Thailand. In certain circumstances, foreign attorneys may act in a consultative capacity.

3.6.5 Labor service

Thailand is a big country in terms of exporting labor service and set strict control on the introduction of labor service. The Thai working visas are not available to common foreign nationals providing labor services. China exports a labor force of around 2,000 people to Thailand annually, among which half are for contracted engineering projects while the rest are for scarce human resources such as those working in the fields of textiles, electronics, metallurgy, engineers for ports' operation, managerial personnel, jewel processing and tourist guides for shopping in Chinese language.

3.6.6 Express delivery service

According to Thai regulations, foreign ownership in land transport (trucking) should not exceed 49%, which hampers investment in the Thai express delivery service market.

3.6.7 Medical service

Thai government policy is highly restrictive and lack of transparency in the healthcare services sector such as hospitals, out-patient services, and medical check-up services.

3.7 Others

Domestic firms are protected from foreign competition in Thailand. In the pharmaceutical sector, the government pharmaceutical enterprises are not subject to requirements faced by the private sector in terms of registration and gaining permits; in addition, it can produce and market generic formulations of drugs marketed in foreign countries irrespective of safety monitoring program protection. Thai government requirements limiting government hospitals procurement and dispensing of drugs not on the national list of essential drugs (NLED) significantly constrain the availability of many imported products. The Thai government retains authority to set price ceilings for 20 goods and services, including medicines, sound recordings, milk, soda, fuel oil, and chemical fertilizer. Price control review mechanisms are not transparent. Price control decisions are sometimes based on outdated assumptions. The above regulations place foreign firms in an unequal competitive position with the local firms.

4 Barriers to investment

4.1 Barriers to investment access

According to Thai Foreign Business Act, Thai ownership should not be lower than 51% in the areas of agriculture, animal husbandry, fishery, mine exploration and in the service sector which is listed as the first industry in the annex to the Act on Business Operation by Foreign Nationals promulgated in 1999. When foreign juridicallegal persons start business operation in the industries where foreign investment needs permission according to Foreign Business Act, the minimum investment amount should be no less than 3 million bahts. No less than 2 million bahts of foreign investment is required in the other industries.

4.2 Barriers to investment operation

Land ownership by foreign nationals is not allowed in Thailand except for BOT I projects. Thailand also restricts foreign investment in real estate. The Land Act provides that with the approval of Thai government, a foreign national is allowed to purchase up to 1,600 square metres of land for residential purposes which should be located in urban Bangkok, Pattaya or other districts laid down by the Township Planning Act with the precondition that the foreign national in question should bring to Thailand an investment of no less than 40 million bahts for at least three years in a business that is believed to benefit the economy of Thailand.

In addition, foreign investment approval by the Thai government is inefficient and time-consuming. For example, a certain Chinese company applied for investing in Thailand by establishing a company in March 2004. The company applied to the Ministry of Industry and the Ministry of Environment for mine exploration. But due to the prolonged period for approval by the competent departments with various excuses, the Chinese company has not obtained the mine exploration permit yet. Thus, they are not in a position to do business. The Chinese side will hold further consultations with the Thai side and look forward to a speedy and proper solution to the issue.

Turkey

1. Bilateral trade relationsand investment

According to customs statistics in China, the volume of bilateral trade between China and Turkey in 2004 totaled US$ 3.41 billion, up 31.4% over the preceding year, among which China's exports to Turkey jumped by 36.7% to arrive at US$ 2.82 billion, whereas China's imports from Turkey reached US$ 0.59 billion, an increase of 11.0%. China enjoyed a trade surplus of US$ 2.23 billion with Turkey. China mainly exported to Turkey electromechanic products, audio-video instruments, machinery, and mineral fuels,etc... China's imports from Turkey included, among others, iron and steel, construction materials, ore sand, and chemical fiber, etc...

According to figures released by the China's Ministry of Commerce of the People's Republic of China (hereinafter referred to as MOFCOMMOFCOM), in 2004, the turnover of the completed engineering contracts and the volume of the newly signed engineering contracts by Chinese companies in Turkey stood at US$ 44.64 million and US$ 32.88 million respectively, and the turnover of the completed labor service cooperation contracts by Chinese firms in Turkey came into US$ 1.71 million, with no newly signed labor service contracts.

Upon the approval or on the record of MOFCOM, one Chinese-funded non-financial enterprise was set up in Turkey in 2004, with a contractual investment of US$ 0.20 million.

According to MOFCOM, companies from Turkey invested in 35 projects in China in 2004, with a contractual investment of US$ 61.74 million and an actual utilization of US$ 7.45 million.

2. Introduction to Turkish trade and investment regimeTurkey's trade regime

2.1 Legislation on trade and investment

2.1.1 Legislation on trade administration

The major legislation in Turkey in the administration of trade is the Foreign Trade Regulation Law, running into force as of 1984 and providing specific stipulations on export promotion and punitive trade measures. Other laws pertaining to trade administration include the Customs Law taking effect from 2000, the Law on the Prevention of Unfair Competition by Imports coming into effect from 1999, the Free Zones Law brought into effect from 1985, and the Law on Measures to be Taken by the Government Relating to Taxes for the Purpose of Promoting Exports effective from 1963.

2.1.2 Legislation on investment administration

The major legislation in Turkey governing foreign investment is the Foreign Direct Investment Law taking effect as from 2003, which provides specific regulations on foreign investment areas, the definition of foreign capital, rights and obligations of foreign investors. Other legislation affecting the administration of foreign investment includes the Law on Encouraging Foreign Investment promulgated in 1954, the Decree on Foreign Investment Framework issued in 1995, and the Circular of the Decree on Foreign Investment Framework released in 1995.

2.2 Trade administration

2.2.1 Tariff policyadministration

Goods imported into Turkey may be subject to five types of charges: customs tariffs, 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. By 2004, value-added taxes have fallen from the previous five to the current three in categories. In addition, Turkey accords at least most-favored-nation (MFN) tariff treatment to imports from all trading partners, including non-WTO members. Turkey does not have seasonal tariffs.

2.2.2 Import administration

2.2.2.1 Customs procedures

Turkey's new Customs Law, in force since 5 February 2000, replaced the earlier law and introduced, inter alia, the following changes: ①(1) goods can remain under temporary importation procedure for up to 24 months (previously 12 months); ② (2) temporary importation even with partial (instead of total) relief from import duties; ③(3) the monopoly for warehouse keeping has been abolished;④ (4) goods may remain under the customs warehousing procedure with "no limit of time" (previously five years); ⑤(5) for the transportation of goods by road, air, and sea, a "summary declaration" is used (in lieu of the three different manifests); and ⑥(6) a new customs classification system is adopted to make it easier for traders. The GUMSIS (security systems for customs checkpoints) project was launched in November 2001, and the BILGE (instant customs declaration system) project was put in place in 2002.

2.2.2.2 Rules of origin

Turkey applies two different sets of rules of origin: non-preferential and preferential.

The non-preferential rules of origin, set out in Articles 17 and 21 of Customs Law, assign origin to the country where the good underwent its "last substantial transformation and an important stage of manufacture". Preferential rules of origin apply to imports from countries with which Turkey has signed bilateral or multilateral trade preference arrangements, and the preferential rules of origin also specify the standards for processing and added value of the relevant products.

2.2.2.3 Import restrictions, quotas and licenses

Because of environment, public security, health, and other concerns, Turkey restricts 11 categories of imports such as narcotics, hashish, opium, and ozone depleting substances.

Since 1996, Turkey has imposed quota restrictions on some textile products of Chinese origin and adopted double checking to enforce the restrictions. According to the Agreement on Textiles and Clothing (ATC), Turkey will gradually phase out quota restrictions on textiles and garments.

Prior import licenses are required products such as telecommunications equipment, chemicals and vehicles. Importers must, before importing the above mentioned products, be granted an import permit by competent government departments. In addition, some products should satisfy certain requirements in safety and environment.

2.2.3 Export administration

Exporters in Turkey are required to register with the Exporters Union and their local Chamber of Commerce.

The export of the following products should be registered: products in payment of loans to the Support and Price Stabilization Fund (SPSF), natural gas re-exported after importing from Russia under the bilateral agreement between the two countries, products under international embargo, some electronic devices, products such as centrifuges under the Wassenaar Agreement, products under the Missile Technology Controlling Regime (MTCR), unprocessed olive oil, processed bulk or barreled olive oil, unprocessed olive oil in bags, liquorice root, raw meerschaum, live sheep and cattle.

Exporters engaged in frequent trade with EU member countries and having a good record may be granted a special certificate by Turkishey's Undersecretariat of Customs. However, this certificate is not yet available for exporters doing business with new members to the EU such as Hungary, Lithuania, Czech, Slovenia, Estonia, Latvia, Slovakia, Poland and Croatia.

2.3 Investment administration

2.3.1 Investment incentives and tax exemption policies

In terms of the application of investment incentives, Turkey is divided into three types of regions, namely, developed regions, first priority regions, and normal regions.

The policies of investment incentives available to investment in first priority regions and normal regions include:

1. Machinery and equipment imported for the investment project, such as those approved to be imported into the country by the General Directorate of Foreign Investments (GDFI) under the Undersecretariat of Treasury, may be exempted from customs duties and fund levies.
2. Of the expenses incurred within the scope of investment incentive certificate, those relating to buildings, machinery and equipment, freight and installation are entitled to benefit from the investment allowance by deducting from future taxable profits, the maximum allowance being equal to the fixed investment costs. In addition, investment allowance amounts are also entitled to readjustment for inflation. The allowance rate has been 200% for investment over US$ 250 million, starting from 1999.
3. Value-added tax exemption for imported and locally purchased machinery and equipment for the investment project.
4. The investors who commit to realize US$ 0.1 million of exports annually upon the completion of the investment are granted exemption from the taxes, duties and fees thereof in the construction costs and re-investment, and are granted, at least, one-year investment credit.

2.3.2 Restricted and prohibited investment sectors

Turkey currently restricts investment in such sectors as broadcasting, civil aviation, maritime transportation, port services, fishing processing, telecommunication services provided under concession agreements, accounting and auditing, financial services, petroleum, and mining.

At present, investment in real-estate trading and fishing is banned in Turkey.

2.3.3 Other investment policies

Established in December 2001, the Coordinated Committee for the Improvement of the Investment Environment (CCIIE) assessed the legal framework for foreign investment in Turkey. Thanks to the efforts of the CCIIE, Turkey reduced the period of processing applications of foreign investment from two months and half to a single day. Relevant laws approved by the Turkish Parliament were promulgated on the

Official Gazette on 17 June 2003.

The Law on International Arbitration ran into force in Turkey in June 2001, providing legal basis for arbitration of cases involving foreign investment-related public services.

2.4 Competent authoritiesTrade and investment authorities

The Undersecretariat of the Prime Ministry for Foreign Trade (UFT) is the leading government body in the administration of foreign trade in Turkey. The UFT formulates, administers and coordinates Turkey's foreign trade policies, consults with other relevant ministries and institutions in matters concerning foreign trade policy formulation and its implementation, and submits proposals for deliberation of the legislature.

The Ministry of Industry and Trade (MIT) is responsible for the formulation and enforcement of trade-related laws in areas such as technical barriers to trade, protection of intellectual, industrial and commercial property rights, competition, and consumer rights.

The Undersecretariat of the State Planning Organization (SPO) is responsible for preparing the five-year development plan. The SPO sets out the economic objectives and the priorities for public investment programs, and implements incentive schemes for regional development.

The General Directorate of Foreign Investments (GDFI) operates as a one stop agency within the Undersecretariat of Treasury to assist the foreign investors. The GDFI is authorized to guide and assist foreign investors in exploring investment opportunities in Turkey, receive and process foreign investment applications and grant investment incentives, register license, know-how and management agreements, and represent the government to negotiate bilateral investment promotion and protection agreements with foreign countries.

3. Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak

The average ad valorem tariff rate in Turkey stood at 10% in 2004. However, Turkey imposes a much higher tariff rates on certain imports, thus forming tariff peak. These tariff-peak products include agricultural products (25%), meat products (227.5%), dairy products (170%), fruits (61% – 149%), processed fruit juices and vegetables (41% – 138%). Turkey tends to raise tariff rates drastically on imports of agricultural products on the occasion of domestic harvest or a large stock of agricultural products.

