Foreign Market Access Report：

2006

Ministry of Commerce

People’s Republic of China

Foreword

The year of 2005 witnessed a rapid development of China's foreign trade. According to the Chinese Customs, China's foreign trade volume reached US$1422.12 billion in 2005, up by 23.2%, among which China's export was US$762.0 billion, up by 28.4%, while China's import was US$660.12 billion, up by 17.6%. The trade surplus in 2005 was US$101.88 billion, up by 217.4%. 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 2005, Chinese non-financial overseas investment reached US$6.92 billion, up by 25.8%. By the end of 2005, the accumulated overseas direct investment of China was about US$43.72 billion. The volume of completed labour service cooperation contracts was US$4.8 billion in 2005, up by 27.5%, and that of the newly signed labour service cooperation contracts was US$4.25 billion, up by 21.2%; Approximately 274,000 Chinese laborer and professionals were expatiated abroad in other countries or territories, representing an increase of 26,000 people..

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 Ministry of Commerce (MOFCOM), a total of 18 countries and regions initiated 63 anti-dumping, countervailing, safeguard and product-specific safeguard investigations against Chinese products. The total value related to these cases is US$2.1 billion; Seven investigations were initiated pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §1337, against Chinese products, the total value related to these cases is US$1.2 billion; Two products were subject to anti-trust investigations, the total value related to these cases is US$170 million. 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.

With China's expanding share in the global market, for a quite long period in the future, Chinese companies will be confronted with an increasingly challenging international trade and investment environment.

The Report is complied in the course of enabling Chinese enterprises and relevant organizations to have better knowledge on the trade and investment regimes, and practices of China's main 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 international competition on equal footing. It also aims at maintaining an 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 and investment. In accordance with relevant provisions of the Foreign Trade Law and the Regulation on the Administration of the Import and Export of Goods, MOFCOM is now publishing the Foreign Market Access Report:2006.（hereinafter referred to as "the Report"）

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 2005 provided by the Chinese Customs, the Report covers 25 trading partners of China, including, Egypt, Algeria, Kenya, South Africa, Nigeria, Saudi Arabia, Turkey, Kazakhstan, 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 71.2% of China' s total export in 2005.

II. Sources of information and content

The Report is based upon information compiled within Chinese central government agencies, local competent authorities for foreign trade, Chinese Commercial Counselor' s Offices abroad, 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;
- Barriers to Customs procedures, e.g. procedural obstacles in customs clearance, unjustified charges on imports;
- Discriminatory taxes and fees on imported goods;
- Technical barriers to trade, e.g., unjustified technical regulations and standards applied to imported products, complicated certification and conformity assessment procedures;
- Sanitary and phytosanitary measures, e.g., unnecessarily strict quarantine requirements and procedures applied to imported products;
- Trade remedies, e.g., unfair anti-dumping measures imposed on imported products, insufficient transparency in investigation procedures of trade remedy, in particular the abusive application to Chinese enterprises of measures designed for non-market economy;
- Government procurement, e.g., insufficient transparency, violation of

most-favored-nations clause;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Others

The Chinese Government respects and maintains the trade and investment system as advocated by WTO, and would develop partnership with all the WTO members and other parties based on the principle of friendly mutual benefit, mutual development. It is advocated that trade disputes and common concerns should be tackled with respective parties through 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

Algeria

1 Bilateral trade relations

According to China Customs, the bilateral trade volume between China and Algeria reached US$1.76 billion in 2005, up by 42.7%, among which China's export to Algeria was US$1.4 billion, up by 43.3%, while China's import from Algeria was US$360 million, up by 40.4%. China had a surplus of US$1.04 billion. China mainly exported mechanical appliances and accessories thereof, machinery and electronic products, vehicles and parts and accessories thereof, iron and steel products, clothing and accessories thereof, rubber and articles thereof, footwear, ceramic products, plastic and products thereof. The major imported products of China from Algeria included mineral fuels, plastic and products thereof, cork and articles of cork, copper and articles thereof, raw hides and skins (other than furskins) and leather.

According to the Ministry of Commerce (MOFCOM), the turnover of engineering contracts completed by Chinese companies in Algeria reached US$1.05 billion in 2005, and the volume of the newly signed contracts was US$1.83 billion. The volume of completed labour service cooperation contracts was US$10.71 million, and that of the newly signed labour service cooperation contracts was US$3.77 million. The turnover of finished designs and consultations was US$4.21 million, and that of the newly signed contracts was US$7.66 million.

Approved by or registered with the MOFCOM, 5 Chinese-funded non-financial enterprises were established in Algeria in 2005, with a total contractual investment of US$5.6 million.

According to the MOFCOM, Algeria investors invested in 7 projects in China in 2005, with a contractual investment of US$3.78 million and an actual utilization of US$1.01 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

Algeria's laws and regulations governing trade and investment mainly include Customs Law, Foreign Investment Law, Trade Law, Business Law, Trademark Law, Phytosanitary and Sanitary Control Regulations, Labor Law, Tax Law, Public Contract and Public Procurement Law, Currency and Credit Law, Banking and Insurance Law, and Anti-smuggling Law. Every year, the Algerian Ministry of Finance publishes finance acts and supplementary acts thereof to provide supplements or modifications for regulations relating to trade, tax and investment.

To meet the needs of Algeria's accession into the WTO, in May 2005, three administrative rules on implementing guidelines for laws of anti-dumping, countervailing and safeguard measures were passed at the Algerian Cabinet meetings. The three rules are aimed to regulate import and export behavior and strengthen protection of domestic products while opening the Algerian market.

In July 2005, the Algerian Ministry of Finance published the 2005 Supplementary Finance Act, which stipulates that only legal persons with a minimum registered capital of 20 million dinar (approximately RMB2.2 million) are allowed to conduct import and distribution. The aim of the act is to punish tax evasion and regulate the domestic import market.

In August 2005, at the Algerian Ministers' meetings, the Capital Investment Company Act was passed after examination. The new act aims at improving economic activities and investment modes by encouraging businesses and individuals to invest their idle capital and assist enterprises in their fund-raising for production expansion.

2.2 Trade administration

2.2.1 Tariff system

The Algerian Customs apply three levels of basic tariff rates: 5%, 15% and 30%. To protect domestic industry, a *droit additional provisoie* (DAP) is imposed on imports that can be produced domestically. As of 2001, the Algerian government began to cut the DAP rate by 12% annually, and it is due to be phased out by 2006. In 2005, the DAP rate stood at 12%.

Based on the resolution of the 69th session of the Economic and Social Council of the League of Arab States, Algeria has started on January 1 2005 to open its trade in goods with other Arab countries, remove all duties on goods traded among Arab countries, terminate restrictive regulations on agricultural projects prescribed in previous bilateral agreements signed between member countries, and fully open its trade in agricultural products. Meanwhile, requirements for certificates of origin, and other relevant invoices and documents authenticated by Arab embassies and consulates were abolished.

2.2.2 Import administration

Algeria exercises a free trade policy. There is no state monopoly on foreign trade. Import quota licenses have been abolished. Both state-owned enterprises and private enterprises are allowed to conduct import and export. There are essentially no restrictions on imports. Foreign investors are allowed to set up trade companies to conduct import, export and domestic trade.

Pork products are prohibited in Algeria for religious reasons and specific testing and labeling are required for imports of other meats. Additionally, there is a mandatory requirement in Algeria that imported products, particularly consumer goods, must be labeled in Arabic.

Algeria opened its market to imports of pharmaceutical products in late September 2005. Imports of pharmaceutical products by public health organizations need to follow relevant technical instructions and regulations. Dispensaries of hospitals or medical organizations are responsible for import of pharmaceutical products for their own use. All imported pharmaceutical products must be registered with the relevant medical care administration.

2.2.3 Export administration

In Algeria, exports of palm seedlings, sheep and historical and archaeological artifacts are restricted. Exports to Israel are prohibited. In order to boost non-hydrocarbon exports, the Algerian government has formed the Algerian Export Insurance and Guarantee Company and created the Export Promotion Fund.

2.3 Investment administration

Algeria encourages foreign investment and grants national treatment to foreign enterprises. The Algerian Foreign Investment Law stipulates that nationals and non-nationals enjoy the same preferential policies when setting up companies in Algeria.

Foreign investors can make direct investment by establishing a factory as well as participating in an established company in the public service sector in Algeria. The Foreign Investment Law guarantees that foreign investors can remit their profits out of the country. Additionally, foreign investors of major investment projects can negotiate with the Algerian government for preferential policies or better terms. The Algerian government can grant further preferences to the project based on its specific situation.

According to the Law on Examination of Industrial Assembly and Production, approval from the Algerian Ministry of Industry is required for conducting the industrial assembly and assembly production in Algeria.

2.4 Competent authorities

2.4.1 Competent authorities governing trade

In Algeria, the main authorities governing trade include Ministry of Trade, Algerian Customs, Algerian National Tax Bureau and Algerian Business Registration Center.

The Algerian Board for the Promotion of External Trade (PROMEX), an organization affiliated to the Algerian Ministry of Trade, is responsible for administering the export of non-hydrocarbon products. The National Export Promotion and Consultation Committee, under the supervision of the Algerian Prime Minister, is primarily responsible for formulating export strategy of non-hydrocarbon products, evaluating this strategy, and advising the government on organizations, legislation and regulations relevant to non-hydrocarbon products.

2.4.2 Competent authorities governing investment

The main authorities governing investment in Algeria include National Investment Development Agency (ANDI), National Investment Council (CNI) and Ministry for Participation and Investment Promotion (MPPI).

ANDI, together with other relevant authorities and organizations, is responsible for promoting, developing and supervising the investment.

Under the direct supervision of the Prime Minister, CNI is in charge of putting forward the development strategies of investment and suggestions of priorities, proposing investment incentive measures to meet changing circumstances, as well as establishing financial institutions and developing measures to serve the purpose of attracting and encouraging investment.

The main functions of MPPI include coordinating the on-going privatization of state-owned enterprises and its process of sharing, as well as studying and proposing suggestions on policies of investment incentives.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

The average tariff rate of Algeria is 18.7%. High rates, at a level of 30%, are applied to food, beverages, tobacco, and consumer goods. Tariff escalation exists in Algeria. Usually a 5% rate is levied on raw materials, while a 15% rate is imposed on semi-finished products and a 30% rate is on finished products.