3.1.2 Tariff escalation

Turkey adopts a mixed tariff escalation to protect specific domestic industries. The primary arithmetic average tariff on first-stage processed products and processed products is comparatively high, at 19% and 13.6% respectively, and that on semi-finished products is relatively low, at 6.4%.

3.2 Import restrictions

Exporters complain that Turkish import policies are often implemented in a non-transparent manner. For many products, no written standards exist, which has caused much inconvenience to the exporters concerned. For example, despite repeated requests from exporters, Turkey failed to provide guidelines for bovine meat imports.

The import process for alcoholic beverages is exceedingly complicated, requiring both MARA (the Ministry of Agriculture and Rural Affairs) control certificates and TEKEL (a para-statal. company) permits. The operations of TEKEL have been privatized and recent legislation provides private companies with more control over alcoholic beverage import and distribution. China is concerned with the negative effects of the lack of transparency in Turkish practices upon normal Chinese exports.

3.3 Barriers in customs procedures

In April 2004, Turkey set up a "red passageway" in the customs to examine specifically products of Chinese origin, administered the so-called "double checking" on certain Chinese products, and drastically increased the proportion of checking by opening the containers and turning out the contents. Turkish importers report that since 2004 their imports from China have been subjected to frequent inspection. When the container is opened, customs officials sometimes unload the cargo but refuse to check immediately so as to prolong the examining period. Such unreasonable practices add to the costs of importers, seriously affecting Turkish importers' desire to import Chinese products.

In 2004, Turkey imposed "minimum prices" on a number of Chinese exports during their customs clearing process. For example, Turkey set a US$ 5 unit price as the "reference import price" for trunks, cases and bags of all kinds (including handbags, school bags and wallets) imported from China, and any trunks, cases or bags below the US$ 5 unit price are not allowed to go through the customs. The so-called "reference import price" has been calculated on the basis of Turkey's local production costs. Because production costs such as labor, raw materials and energy are much higher in Turkey than in China, the "reference import price" so calculated is unfair and unreasonable, thus effectively reducing the competitiveness of Chinese products on the Turkish markets. China is very concerned with such customs clearing processes.

3.4 Technical barriers to trade

The industrial standards in Turkey run into nearly 1,000. Before importing industrial products pertaining to or affecting personal health and safety, plant and animal safety, and environmental protection, an examination certificate must be obtained from the State Standards Bureau. If the imported industrial products are claimed to meet relevant international standards, the State Standards Bureau will examine such products based on the relevant international standards. If the products are up to EU's standards, the State Standards Bureau will directly issue a permit upon presentation of the relevant documents.

Turkey promulgated a number of new technical regulations and standards in 2004, but no transitional period is granted between the date of issuance and the date of enforcement, which has caused exports having arrived at Turkish ports, on route to Turkey, and ready for shipment to Turkey to be held up in the customs in Istanbul, forced to be sent back or confiscated by the Turkish customs. According to Article 2 in WTO's Agreement on Technical Barriers to Trade, all the WTO members should allow a reasonable period of time between the promulgation and the implementation of technical regulations, thereby ensuring exporters adequate time in their adjustment and preparation. China hopes that Turkey will abide by the relevant stipulations of the WTO, thus reducing to the minimum the unreasonable policy risks on the relevant Chinese exports to Turkey.

3.5 Sanitary and phytosanitary measures

Turkey requires that the import of products such as medicines, cosmetics, cleansers, and foods be subject to sanitary and health examination. In 2004, Turkey issued a number of sanitary and phytosanitary regulations, including the Governing Standards on Wood Packaging Materials in International Trade, but Turkey neither heard public review in its process of enacting such regulations nor allowed a reasonable period of time between their promulgation and implementation. In accordance with Article 7 and Appendix B in WTO's Agreement on the Implementation of Sanitary and Phytosanitary Measures (SPS Agreement), all the WTO members should, unless in an emergency situation, provide a reasonable period of time between the issuance and enforcement of sanitary and phytosanitary regulations, thus enabling exporters, especially producers in developing countries, to have sufficient time to make adjustments and preparations. China hopes that Turkey will fully observe the relevant regulations of the WTO and reduce all possible policy risks incurred by the relevant Chinese exporters.

3.6 Trade remedies

3.6.1 Anti-dumping

From 1995, the year in which the WTO came into being, to December 2004, Turkey had launched a total number of 69 anti-dumping investigations, among which 47 investigations were initiatedmade in the 2001-2003 period. The first anti-dumping investigation against Chinese imports occurred in the end of 1989, and by December 2004, 39 anti-dumping investigations against Chinese products had been initiated. After 2000, the number of anti-dumping cases against Chinese imports increased noticeably: 2 cases in 2000 and 2001 respectively, 4 in 2002, 5 in 2003, and a startling number of 11 in 2004. The Chinese products involved in anti-dumping charges cover 4 major sectors and about 37 product categories, among which 22 cases were filed against light industrial products, 5 cases against machinery and metallurgical products, 3 cases against medical and chemical products, and 7 cases against textile products. China hopes that Turkey will grant as soon as possible the market economy status to Chinese industries and enterprises involved in anti-dumping cases, and is very dissatisfied with Turkey's persistent refusal to bind the particular Chinese industry or enterprise involved in the case to a separate tariff rate in its decision of anti-dumping investigation.

3.6.2 Safeguard measures

Turkey promulgated in 2004 the amended Decree on Safeguard Measures Against Imports and the Regulation on the Implementation of Safeguard Measures Against Imports, which serve as the legal basis for initiating safeguard measures. The above decree and regulation provide detailed stipulations on initial investigation application, placing the application on file for investigation, fact-finding visits, confidential information and so on, but they are still inconsistent with WTO's Agreement on Safeguard Measures in a number of important aspects, including but not limited to the following:

(1)Extending the means of trade remedies in temporary safeguard measures. Turkey's Decree and Regulation on Safeguard Measures provides that temporary safeguard measure may take the form of the increase in tariff rates, the raise of extra financial fees, quantitative (price) restrictions on imports, tariff quotas, or any combination of these measures. However, as stipulated in Article 6 of WTO's Agreement on Safeguard Measures, the increase in tariff rates is the only temporary safeguard measure.

(2)Lack of specification of key concepts and investigation procedures when launching safeguard measures. Articles 8, 9 and 12 in WTO's Agreement on Safeguard Measures provide specific stipulations on level of concession and other obligations, developing country members, notification and consultation, and so forth, but Turkey's Decree and Regulation on Safeguard Measures do not provide corresponding stipulations on these important matters.

China hopes that Ankara will comply with the relevant stipulations of the WTO Agreement, and is greatly concerned with potential problems that may occur in the implementation process of its safeguard measures owing to the inadequacies of its relevant laws.

From 1998 to 2004, the Turkish government had initiated 18 safeguard measures against imports. Turkey launched safeguard measures against Chinese exports of eye glasses, faucets and bicycles from 2003 to January 2004. Turkey announced on 18 April 2004 that the final decision was made in the special safeguard measures against Chinese-made bicycles, and that no punitive measures would be taken. On 17 July 2004, Turkey launched safeguard measures investigation against five Chinese products, among which US$ 8.50 million's worth of voltmeters and ammeters and US$ 1.27 million's worth of glassware in trade would be affected.

On 31 December 2004, immediately after promulgating the Regulation on Textiles-Specific Imports Monitoring and Safeguard Measures, Turkey announced that in accordance with Article 12 of the above regulation, 42 categories of textile products of Chinese origin were placed under import quota restrictions. According to Paragraph 242 as contained in the Protocol on the Accession of the People's Republic of China to the， WTO, any WTO members should first demonstrate the presence of "market disruption" before they can adopt transitional textile safeguard measures against Chinese exports. However, Turkey's announcement of the imposition of special safeguard measures did not provide any such relevant supporting information. China demands that Turkey fully comply with Paragraph 242 in the Protocol on the Accession of the People's Republic of China，WTOthe Protocol on China's Accession to the WTO as well as the rule of transparency of the WTO and take an extremely prudent attitude when considering the initiation of safeguards against Chinese products. At the same time, Turkey authorized the Secretariat of the Istanbul Union of Exporters in Textiles and Garments to administer the distribution and management of quotas. As the Istanbul Union was 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.

3.7 Government procurement

The domestic laws in Turkey require that a fair and speedy procedure be granted to international bidders in government procurement. However, foreign tenderers often have to face problems such as a complicated process, a lengthy negotiation, and frequent changes in government policies in their biddings.

In 2003, the Public Tender Law entered into force in Turkey. The law establishes an independent board to oversee public tenders and lowers the minimum bidding threshold at which foreign companies can participate in state tenders. However, the law gives a price preference of up to 15% for domestic bidders, and the preference does not apply to domestic bidders that form a joint venture with foreign bidders. China hopes that Turkey will conform to the WTO's rule of national treatment in its procurement tenders.

New Zealand

1. Bilateral trade relations

According to China's Customs, the bilateral trade volume between China and New Zealand in 2004 reached US$2.49 billion, up by 36.4%, among which China's export to New Zealand was US$1.08 billion, up by 34.2%, while China's import from New Zealand was US$1.41 billion, up by 38.1%. China had a deficit of US$0.33 billion. China mainly exported nuclear reactors, boilers, machinery tools and components, electromechanical products, electric products, audio-visual equipment and related parts and auxiliaries, knitted or crocheted garments and accessories, non-knitted or non-crocheted garments and accessories, furniture, bedclothing, lightings, outdoor movable houses. Major imported products to China from New Zealand included milk, egg, honey, meat and edible offal, live animal and other edible animal products, wood and wooden products, charcoal, wood pulp, waste paper and paper board, animal hair such as wool, yarn and woven fabrics of horse hair.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of engineering contracts completed by the Chinese companies in New Zealand reached US$ 3.56 million in 2004, and the volume of the newly signed contracts was US$ 3.8 million. The volume of completed labour service cooperation contracts was US$2.12 million, and that of the newly signed labour service cooperation contracts was US$7.45 million.

Approved by or registered with the MOFCOM, 6 Chinese-funded non-financial enterprises were set up in New Zealand in 2004, with a total contractual investment of US$3.46 million by Chinese investors.

According to MOFCOM, New Zealand investors invested in 144 projects in China in 2004, with a contractual volume of US$314 million and an actual utilization of US$120 million.

2 Introduction to New Zealand trade regime

2.1. Legislation on trade and investment

2.1.1 Trade-related legislation

Major trade-related laws in New Zealand consist of Commerce Act 1986, Fair Trading Act 1986, Dumping and Countervailing Duties Act 1988, Temporary Safeguard Authorities Act 1987, and Australia-New Zealand Closer Economic Relations Trade Agreement.

The Commerce Act provides for commencement and interpretation of the Act, the establishment of the Commerce Commission and its functions, restrictive trade practices, business acquisitions, control of prices, authorizations and clearances, enforcement, and remedies and appeals.

The Dumping and Countervailing Duties Act of 1988 is quite similar to the WTO Antidumping and Countervailing Agreement in terms of the rules contained in the Act. However, the Act is not applicable to the Australian products covered by the Australia-New Zealand Closer Economic Relations Trade Agreement. The Act was amended in 1994.

With respect to technical trade, New Zealand mainly abides by the Patent Act, Trade Mark Law, and Design Act, which were promulgated in 1953. The Geographical Indications Act was enacted in 2003.

2.1.2 Investment-related legislation

Investment-related legislation consists of Foreign Investment Regulation Act 1995, Overseas Investment Regulations 1995, Overseas Investment Act 1973, Fisheries Act 1983, Fisheries Act 1996 and Optometrists and Dispensing Opticians Act 1976. The New Zealand government doesn't control capital outflow, which is only recorded at regular interval by the New Zealand Statistics Authority for study and promotion purposes.

2.2. Trade administration

2.2.1. Tariff administration

In New Zealand, tariff is calculated and levied by the New Zealand Customs Service (NZCS). Preferential tariff is levied on most of the products from specified countries or country groups like Australia, Canada, or the least developed countries. Tariff rates include ad valorum duty, specific customs duty, concession rate (including the duty-free items, such as the duty-free belongings of passengers). Ad valorum duty ranges from 0% to 39%. As specific customs duty is limited, New Zealand tends to adopt the ad valorum duty. Besides, alcoholic beverages, tobacco products and certain petroleum products are subject to commodity tax. In addition, a goods and services tax (GST) of 12.5% needs to be paid for all imports when they go through the Customs.

2.2.2 Import and export administration

With regard to import, the government makes adjustment and conducts regulatory activities through tariffs, laws and regulations. Import coordination is done through various trade associations.

With respect to export, the government adopts the following measures to encourage export:

(1) New Zealand Trade & Enterprise (NZTE) was established, aiming at promoting

trade and development so as to increase foreign exchange. The NZTE helps the government analyze overseas market and provide information needed by enterprises. Besides, the Authority is responsible for implementing government policies related to the promotion of export of education and the attraction of overseas tourists as well as foreign investment.

(2) To encourage and promote export, the New Zealand government adopted in July 2001 the 'New Zealand Export Credit Guarantee Scheme', setting up the Export Credit Office to provide guarantee to domestic exports for losses incurred as a result of external risks.

(3) New Zealand has a unique state-owned trading system which can be classified into two types. One type of system requires the purchasing, pricing, export of products be conducted through national specialized agencies; the other type of system provides uniformed coordinated guidance to exporters regarding grades, prices standards, etc while giving autonomous operation rights to exporters. Specialized agencies working under the system mainly include ONTERRA (specializing in the sale of dairy products), hops company (specializing in the sale of hops), ZESPRI (specializing in the sale of kiwi fruit), ENZA (specializing in the sale of fruits), etc. Most of these sales agencies are held by producers, who are not only suppliers but also shareholders). After products are purchased from the producers, they will be exported on a uniformed basis. The companies themselves won't keep profits and all net profits go to the producers.

2.2.3 Other related policies

The Ministry of Commerce in New Zealand is responsible for the administration of the legislation regarding antidumping and countervailing practices. In 1994, the Dumping and Countervailing Duties Act was further amended to take into account the WTO antidumping and countervailing agreement. The Ministry of Economic Development accepts applications for dumping and subsidy investigations, examine and analyze the submissions, and report the outcome of the examination and analysis with recommendations to the Minister of Commerce.

On 14 April 2004, New Zealand officially recognized China's market economic status, becoming the first developed country giving market economic treatment to China.

The Temporary Safeguard Authorities established under the Temporary Safeguard Authorities Act 1987 are in charge o f safeguard investigations.

2.3 Investment administration

Investment is conducted pursuant to the Foreign Investment Regulation Act, the implementation of which is under the joint supervision of the New Zealand Reserve Bank, Minister of Finance, and Minister of Food, Fiber and Biosecurity and Border Control. According to the Act, any foreign investment regarding the use of land of a certain size or the acquisition and control of "important properties" of New Zealand must be examined and approved by the Overseas Investment Commission.

New Zealand exercises no control over foreign exchange. According to the Overseas Investment Regulations 1995, most of the investment projects in New Zealand don't need to go through the examination and approval procedure.

As to foreign investment in fisheries and the manufacturing of spectacles, there are certain restrictive measures contained in Fisheries Act 1983 and the Optometrists and Dispensing Opticians Act 1976.

2.4 Competent authorities

The New Zealand Ministry of Foreign Affairs and Trade is competent authority. Its functions in terms of trade include negotiating better market access terms for products of New Zealand and better international trade rules; conducting research and discussions on strategic trade policies of New Zealand; promoting foreign investment in New Zealand, researching and analyzing overseas market, economic and political situations; minimizing political risks for New Zealand enterprises abroad; implementing official development aid programs; promoting international and trade ties.

The New Zealand Trade Development Board is mainly responsible for administering embassies, senior commissioners' offices, and trade representative offices abroad, providing import and export consulting services through 4 domestic regional agencies, joining the industries and groups in making market development plans, conducting strategic analysis of business plans, and providing to the public information concerning fairs and exhibitions as well as market services. While performing the above functions, the New Zealand Trade Development Board stays in close contact with the Ministry of Foreign Affairs and Trade. At the same time, international trade negotiations and activities promoting overseas interests conducted by the Ministry also fall under the important areas of service of the Trade Development Board.

The Overseas Investment Commission of New Zealand, established under the Overseas Investment Act 1973, is mainly responsible for examining and approving applications filed by foreign investors for initiating large investment projects in New Zealand. Large investment projects are defined as those that will enable the investors to acquire or control 25% of the important properties, real estate or land of New Zealand.

The Ministry of Economic Development of New Zealand is the largest economic regulatory authority in the country, in charge of formulating and implementing major industrial and energy policies. The Regulatory and Competition Policy Branch under the Ministry is responsible for investigations against unfair competition, including launching antidumping, countervailing, and safeguard investigations and reporting to the Minister with recommendations to sign documents to protect domestic products.

The Commerce Commission is mainly responsible for ensuring fair trade and competition. The Commission reviews cases where there might be unfair treatment to consumers or other players of industry caused by possible monopoly over the industry or reducing competition within the industry.

New Zealand is among the pioneers of countries that established a national biosecurity program. The Ministry of Agriculture and Forestry established the Biosecurity Authority in July 1999 to protect the unique biodiversity in New Zealand, control risks regarding animal and plant health as well as animal welfare, and promote export. The 'Animal and Plant Import Risk Analysis' imposed by the Biosecurity Authority provides national standards for quantitative risk assessment.

3 Barriers to trade

3.1 Tariff and tariff administration

New Zealand has abolished import licensing. The overall tariff level in New Zealand, after many tariff cuts, is fairly low, with zero tariff for most of the products and an average rate of 4.1% for the rest of the products. However, the tariff also shows a tendency to escalation. For example, some of the raw materials of textiles under Chapters 50 to 56 of the Tariff Schedule are subject to a rate ranging from 10% to 12.5%, however, the average tariff for fully processed textiles and clothing remains high at 14.8%. Such tariff escalation constitutes an obstacle to local processing of domestically produced primary and semi-processed products.

Textiles, garments and footwear are the products in which China enjoys the major export advantage. Therefore, the Chinese side expresses concern over the high tariff rate for these products.

3.2. Technical barriers to trade

New Zealand implements mandatory approval and labeling requirements for food produced using biotechnology. Food produced using biotechnology can only be sold after the assessment and approval of the New Zealand Food Security Authority. In 1999 a mandatory standard was adopted on the products with modern biotechnology, prohibiting the sale of foodstuffs produced using gene technology unless the foodstuff have passed the assessment by the New Zealand Food Security Authority and got listed in the Food Standards Code. A mandatory labeling system regarding the said foodstuffs was put into effect in December 2001. The labeling requirement places a great burden on manufacturers, packing enterprises, importers and retailers, especially exporters. As a result of the system, retailers in New Zealand are less enthusiastic about selling products produced using biotechnology, therefore exerting a negative impact on the import of such kind of products.

3.3. Sanitary and phytosanitary measures

The New Zealand government conducts very stringent inspection and quarantine over food imports in order to prevent the penetration of organism from outside the country. Rigorous quarantine is conducted on the import of meat, honey and products containing honey, dehydrated edible plant products, fresh fruit and vegetable. Import of the above is permissible after the exporter presents relevant certificate.

In January 2004, the Ministry of Agriculture and Forestry announced the import health standards for plants of tuber. According to the new standards, phytosanitary certificate obtained for the imports should comply with the International Convention on the Protection of Plants. Besides, import risk analysis forms and hazardous organism forms should be completed. In addition, requirements are also made on the additional statement of the certificate, inspection and resting, and post-entry quarantine. The new standards are meant for fresh and frozen plants of tuber while dry and chilled tubers are subject to import standard for edible plant products.

In 2004, New Zealand released the import requirement on the importation of dracaena, including entry requirement, additional statement of plant health certificate, inspection, monitoring and post-entry quarantine. The requirement is effective as of March 31, 2004. This has affected the export of dracaena from China to New Zealand, which has already suspended the import of the seeds of dracaena as disease symptoms had been found upon quarantine in the dracaena imported from countries like China.

In May 5, New Zealand amended the import plant health standards for cereals and seeds intended for consumption or processing, making a list of 23 types of cereals and seeds for consumption or processing purposes. All the listed items, including wheat, oat, seeds of bean and helianthus, must go through the biosecurity clearance process at the New Zealand border. Besides, detailed requirements are also made on the quarantine and certificate. As to those cereals and seed not listed, exporters together with importers shall apply to the relevant authority for risk analysis so that the government can make a decision as to whether the import is allowed. Early in August 2003, New Zealand adopted import health requirement on wheat for consumption or processing purposes, including pre-entry requirement, plant health certificate requirement, additional statement of the plant health certificate, inspection and quarantine requirement, post-entry restrictions and disposals. In September of the same year, import health requirement was made on chickbeans. And in October, New Zealand adopted the import standards for cereals or seeds for processing purposes.

Starting from 16 July 2004, New Zealand implemented the amended bill on seedlings import requirement. According to the new requirement, the government shall conduct mandatory treatment of fungicide, pesticide, miticide in seedlings. Besides, New Zealand amended the methods of bacteria treatment regarding whole plants, twig cuttings, and dormant bulbs (excluding tissue culture) originated from Asia so as to prevent the possible penetration of Helicobasidium mompa Tanaka into New Zealand. It is also required that statement be made on the plant health certificate to the effect that the seedling comes from an area not affected by the said virus or the plant parents of the twig cuttings were not found upon inspection to be infected with the virus during the breeding period. These requirements are more stringent compared with previous ones and have therefore placed an extra burden on exporters.

Various kinds of complex sanitary and phytosanitary measures implemented by New Zealand have impeded some of the WTO members from exporting to the country. The impact is more striking on imports of several agricultural products including chicken eggs and meat. Different inspection and quarantine methods are adopted for different products, increasing the arbitrariness of the process. In addition, imports must meet detailed inspection and testing requirements raised by the government of New Zealand. All these requirements have led to extra cost on the part of other WTO members and therefore weakened the competitiveness of foreign products.

3.4. Trade remedies

New Zealand's first antidumping investigation against China was launched in May 1988 on Chinese bristle brushes. Till the end of 2004, 10 trade remedy cases have been filed against Chinese products. They were all antidumping investigations.

On 31 October, the Ministry of Economic Development initiated an antidumping investigation on imports of galvanized wire from Malaysia and China. A final determination was reached on March 25, 2004, that imports from China are lower than 3% of the total imports of galvanized wire to New Zealand. Based on the determination, the Ministry of Economic Development recommended the Minister of Commerce to terminate the investigation against Chinese products. However, the Ministry of Economic Development said that New Zealand would closely watch the quantity of galvanized wire imported from China. Should there be a sudden surge of imports, the Ministry would immediately notify the complaint, Pacific Wire, of the surge who shall then determine whether another investigation would be initiated.

On 20 July 2004, New Zealand filed an antidumping investigation involving lubricating oil filters from China, Indonesia, Korea, and Thailand. The investigation lasted between 1 July 2003 and 30 June 2004. However, the New Zealand authority only gave Chinese export enterprises 37 days to complete the relevant questionnaire. A provisional antidumping duty was determined by New Zealand on machine oil filter from China, Indonesia, Korea, and Thailand. Among the four countries, China was imposed the highest antidumping duties, 36% on Bengbu Filter Company, 404% on Golden Haiye Auto Parts, 82% on Zhejiang Universe Filter Co., Ltd, and 180% on the rest of Chinese companies. With regard to the same product, a final determination was made by the Ministry of Economic Development on 14 January 2005. The antidumping duties on Chinese respondents are 38% on Bengbu Filter Company, 414% on Golden Haiye Auto Parts, 85% on Zhejiang Universe Filter Co., Ltd, and 185% on the rest of Chinese companies. The final determination was effective as of 15 January 2005. The second-hand auto market is fairly developed in New Zealand and auto parts are the biggest imports of the country. Although China's export of auto parts to New Zealand is small, there is great potential in the area.

Although New Zealand has already recognized the market economic status of China, which is in the favor of Chinese enterprises in general, the government of New Zealand has not incorporated the recognition into relevant laws and regulations.

4 Barriers to investment

The government of New Zealand encourages foreign investment and FDI plays a very important role in the country's economy. To encourage foreign direct investment, Investment New Zealand was established as an investment promotion agency, which was merged in 2003 with the Trade Development Authority and the Industry Authority to form a new agency, New Zealand Trade and Enterprise. However, restrictions remain in certain areas, posing an obstacle to foreign investment. The areas are as follows:

4.1 Investment involving land

With regard to investment involving land, evidence must be presented to the authority that such investment is in the interest of the country, such as creating more job opportunities; bringing in new technologies; developing new export markets or increasing export channels for New Zealand; raising competitiveness, production efficiency, output and service quality; bringing in new investment; increasing processing of primary products; or the intension of the investors to seek permanent residence in New Zealand.