3.2 Barriers to customs procedures

3.2.1 Customs valuation

In order to prevent tax evasion by importers, the Algerian Customs requires that imports from certain countries including China be sent to the General Customs Administration for valuation. Since this requirement was implemented, there has been a considerable increase of cases that goods from China were opened by the Customs for inspection. This has resulted in delays of customs clearance and certain seasonable commodities have missed the sales season. Therefore, Chinese export companies have suffered losses, over which the Chinese side expresses concern.

3.2.2 Regulations on return or transshipment of port-stranded goods

According to the regulations of the Algerian Customs, to return or transfer goods originally intended for exportation to Algeria, a certificate of rejection from the consignee or the notifying party on the bill of lading needs to be presented, without which no person (neither the owner nor the exporter) is entitled to return or transfer the goods. In trading with Algeria, an exporter usually makes delivery to an Algerian importer after receiving a certain amount of down payment or advance payment. If the importer rejects the goods or is unable to pay the rest of the amount in a timely manner when the goods arrive at port, for which the importer refuses to write a certificate of rejection, neither the owner nor the exporter of the goods is entitled to return or transfer the goods.

As this regulation makes the certificate of rejection from the consignee a prerequisite for goods to be returned or transferred, if a situation described as above occurs, the imports will be confiscated and put on auction by the Algerian Customs after a period or sold to the importer at a lower price before confiscated. Therefore, the exporter will suffer severe economic losses. Such requirement is obviously unreasonable, and endangers the exporter' s interests.

In addition, even if the exporter can obtain a certificate of rejection from the importer, he has to go through the complicated import and re-export procedures again by submitting relevant documents through a local company.

Chinese enterprises have encountered this problem on several occasions, and none of these cases have been settled properly and satisfactorily. The Chinese side expresses concern over this issue, and hopes that Algeria will soon remove the unreasonable requirement so as to protect the justified interests of exporters.

3.3 Sanitary and phytosanitary measures

According to relevant Algerian regulations, the tolerance of aflatoxin content in peanuts should be not more than 15PPB, and the number of mould should be not more than 100 per gram. According to the standards set by the UN Food and Agriculture Organization, the total number of mould for nuts should range from 100-10000 per gram. Algeria has discretionally only adopted the lower limit of the international standard, and its definition of mould and applicable foodstuff are too vague. There is a great variety of mould, and only part of them imposes hazards to human health. Most countries distinguish clearly the deep-processed ready-to-eat food from raw food when defining mould tolerance. Algeria' s general and undefined requirement on mould tolerance lacks scientific grounds. The Chinese side expresses concern.

3.4 Barriers to trade in services

3.4.1 Project bidding

When inviting tenders for engineering projects, the Algerian government usually requires that foreign bidders provide financing plans or that they bring capital to join the projects or make investment. Those who fail to meet the requirements are usually not awarded the project.

3.4.2 Visa

Algeria has a lengthy and complicated procedure to handle working visa applications filed by technical staff working on engineering projects. To get such visa, an applicant must go through five levels of authority including the Algerian project manager, the local labor department, the Ministry of Labor, the Foreign Ministry and the Algerian Embassy in China. The time-consuming procedure, which takes two to three months, has affected the normal business of Chinese companies.

In addition, when a foreign employee applies for a long-term working visa, a document of approval issued by the relevant Algerian department to his employer is required. On arrival in Algeria, he also needs to apply for a Labor Card from the local labor department, which is quite inefficient in handling such applications. All these have created an unfavorable environment for China to provide labor services in Algeria.

4 Barriers to Investment

4.1 Barriers to investment access

The 2003 Algerian Finance Act stipulated that as of January 1 2003, the minimum requirement for registered capital of an import trade company would increase from 100 thousand dinar to 10 million dinar. In July 2003, Algeria published a law governing the general principles of import and export business, which reintroduced the 100 thousand dinar minimum requirement for registered capital. In July 2005, Algeria published the 2005 Supplementary Finance Act, which again raised the requirement to 20 million dinar, effective from December 26 2005. According to the new act, if importers fail to meet the requirement, their business licenses will be invalidated. This policy has affected many Chinese trade companies in Algeria as most of them have a registered capital of 100 thousand dinar. Inconsistency of investment policy will affect operation of foreign investment and investment confidence. China hopes that Algeria can keep its laws and policies consistent so as to reduce risks for investors.

4.2 Barriers to investment operation

Algeria does not allow foreign nationals to remit their business profits unless they have been doing business trade for 5 years or above in Algeria. Any violation of the regulation will result in confiscation of the profits.

Foreign employees in Algeria can transfer a portion of their salaries abroad (generally about 50%). Foreign investors are allowed to remit their profits within a certain period of time if they obtain official permission from the General Directorate of Exchange of the Central Bank. It is reported by relevant enterprises that it may takes longer than the period required by the law to acquire the permission, which is caused by the lower efficiency of the General Directorate of Exchange. Therefore, the interests of the investors would be harmed.

To prevent arbitrage, the Algerian Customs require that banks shall not remit payments to exporters before receiving a notice from the Customs confirming that importers have gone through customs clearance. This requirement is applied to imports from certain countries including China, and can cause delay in payment. Coupled with the strict restriction on return and transshipment of goods, these rules have greatly increased business costs to Chinese enterprises.

Additionally, foreign workers in Algeria are required to pay a variety of fees such as social security, which amounts to 48% of the total salary. As Chinese workers usually return to China after working in Algeria for one or two years, they are unable to enjoy those benefits. Meanwhile, the fees above mentioned have burdened the enterprises and affected their competitive ability.

Argentina

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Argentina in 2005 reached US$5.12 billion, up by 24.8%, among which China's export to Argentina US$1.32 billion, up by 55.5% and China's import from Argentina US$3.8 billion, up by 16.7%. China had a deficit of US$2.48 billion. Chinese exports to Argentina mainly included electro-mechanic equipment, chemicals and light industrial products; main imports included soybean, bean oil, crude oil, leathers, etc.

According to the Ministry of Commerce (MOFCOM), the turnover of completed engineering contracts by Chinese companies in Argentina recorded US$120 million in 2005, and the amount of the contracts signed in 2005 was US$11.34 million. The volume of completed labor service cooperation contracts was US$6.41 million, and that of the newly signed labor service cooperation contracts was US$3.57 million.

In 2005, 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$0.5 million.

On the other hand, according to MOFCOM, Argentine investment projects in China recorded 18, with contracted investment amounting to US$25.68 million, including paid-in capital US$10.89 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

Argentina's trade-related legislation mainly consists of its Customs Regulations, and acts and decisions governing export refunds, bonded zones' imports, trade remedies, and commodity inspection.

Argentina's legislation governing investment includes Executive Order No.1853/1993 issued in 1993, Foreign Investment Act No.21382 promulgated under the said Executive Order, and investment-related aspects of the Constitution of Argentina and the Business Association Law No. 19550.

2.2 Trade administration

Argentina acceded to the GATT, the predecessor of the WTO, as early as October 1967. Under the joint efforts of Argentina, Brazil, Paraguay, and Uruguay, MERCOSUR was formed in 1991. Argentina enjoys a considerably liberalized domestic market and has hardly any special restrictions in its trade with other countries.

2.2.1 Tariff system

Argentina's tariffs average approximately 12.7 percent. Import duties are classified into ordinary and special customs duties. The latter mainly apply to the imports from the member countries of the free trade area within MERCOSUR. As a customs union, MERCOSUR plans to implement full CET product coverage in 2006. Presently, the ordinary customs duty is applied to Chinese imports.

In addition, a 21% VAT and a 9% additional VAT are levied on imports. 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, mails, and articles to be used by national, provincial and municipal governments and their affiliates.

2.2.2 Import administration

Argentina bans the import of worn garments, used tires, modified auto parts, second-hand or repaired medical equipment. Besides, prior governmental approval shall be obtained for the importation of cotton seeds, potatoes to be used as seeds, fresh fishes, vegetables, dry nuts, hard nuts, drummed apples, 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.

Quotas must be obtained for imported automobiles while pulp, paper products and certain selected goods are subject to provisional import quotas. Except for automobiles, imports are generally not subject to import licensing.

2.3 Investment administration

Foreign investors enjoy the same legal treatment as nationals do in economic activities, and they can adopt any business forms allowed by the Argentine legislation. The forms of business organizations may include corporations, limited liability partnerships, branches of foreign corporations, joint ventures, temporary partnerships, temporary union of companies, etc.

Foreign companies may invest in Argentina without prior approval. Except for military areas and military facilities, foreign companies may carry out economic activities such as industrial, mining, agriculture, commercial, financial, service, and other activities related to the production or exchange of goods and services. Foreign investors may at any time repatriate their capital and remit their liquid earnings and realized profits abroad.

Foreign investment is encouraged in Argentina. Both domestic and foreign investors may enjoy General Incentives, Sectoral Incentives and Regional Incentives that are adopted to promote productive development and investments:.

2.4 Competent authorities

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

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

3 Barriers to trade

3.1 Tariff and tariff administrative measures

Argentina's tariffs average approximately 12.7 percent. Most imports are subject to an additional statistical fee of 0.5%.

3.2 Import restrictions

On August 31, 2005, Ministry of Economy and Production issued two decisions, requiring that non-automatic import licensing be applied to toys and footwear. The Chinese side has noted that the products covered by the said decisions include some that are not manufactured in Argentina. As a result, the import of these products would neither bring any competition to Argentina's domestic manufacturing nor affect the development of its national industry. Meanwhile, the period allowed by the decisions for application for import licenses has been found too short for importers to complete all the relevant procedures. The implementation of the decisions, therefore, has not only affected the business of Argentine importers concerned, but also hindered Chinese normal export to Argentina. The Argentine side brought the above-mentioned measures into operation within 20 days right after consultations with the Chinese side. While expressing its regret, the Chinese side requires that Argentina restrain itself from adopting these import measures against China's exports.

Chinese firms complain of cumbersome certificate of origin requirements, particularly in the electronics and textile sectors.

3.3 Barriers to customs procedures

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

In addition, the AFIP requires that the clearance of fabrics, clothing, toys and footwear made in China be conducted at specially designated customs offices. This requirement has aroused great concern of the Chinese side.