4.2 Investment in fisheries

In addition to domestic fishing crafts, New Zealand fishing companies also charter foreign fleet or allow foreign companies to participate in commercial fishing activities. The government conducts access administration regarding foreign investment in fishing industry in New Zealand. While compliance need to be sought with the Overseas Investment Regulations 1995, additional applications need to be made to the Foreign Investment Commission for foreign investors who wish engaged in fishing or fish production when their intended ownership exceeds 25% of a local company with certain assets (reaching NZ$50 million) or occupying a land of 5 ha or worth of NZ$10 million or above. Apart from that, they also need to obtain the necessary exemption and permission set out respectively in Section 56 and Section 57 of the Fisheries Act 1996 to be qualified for participating in the allocation or purchasing of quota, interest in quota, provisional catch or annual catch entitlement. Judging from the recent statistics, foreign investment approved by the Foreign Investment Commission in fisheries in New Zealand accounts for a very small part of the total foreign capital introduced. This shows that it is difficult for foreign investors to enter the fishing sector in New Zealand.

4.3 Making of spectacles

According to Optometrists and Dispensing Opticians Act 1976, foreign investors engaged in optometry in New Zealand shall hold no more than 45% of the enterprises they invest. By setting up different standards regarding foreign and domestic ownership, the restriction has adversely affected the enthusiasm of foreign capital in the sector.

India

1 Bilateral trade relations

India is the largest trading partner of China in South Asia. According to the China Customs, the bilateral trade volume between China and India in 2004 reached US$13.6 billion, up by 79.1%, among which China's export to India was US$5.93 billion, up by 77.3%, while China's import from India was US$7.68 billion, up by 80.6%. China had a deficit of US$1.75 billion. China mainly exported coal, machinery and equipment, electric and electronic products, battery, charcoal and semi-charcoal, yarn and products thereof, etc. The major imported products of China from India included iron ore and refined ore, steel, iron and steel plate, chromium ore and refined ore, aluminum oxide, primary plastics (primary polyethylene, primary polypropylene), manganese ore and refined ore, machinery and equipment, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by the Chinese companies in India reached US$ 240 million in 2004, and the volume of the newly signed contracts was US$ 430 million. The volume of completed labor service cooperation contracts was US$1.03 million, and that of the newly signed labor service cooperation contracts was US$50 thousand. The turnover of completed design consultancy contracts was US$6.33 million, and the volume of the newly signed contracts was US$ 78.22 million.

According to MOFCOM, 2 Chinese-funded non-financial enterprises were set up in India in 2004, with a contractual investment amount of US$2.2 million. By the end of 2004, there were accumulatively 17 Chinese-funded non-financial enterprises set up in India with a total contractual investment of US$22.83 million by Chinese investors.

According to MOFCOM, India investors invested in 37 projects in China in 2004, up by 23.3%, with a contractual volume of US$62.90 million, up by 34.7% and an actual utilization of US$19.48 million, up by 22.3%.

2 Introduction to the trade and investment regime

2.1 Legislation on trade and investment

The Indian legislation on trade and investment mainly includes the Customs Act, the Customs Tariff Act, Customs Tariff (Identification and Assessment of Safeguard Duty), Customs Tariff (Transitional Safeguard Measures on Chinese Products), the Foreign Exchange Management Act, the Regulation on Anti-dumping, the Regulation on Countervailing, the Law on Patent, Guidelines for Overseas Venture Capital Investment in India, Guidelines for Investment by Foreign Institutional Investors, the Law on Animal Imports, the Drug and Cosmetics Act, etc.

2.2. Trade administration

2.2.1 Tariff administration

India started to implement the Agreement on Information Technology of the WTO on January 1st 2005, offering zero tariffs to 115 products including computers, communication equipment, semi-conductors, and scientific instruments. The basic tariff rates are different in India depending on products. In addition to basic tariff duties, additional duty of Customs (CVD) and an education cess are also imposed on imports.

2.2.2 Import and export administration

Trading right registration system is applied in India. Products subject to import and export fall into four categories, namely, products subject to import or export ban, products subject to import or export restriction, products subject to special import or export administration, and products subject to ordinary administration. Import or export licensing is applied to products under restriction. The trade in certain products, such as petroleum, rice, wheat, chemical fertilizer, cotton, and high quality iron ore is operated by government appointed state-owned trading companies. Five basic products including means for production, raw materials, consumer products, components, tools and spare parts are protected by India's import policy, whose import must be approved by competent authorities. Exporting enterprises in India are exempt from service taxes and central sales taxes.

2.2.3 Other relevant systems

The Reserve Bank of India, India's Central Bank, only allows banks to provide medium-term import loans below US$20 million to businesses, or import loans with a term of less than 1 year, or loans for importing capital goods.

2.3. Investment administration

Investment is permitted in infrastructure and service industries such as telecommunications, roads, ports, power generation, and oil refinery. With an exception to 14 sectors involving environmental protection, national security, national welfare and people's livelihood, investment in other sectors does not require examination and approval by government authorities. Meanwhile, if foreign equities do not exceed the flooring required by the Indian government for a particular industry, foreign equities will automatically become valid provided relevant information is submitted to the Reserve Bank of India for registration. If foreign ownership exceeds the stipulated flooring, or if there are regulations excluding the investment project, approval must be obtained from the Foreign Direct Investment Promotion Board of India.

India grants favorable tax policies to foreign-invested enterprises. For newly established foreign-invested enterprises, 30% income is exempt from taxation within 10 years. For foreign-invested enterprises that export all products abroad, or enterprises located in export-processing zones and free trade zones, income is exempt from taxation within 5 years. For foreign-invested enterprises located in backward areas, 25% income is entitled to tax reduction. Machinery spare parts and raw materials imported by foreign-invested enterprises for the use of producing export products are free from duties.

2.4 Competent investment authorities

The Ministry of Commerce and Industry is India's trade administration authorities. It consists of the Department of Commerce and the Department of Industrial Policy & Promotion. The Department of Commerce is in charge of trade affairs, responsible for formulating import and export policies, administering bilateral and multilateral trade relations, handling affairs with regard to state-run trade, export promotion measures, export-oriented industries, product development and planning. The Department of Industrial Policy & Promotion is responsible for formulating and implementing industrial policies and strategies in the interest of national development, monitoring industrial and technological developments, promoting and examining foreign direct investment and introduction of foreign technology, making intellectual property rights policies, etc.

The Reserve Bank of India is responsible for regulating the financial system, managing foreign exchange reserve, and issuing currency.

The Central Board of Excise and Customs under the Ministry of Finance are responsible for setting tariff rates, imposing tariff duties, monitoring the customs and fighting against smuggling.

The Foreign Direct Investment Promotion Board of India is responsible for examining and approving exclusive foreign investment projects in high technology, export-oriented industry, energy, infrastructure, consultancy, trade and other sectors.

3. Barriers to trade

3.1. Tariff and tariff administration

The average tariff rate for India was 29% in 2003. Average tariff rate for industrial goods was lowered to 15% in 2004, covering products including coal; nickel and nickel articles; power equipment; electronic meters; certain raw materials and inputs for optical fibers and cables; capital goods for manufacturing electronic goods; certain telecommunication infrastructure equipment; cellular phones; VCDs and DVDs, and medical apparatus.

3.1.1. Tariff peak

High tariffs remain imposed on certain import products. In the 2004-2005 Fiscal Year Budget of the Indian government publicized in July 2004, tariff rates of customs duty on starches (other than wheat and potato starch) of heading 1108, and all goods of heading1903 have been increased from 30% to 50%. Tariff rates of customs duty on modified starches of sub-heading 3505 10 has been increased from 30% to 50%. Customs duty on palm oil (other than crude palm oil) has been increased from 70% to 75%.

In India, tariff peaks exist in products such as alcoholic drinks, transportation vehicles, fruit and vegetable. For example, the tariff rate is 166% for undenatured ethyl alcohol of heading 220710, 105% for raisins of heading 080620, 40% for fresh grapes of heading 08061, 105% for transportation vehicles of heading 870310-870390, 100% for garlic of heading 20019010, 100% for tea of heading 090210—090240, 80% for rice of heading100610, 100620, 100640, 75% for sunflower seed oil of heading 151211, and 70% for spices of heading 090411—090420. The high tariff rates have affected the entry of Chinese products into the Indian market.

3.1.2 Tariff quota

Tariff quota is applied to the import of certain products. There is a great difference between the in-quota and off-quota tariff.

In May 2004, India adjusted the number of products subject to tariff quota. But the import quota for unrefined sunflower seed oil and refined colza oil remain at 150 thousand tons. The in-quota tariff rate is 50%, while the out-of-quota tariff rate is 75%. The import quota for refined rapeseed oil and mustard oil remain at 150 thousand tons, and the in-quota tariff is 45%, while the out-of-quota tariff is 75%.

The quota allocation procedure is very complicated in India. Prior to the importation, the Indian importers should submit their import application to the Directorate General of Foreign Trade (DGFT) in Delhi, and the authorities will then decide the amount approved to import. There are stringent qualification requirements on granting quotas and proscribed time limits on transaction. In addition, quotas are allocated to the large state owned companies with import performance. Thus, many of the quotas are wasted. The practice in fact has impeded the importation of the products concerned.

3.2. Import restrictions

3.2.1 Import ban

India continues to maintain a negative import list. The negative list currently falls into 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); and (3) "canalized" items (e.g., petroleum products, bulk rice, etc.) subject to government controls.

The Department of Commerce, the Ministry of Commerce and Industry issued the import ban on penicillin industrial salt in July 2004, expanding the ban from penicillin industrial salt to penicillin, and 6-APA. The measures include 1-month suspension of import licensing examination and approval, and re-exportation of imports within 3 months starting from the date when the first shipment was cleared. The action by the Indian government has caused great losses to the penicillin industrial salt industry in China. In July 2004, the total export volume of penicillin industrial salt from China dropped by 46%.

3.2.2 Import licensing

India applies import licensing to certain products. Import licenses are often difficult to obtain. For example, any importing of motorcycles needs special licenses. These special licenses are granted only to foreign nationals working in India for foreign firms holding greater than 30 percent equity, or to embassies located in India. Such measures have made like products of China difficult to enter the Indian market.

3.3 Discriminatory taxes on imports

India imposes discriminatory taxes on certain imports, which are levied as per 16% of the retail prices. The formula for the amount of duty is: tax=16%* (CIF + basic tariff duties). This measure has restricted the entry of products concerned into the Indian market.

3.4 Barriers in customs clearance

There are no clear provisions in the Indian laws and regulations on withdrawal of imported cargos. In practice, the Indian customs authorities require the exporter who applies for withdrawal to present no-objection certificate or letter signed by the intended importer. However, importers concerned are usually reluctant to sign a certificate or letter of this kind, and as a result, exporters concerned cannot collect their cargos in a smooth way. Chinese enterprises have suffered great losses thereof.

The Indian Customs require complicated documents for clearance of goods. Importers are required to provide commercial invoices bearing no terms such as “Value for customs purposes only”. In the case of sample goods, customs invoices should be affixed, stating “No commercial transaction involved”. In addition, documents required for clearance vary with products, users or the export promotion policy of the Indian government The complicated tariff structure and various duty-free polices often cause delays in customs clearance. Due to the aforesaid issues, risks have occurred to Chinese exports. The Chinese side urges India to take action against these problems.

3.5 Technical barriers to trade

3.5.1 Drug registration

The implementation details of the Drug and Cosmetics Act stipulates that as of April, 2003, foreign drugs including both the material drugs and final drugs shall not enter the Indian market unless they have obtained the Indian registration certificate, and the registration certificate be renewed every 3 years. The Indian Ministry of Health charges manufacturers US$1500 for each of the drugs applying for registration and US$1000 for the registration of each drug. Foreign drug manufacturers shall pay the Indian Drug Bureau US$5000 as inspection fee for them to inspect the manufacturing facilities in the exporting countries. In addition, fees shall be paid to obtain each import license and testing on each drug. In the actual operation, some Chinese pharmaceutical companies, having handed in all the required documents and paid the relevant registration fees, failed to receive registration certificate issued by the competent Indian authorities within the stipulated time. Certain other Chinese companies, having got their drugs registered, failed to receive import licenses issued by the competent Indian authorities within the stipulated time. The above situation has increased the business risk of Chinese exporters, and the practice has restricted to certain extent the Chinese export to India. The Chinese side is concerned over the issue.

3.5.2 BIS certification

In April 2003, the Indian Ministry of Commerce and Industry promulgated a decree, stipulating that the number of products subject to BIS certification increased from 135 to 159. Foreign producers of the 159 products or trading companies must apply to BIS for registration and shall make the inspection agency believe that prior to be authorized to have BIS marking on their product, the foreign producers have already satisfied the safety and quality standards as required by the Indian authorities. To be certified, exporters or manufacturers must either establish a presence in India or name a local Indian representative to accept responsibility, pay an annual fee as well as a percentage of the invoice value of shipments to India, and subject all certified exports to inspection. These certification requirements have caused undue burdens to foreign manufacturers including the Chinese ones. The Chinese side is concerned about the consistency of this standard with the Agreement on Technical Barriers to Trade of the WTO, and hopes the Indian government would notify the WTO in time.

3.6 Sanitary and phytosanitary measures

The Plant Quarantine Decree of 2003 and the Amendment to the Plant Quarantine Decree 2004 came into force in March 2004. The Plant Quarantine Decree of 2003 has laid down in detail the requirements for importing plants and plant materials into India. This Decree, as an act on plant health, has replaced the current national plant health system in India. The two decrees, on the base of risk analysis of harmful organisms, have included new terms and definitions, and made supplementary statements to many goods. Certain new types of plant materials and plant species have become covered by the decrees.

According to the Indian Government Wood Packing Import Restriction issued by the Ministry of Agriculture and taking effect as of April 1 2004, for any kind of material of plant origin used for packing which include hay, straw, wood shavings, wood chips, saw dusts, wood waste, wooden pallets, dunnage mats, wooden packages, coir pith, peat or sphagnum moss etc., plant quarantine certificate issued by exporting government in accordance with the International Plant Protection Convention or in the form as required by the exporting government must be presented before exporting to India. All wood packaging materials imported into India shall undergo heat-kiln treatment or Methyl Bromide fumigation or chemical impregnation of wood with wood preservatives such as copper chrome arsenic, or be treated in other internationally recognized manner, and be affixed with the quarantine certification stating the processing method.

3.7. Trade remedies

3.7.1 Information on investigations for trade remedy measures

In the period from 1994 to December 31st 2004, India had initiated 78 anti-dumping investigations, 2 safeguard investigations and 1 product-specific safeguard investigation against Chinese products. In 2004, India initiated 7 anti-dumping investigations involving an amount of US$22.7 million, slightly lower than 2003 in terms of amount and cases. It has become the third largest country to initiate anti-dumping cases, only after EU and Turkey. In 2004, India initiated 1 safeguard investigation against China.

3.7. 2 Unfair practices in trade remedy investigations against China

3.7.2.1 Market economy status

India hasn't formally stated its position on whether recognizing China as a market economy so far.

In anti-dumping investigations involving Chinese products, India uses the case-by-base approach to determine whether the Chinese company involved satisfies market economy standards, and whether to grant accordingly the market economy status. Such an approach has imposed barriers and made it more difficult for Chinese responding companies to obtain fair treatment. While Chinese responding companies meet the requirements in other factors of production, they fail to obtain the market economy status as water, power, coal and gas are supplied by state owned enterprises in China. In fact, factors of production such as water, power, coal and gas are under state operation both in China and India. The practices by India have shown that it has adopted double standards on the issue of market economy status, and have failed to treat Chinese companies fairly and objectively.

3.7.2.2 Imposition of anti-dumping duties

After the dumping margin is fixed, India often uses the following 3 methods to impose anti-dumping duties:
(1) ad valorem anti-dumping duties in the percentage form;
(2) specific anti-dumping duties imposed according to the amount of the dumping

margin per unit

(3) a minimum price is set and imports sold at a price above are not imposed anti-dumping duties. For imports sold at a price below, the price difference is counted as anti-dumping duties.

However, there are frequent changes to India's import tariff rates. For instance, while the tariff rate during the investigation period was 30%, at the time when initial ruling or final ruling was made, the import tariff was lowered to 20%. As a result, the reference price set according to statistics collected during the investigation period turned out to be much higher, rendering losses to responding companies which had worked hard to obtain lower dumping margins or injury margins. Such a problem occurred in the anti-dumping case against melamine ruled by India in October 2004.

3.7.2.3 Individual cases

(1) In the case against Chinese curtain fabrics, facts before the initial ruling and the final ruling was made revealed that in terms of procedures and entities, India's anti-dumping laws have many inconsistencies with WTO rules, such as lack of transparency in procedure, failure to grant full opportunities for Chinese companies to make presentation, use of wrong internet information to determine the business operation of Chinese companies, publicizing in initial rulings information intended to be confidential, and total refusal to adopt information provided by Chinese companies. All these measures have greatly injured the rights and interests of Chinese companies. Since the curtain fabric case is one of the largest anti-dumping cases initiated by India in recent years, the Chinese government has attached great importance, and has issued three notes requesting India for clarification and to make an objective and fair ruling.

(2) India ruled that the export of China's mulberry raw silk of 2A grade and below constituted dumping. India has set a base price of $27.97 US per kg for Chinese imports starting from July 2003. Products sold at a price lower will be imposed anti-dumping duties based on the price differences. According to the reports from Chinese companies, the India Central Silk Board doesn't accept quality inspection certificates issued by Chinese commodity inspection agencies and conduct re-inspection on the grade of raw silk imported from China, which usually result in a degradation of the silk, and an imposition of anti-dumping duties. In addition, due to delay by Indian customs inspection agencies, Chinese goods are kept waiting at ports, causing great inconvenience and losses to Chinese companies. The Chinese side is concerned about these practices by India.

3.8. Export restrictions

Goods that have entered India are prohibited from being re-exported to other countries unless a no-objection certificate is provided by the Indian importer.

3.9 Subsidies

India provides indirect subsidies to export through various export promotion schemes, such as the Export Promotion for Capital Goods (EPCG), DEPB, Tax Exemption Program, and Export Promotion Program for Diamonds and Jewries. Tax holidays are enjoyed by export-oriented enterprises established in export processing zones, special zones for agricultural products export and special economic zones. EPCG provides that a preferential tariff of 5% be provided to imported capital goods to be used in the production of products intended for export.

3.10 Barriers to trade in services

In the fiscal year 2004-2005, India has raised the flooring permitted for foreign ownership from 49% to 74% in telecommunications sector, 40% to 49% in civil aviation, and 26% to 49% in insurance.

3.11 Other barriers

3.11.1 Visa

Chinese companies based in India have long had a strong complaint towards the issue of visa. In later half of 2003, with the signing of Memorandum of Understanding between China and India, India's visa approval was eased for a while towards Chinese applicants. However starting from March 2004, the problem emerged again. Chinese companies have the common view that India's visa policy towards Chinese citizens lack certainty and transparency, and have seriously restricted the economic exchanges and trade between the two countries. The major problems are as follows. Firstly, Chinese nationals working in Chinese companies located in India are often granted 1-month single-entry business visa, and rarely short-term multi-entry visa. Secondly, the Indian embassy's examination of visa application from Chinese nationals working in Indian headquarters is bureaucratic, and always requires working visas regardless of the purpose of the visits (some are only for attending exhibitions or for business visits). Thirdly, it takes a long time to apply for a business visa. If a visa needs to be extended for business reasons, an application must be submitted to the Ministry of Internal Affairs in New Delhi. Moreover, the policy is applied only to Chinese and Pakistan nationals. The China side regards this policy as discriminatory towards China. Fourthly, working visa is difficult to obtain and takes long time. Chinese companies planning to invest in India or execute contract projects are often affected as a result. The Chinese side hopes that India would take effective measures to find a solution to this problem.

3.11.2 Retail

India hasn't opened its retailing sector to foreign investment so far. As a result, the Indian market which has a great demand for Chinese products is unable to have access to China's light industry products and household appliances through legal sales channels. The Chinese side hopes that the two governments hold consultations and discuss measures of mutual benefit to promote bilateral trade and economic relations.

4 Barriers to investment

Foreign investment in India is banned in atomic energy, railway transportation and national defense.

The Foreign Exchange Management Act of India 1999 clearly stipulates that non-Indians are not allowed to buy assets in India. Rental term by a non-Indian should not exceed 5 years. If a Chinese company wants to set up a branch or a representative office in India, it must obtain a prior permit by the Reserve Bank of India. This requirement is applied only to countries like Pakistan, Bangladesh, China, Sri Lanka, Afghanistan, and Iran. As reported by Chinese companies, the prior permit may take 2 to 3 months to obtain, or even 6-12 months. The Chinese side urges the Indian side to correct this discriminatory measure against China at an earlier date.

Indonesia

1 Bilateral trade relations

According to China's Customs, the bilateral trade volume between China and Indonesia in 2004 reached US$13.48 billion, up by 31.8%, among which China's export to Indonesia was US$6.26 billion, up by 39.6%, while China's import from Indonesia was US$7.22 billion, up by 25.7%. China had a deficit of US$970 million. China mainly exported grains and grain powder, machinery and electronic products, maize, crude oil, processed oil, gasoline, textile and yarn products, etc. The major imported products of China from Indonesia included crude oil, processed oil, other fuels, pulp, machinery and electronic product, electric and electronic products, edible oil, coal, paper and paper board, palm oil, etc..

According to the MOFCOM, the turnover of engineering contracts completed by the Chinese companies in Indonesia reached US$260 million in 2004, and the volume of the newly signed contracts was US$900 million. The volume of completed labour service cooperation contracts was US$23 million, and that of the newly signed labour service cooperation contracts was US$22.22 million. The volume of the completed designing and consulting contracts was US$1.1 million and that of the newly signed contracts US$1.08 million.

Approved by or registered with the MOFCOM, 10 Chinese-funded non-financial enterprises were established in Indonesia in 2004, with a total contractual investment of US$26.45 million from the Chinese parties. By the end of 2004, total number of such kind of enterprises in Indonesia reached 75, with an accumulated contractual volume of US$196 million from the Chinese parties.

According to the MOFCOM, Indonesians invested in 122 projects in China in 2004, with a contractual investment of US$200 million and an actual utilization of US$100 million.

2. Introduction to the Indonesian trade regime

2.1. Legislation related to trade and investment

Legislation related to trade and investment in Indonesia consists of the Trade Law (Revised), the Customs Law, the Foreign Investment Law, the Foreign Investment Law (Revised), Companies Law, the Government Regulation Concerning the Share of Equity, the Public Health Law, the Law on Drugs for Mental Diseases, the Narcotics (Stupefacient) Law, and the Environment Protection Law.

2.2 Trade administration

2.2.1 Tariff administration

Indonesia's average unweighted tariff is 7.3%. As of January 2003, import duties on about 20% of Indonesia's tariff lines were adjusted to a level ranging from 0% to 5%. The government released a new tariff concession schedule in January 2004. The new schedule categorizes tariffs into Non-ASEAN Tariffs and ASEAN Tariffs. The ASEAN Tariff Rates are half of the Non-ASEAN Tariff Rates.

Duties imposed on imported products are put into the following 4 categories: under Category One are items deemed necessary imports, including rice, flour, certain iron and steel products, certain chemical fibers, cotton, medicinal materials, and farming machinery and equipment; items under Category Two are parts and components and materials needed for the production of manufactured goods; Category Three contains items for which there is not a high demand in the domestic market and against which protection is needed for the domestic industry. These items incur higher duties than items under Categories One and Two; Category Four contains luxury and consumer products that can be produced by domestic firms which need protection from the competition of imports. These items are subject to the highest import duties.

2.2.2 Import administration

The Indonesian government requires that all importers register with the Ministry of Industry and Trade (hereinafter referred to as MIT) and obtain a license. Indonesian importers are classified into 6 groups, namely grade-one comprehensive importer, grade-two comprehensive importer, designated importer, production importer, importer/producer and private agent. Importers have to register in accordance with the respective criteria established for the 6 groups.

Currently, products under 141 tariff lines are covered by Indonesia's import licensing procedures, classified as automatic and non-automatic licensing. Those subject to automatic licensing include: methyl bromide, hazardous goods, alcoholic beverages and their immediate materials containing alcoholic substances, industrial salts, ethylene and propylene, explosives and their immediate raw materials, wastes and scraps, used clothing. Those subject to non-automatic licensing include: spices, textiles, lubricating oil, sugar, and agricultural hand tools. Furthermore, imports of livestock, pets and animal products including leather for industrial use shall obtain SPP from the Indonesian Ministry of Agriculture and the Islamic Certification issued by the Islamic organization in the exporting country accredited by the Indonesian Ulamas' Council (MUI).