3.4 Sanitary and phytosanitary measures

On June 10, 2005, Argentina issued a draft decision that replaces and incorporates several articles contained in the Argentine Food Code, and thereby constitutes health and hygiene requirements for dairy products. The requirements include: sensory attributes, toxic metals, toxic substances, microbial toxins, antimicrobial residues, pesticide residues, additives, etc. It also sets requirements concerning dairy product identification and quality.

3.5 Trade remedies

Argentina was one of the major countries/regions that took trade remedies against China. By the end of 2005, Argentina has initiated a total of 49 cases involving trade remedies, of which 46 are anti-dumping cases while 3 are related to safeguards. The products covered include light industrial products, electronics, chemicals, machinery, building materials, textiles, pharmaceuticals, etc.

In 2005, Argentina launched four anti-dumping investigations against imports from China: furfural and products, stainless seamed steel pipes of Austenite iron, tape measures and screw drivers respectively. It also called for anti-dumping reviews against four Chinese products, namely ball bearings, air conditioners, playing cards and thermos bottles. In addition, it insists on furthering anti-dumping investigation against automatic circuit breakers of Chinese make.

In the anti-dumping case against eyeglasses concluded in July, 2004, the Argentine side set a minimum price of $0.46 per pair of sunglasses imported from China, which would be maintained effective for three years. Although China and Argentina signed in 2004 the Memorandum, wherein Argentina officially recognizes China's status as a market economy, the Surrogate Country approach was still adopted by the Argentine side during the course of investigation. China hopes that Argentina could correct these discriminatory practices at an early date, implement the agreement reached between both sides, and grant the treatment of full market economy status to Chinese enterprises involved in the anti-dumping case.

Besides, on December 16, 2004, the Argentine government issued Act No. 1859/2004 and Act No.1860/2004. Of the two legislations, one aims to establish the special safeguard mechanism against products from China and the other, to impose quantitative restrictions on Chinese textiles. These two acts have in fact laid the foundation for Argentina's legislation to set up special safeguards against Chinese products. China hopes, therefore, that Argentina would restrict itself from taking such measures against imports from China.

3.6 Barriers to trade in services

Argentina has committed to allow foreign suppliers of non-insurance financial services to take all forms of commercial presence and has 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.

There are nationality restrictions for some internal shipping, private security, and education providers. Provinces can impose their own barriers on the provision of services.

Egypt

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Egypt in 2005 reached US$2.14 billion, up by 36.1% year on year, among which China's export to Egypt was US$1.93 billion, up by 39.3% year on year, while China's import from Egypt was US$210 million, up by 12.3% year on year. China had a surplus of US$1.72 billion. China mainly exported to Egypt garments and clothing accessories, cotton, man-made filaments, plastics and products thereof, organic chemical products, mechanical apparatus and parts, motive power machines and equipment, iron and steel products, vehicles and parts. China's main imports from Egypt included cotton, textile yarn and knitted products thereof, man-made filaments, carpets and other textile floor coverings, iron and steel, mechanical apparatus and parts, plastics, metals, mineral materials and products thereof.

According to the Ministry of Commerce of the People's Republic of China (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by the Chinese companies in Egypt reached US$280 million in 2005, and the number of newly-signed contracts reached 1301, totaling US$330 million. The volume of completed labor service cooperation contracts was US$30,000, and that of the newly-signed labor service cooperation contracts was US$30,000. By the end of 2005, the accumulated turnover of completed engineering contracts by the Chinese companies amounted to US$640 million with a total contractual value of US$990 million; 93 labor service cooperation contracts had been signed with a total contractual amount of US$440million.

Approved by or registered with MOFCOM, China set up five non-financial Chinese-funded enterprises in Egypt in 2005 with a contractual investment from the Chinese side standing at US$13.75 million.

Statistics of MOFCOM show Egypt invested in 18 projects in China in 2005 with a contractual investment of US$15.12 million, up by 157.1% and 168.1% respectively year on year; while the actual utilization was US$5.32 million, up by 34.3% year on year. By the end of 2005, Egypt had accumulatively invested in 57 projects in China with a contractual investment of US$59.39 million and an actual paid-up capital of US$13.46 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

Legislation relating to foreign trade administration adopted by the Egyptian government at present mainly includes Import and Export Regulations of 1975, Customs Law of 1963, and Trade Law of 1999. The Import and Export Regulations was revised in 2005 and the executive rules of the Import and Export Regulations was also promulgated. In 1998 Egypt promulgated Law on the Protection of National Economy from the Effects of Injurious Practices in International Trade along with its Executive Regulations, which establishes procedures to be followed in anti-dumping, countervailing and safeguards investigations.

The main laws governing investment in Egypt are the Companies Law of 1981, the Investment Guarantees and Incentives Law of 1997 along with its Executive Regulations, and Special Economic Zones Law of 2002. Egypt amended its Companies Law and Investment Guarantees and Incentives Law in 2005.

2.2 Trade administration

2.2.1 Tariff system

To accelerate trade liberalization, Egypt has made major adjustments to its tariff rates and tariff structure. The Presidential Decree 300/2004 reduces the number of tariff bands to six and removes export duties on 25 products which are in short supply in the domestic market. Meanwhile, the Customs has abolished the administrative charges on imported products. The 2005 tariff contains 5,687 lines at the HS eight-digit level, of which 99.8% carry ad valorem duties and compound, mixed or seasonal MFN tariffs do not apply. Of all the imported goods, 11 tariff lines carry specific duties.

2.2.2 Import administration

The principle of encouraging the import of raw materials, primary products, and products that are in short supply, incapable of being produced domestically is fully reflected in the tariff regime of the Egyptian Customs. Meanwhile, the provisional release system through Customs risk management and sample inspection is practiced by the Egyptian Customs for the import of primary materials, semi-processed products, and raw and auxiliary materials for producing export products. Import products in line with this system are not subject to Customs import approval, but a guarantee equivalent to import duty value should be deposited.

According to the new Import and Export Regulations, Egypt should facilitate the service-oriented industries such as tourism companies and contractors to import equipment, simplify the procedures of documents for customs clearance provided by importers and of releasing certificates of origin, allow the import of new and second-hand automobiles from non-manufacturing countries. Egypt has adjusted the tariff rate to 40% on textiles, garments and clothing accessories on which import ban had been lifted. However, the new Regulations require all the imports should be labeled with international codes.

2.2.3 Export administration

All Egyptian products are free to be exported and are not subject to export licensing.

To encourage domestic enterprises to participate in international competition, Egypt has established the "export incentives fund" in accordance with its Export Incentives Law to encourage export and to enhance its share in the international market.

There is no requirement with regard to the proportion of local content for export products from Egypt, but the tariff policies include provisions encouraging local content. The Customs Law stipulates that a tariff concession of 10%-90% is granted to the assembly industry when importing components depending on the proportion of the 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 regarded as inside the territory while outside the customs.

2.2.4 Other related systems

According to the Presidential Decree of provisional release and tax rebate, all the Egyptian ports have simplified their procedures of tax rebate for exporters. The tax rebate list of 1800 items jointly drafted by the Ministry of Foreign Trade and Industry and the Ministry of Agriculture specifies the rate of tax rebate based on the foreign proportion of raw materials in each item. Exporters can get their tax rebate by providing export documents and enjoy tax rebate equivalent to 4% to 10% of the export value according to the regulation.

In the end of 2005, the Egyptian Customs established a large service center of customs clearance for importers, providing fast and convenient customs clearance services for registered importers. In the center, each importer can be accompanied by a staff member and be assisted in going through the relevant procedures.

2.3 Investment administration

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

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 are covered by the tax rebate policy which is not applicable to projects in free zones according to the prevailing Egyptian tax regime.

The Income Tax Law of 2005 stipulates that start-up companies with the financial support of the Social Development Fund are entitled to a five-year tax holiday and those individually-owned companies are entitled to a three-year tax holiday.

Six free zones of Alexandria, Cairo and Suez, etc. as well as 12 new cities and a number of industrial zones have been set up nationwide in Egypt. Enterprises located in these special zones enjoy a series of preferential policies.

2.4 Competent authorities

The competent authorities responsible for trade and investment affairs is the Ministry of Foreign Trade and Industry of Egypt with the affiliated organization of General Organization for Import and Export Control (GOIEC) being in charge of the inspection of all import commodities.

Affiliated to GOIEC, the Administrative Bureau of Countries of Origin is responsible for researching on trade preferential arrangement and non-tariff barriers, publishing information, issuing certificates of origin, and conducting business administration of the sections in charge of countries of origin in different departments. The Central Department of International Trade Policies in the Ministry of Foreign Trade and Industry is responsible for countervailing, emergent safeguards and anti-dumping issues.

In line with the Presidential Decree, the Ministry of Foreign Trade and Industry will set up the General Authority for Industrial Development to replace the former General Authority for Manufacturing. Its main functions include formulating and implementing the plans and policies of deepening domestic industrialization, increasing the proportion of domestic raw materials in production, and raising the added value of Egyptian products gradually. It is also in charge of setting the prices of land for industrial use in each province and industrial zone, implementing the industrial policies made by the Ministry of Foreign Trade and Industry, encouraging investment, providing convenience for investors, improving the investment environment of the industrial zones together with the General Authority for Investment and Free Zones, and making and publishing the specifications and standards for each industrial project.

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

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 adjusted tariff rates many times on the basis of its accession commitments. Import duties on 98% products are lower than the overall bound tariff rates. Egypt's prevailing overall bound tariff rates average 38.6% while the average applied tariff is 20.0%.

3.1.1 Tariff peak

Import duties vary from 2% to 40% on different imports of raw materials, components, primary feeding materials, and durable products based on the different degrees of processing. However, high tariff rates are maintained on some products including passenger cars, tobacco and alcoholic drinks. The highest rate reaches 3000%.

3.1.2 Tariff escalation

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

3.2 Import restrictions

Egypt maintains import prohibitions for economic, environmental, health, safety, sanitary, and phytosanitary reasons. Import prohibitions apply to edible offal of poultry (including liver). They also apply to hazardous chemicals, certain chemicals and pesticides, and hazardous wastes. Pursuant to Article 46 of the Telecommunications Law, imports of used telecommunications materials for trading purposes are prohibited.

Egypt does have quotas or tariff quotas on imports. In general, it does not subject imports to licensing or prior approval. Permits from the National Telecommunications Regulatory Authority are required for the import of telecommunications equipment.