2.2.3 Export administration

Export products are classified by the MIT into four groups, namely, products which can only be exported by registered exporters, those that can only be exported with the approval (special permit) of the MIT, those that are banned from export, and those that can be exported freely. Products subject to export restrictions include major cash crops like rubber, palm oil, coffee, and copra; those banned from export include waste iron, silver, fossil, petrified wood fossil, natural and semi-processed rattans collected from natural forests (excluding planted rattans).

2.2.4 Other trade-related tariff policies

There are over 10 bonded areas in Indonesia. Goods entering the bonded areas from outside the Indonesia Customs territory are exempt from tariffs or other export duties; goods or raw materials transported from Indonesia or regions outside Indonesia into the areas are exempt from excise, VAT, tariff and other duties; Enterprises established within the bonded area upon the approval of the Indonesian government may enjoy reduction or exemption of import duties, import excise, withholding tax, and excise, etc.

2.3 Investment administration

According to the government regulation of 1994 on foreign ownership, foreign investors may establish wholly-owned enterprises with no limit on capital investment. Foreign-invested enterprises are granted an operation period of 30 years since their official establishment. If investment is expanded during the period, the duration can be extended for another 30 years with regard to the enlarged investment program.

The Indonesian government implements preferential tax policies regarding foreign investment. First, there are preferential duties and taxes: for any new investment, preferential import duties are granted for production equipment and parts and components, raw materials, consumables related to production equipment; favorable treatment is given with regard to the levy of VAT and luxury duties on the purchase of fixed assets such as machinery and equipment. Second, investments in key areas and industries enjoy preferential tax policies: if the investment is in an industry to which the government gives priority in development or export or the investment promotes the development of remote areas, preferential income tax policy will apply.

2.4 Competent authorities

The Ministry of Industry and Trade (MIT) is the competent authority for trade administration, and its competences mainly include the formulation of policies concerning administration of foreign trade, participating in the formulation of trade related legislation, classifying export and import products into different administrative systems, import/export license examination and approval, appointing importers and allocating quotas, and participating in the settlement of trade disputes and anti-dumping cases.

The Indonesian Investment Coordination Committee is responsible for the examination and approval of investment applications.

3. Barriers to trade

3.1. Tariff and tariff administrative measures

In the market access negotiations of the Uruguay Round, Indonesia committed to lowering the tariff rate of 94.6% gradually to 40%. Products for which tariff bindings exceed 40%, or which remain unbound include automobiles, iron, steel, and some chemical products.

3.1.1 Tariff peak

Tariff peak exists in Indonesia and import duty on alcohols is as high as 170%. Among sugar with no additives or pigments, duty on cane sugar is 550 Rupiah per kg and that on beet sugar is 700 Rupiah per kg; on sugar with additives or pigments, 700 Rupiah per kg; on lubricating oils, 30%; on rice with bran, 430 Rupiah per kg.

3.1.2 Tariff escalation

Tariff escalation is quite evident in Indonesia. For example, import duties on separate motorcycle parts range between 5% and 10%, that on a complete set of parts 25%, and that on the whole motorcycle 35% (displacement below 250cc) or 60% (displacement between 250cc and 500cc).

3.2 Import restriction

3.2.1 Import injunctions

Indonesia bans the import of books, magazines, Chinese newspapers, tapes, video taps, color photocopiers as well as some second-hand equipment and household electrical appliances such as computer, refrigerator, washing machine, tractor, forklift, and various models of passenger buses and motorcycles. Other products that are subject to import ban include chicken products such as chicken legs and wings. As of December 2004, the Indonesian Marine and Fishery Ministry stopped importing shrimp products originated from 6 countries including China, Thailand, India, Vietnam, Brazil, and Ecuador on the ground that these products were determined by the United States as dumped products.

Besides, a preliminary injunction was issued by the Indonesian government, banning import of various models of second-hand trucks till 13 December 2005. According to an order issued by the MIT in 2004, import of salt is banned from July 1 to December 31 every year during which Indonesia produces salt. Apart from that, the Indonesian government announced a ban on the import of rice during a certain period including the month before the harvest of rice, the harvest season, and two months after the harvest season. At the end of 2004, the periodical ban on rice was extended to June 2005 by the MIT.

The Regulation on Sugar Import System promulgated by MIT provides that only authorized sugar producers in Java may conduct sugar imports, and that sugar imports are forbidden when the price of sugar is below 3100 rupiah/kg on the Indonesian market. Only three registered importers are allowed to import alcohols, which are subject to quantitative restriction.

The above provisional injunctions, due to the unstable and unpredictable nature, have increased the operational risks incurred by the Chinese exporters, therefore blocking normal international trade activities.

3.2.2 Import permit

The MIT issued the Decree of the Director-general for Foreign Trade in March 2002, requiring special import permit on a number of products, including maize, rice, bean, cane sugar in solid form, beet sugar or sugar of chemical processing, 79 textile products, 5 types of footwear and components thereof, 20 electric and electronic products or electrical appliance, and 2 types of toys for children. The decree requires importers of certain product categories to apply for a special importer identity card, without which products can be detained at port.

The Indonesian government also requires an Importer Letter of Recommendation for the import of meat and poultry products, Through issuing the Import Letters of Recommendation, the government can arbitrarily alter the quantity allowed to the Indonesian market. This measure again increases the operational risks of the Chinese exporters because of unpredictability involved.

3.3. Barriers in Customs clearance

To the end of 2004, the Indonesian government still maintained the requirement for pre-shipment inspection over imports of electronic products, textile products, footwear, and toy. The Chinese side, therefore, is concerned over the extra cost borne by the Chinese exporters.

With regard to the import of foodstuffs, customs valuation in Indonesian tends to be arbitrary as the Indonesian Customs don’t value imports based on the actual transaction prices listed on importers’ documents, nor do they disclose the methods used to arrive at those prices. This has often led to overvaluing dutiable prices of imported foodstuffs and hurt the Chinese exporters as they ended up paying a duty higher than the nominal duty.

With regard to the import of motorcycles, the Indonesian Customs require the importers to provide accurate pricing information, failing which the importers shall pay a deposit based on the valued price of US$600. As a matter of fact, the average contract prices for motorcycles made in China with displacement of 100cc and 110cc are US$420 and US$430 respectively. However, the Indonesian government values these products all at US$600 by referring to the prices of motorcycles made in Taiwan. Such discriminatory measure has restricted the Chinese export of motorcycles to Indonesia.

Besides, the Chinese companies complain that customs clearance procedure seems longer for Chinese products, which leads to the deterioration of perishable products such as certain food and medicines, and that the untimely customs clearance of certain components leads to the failure to complete production plans and the missing of sales opportunities. All these impede the export of the relevant Chinese products to Indonesia.

3.4. Discriminatory taxes and fees imposed on imports

The Indonesian government levies discriminatory VAT and luxury duty on certain imports, for example a 10% VAT and a 35% luxury duty on alcoholic products, a 75% luxury duty on motorcycle, a sales tax for luxury products ranging from 50% to 75% for 4-wheel driven jeep or van and a sales tax for luxury products ranging from 15% to 20% for motor vehicles with displacement of 1500cc and 3000cc. These charges are not levied on imports only. The high rates often put the Chinese exports at a disadvantage in the Indonesian market.

3.5. Technical barriers to trade

All the imported medicines must be registered with the Balai Pengawas Obat dan Makanan (hereinafter referred to as the BPOM) before they are processed or sold in Indonesia. 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 instead of the manufacturer. Such measure deprives the manufacturer of the exporting country rights to register the medicine and tends to hurt the interests of export enterprises, over which the Chinese side shows great concern.

3.6. Sanitary and phytosanitary measures

According to the Indonesian Law on Consumer Protection, imported food should be registered with the BPOM. The registration process is not only complicated but also costly. For instance, information concerning ingredients and processing method is required for registration. This has caused the Chinese companies a great deal of concern over the protection of trade secrets during the registration process.

Indonesia unilaterally declared the suspension of the import of leather of Chinese origin as of October 2003, on the ground that the Chinese government had never notified the Indonesian authorities of the situation of animal diseases in China. After several consultations made by the Chinese side with the Indonesian side, the Indonesian side agreed to lift the import injunction on Chinese leather temporarily before January 2004. However, the said unjunction hadn't been lifted by the end of 2004.

As of December 2004, Indonesia started to implement the decree regarding the hazardous life forms found in plant quarantine, involving a range of products including apples, strawberries, tea, maize, cotton as well as plant parts (stems, seeds, roots, soil, leaves, tubers). The Chinese side remains alert of the implications of the decree.

3.7. Trade remedy measures

Till 2004, there were 4 anti-dumping investigations launched by Indonesia against imports of Chinese origin. The investigations involve steel tubes, paracetamol, wheat flour and calcium carbide. In October 2004, Indonesian launched a countervailing investigation against imported porcelain tableware of Chinese origin.

At present, cases that are still under investigation are on paracetamol and wheat flour. As to imported calcium carbide of the Chinese origin, Indonesia imposed an anti-dumping duty of 24% as of June 2004, effective for 5 years.

3.8. Government procurement

Indonesia is not yet a signatory to the WTO Agreement on Government Procurement. The procedures for government procurement are provided in various domestic legislations, which grant special preferences to domestic sourcing. In addition, Construction Law 14/1999 requires construction services and related consulting services be purchased domestically. Besides, regional decentralization may also introduce additional barriers as local and provincial governments adopt their own procurement rules.

Foreign firms bidding on high-value government-sponsored construction or procurement projects have been asked to purchase and export the equivalent value in selected Indonesian products.

3.9. Subsidies

The Indonesian government, through Bank Export Indonesia, maintains several credit programs that provide subsidized loans, primarily to agriculture and small and medium enterprises. Energy products are heavily subsidized by the Indonesian government. The budgeted subsidy for fuel in 2005 surged from the previous amount of US$1.6 billion to US$8 billion, 3% of its GDP.

3.10. Barriers to trade in services

3.10.1 Financial services

Foreign banks to open branches in Indonesia are required to have a minimum registered capital of 3 trillion Rupiah. Financial companies with foreign participation shall pay two times of capital reserve that of domestic companies. Foreign insurance companies can set up joint ventures in Indonesia. All insurance policies shall be issued by Indonesian insurance companies or joint ventures unless the insured is a wholly foreign funded entity or the required cover cannot be provided by Indonesian companies.

3.10.2 Construction services

Foreign consultants working for government-funded projects can only collect fees at the rate stipulated by the government. Foreign companies can participate as subcontractor or consultant in projects that Indonesian companies are not able to complete independently. Foreign companies must set up joint ventures with Indonesian companies before participating in government-invested projects.

3.10.3 Distribution

Foreign investment is not allowed to enter the distribution and retailing sector unless they enter into a partnership agreement with small-scale Indonesian enterprises.

3.10.4 Audio-visual services

Foreign film and audio-visual distributors are not allowed to set up branches or subsidiaries in Indonesia. The Indonesian Film Law provides that the importation and distribution of foreign film can only be conducted by domestically funded Indonesian companies. Besides, duties, taxes, licensing, and other required payment also act as barriers to the importation of films.

3.10.5 Legal services

Legal practitioners in Indonesia must be Indonesian citizens graduated from Indonesian universities or from universities recognized by the Indonesian government. Foreign lawyers can only provide legal consulting service upon approval of the Indonesian Ministry of Justice and Human Rights. Foreign law firms must establish partnership with Indonesia law firms before access is granted to the Indonesian market.

3.10.6 Accounting services

Foreign firms cannot practice under the names of international firms, although terms such as 'in association with' are permissible and can only operate through technical assistance arrangements with local firms. Besides, foreign agents and auditors may act only as consultants and cannot sign audit reports. Licensed accountants must hold Indonesian citizenship.

3.10.7. Transportation

Foreign participation is forbidden in domestic public transportation such as taxi, bus and internal marine transport.

3.11 Inadequate protection of intellectual property rights

Piracy of software, audio-visual products and books is rather serious in Indonesia. Infringement of drug patents happens frequently. According to incomplete statistics, over 80 Chinese trade marks have been registered by squatting. As there is no trade mark dispute settlement system, victims of trade mark squatting could only file lawsuits in pursuit of legal remedies, which is very costly. The Chinese side is concerned about the inadequate protection over the intellectual property rights of Chinese famous products in Indonesia.

3.12 Irrational IPR protection measures

According the Patent Law of Indonesia, inventors of new products can only apply for patent in Indonesia after the relevant production is carried out in the country.

3.13 Others

Chinese firms complain that additional expenses are incurred when applying for business license and permits. Besides, employees of Chinese companies in Indonesia encounter extraordinary delay in their visa and long-term working permit application, as well as entry/exit inspection.

4. Barriers to investment

4.1. Barriers to investment access

Restricted sectors for foreign investment in Indonesia include infrastructure such as port, power station, railway, and medic-care services with foreign ownership limited to 95% as well as air transport and telecommunications with foreign ownership limited to 49%.

Foreign investment is forbidden in the following sectors: drug planting and processing, alcohols and alcoholic beverages, explosives, production of chemical weapons and components, mining of uranium and other radioactive substances, gambling and lottery business, development of forests, mahogany processing, production of environmental-threatening chemical agents (poisonous pesticide, poisonous production technique), breeding precious species, operating natural forests, deforestation, etc.

Foreign investors are allowed to be engaged in fishing, fish raising and printing of securities once they obtain the permits from the Indonesian government.

4.2. Business operation barriers

According to Article V of Chapter III of the Regulation on Commercial Institutions, wholesalers can employ a maximum of 10 foreign experts or managerial staff, and for the employment of one foreign expert or manager, no fewer than 3 local Indonesians shall be employed. Foreign employees must be university graduates or hold the same academic degrees as their Indonesian colleagues and have at least 3-year work experience in the technical field he/she is to be employed for. Article VII of the same chapter provides that retailers can employ no more than 3 foreign employees, subject to the same above-mentioned qualification requirements. In addition, each foreigner working in Indonesia, regardless of the sector she or he is working for, shall pay US$100 monthly as DPKK.

In August 2003, the Indonesian Ministry of Education announced that about 30,000 foreigners currently working or studying in Indonesia shall take a test on the Indonesian language. Those who fail shall not get the working visa and will be required to take Indonesian language courses organized by the government. The measure poses a kind of restriction on foreign companies operating in Indonesia.

Currently, Indonesia conducts the Economic Need Test on professionals and managerial staff as a means to restrict and ban the use of foreign labor. Therefore, 16 WTO members including China strongly urge the Indonesia government to open the labor market.

4.3. Exit barriers

Article VII of the Investment Regulations promulgated in 1994 provides that wholly foreign-funded firms shall remise part of its share holding rights to Indonesian residents 15 years after its establishment through direct transactions or through the security market.

Vietnam

1 Bilateral trade and investment

According to customs statistics in China, the bilateral trade volume between China and Vietnam in 2004 climbed by 45.3% over the previous year to total US$ 6.74 billion, among which China's exports to Vietnam accounted for US$ 4.26 billion, up 45.5%, while China's imports from Vietnam surged by 70.4% to reach US$ 2.48 billion. China had a surplus of US$ 1.78 billion in trade with Vietnam. China mainly exported to Vietnam processed oil, machinery and equipment of various kinds, textile products, garments and accessories, grain and grain powder. China's imports from Vietnam included, among others, crude oil, fruits, natural rubber and coal.

According to China's Ministry of Commerce (MOFCOM), the volume of the newly signed engineering contracts, labor service cooperation contracts, and designing and consulting contracts by Chinese companies in Vietnam added up to US$ 460 million in 2004, with a turnover of the completed contracts running into US$ 300 million and a total number of 8,729 Chinese working under those contracts in Vietnam by the end of the year. Specifically, the volume of the newly signed and the completed engineering contracts came out at US$ 440 million and US$ 280 million respectively; the volume of the newly signed and the completed contracts of labor service arrived at US$ 8.51 million and US$ 8.30 million respectively; the volume of the newly signed and the completed contracts of designing and consultancy services stood at US$ 13.02 million and US$ 7.51 million respectively.

Upon the approval or on the record of MOFCOM, 19 Chinese-funded non-financial enterprises were established in Vietnam in 2004, with a contractual investment of US$ 19.90 million from the Chinese investors. By the end of 2004, a total of 109 Chinese-invested non-financial companies had been set up in Vietnam, with the contractual investment amounting to US$ 110 million.

2 Vietnam's trade and investment regime

2.1 Legislation on trade and investment

The major laws pertaining to trade and investment in Vietnam include the Law on Accounting, the Law on Statistics, the Ordinance on Food Safety and Hygiene, the Ordinance on Protection of Domestically Developed New Plant Varieties, the Ordinance Against Dumping of Imported Goods into Vietnam, the Ordinance on Measures Against Subsidized Goods Imported into Vietnam, and the Law on Foreign Investment.

2.2 Trade administration

2.2.1 Tariff administration

In July 2003, Vietnam's Ministry of Finance released a new tariff schedule, listing 10,721 tariff lines, which is based on the Harmonized Commodity Description and Coding System (HS) by the World Customs Organization and the AESEAN Harmonized Tariff Nomenclature (AHTN).

Currently, Vietnam administers four different categories of tariff rates: (1) the most-favored-nation-status tariff rate, applying to imports from 80 countries with a bilateral trade treaty with Vietnam, (2) ASEAN-specific preferential tariff rate, applicable to imports from ASEAN member countries, and (3) common tariff rate, which is 50% higher than the most-favored-nation-status tariff rate, applying to those countries which have not established normal trade relationships with Vietnam, and (4) the Early Harvest Program (EHP) tariff rate under the framework of China-ASEAN Free Trade Area, applicable to the major products of Chinese origin originated in China listed in chapters 1 to 8 of the Harmonized Commodity Description and Coding System.

2.2.2 Import and export administration

According to the Decision on Imports and Exports Administration for 2001-2005 Period issued by the Vietnamese government in April 2001, Vietnam adopts a pigeonhole system on the administration of imports and exports, including banned imports and exports, imports and exports subject to licensing by the Ministry of Trade, and imports and exports subject to the administration of professional associations.

Specifically, products forbiddedn from importing into Vietname mainly includeincluding arms and ammunitions; narcotics; poisonous chemicals; reactionary cultural materials; fireworks; tobacco products; second-hand consumables; right-steering-wheeled vehicles; second-hand materials and vehicles; products and materials containing asbest; special cipher and encryption software for the protection of state secrets.

Products that are not allowed to be exported out of Vietnam chiefly include arms, ammunitions, explosives, and other military equipment and devices; narcotics; poisonous chemicals; antiquities,; logs and converted timber from domestic natural forests, wood, lumber and charcoal made from domestic natural forests,; wild animals and rare animals,; special ciphers and encryption software for the protection of state secrets.

Since 19 May 2004, Vietnam has applied customs valuation based on transaction pricing to goods of Chinese origin.

a) Investment administration

In March 2003, Vietnam promulgated the amended Implementation Rules for the Law on Foreign Investment, further liberalizing foreign investment in Vietnam. According to the above regulation, investment registration regime applies to investment projects that export 80% of products, invest in an encouraged or specially encouraged project located in an industrial zone, or belong to the manufacturing sector with up to US$ 5 million invested capital. Projects that satisfy any of the above three conditions do not need licensing.

2.3 Investment promotion policies

According to Vietnam's Regulations on High-Tech Zones (HTZs), as from 2004, various preferential treatment policies are provided to investors in HTZs with respect to land, corporate income tax and personal income tax.

2.3.1 Taxation on investment

According to the Law on Corporate Income Tax as amended in 2004, a single corporate income tax rate of 28% applies to both domestic and foreign enterprises in Vietnam, although preferential rates of 20%, 15%, and 10% will still be available. In addition, preferential treatment in the reduction or exemption of corporate income tax is provided to enterprises located in industrial parks, export processing zones and economic zones as well as enterprises investing in a specially encouraged project.

Since 1 January 1st 2004, no duties are imposed on the transfer abroad of investment returns by overseas Vietnamese and foreign nationals residing in Vietnam. At the same time, the highest level of personal income tax on foreign citizens has also been reduced; foreigners in Vietnam for less than 183 days are deemed to be non-residents and subject to a fixed rate of 25%.

2.3.2 Restricted and prohibited investment sectors

In accordance with the revised Implementation Rules for the Law on Foreign Investment, Vietnam shifted from the investment licensing regime towards an investment registration regime. According to the above regulation,
(1)Sectors where foreign investment is subject to restriction include: (A) Vietnamese monopolized businesses where foreign participation is only allowed by means of contractual cooperative operation and/or joint operation; (B) the production and processing of dairy, plant oil, cane sugar, and timber; (C) importation, domestic distribution, and high sea fishing.
(2)Sectors where foreign investment is prohibited include: projects threatening national security, national defense and public interests; projects damaging Vietnamese historic relics, culture, traditions and customs; projects damaging ecological environment; projects processing imported toxic wastes; projects for producing toxic

chemicals or using toxic substances banned by international conventions.

2.4 Competent authorities

The major government bodies responsible for the administration of trade and investment in Vietnam include the Ministry of Trade, the Ministry of Finance, the Ministry of Planning and Investment, the Ministry of Agriculture and Rural Development, the Ministry of Culture and Information, the Ministry of Post and Telecommunications, the Ministry of Science and Technology, and the Vietnamese National Bank.

In 2004, the Vietnamese government expanded the authorities of the Ministry of Trade. In addition to the administration of foreign trade, the Ministry of Trade is also responsible for supervising domestic transportation of goods, activities in import and export, electronic businesses, domestic market, fair competition, anti-monopoly and anti-dumping, providing relevant information to business associations, and representing the national assets owner in state-owned enterprises. The Trade Ministry also takes on some of the responsibilities previously belonging to the Customs Head Office and has the authorities to determine the qualifications of enterprises for receiving preferential treatment such as reduction or exemption of taxation. The State Intellectual Property Bureau under the Ministry of Science and Technology is responsible for the formulation and revision of the procedures of the transfer of intellectual property rights as well as handling disputes in intellectual property rights.

The Ministry of Planning and Investment is the central authorities in attracting foreign investment and supervising Vietnamese investment abroad, and the Foreign Investment Bureau under the Ministry of Planning and Investment is specifically entrusted with the task along this line.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

In 2004, the most-favored-nation nonweighted average tariff rates in Vietnam stood at 29.37% for agricultural products and 17.03% for non-agricultural products. According to the Early Harvest Tariff Reduction Program (EHP) signed between China and ASEAN, Vietnam has cut its tariff rates by an average 10% for 484 categories of poultry and aquatic products of Chinese origin, among which import duties for 376 categories of products have been reduced from the previous levels of under 15%, 15% to 30%, and over 30% to the current levels of 5%, 10%, and 20% respectively since 1 January 2004. These products involve eggs, sea products, mushrooms, eider down, fresh fruits and chicken. However, the higher most-favored-nation rates still apply to other categories of products imported from China.

3.1.1 Tariff peak

As is indicated in the tariff schedule published by the Vietnamese government in 2004, Vietnam still maintains high import tariff for most goods, for example, 30% for vegetables, 50% for tea, 40% for rice, 30% for cereal flour, 40% for sugar, 30% to 50% for chocolate, 50% for processed cereal flour, 50% to 100% for alcoholic and non-alcoholic beverages, 30% to 100% for tobacco, 30% for salt, 40% for cement, 30% for paint, 50% for cosmetics, 50% for soap, 20% to 40% for fireworks, 40% for synthetic resin floorings, 40% to 50% for kitchen and bathroom utensils, 40% to 50% for certain rubber tires, 40% for synthetic leather products, 30% to 50% for fur products, 40% for certain wood products, 40% for knitwear, 30% to 50% for certain categories of paper, 40% to 50% for textile products, 50% for clothing, 50% for footwear, 40% to 50% for certain caps and hats, 40% for umbrellas and walking sticks, 30% for stone materials, 30% to 50% for certain ceramics, 30% to 60% for certain glassware.

3.1.2 Tariff escalation

As from 1 January 2004, Vietnam has raised import duties on whole-set motorcycles from 60% to 100%. Moreover, tariff on the imports of motorcycle components has also been significantly increased. Chinese companies complain that under the current Vietnamese tariff policies, the rate on Vietnamese imports of motorcycle components of Chinese origin bears an inverse relation to the level of localization of production of motorcycles. For example, if the local production of motorcycle components is 20%, import duties on the remaining 80% of components will be 60%; however, if the local production of motorcycle components reaches 80%, the rate for the other 20% of components will be a mere 5%. Tariff escalation based on the level of local production dulls the edge of the competitiveness of Chinese exports of motorcycles and their components.