3.3 Barriers to customs procedures

According to the Egyptian Customs regulations, to ensure the release of the consignments 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 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 related issues.

The requirement increases export costs and causes inconvenience to Chinese enterprises.

Although the Egyptian Customs has eliminated all customs service fees and charges on imports, an additional fee of 2% is levied on commodities subject to customs duties of 5% to 29%; 3% on duties of 30%; and 4% on over 30%.

3.4 Technical barriers to trade

The Government of Egypt lifted the import restrictions on fabrics and textiles for commercial use on January 2004 and subjected garments to ad valorem duties (at present the import duty on garment is 40%). However, in February 2004, it required that all enterprises exporting garments to Egypt should register with the General Authority for Import and Export Inspection of Egypt, confirming that the products are in line with the international labor, health and environmental standards and that the General Authority for Import and Export Inspection of Egypt should send staff to make field inspection and the inspection expenses should be borne by the exporters. In October 2004, the requirement on field inspection was cancelled by the Government of Egypt, but garment exporters to Egypt should still register with the General Authority for Import and Export Inspection of Egypt. These regulations have increased the cost on exporting enterprises and weakened their competitiveness.

For the import of chemical raw materials used in food, importers should provide the inspection report notarized by the Egyptian embassies or 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 shipment will be refused if the goods were made three months ago.

3.5 Sanitary and phytosanitary measures

Egypt requires a certificate provided by the importers for importing frozen meat products, confirming that a temperature below –18°C was maintained before export. Egypt also requires that imported cotton is subject to fumigation in both its country of origin and Egypt. These practices have increased the cost of exports and posed apparent barriers to trade.

3.6 Trade remedies

Egypt has initiated a total of 15 cases regarding trade remedy measures since 1996, of which 13 are anti-dumping cases while two are related to safeguard measures in the areas of machinery and electronics, light industry, chemical industry and hardware and minerals.

On 5 July 2005, the Ministry of Foreign Trade and Industry issued an announcement, initiating anti-dumping sunset review on two machinery and electronic products originated or imported from China, which are 1/3 horsepower single-phase electric machine mainly used in washing machines and 3/4~25 horsepower three-phase electric machine mainly used in motive power equipment of air-conditioners.

In January 2006, the anti-dumping Bureau of the Ministry of Foreign Trade and Industry accepted the application filed by Egyptian domestic enterprises for anti-dumping investigation into ball-point pens and color pens originally made in China.

In the anti-dumping investigation into Chinese products, Egypt still regards China as a "non-market economy" and uses a surrogate country to calculate the normal value of the Chinese commodities. High anti-dumping duties are levied. The Chinese side feels regretful for this and hopes the Egyptian side to reevaluate China's marketization process and grant China full market economy status at an early date.

3.7 Government procurement

Tenders Law (Law of 89/1998) of Egypt provided that the government procurement should take both prices and technical factors into account. Meanwhile, Egyptian bidders enjoy preferential policies compared with 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.

3.8 Barriers to trade in services

3.8.1 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 Egyptian market is to purchase an existing bank.

3.8.2 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.

3.8.3 Transportation service

Transportation services of Egypt are being liberalized. Pursuant to the Law of 1998, the government no longer enjoys monopoly in maritime transportation. Private concessions can operate maritime transportation service including carrying and delivering of goods, providing supply to ships, ship repair and container businesses. Private enterprises can also provide services at airports, but private ownership of airports is 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.

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. Foreign investment in military products, tobacco industry, alcoholic drinks and investment in Sinai should be examined and approved by the competent authorities. Operation in the areas of publication of newspapers and journals, satellites and remote sensing, companies affiliated to research institutes are subject to approval by the Council of Economic Ministers. Opening supermarkets and franchise stores should be examined and approved by the special committee.

Foreign nationals are not allowed to register companies operating import business or be involved in occupations of business agents dealing with bidding, commercial circulation and tourist guides. The new Labor Law of April 2003 stipulates that foreign nationals are not allowed to be engaged in activities involving 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. The company with a purpose of reclaiming desert should have an Egyptian ownership of no less than 51%. Upon liquidation, the land belongs to Egyptians.

Australia

1 Bilateral trade relations

According to China's Customs, the bilateral trade volume between China and Australia in 2005 reached US$27.25 billion, up by 33.6%, among which China's export to Australia was US$11.06 billion, up by 25.2%, while China's import from Australia was US$16.19 billion, up by 40.1%. China had a deficit of US$5.13 billion, US$2.41 billion more than that of last year. China mainly exported machinery tools, electromechanical and electric products, audio-visual equipment, garments and knitwear, seats, furniture, articles of funfair, oils, plastics, cases and bags, tyres, etc. Major imported products of China from Australia included mineral products, artificial corundum, aluminum oxide, aluminum hydroxide, base metal and articles thereof, textile materials such as wool and cotton, raw skins of sheep, bovine and equine animals, cereal, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of engineering contracts completed by the Chinese companies in Australia reached US$ 17.38 million in 2005, and the volume of the newly signed contracts was US$54.17 million. The volume of completed labour service cooperation contracts was US$2.77 million, and that of the newly signed labour service cooperation contracts was US$22.66 million. By the end of 2005, the accumulated turnover of engineering contracts completed by the Chinese companies in Australia was US$260 million, with a total contractual volume US$310 million, and the volume of the completed labour service contracts has reached US$23.08 million, with the total contractual volume of US$140 million.

Approved by or registered with the MOFCOM, 16 Chinese-funded non-financial enterprises were set up in Australia in 2005, with a total contractual investment of US$37.82 million by Chinese investors. By the end of 2005, there were accumulatively 272 Chinese-funded non-financial enterprises set up in Australia with a total contractual investment of US$740 million from Chinese investors.

According to MOFCOM, Australian investors invested in 692 projects in China in 2005, with a contractual volume of US$2.7 billion and an actual utilization of US$0.4 billion. By the end of 2005, Australia investors had accumulatively invested in 7,501 FDI projects in China with a contractual volume of US$14.74 billion and an actual utilization volume of US$4.48 billion.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

2.1.1 Legislation on trade administration

Major trade-related legislation in Australia consists of Customs Act 1901, Trade Practices Act 1974, Customs Tariff Act 1995, Excise Tariff Act 1921, Excise Act 1901, A New Tax System (Goods and Services Tax) Act 1999 and other relevant decrees and regulations. Among the aforementioned six laws, four were amended in 2005, except the Excise Tariff Act and Excise Act. Amendments were also made to Trade Marks Act 1995, Copyright Act 1968, Customs Regulation 1926, Customs (Prohibited Imports) Regulations 1956, Customs (Prohibited Exports) Regulations 1958, Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998, and Imported Food Control Regulations 1993.

2.1.2 Legislation on investment administration

Major legislation governing foreign investment includes Foreign Acquisitions and Takeovers Act 1975, Foreign Acquisitions and Takeovers Regulations1989, Foreign Acquisitions and Takeovers (Notices) Regulations. Amendments were made to the former two laws and regulations in 2005. In addition, two new laws were made, that is, Australian Communications and Media Authority Act 2005 and Film Licensed Investment Company Act 2005.

2.2 Trade administration

2.2.1 Tariff system

2.2.1.1 Average tariff level and its trend of development

Though the overall tariff level in Australia is fairly low with average tariff rates ranging from 0 to 5%, tariff rates for such products as parts and components of automobiles, textiles and clothing, and footwear, despite the reduction in 2005, remain on the high side between 5% and 17.5%. They are expected to drop to the terminal tariff rate by 2010, with the exception of those on certain items of clothing, to which terminal tariff rate shall apply by 2015. While the majority of the exports to Australia are subject to ad valorem duty, specific duty is levied on such products as cheese, biodiesel, fruit juices, beverages, spirits and vinegar, tobacco, petroleum oils, and certain chemical products.

2.2.1.2 Tariff administration

In Australia, tariff rates are listed in the Customs Tariff Act. They are subject to change by the Federal Government based on the merits of the situation. As to import tariffs, MFN rate and preferential rate are adopted. Countries to which preferential rate is applied are classified into 9 categories, each of which is subject to different rates. China falls under the category of Developing Country specified in Part 4 of Schedule 1 of Customs Tariff Act 1995. For countries and regions which do not fall within the abovementioned 9 categories, MFN rate shall apply.

Besides, Australia adopts tariff concession system for imports, where concessions are allowed to be made on certain imports provided that non substitutable goods were produced in Australia in the ordinary course of business. Tariff concessions are listed in Schedule 4 of Customs Tariff Act 1995.

With regard to export, no duties are levied except on coal and uranium. In cases where imported products are re-exported, one may ask for a refund of import duties and excise. The same shall apply to the export of new and unused imported goods, manufactured goods which contain imported components, or the import of products for the purpose of processing.

2.2.2 Import prohibition and restriction system

The Australian Government controls the importation of certain goods into Australia. The controls either take the form of an absolute prohibition or a restriction. The importation of 4 categories of goods, namely, dangerous breeds of dogs, human embryos, suicide devices, and rough diamonds from Liberia is prohibited while the importation of 41 items including antibiotics, pencils and paintbrushes with a coating that contains excess amounts of toxic compounds is restricted. According to the amendments made by the Australian Government in 2005 to the Customs (Prohibited Imports) Regulations, two more items are listed as restricted imports, including crossbows that are capable of causing damage to property or bodily harm, and ammonium nitrate. Importation of the abovementioned restricted items is only allowed upon the approval of competent authorities.

2.2.3 Export prohibition and restriction system

The Australian Government controls the exportation of certain goods from Australia. The controls either take the form of an absolute prohibition or a restriction. Prohibited exports include suicide devices and the exportation of acetic anhydride to Afghanistan while restricted exports consist of 28 items, such as wine and brandy, narcotic drugs, and human embryos. According to the amendments made by the Australian Government in 2005 to the Customs (Prohibited Exports) Regulations, ammonium nitrate is included in the list of restricted exports. Exportation of the abovementioned restricted items is only allowed upon the approval of competent authorities.

According to the Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998, the Australian Government exercises licensing control over the exportation of domestic meat and livestock.

2.2.4 Import risk analyses (IRAs) for products of plant and animal origin

An IRA is often required by Biosecurity Australia (BA) for products of plant and animal origin where there is no quarantine policy or a significant change in existing quarantine policy is to be considered. Specific processes of an IRA are set out in The Import Risk Analysis Process Handbook. For instance, an IRA would be conducted for new commodities that have not previously been imported into Australia and commodities that are already imported but the import request is from a different country/area with a significantly different pest and disease status so as to identify the possible quarantine risks.

2.3 Investment administration

The Australian Government encourages foreign direct investment but still maintains a system of examination on foreign investment. The types of proposals by foreign interests to invest in Australia, which require prior approval and therefore should be notified to the Government, include: (1) acquisitions of substantial interests in existing Australian businesses, the value of whose assets exceeds A$50 million or where the proposal values the business at over A$50 million; (2) proposals to establish new businesses involving a total investment of A$10 million or more; (3) takeovers of offshore companies whose Australian subsidiaries or assets exceed A$50 million; (4) direct investments by foreign governments and their agencies irrespective of size; (5) acquisitions of interests in urban land including interests that arise via leases, financing and profit sharing arrangements and the acquisition of interests in urban land corporations and trusts.

In the majority of industry sectors, smaller proposals are exempt from notification and large proposals are approved unless judged contrary to the national interest of Australia.

2.4 Competent authorities

The Australian Department of Foreign Affairs and Trade (DFAT) has three subordinate agencies that deal with foreign trade promotion and administration. Australian Trade Commission (Austrade) is in charge of trade promotion and market development; Australian Agency for International Development is responsible for managing the Australian Government's official overseas aid program; Export Finance and Insurance Corporation (EFIC) provides finance and insurance services to Australian enterprises investing in new projects overseas.

The Australian Customs Service (ACS) under the Attorney-General's portfolio is in charge of supervision of imports and exports, import and export statistics and anti-dumping investigations.

Two agencies under the Australian Government Department of Agriculture, Fisheries and Forestry (DAFF) are involved in the import and export inspection and quarantine. Biosecurity Australia is responsible for conducting IRAs, gathering scientists and technical specialists to develop a new quarantine policy, and provides scientific and technical advice and support to enhance Australia's access to international animal and plant related markets. Australian Quarantine and Inspection Service (AQIS) inspects incoming luggage, cargo, mail, animals and plants and their products, and provides inspection and certification for a range of exports.

Food Standards Australia New Zealand (FSANZ), established according to the 2002 amendment to Food Standards Australia New Zealand Act, is a bi-national independent statutory authority that develops food standards for composition, labeling and contaminants, including microbiological limits, that apply to all foods produced or imported for sale in Australia and New Zealand.

AQIS and FSANZ jointly run the Imported Food Inspection Scheme. While FSANZ develops food risk assessment policy, AQIS has operational responsibility for inspection and sampling.

The Foreign Investment Review Board under the Australian Government Department of Treasury examines proposals by foreign interests to undertake direct investment in Australia and makes recommendations to the Government on whether those proposals are suitable for approval under the Government's policy. At the same time, the Board provides guidance to foreign investors, but its functions are advisory only.

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 provide consulting services for companies investing in Australia. So far, Investment Australia has 15 operations around the world.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

Although the Australian government lowered import duties on components in passenger motor vehicles, textiles and clothing, and footwear, the tariff rates for these goods ranging from 5% to 7.5% are still on the high side. Such tariff peaks have adversely affected Chinese enterprises who export to Australia large quantities of textiles and clothing, footwear, and medical instruments every year.

3.2 Barriers to customs procedures

As of November 11, 2005, the Australian Customs Service has raised fee rates for air cargo import declaration (ID) and sea cargo ID services to A$14 per ID and A$ 7 per ID respectively, compared with the previous rate of A$6.5 per ID for both. According to the Government of Australia, the reason why the ID air fee has increased more than the ID sea fee is that the change in the ID threshold for air and sea cargo from A$250 to A$1000 has a greater impact on the provision of air cargo clearance by AQIS staff. The Chinese side doesn't think the statement well justified and remains concerned over the matter.

3.3 Sanitary and phytosanitary measures

3.3.1 IRAs

An import application shall be filed before animal and plant products from any country enter Australia. Based on the application, BA shall conduct an Import Risk Analysis. 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. However, an IRA is usually time-consuming and involves too many technical standards. Besides, a separate IRA is required for goods of the same category from a different area of the same country.

On October 4, 2005, BA announced the Final Extension of Policy for the Importation of Pears from the People's Republic of China, granting approval for the importation of Pyrus bretschneideri from Shaanxi Province, Pyrus pyrifolia from Hebei and Shaanxi Provinces, and Pyrus sp. nr. communis from Xinjiang Uighur Autonomous Region, in addition to the previous import permit granted to fresh pear fruit including: 1.Pyrus bretschneideri (Hebei and Shandong Provinces only); 2.Pyrus pyrifolia (Shandong Province only); 3. Pyrus ussuriensis (Shandong Province only).While welcoming the new policy, the Chinese Government still believes it is too stringent a system to conduct an IRA on fresh pear fruit based on the place of origin rather than the country of origin.

The IRAs implemented by the Australian Government have in fact proved an obstacle to the entry of products of animal and plant origin from other countries into the Australian market. As far as China is concerned, other affected exports to Australia include fresh fruits, vegetables, and certain cash crops. Therefore, the Chinese Government shall remain concerned over the system.

3.3.2 Imported food (IF) inspection scheme

All food imported into Australia must in the first instance comply with the requirements of the Quarantine Act 1908 as applicable and then the requirements of the Imported Food Control Act 1992 for matters relating to food safety. Under IF operations, foods are classified into three inspection categories: 1. Risk Category food; 2. Active Surveillance Category Food; 3. Random Surveillance Category Food. For Risk Category food, all producers will have their food inspected at the initial rate of 100% of consignments. Usually after five consecutive consignments have passed inspection, the food will be inspected at a less intense rate of one in four consignments on a random basis. Twenty passes must be achieved before the rate reduces to one in twenty on a random basis. Active Surveillance Category food is selected for inspection at a rate of approximately 10 per cent by country-of –origin. Food in the Random Surveillance Category is selected at the rate of 5 percent by tariff classification for inspection.

At the end of each year, AQIS conducts an annual review of the classification of the above three categories. In August 2004, AQIS reclassified Risk Category food and placed mushrooms (canned) and soy sauce under the Random Surveillance Category while sesame seeds and sesame seed products, formerly under the Active Surveillance Category, together with pistachios and any food that contains pistachios formerly under the Random Surveillance Category, were classified as Risk Category food. On December 1, 2005, AQIS conducted another review of the classification. However, no consideration was given to the above four types of food.

It is worth noting that the Australian government failed to produce any scientific reasons for classifying food into the above three categories, nor did the Government give justifiable explanations for frequent changes in the classification. While welcoming the classification of canned mushroom and soy sauce as Random Surveillance Food, the Chinese Government expresses concern over sesame and pistachios, which have been regrouped into the Risk Category.

3.3.3 Requirements for poultry hatching eggs

On November 17, 2005, Biosecurity Australia issued an emergency notice, amending the conditions for the importation of hatching eggs of poultry. The main changes to the conditions are: certification of country freedom from highly pathogenic notifiable avian influenza in poultry; and poultry source flocks must be tested for antibodies to Type A avian influenza virus with negative results. This requirement applies even when the exporting country certifies freedom from highly pathogenic notifiable avian influenza. These conditions take effect immediately the notice was announced. The Chinese side attaches close attention to the threshold raised by the Australian government for the importation of poultry hatching eggs, in particular the requirement for inspection irrespective of the avian influenza situation of the exporting country.

3.3.4 CTO verifications for imported airfreight perishable consignments such as nursery stock

As from 9 May 2005, AQIS has ceased CTO verifications for most imported airfreight perishable consignments. However, nine perishable airfreight commodities/countries pathways including nursery stock and cut flowers continue to require AQIS verification checks at CTOs. AQIS verifies whether the imported airfreight perishable consignments are properly packed prior to produce being moved from CTOs to AQIS inspection points. However, there are no specific verification standards regarding the process. Besides, AQIS charges will apply where verification checks are performed. Such process has added uncertainty as well as extra expenses to Chinese enterprises which export nursery stock to Australia.

3.3.5 Inspection on imported prawns by the number of batches

According the requirement of AQIS for imported prawns, documentation from the exporter, supplier or competent authority verifying the number of batches in the consignment must be provided to AQIS as each batch must be tested on arrival for white spot syndrome virus. A batch is defined as a processing run of a single lot of raw materials, or as one species of prawns caught during one continuous fishing period, or as prawns raised in the same pond of an aquaculture establishment. Prawns must be packed separately for inspection according to different batches. If the number of batches cannot be determined from documentation, a full unpack and inspect may be required in order to determine the number of batches. This inevitably has a great impact on China, which export in large quantities prawns of various kinds to Australia. Therefore, the Chinese side expresses concern over the matter.

3.4 Trade remedies

According to statistics, between 1982 and 2005, Australia launched 43 antidumping investigations against Chinese exports including chemicals, foodstuffs and produce, minerals and mining products, iron and steel products, involving an approximate value of US$110 million.

By the end of 2005, altogether 8 antidumping cases ended up with the Australian Government's decision to impose antidumping duties on Chinese exports, involving glass (clear float and plain float), steel shelving kits, sodium metabisulfite, Dichlorophenoxy-acetic acid (2,4-D), hot rolled steel plate, silicon, sodium hydrogen carbonate, and preserved mushrooms (on which a provisional duty is imposed). In 2005, Australia launched 2 antidumping investigations involving Chinese-made sodium hydrogen carbonate and preserved mushrooms.

Following the recognition of China's full market-economy status by Australia in April 2005, Australia amended Customs Act 1901 and Customs Regulations 1926 in May and October respectively, putting China under the list of countries and regions not subject to rules governing transitional economies. At the same time, the Australian government also made some amendments to the part of the customs manuals that deal with market economies. In addition, clarifications and interpretations were also made to the anti-dumping procedure, changes being focused on normal value. In the old edition of customs manuals, the Australian Customs Service required that only transforming economies be considered for possible government influence. However, according to the new edition of customs manuals, all countries are to be considered for possible government influence and substitute prices may be used irrespective of the country's economic status.

3.5 Subsidies

According to A New Tax System (Wine Equalisation Tax) Act 1999, the Australian Government imposes Wine Equalisation Tax (WET) on wholesale wine before GST is added. However, exports of wine are not subject to WET. Such practice is intended as an export incentive, which constitutes a de facto subsidy.