In Vietnam, it is also a common practice to raise tariff rates with the increase in the level of processing. For example, the rate for soybean oil is 5%, refined oil 50%; unprocessed tobacco leaves 30%, cigarettes and cigars 100%; fur materials 0, fur products 30% to 50%; wood materials 0 to 5%, wood products (kitchen utensils, tools and furniture) 30% to 40%; silk 5% to 15%, silk textile products 40%; wool 0 to 20%, wool textile products 40%; cotton and cotton yarn 0 to 20%, cotton textile products 40%; fiberflax 0, linen 40%; synthetic silk 0, synthetic silk textile products 40%.

3.1.3 Tariff quotas

Under the circular of Vietnam's Ministry of Trade, from 1 January 2004, import quotas apply to seven categories of commodities in total – raw tobacco, salt, cotton, condensed milk, non-condensed milk, maize seed, and poultry eggs.

3.2 Quantitative restrictions

In Vietnam, imports of the following products still remain subject to quantitative restrictions: sugar, petroleum products, cement and clinker, some common chemicals, chemical fertilizer, paint, tubes and tires, paper, silk, ceramics, construction glass, construction steel, certain engines, certain automobiles, motorcycles, bicycles and parts, ships and vessels.

Vietnam has, for a long time, used various restrictive measures on the imports of motorcycles. Since 2003, Vietnam has lifted quota on motorcycle components imported by domestic-invested whole-set motorcycle assembly companies, but still maintains quota administration over imported components by foreign-invested motorcycle assembly companies on the basis of their approved production volume. This measure severely restricts the quantity of the imports of motorcycle components, thus impeding the exports of motorcycle components and parts from China into Vietnam.

Currently, the Vietnamese government still puts seven key products, namely, petroleum, glass, iron, vegetable oil, sugar, motorcycles, and nine-seat motorized vehicles, on the mandatory import license list.

Vietnam does not accord foreign-invested enterprises national treatment as regards import licenses. Vietnamese enterprises are entitled to import in accordance with the business lines prescribed in their business registration certificates, and are not required to apply for an import license, except when the imported goods are prescribed by the Ministry of Trade as requiring a non-automatic import license. However, according to the Law on Foreign Investment, foreign-invested enterprises are only permitted to import the following: (1) goods for the purposes of adding to their fixed assets, and (2) raw materials for production and business, subject to the approval of an import plan. In its bid for accession to the WTO, the Vietnamese government is currently considering the drafting of a law to liberalize import regulations relating to foreign-invested enterprises in Vietnam. The proposed law will allow foreign-invested enterprises to import spare parts, components and raw materials for production without the government’s approval, as allowed for domestic firms. China is watching closely the enacting process of the proposed law.

3.3 Discriminatory excise taxes on imports

According to the Law on Special Sales Tax, excise tax reduction and exemption for car assembling enterprises are subject to a phasing out schedule from 2004 to 2007. However, Vietnam currently applies fairly high excise taxes on a number of imports including automobiles and tobacco products, and the excise taxes can be as high as 100% for some automobile products. Such a taxation system has led to differential treatments to imported products and domestic products, thus eliminating the competitiveness of products imported from China in the Vietnamese market.

3.4 Technical barriers to trade

Vietnam's Ministry of Science and Technology publishes a list of imports and exports requiring mandatory quality inspection. Importers and exporters of the products on the list must subject their products to inspection and obtain a permit from the government agencies (such as the Ministry of Public Health, the Ministry of Agriculture and Rural Development, the Ministry of Industry, the Ministry of Fishery, and the Ministry of Science and Technology) at the time they go through customs. In the inspection, some products are subject to national standards, some are subject to regulations of the functional agencies, and some are subject to both. China is very concerned with the transparency of theVietnam's mandatory quality inspection system.

In February 2004, the Ministry of Science and Technology promulgated relevant regulations on quality control of the production and assembly of two-wheeled motorcycle engines, spare parts and components, both domestically made and foreign imported. According to the regulations, Vietnamese importers can only import motorcycle components and parts from enterprises which have been awarded with an ISO9000 or QS9000 certificate. Therefore, foreign enterprises intending to export whole-set motorcycles, engines, parts and components must present a certificate or document that meet the Vietnamese quality standards. China is watching with great concern the enforcement of the new regulations.

3.5 Trade remedies

In 2003, the Vietnamese government issued a decision, providing specific implementation rules for Self-Protection in Import of Foreign Goods into Vietnam. According to the decision, in case of excess of imports, Vietnam is entitled to resort to the following seven self-protection measures: raising import tariff rates, using import quotas, using tariff quotas, imposing absolute taxes, granting import licenses, levying supplementary taxes. China hopes that the decision of the Vietnamese government will be consistent with the relevant WTO agreements.

The Anti-dumping Law and the Countervailing Duties Law were promulgated in Vietnam on 29 April 2004 and 20 August 2004 respectively. So far, no anti-dumping and countervailing duties investigations have been lodged against Chinese exports.

3.6 Export restrictions

Vietnam imposes export duties on a number of natural resources and related products, the export rate on scrap metals beingrunning as high as 45%.

In June 2004, the Ministry of Trade demanded that all enterprises dealing in rice should register their rice export contracts at the Vietnam Food Association to ensure that the export of rice for 2004 would not exceed 3.50 million tons.

On 25 January 2005, the General Customs Bureau of Vietnam's Financial Ministry of Vietname issued a document, announcing the request for customs clearance procedures for the export of primary mineral products would not be accepted for the time being.

3.7 Subsidies

Export subsidies in Vietnam include direct tax reduction and exemption, deduction of loan interest taxes, direct financial support, export incentives, and reimbursement of losses (for enterprises exporting rice, pork, coffee, canned vegetables, canned fruits, pottery and porcelain).

In December 2003, the Vietnamese government issued a decision to develop export market in 2004-2005. According to the decision, direct financial support and export incentives are to be reduced and limited, and to be eventually replaced with long-term credit for suppliers of raw materials for the production of exports and with export credit to importers of Vietnamese goods. However, in 2004, Vietnam provided 200 billion Dong's (about US$ 13 million) worth of export incentives to Vietnamese exporters of large amounts of goods, 12.6 times that of the previous year.

3.8 Barriers to trade in services

3.8.1 Banking

According to the Ordinance on the Amendment and Supplement to the Law on Credit Organizations effective as from 1 October 2004, foreign commercial banks may, upon approval, establish joint venture banks (foreign investment not exceeding 50%), branch offices and representative offices, as well as solely foreign-funded banks in Vietnam.

According to the relevant regulations, branch offices of a foreign-invested bank (except the US banks) may, as from October 2003, conduct savings business with clients having no credit relations with the bank, but the savings shall no exceed 50% of its registered capital.

3.8.2 Securities

Foreign securities business organizations have not been permitted for the cross-border supply of securities-related services in Vietnam.

According to the relevant regulations, foreign securities business organizations may invest in securities companies and fund management companies, subject to restriction of foreign capital ratios: foreign shareholdings in listed domestic shareholding companies shall not exceed 30%, and foreign capital in foreign invested securities companies and fund management companies shall not exceed 49%.

3.8.3 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.

According to the relevant regulations, a foreign construction contractor must be issued with a contractor's permit in order to operate in Vietnam. In all cases, a foreign contractor must have a partnership with a Vietnamese contractor or must engage a Vietnamese sub-contractor so as to be granted such a permit.

According to the relevant 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 sub-contract 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.

3.8.4 Post and telecommunications

Network infrastructure is not yet opened for foreign competition in Vietnam. Vietnam Post (VNP) retains its monopoly over the public post network throughout Vietnam, and other enterprises are permitted to engage in domestic and international post delivery only. All foreign invested enterprises are excluded from engaging in domestic post delivery.

3.8.5 Distribution

Foreign participation in Vietnam's distribution sector is currently restricted. According to the relevant regulations, foreign direct investment in the import and distribution sectors is subject to the condition that it must be implemented in accordance with separate regulations, but no such separate regulations have yet been issued. To date, foreign investment licenses in the distribution sector have been granted on a case-by-case basis.

3.8.6 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, which means a higher freight costs for foreign exporters. 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.

3.9 Inadequate intellectual property protection

Trademarks of Chinese products generally fail to be effectively protected in Vietnam. In 2004, the trademark of China's Chongqing Longxing Motorcycle Company was viciously registered in Vietnam without its knowledge, and the company sent its team to Vietnam to try to solve the issue, but even after a prolonged stay of two months in Vietnam, no results had been produced. China is increasingly concerned with the adequate protection of intellectual property rights of Chinese companies operating in Vietnam.

3.10 Others

The Vietnamese trade authorities tend to interfere in trade activities by issuing various official resolutions, decisions and circulars, and Vietnam's trade policy lacks predictability, which disturbs the normal business of Chinese enterprises in Vietnam. For example, in March 2004, the rate of tariff on iron and steel was reduced temporarily to zero; on 1 July 2004, import duties on iron and steel products were increased, levying a 20% and a 10% customs duty on imports of construction steels and ingots from non-ASEAN countries respectively; and in September 2004, the Vietnamese government decided that import duties on iron and steel were to be cut again by the end of the year. The frequent adjustments and readjustments in tariff by the Vietnamese authorities have increased business risks for Chinese exporters.

Chinese businesses often complain that the Vietnamese government usually promises various kinds of investment incentives in the drive to attract foreign capital and investment, but the competent Vietnamese authorities often fail to deliver those promises after Chinese enterprises have invested in Vietnam. Such a practice affects the interests of Chinese enterprises investing in Vietnam, with which China is very concerned.

4. Barriers to investment

4.1 Barriers to investment access

Although Vietnam has switched its licensing system to a registration regime in some investment projects and reformed its licensing process such as the introduction of the "one-stop service window" for the simplification of licensing procedures, these measures have not, to date, produced the intended results. The licensing process is still very exacting and time-consuming. In addition, frequent adjustments in local policies tend to make foreign investors feel a lack of predictability in their policies.

In the automobile industry, it is stipulated that no new foreign invested automobile assembling projects be approved unless all the products are for exports. However, domestically invested enterprises are not subject to this restriction.

The Implementing Regulations for the Law on Foreign Investment provides that prospecting, exploiting and processing mineral resources are an encouraged area for foreign investment. However, Chinese companies having invested in this area have encountered many difficulties in their operations: the licensing process for projects in mineral resources exploitation is very complicated and lengthy, going step by step from the Ministry of Investment and Planning to the competent functional ministries and finally to the Prime Minister for approval; it is extremely difficult for foreign invested companies to be granted licenses in mineral mine exploitation, and the sources of mineral mines cannot be guaranteed. Because of this, Chinese funded companies cannot conduct any normal business.

4.2 Barriers to investment operations

The productive capacity of an enterprise producing or assembling motorcycles in Vietnam is decided neither by the market nor by the enterprises themselves; instead, it is decided by the approval from the government. The Vietnamese government directly interferes in the production of a motorcycle enterprise, requiring that principal machine manufacturer produce more than 20% of the motorcycle parts and components including the main frame, and that motorcycle engine manufacturer produce at least one of the eight components of a motorcycle engine.

Although the Vietnamese government has removed trade balancing requirements and foreign exchange controls, Vietnam continues to require foreign investors in the electronics, motorcycle, automobile, cane sugar, paper processing, vegetable oil, wood processing and milk sectors to use local content.

According to the relevant regulations, no more than 3% of the total number of employees in Vietnamese enterprises, including state-owned enterprises and foreign-invested 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 foreigners.

Vietnam has traditionally maintained its dual pricing system for foreigners and Vietnamese in areas such tourism, air flight, rail transportation, seaport charges, charges for television advertising, utilities such as electricity and water, intellectual property rights registration fees, and land use right charges. However, such a system is being gradually phased out as from 2004. Dual-pricing of domestic airfares has been scrapped as of 2004. Beginning 1 January 2005, a common electricity price schedule and a single registration fee for industrial property apply to both Vietnamese and foreigners. The fee level of testing and checking medicinal products, medical samples, materials for making pharmaceuticals and cosmetics willis expected to be uniform for foreigners and local Vietnamese. China hopes that Vietnam will speed up the process of ending the dual pricing system.