Starting from the year 2000, the Australian Government has earmarked a great amount of grants to the domestic textiles, garments and footwear. From July 2004 to June 2005, grants under the Textile, Clothing, and Footwear Strategic Investment Programme (TCF Scheme). Scheme were given to the above industries by the Australian Government in order to promote equipment updating, R&D, and production in these industries. The budget outlay during the above period was A$142 million. The budget outlay for the 2005/06 financial year (from 1 July to 30 June) is A$214. The continuous subsidies granted by the Australian Government in large amount to these industries have weakened the competitiveness of Chinese textiles, garments and footwear in the Australian market, thereby adversely affecting the

Chinese exports to Australia.

In 2005, the Australian Government continued to implement Automotive Competitiveness and Investment Scheme (ACIS) which is to promote competitiveness and encourage investment, R&D and innovation in the Australian automobile industry. ACIS, according to the Australian Government, shall remain effective until 2015. Under ACIS, participants of the Scheme, including motor vehicle producers (MVPs), automotive components producers, automotive machine tools and tooling producers or automotive service providers, may receive duty credits which can be used to pay customs duty on certain eligible imports. Duty credits are earned on the basis of a percentage of eligible production, eligible investments in plant and equipment, or eligible investments in R&D. Assistance provided in financial year 2004/05 (from 1 July to 30 June) was A$569 million. This has weakened the competitiveness of Chinese automotive exports to Australia, over which the Chinese side expresses concern.

3.6 Other barriers

Marketing for almost every kind of bulk goods in Australia is handled by State-owned trading corporations, which in fact monopolize the purchase and distribution of these goods. These corporations include AWB (International) Ltd, Australian Dairy Corporation (ADC), New South Wales Grains Board, The Rice Marketing Board for the State of New South Wales, and Queensland Sugar Limited (QSL). These corporations and agencies specialize in export only and enjoy monopolized trading rights by law. For some sensitive goods such as wheat and rice, there is no domestic market as these goods are mainly for export. Therefore, the State-owned corporations in charge of these goods enjoy a high degree of monopoly, for instance, AWB purchases 80% of domestic-produced wheat while The Rice Marketing Board purchases 100% of domestic rice production.

Such trading system implemented by Australia on bulk goods, to a certain extent, has distorted the export market, and is by nature a disguised protection to its agricultural exports. The system has had an adverse effect on the interests of Chinese importers as each year China imports large quantities of bulk products like wheat and barley from Australia. Therefore, the Chinese Government shows concern over the system.

4 Barriers to investment

The Australian Government imposes a series of restrictions and conducts detailed examinations on investment proposals in certain sensitive sectors, mainly including residential real estate, urban land, civil aviation, airports, shipping, telecommunications, banking, media, tourism. 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 lack transparency, which has impeded the access of foreign capital into Australia.

4.1 Media services

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

a. Broadcasting services: Proposals for a foreign person to acquire an interest in an existing broadcasting service or to establish a new broadcasting service are subject to case-by-case examination. A foreign person must not have company interests in a license that exceed 15% or 20% in aggregate held by two or more foreign persons. The number of foreign directors shall be no more than 20% of the total number of directors; foreign investors are not allowed to exercise control of the commercial television broadcasting license. A foreign person is not allowed to have company interests of more than 20% in a subscription television broadcasting license, and the aggregate interests held by foreign persons must not exceed 35%.

b. Newspaper: All proposals by foreign investors to acquire an interest of 5% or more in an existing newspaper or to establish a new newspaper in Australia are subject to case-by-case examination. The maximum permitted aggregate foreign interest (non-portfolio) investment/involvement in national and metropolitan newspapers is 30% with any single foreign shareholder limited to a maximum interest of 25%. Aggregate foreign interest direct involvement in provincial and suburban newspapers is limited to less than 50% for non-portfolio shareholdings.

4.2 Telecommunications

The Australian Government holds 51.8% of the shares of Telstra Corporation Ltd (Telstra) with the remainder of the equity in the partially privatized company held by institutional and individual investors. Aggregate foreign ownership of Telstra is restricted to 35% of the privatized equity and individual foreign investors are only allowed to acquire a holding of no more than 5% of the privatized equity.

4.3 Airports

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

4.4 Shipping

For a ship to be registered in Australia, it must be majority Australian-owned, unless the ship is designated as chartered by an Australian operator.

Brazil

1 Bilateral trade relations

According to China Customs, the bilateral trade volume between China and Brazil in 2005 reached US$14.82 billion, up by 20%, among which China's export to Brazil was US$4.83 billion, up by 31.4%, while China's import from Brazil was US$9.99 billion, up by 15.2%. China had a deficit of US$ 5.16 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 projects contracted by the Chinese companies in Brazil reached US$ 250 million in 2005, the volume of the newly signed contracts was US$ 430 million, and no new labor service contract was signed. By the end of 2005, the accumulated turnover of engineering contracts completed by the Chinese companies in Brazil reached US$380 million, with that of all the contracts signed US$620 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.

Twelve Chinese-funded non-financial enterprises that had either obtained approval from or registered with the MOFCOM were set up in Brazil in 2005, with a total contractual investment of US$16.43 million by the Chinese investors. By the end of 2005, there were altogether 89 Chinese-funded non-financial enterprises set up in Brazil with a total investment of US$150 million by the Chinese investors.

According to MOFCOM, Brazilians invested in 36 projects in China in 2005, with a contractual volume of US$140 million and an actual utilization of US$24.61 million. By the end of 2005, Brazilian investors had altogether invested in 348 FDI projects in China with a contractual volume of US$530 million and an actual utilization volume of US$140 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

There is not a comprehensive trade law in Brazil. Its main import measures have been included in the Import Regulations while export measures in the Export Regulations. The main investment-related legislation is Brazil's Constitution, the Foreign Investment Law and Labor Law.

2.2 Trade administration

2.2.1 Tariff system

Brazil is a member of MERCOSUR, a customs union comprising Argentina, Brazil, Paraguay, and Uruguay. Full Common External Tariff (CET) product coverage is scheduled for implementation in 2006. CETs range from zero percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions.

In February 2005, the Brazilian Foreign Trade Commission passed Decisions No. 5 and No. 6. By Decision No. 5, import tariffs were brought from 4% to 2% on the capital goods, information and communications products that originally had fallen in the category of CET exceptions and that had been proved beyond Brazil's domestic manufacturing capacity. （According to MERCOSUR CET tariff schedule, the import duties on the above-mentioned products generally stay at 14%）Meanwhile, Decision No. 6 grants free duty on over-3000 horsepower diesel engines that are not produced in MERCOSUR countries.

In December 2005, the President of Brazil signed a decree that exempts some products of capital goods and all software products from manufactures tariffs as of 1 January 2006. Among the exempted products are: (1) 14 kinds of capital goods including farming tractors, steam boiler spares, steam turbine spares, pump spares, non-electrothermal furnaces used at works or laboratories, machines for manufacturing leather products and machinery use in metallurgy, coking and foundry, whose current average tax rate is 5%; (2) software CD or DVD of original copy for information-processing machines (with VA products and other software excluded), whose current average tax rate remains 15%: (3) invoice-making machines whose current average tax rate stays at 15%.

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 license, if approved, will be issued automatically. Non-automatic licensing is administered upon those commodities or imports that are under the control of the Government. The 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 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. Generally the validity of non-automatic import licenses is 60 days.

2.3 Investment administration

The Brazilian government encourages foreign investment and grants foreign companies national treatment. Constitutional amendments passed in 1995 eliminated the distinction between foreign and national capital and the Constitutional Law now mandates the same legal treatment for national capital and foreign capital invested in the country under the same circumstances, and prohibits all forms of discrimination not explicitly foreseen in the Law.

Brazilian National Treasury under the Ministry of Finance declared in a communiqué released in December 2005 that Brazil had been seeking for further improvement since the National Monetary Commission implemented a policy in 2000 designed to encourage foreign investment in Brazil's capital market. The incentives mainly include:

(1) Granting rights to invest in Brazil's capital market to foreign investors abroad instead of to institutional investors only, as previously specified.

(2) Streamlining registration procedures by combining the registrations that had to be conducted respectively with the Securities Regulatory Commission for investment and the Federal Taxation Administration for legal entity into a single on-line registration with the Securities Regulatory Commission only. As a result, the time needed has been shortened from 30 days to no more than 24 hours. The on-line registration was initiated in the second half of December, and Brazilian public bonds can be purchased on-line ever since.

(3) Allowing free conversion between fixed income securities and non-fixed income securities, which is now not regarded as outward remittance of profits.

2.4 Competent authorities

Foreign Trade Commission is the top foreign trade policy-making body in Brazil. Brazilian Export Credit and Credit Security Committee under the Foreign Trade Commission serves to speed up the release of loans and promote foreign trade. Ministry of Foreign Affairs and Ministry of Development, Industry and Foreign Trade are main administrative authorities governing the sector of foreign trade. The Ministry of Agriculture, Ministry of Finance, and Ministry of Health are partly involved in the administration of foreign trade. Subordinate to the Ministry of Finance, the Federal Taxation Administration is responsible for Brazil's customs affairs, including making and implementing customs policies, imposing duties, and conducting customs supervision.

On 25 January 2005, the Brazilian Government declared the establishment of the National Commission for Industrial Development and Industrial Development Administration, new government bodies in charge of affairs of its national industry. The said Commission is entrusted with policy-making for industry, science and technology, and foreign trade, formulation of measures concerning industrial development, infrastructural construction, and enhancement of manufacturers' competitiveness and policies affecting project credits. Directly responsible to the President, the Commission comprises 13 ministers, the President of National Bank for Economic and Social Development, and other 14 members representing private sectors and laboring people.

The Industrial Development Administration serves as a promoter of the implementation of the policies encouraging industrial development, especially the job-creating industrial policies by coordinating policies for foreign trade and science and technology. Under the direction of the Ministry of Development, Industry and Foreign Trade, it is made up of a review commission, a supervision commission and an executive body.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

CETs significantly influence agricultural products, distilled spirits, and computer and telecommunications equipment from China. The additional import duties imposed by Brazil have significantly increased the cost of imported textile products. In addition, high tariffs levied on IT products have impeded the market access of foreign personal computers. A 25 percent merchant marine tax imposed on freights at certain ports has put imports at a competitive disadvantage. Brazil applies a 60 percent flat import tax on most manufactured retail goods imported by individuals that go through the simplified customs clearance procedures called RTS (simplified tax regime).

In August 2005, Brazilian Foreign Trade Commission adopted a measure to raise import tariff on rubber shoes, plastic shoes, leather shoes and sports shoes from 14% to 35%, whose imports had surpassed the average import volume in the trade. Though the increased import tariff expired at the end of 2005, it brought about a most adverse impact on footwear imported from China.

3.2 Import restrictions

All importers must register with the Secretariat of Foreign Trade (SECEX) to access the SISCOMEX computerized trade documentation system. SISCOMEX registration requirements are onerous, including a minimum capital requirement. In addition, fees are assessed for each import statement submitted through SISCOMEX.

Most imports into Brazil are covered by an "automatic import license" regime. Brazil's non-automatic import licensing system includes imports of products that require authorization from specific ministries or agencies such as beverages (Ministry of Agriculture), pharmaceuticals (Ministry of Health), and arms and munitions (National Defense Ministry). Although a list of products subject to non-automatic import licensing procedures is published on the Brazilian Ministry of Development, Industry and Trade website, specific information related to non-automatic import license requirements and explanations for rejections of non-automatic import license applications are lacking. These measures have made importing into Brazil less transparent and more cumbersome for China's exporters.

3.3 Barriers to customs procedures

In December 2005, a meeting held at the Brazil's Presidential House came to an agreement on the problems faced by Brazilian footwear manufacturing and the measures to settle the crisis, including the "gray passage" administration over footwear imported from China, by which Brazilian customs will exercise more stringent supervision on import documents and goods so as to discover and penalize the intended discrepancies between goods and documents or low-priced customs declaration. Moreover, there are possibilities of taking anti-dumping measures against footwear imports from China.

3.4 Technical barriers to trade

In June 2005, Brazilian Ministry of Mining and Energy drafted a bill on the energy efficiency of three-phase induction motors, dictating the lowest energy efficiency standards for the described motors. The changes in the standards will most likely bring adverse effects on China's exports to Brazil.

In July 2005, another bill was drawn up specifying conformity assessment procedures for the certification of single-phase voltage regulators. This has aroused deep concern of relevant Chinese parties.

3.5 Sanitary and phytosanitary measures

In April 2005, Brazilian Health Inspection and Supervision Administration drafted a bill on specific standards and quality requirements for the goods to be steeped or decocted. The bill specifies the minimum quality and labeling requirements for tea, roasted coffee, Paraguay tea, barley tea and dissolvable products. China has expressed its deep concern over this bill.

In June 2005, Brazilian Secretariat of Animal and Plant Health released a quarantine requirement for imported wood products and byproducts for consumption and commercial use. This has raised the export threshold of relevant Chinese products to Brazil.

3.6 Trade remedies

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 2005. More than ten lines of products have been subjected the said investigations, among which are electromechanic products, hardware, chemicals, light industrial products, textiles and foodstuffs.

3.6.1 Anti-dumping measures

In July 2005, Brazilian Foreign Trade Commission ended the review of anti-dumping investigation on Chinese thermos and decided to continue levying an anti-dumping duty of 47%. In August 2005, the Commission decided at its meeting to implement another anti-dumping measure against Chinese bicycle tires by imposing an anti-dumping additional tax of $0.15/kg. In August 2005, Brazilian Foreign Trade Commission decided that the coverage of the metallic magnesium products made in China subject to additional anti-dumping duties be extended to include the products with magnesium content lower than 99.8%, the rate being US$1.18/kg. this measure came into effect as of the date of promulgation and expires on 10 October 2009.

The review of Glyphosate case was the first anti-dumping claim that Chinese enterprises responded to since Brazil recognized China's market economy status in December 2004. The involved Chinese enterprises had submitted all necessary documents a year before; however, no decision has been made against Chinese parties' application for a review. China has repeatedly demand that Brazil bring the case to an end as soon as possible, and has urged Brazil to recognize the market economy status of Chinese enterprises involved by carrying out its commitment in this case.

3.6.2 Safeguard measures

On 1 January 2004, Brazil extended the implementation of a safeguard measure for toys, which was initiated in 1996, to 31 December 2004. And upon expiration, the validity was further extended to 30 June 2006. Although 101 countries and regions are affected by this measure, China and several other major exporting countries are the targets. In addition to a MERCOSUR CET of 20 %, Brazil imposes an additional duty of 9% on all toys involved before 31 December 2005, and the rate stays at 8% from 1 January to 30 June 2006. China has launched negotiations with Brazil on the safeguard measures within WTO and on other occasions, but no obvious progress has been made. China requests that Brazil restrains itself from implementing safeguard measures against Chinese products.

3.6.3 Special safeguard measures

In October 2005, the Brazilian President signed two bills of special safeguard measures against Chinese products. The special safeguard measure against Chinese textiles is to be valid until 31 December 2008, and that against other Chinese commodities valid until 11 December 2013. According to the bills, the Brazilian government shall process the application for special safeguard measures filed by enterprises or industries within 30 days by negotiating with relevant Chinese parties with a view to reaching agreements on avoiding or mitigating injuries possibly caused to related Brazilian sectors. If the negotiations lead to no agreements, Brazil is to conduct investigations. As far as textiles are concerned, Brazil wishes China to restrict its textile exports to Brazil immediately and to guarantee the export increase of no more than 7.5% within 12 months.

3.7 Government procurement

Brazilian federal, state and municipal governments, as well as related agencies and companies, in general, follow a "buy national" policy. Law 8666 (1993), which covers most government procurement other than informatics and telecommunications, requires non-discriminatory treatment for all bidders regardless of the nationality or origin of the product or service. However, the law's implementing regulations allow consideration of non-price factors giving preferences to certain goods produced in Brazil and stipulating local content requirements for eligibility for fiscal benefits. Decree 1070 (1997), which regulates the procurement of information technology goods and services, requires federal agencies and parastatal entities to give preferences to locally produced computer products based on a complicated and nontransparent price/technology matrix.

Brazil is not a signatory to the WTO Agreement on Government Procurement. Some enterprises have complained about practices that lead to non-transparent preferences for Brazilian products in procurement bids for government and non-profit hospitals, including favoring domestically produced “similars” over imported refurbished medical equipment. Limitations on foreign capital participation in procurement bids reportedly impair access for potential service providers in the energy and construction sectors.

3.8 Export subsidies

The Government of Brazil offers a variety of tax, tariff, and financing incentives to encourage production for export and the use of Brazilian-made inputs in domestic production. For example, Brazil’s National Bank for Economic and Social Development (BNDES) provides long-term financing to Brazilian industries. The interest rates charged on this financing are generally lower than the interest rates on alternative domestic financing. BNDES provides capital financing to Brazilian companies for, among other things, expansion and modernization projects as well as acquisition or leasing of new machinery and equipment. The goal is to support the purchase of domestic over imported equipment and machinery.

3.9 Barriers to trade in services

3.9.1 Audio-visual services

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

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

3.9.2 Banking and other financial services

Brazil has not yet ratified its commitments from the 1997 Financial Services negotiations or taken the necessary steps to make them binding under the GATS (accept the Fifth Protocol). Brazil is potentially South America's largest insurance market. However, foreign participation is limited to 50 percent of the capital of a company and to one third of its voting stock. Brazil maintains a government-owned reinsurance monopoly through the Brazil Reinsurance Institute (IRB). If Brazilian shipping companies wish to effect marine insurance with foreign insurers, they must submit information to IRB indicating that the foreign insurance policy is less expensive than that offered by Brazilian insurers.

3.10 Inadequate intellectual property right protection

Brazil's Law 10196 (2001) requires that approval by the Ministry of Health be obtained prior to the issuance of a pharmaceutical patent. This requirement is inconsistent with Article 27 of the WTO's Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS).

In Brazil, unauthorized copies of pharmaceutical products have received sanitary registrations relying on undisclosed tests and other confidential data, in apparent violation of TRIPS Article 39.3.

Brazil's National Institute for Industrial Property (INPI) has amassed a backlog of more than 60,000 patent applications, an estimated 18,000 for pharmaceuticals and 50,000 trademark applications. The Brazilian government plans to take five to six years to work through the backlog of patent and trademark applications. The Chinese side has expressed its deep concern over those issues.

4 Barriers to investment

Restrictions to foreign investment apply in a number of areas. The prospecting and mining of mineral resources may take place only with authorization or concession by the Union, in the national interest, by Brazilians or by a company organized under Brazilian laws and having its head-office and management in Brazil. The prospecting and exploitation of hydrocarbons, as well as their refining, importation and exportation, and ocean and pipeline transportation are under State monopoly.

However, with the exception of activities linked to nuclear energy, the State may contract out the execution of these activities to state-owned or private enterprises.

Foreign investment in highway freight transport is limited to no more than one fifth of the capital stock with voting rights. The enterprise must be organized as a joint-stock company and its capital must be represented by registered shares. In road transport, foreign ownership is limited to 20% of capital without voting rights, for companies established in Brazil after 7 November 1980. International road transport is reserved to companies with more than half of capital with voting rights held by citizens of the seven member countries of the International Land Transport Agreement (ATIT), and of the Latin-American Integration Association (LAIA).

Direct participation in air transport public domestic services is restricted for foreign investors that have no companies, representative offices or presence in any other forms in Brazil. Only Brazilian individuals or corporations established in the country with principle domicile and real effective seat in Brazil may own Brazilian flag vessels. In telecommunications, concessions to provide mobile telephone services or transmission through satellites may only be granted to companies established and administered in Brazil. General mail services are under Federal Government monopoly. Special deliveries may be provided by enterprises operating in Brazil under Brazilian legislation.

Brazil' s tax revenue, as revealed in a survey report by a Brazilian Revenue Program Institute, accounted for 36.5% of its GDP in 2004. The Brazilian governments at all levels promulgated 219,795 rules and regulations concerning taxation during the six years from October 1998 to October 2004. The development of Brazilian domestic enterprises and foreign investment has been impeded by such factors as heavy tax burdens and countless tax regulations that are not only intricate but also contradictory to each other sometimes.

Russian Federation

1 Bilateral trade relations

According to the statistics from China Customs, bilateral trade volume between China and Russia reached US$29.1 billion in 2005,up by 37.1%. Specifically, China's exports to Russia amounted to US$13.21 billion, up by 45.2%, while China's imports from Russia came up to US$15.89 billion, up by 31.0%. China had a trade deficit of US$2.68 billion with Russia. China mainly exported to Russia such consumer goods as clothing, leathers, machinery and electronic equipment, luggage, and footwear, while Russia mainly exported to China such products as minerals, iron and steel, fuels, timbers and chemicals.

As statistics from the Ministry of Commerce of China show, in 2005, the turnover of engineering contracts fulfilled by Chinese companies in Russia reached US$270 million, and the new contracts for engineering projects signed by Chinese companies in Russia involved a sum of US$440 million; the value of contracts for labour cooperation fulfilled by Chinese companies in Russia reached US$180 million, and the new contracts for labour cooperation signed by Chinese companies in Russia involved a sum of US$220 million. By the end of 2005, the accumulative value of contracts for engineering projects fulfilled by Chinese companies in Russia had reached US$1.47 billion, and the accumulative value of contracts for engineering projects signed by Chinese companies in Russia had come up to US$3.38 billion; the accumulative value of contracts for labour cooperation fulfilled by Chinese companies in Russia had reached US$1.23 billion, and the accumulative value of contracts for labour cooperation signed by Chinese companies in Russia had come up to US$2.17 billion.

In 2005, China set up 82 non-financial Chinese-funded enterprises in Russia, with a total amount of negotiated Chinese investments of US$320 million, which had been either approved by or registered with the Ministry of Commerce of China. By the end of 2005, China had established a total of 657 non-financial Chinese-funded enterprises in Russia with an accumulative amount of negotiated Chinese investments of US$980 million.

Statistics from the Ministry of Commerce of China indicate that, in 2005, Russia invested in 162 projects in China with an amount of contracted investment of US$300 million and a utilized amount of US$80 million. By the end of 2005, Russia had directly invested in 1849 projects in China with an amount of contracted investment of US$1.4 billion and a utilized amount of US$540 million.

2 Introduction to trade and investment regime

In 1993, Russia submitted its application for joining the World Trade Organization (WTO) and made a breakthrough in the negotiations on its accession to the WTO in

2005. Currently, Russia is engaging in the critical negotiations on the reduction of import tariffs on agricultural and industrial products and on the liberalization of its requirements for access to labour markets. Russia is expected to become a full member of the WTO in 2006. Upon accession to the WTO, Russia is to make adjustments in its tax policies in compliance with the principles of MFN treatment and national treatment, and cut its customs duties progressively.

2.1 Legislation on trade and investment

2.1.1 Legislation on trade administration

Russia' s laws and regulations related to the trade administration of mainly include *the Customs Code of the Russian Federation, the Law on Tariff Schedule, the Law on Technical Regulation,Federal law* On the Fundamentals of State Regulation of Foreign Trade Activity, *the Law on State Regulation of Foreign Trade Activity, the Federal Law on Special Safeguards, Anti-dumping and Countervailing Measures Applied to Imports, the Law on the Regulation and Surveillance of Foreign Exchange, the Law on Measures for the Protection of State Economic Benefits in Foreign Trade.* Besides, there are some other important laws, which include *the Law on Leasing, the Law on the Inspection of Certificates for Products and Services, the Law on the Labeling of Products and Services and Names of Places of Origin of Goods, the Law on Export Controls, the Federal Programmes for Export Development, the List of Products for Foreign Trade and Tariff Schedule, the Federal Law on Special Permits,* the *Law on Electronic and Digital Signature, the Regulations on the Surveillance of Dual-use Commodities and Technologies to be Exported from the Russian Federation, the Regulations on the Adjustment of Meat Imports.*

In June 2005, Russia promulgated the *Regulations on the Licensing System for Foreign Trade in Commodities and on the Incorporation of Licensed Banks* as a substitute for the earlier *Regulations on Licences for Imports and Exports of Commodities (Services).* The new regulations specify the measures for the application of the licence system, announce the categories of licences to be granted, and list the reasons for refusal to grant licences.

In July 2005, the *Regulations on the Import and Export of Pharmaceuticals* were promulgated to replace the *Law on the Import and Export of Pharmaceuticals* issued in 1998. The new regulations stipulate that the applications submitted to the Ministry of Economic Development and Trade for import licences for pharmaceuticals should be based on the feasibility conclusion on the granting of import licences made by the Russian Federal Health-care and Social Development Agency as to.

In September 2005, the Russian Government issued the *Regulations on Imposition of Supervision over Customs Houses in Respect of the Implementation of the Relevant Laws and Regulations on the Calculation and Collection of Customs Duties and on the Determination of Customs Values.* As stipulated in the Regulations, the Ministry of Economic Development and Trade and the Ministry of Finance are to supervise and monitor Customs Houses in order to prevent any violation and poor enforcement of laws in the process of calculating and collecting customs duties and in the process of determining customs values, and an inter-ministerial-agency supervising body is to be established so as to solve problems which may arise in this regard.

2.1.2 Legislation on investment administration

Russian laws governing the administration of investment include the *Foreign Investment Law*, the *Law Governing Agreements on Product Distribution*, the *Land* Code, the *Law on Circulation of Farming Land*, the *Law on the Limited Liability Company*, the *Law on Joint Stock Company*, the *Law on Advertising*, 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*.

In March 2005, Russia's new version of the *Draft Law on Hidden Resources* was reviewed at government meetings, all the principal provisions of which were approved. The draft law has been proposed to be ratified in 2006. The proposed law requires that (1) the competent federal agencies' administrative power over mineral resources augmented in terms of coverage and function; (2) specific agreements be signed to regulate the relations between the State and the users of mineral resources so as to improve the transparency with respect to investment; (3) the procedures for transfer of the right to use natural resources be streamlined through a clear definition of contractual relationships; and (4) a mechanism of guarantee be introduced on the right to use hidden resources.

In July 2005, the Russian Government promulgated the Federal Law on Special Economic Zones. The Law stipulates that both domestic and foreign enterprises should have the right to establish two types of special economic zones (SEZ): SEZ for industrial production (each limited to an area of 10 square kilometers) and SEZ for technological dissemination (each limited to an area of 2 square kilometers). The life of the SEZs is 20 years only and no extension will be entertained. Within the SEZ, a customs system for free trade is to be adopted, and this means that both imports of foreign enterprises and exports of domestic enterprises are exempted from customs duties. In an industrial production zone, the validity of the agreement on higher value-added processing is 10 years, and the total amount of capital involved should not be less than €10 million with the lowest amount of investment for the first year being € 1 million. And there will be no restrictions on investment in a technological dissemination zone. The Russian government is now considering making an amendment to this law and intends to include harbor-type SEZ and tourism and recreation SEZ.

Promulgated together with "Federal Law On Amending Certain Russian Laws in Connection with the Adoption of the Federal Law on Special Economic Zones in the

Russian Federation", in which it is specified that simplified procedures shall be applied to the calculation of the expenses of scientific research and design testing and the calculation of the depreciation of the fixed assets of those enterprises registered in industrial production zones, and that the requirement for an enterprise to limit the transfer of its loss to the next tax year by only 30% shall be eliminated. According to the Amendments, enterprises registered in technological dissemination zones shall be subject to a uniform social tax of 14% and enterprises in SEZs shall be exempted from property taxes and land taxes within 5 years of establishment.

2.2 Trade regime

2.2.1 Tariff system

According to the Russian Tariff Schedule, Russia Customs applies the base rate to imports from countries enjoying MFNT, but imports from other countries are subject to a tariff rate twice the level of the base rate. Imports from the members of the Commonwealth of Independent States (hereinafter referred to as CIS) that have signed free trade agreements with Russia and imports from the least developed countries are exempted from import customs duties. Customs duties on imports from countries under the Generalized System of Preferences are levied at 75% of the base rate and China is among those countries.

Currently, Russia' average valid import tariff rates remain at 10%-11%, and ad valorem tariffs are applied to the vast majority of imports while specific tariffs and compound tariffs to a limited number of imports. During the recent years, the variety of the goods subject to compound duties has been gradually increasing. In addition, Russia applies higher tariff rates to bulk imports, such as agricultural products including foodstuffs, medical items, household electric appliances, automobiles and related parts and accessories, and alcoholics.

Russia eliminated its overall export duties in July 1996, but restored imposition of interim(provisional?) export duties in January 1999 on the following products: coal, petroleum, natural gas, processed oil, non-denatured alcohol, certain chemicals, non-ferrous metals, timbers, leathers, soybeans, rapeseeds, sunflower seeds, etc.

As stipulated in the *Federal Customs Code*, imports and exports are subject to import and export customs duties, VATs and excise taxes are applied to import goods (except those otherwise specified). According to the provisions in the *Tax Code*, imports such as certain foodstuffs and articles for children are subject to a VAT of 10%, and other imports are subject to a VAT of 18%; imports subject to an excise tax include raw material alcohol and articles thereof, edible alcohol and articles thereof, manufactured tobacco, cars and motorcycles with an engine capacity exceeding 112.5 kilowatts, gasoline, fuel diesel, engine oil and direct distilled gasoline.

In addition, some imports are also subject to special customs duties, anti-dumping duties, or compensation duties, the rates of which are separately specified.

Customs controls in Russia usually takes place by examining documents or certificates and the contents; making oral inquiries; obtaining written explanations; conducting customs surveillance; inspecting cargos and the transporting tools; checking personal identity; examining special labeling and identification codes; and making inspection tours to customs facilities or around customs territories.

2.2.2 Import administration

2.2.2.1 Import quotas and licences

The *Law on Quotas and Licences for Imports and Exports* requires that applications should be submitted to the Ministry of Economic Development and Trade for licences for the import of products affecting national security and national health such as chemical insecticides, industrial waste, pharmaceutical materials and manufactures, anesthetics, poisons, food raw materials, edible alcohol, military equipment or weapons, nuclear technologies, radio-active substances, etc.

2.2.2.2 Product Labeling and Certification

Russia prohibits the sale of imports without Russian instructions in its territory.

Russia also prohibits the sale of alcoholic products, audio-visual products and computer equipment without anti-fake labels or bar codes for bar code labels in its territory.

Biochemical preparations, radio-active substances, industrial wastes, and some first time imported goods, especially foodstuffs, are subject to national registration before importation, and health and quarantine certificates must be provided for the import of goods to be used for industry, agriculture and civil engineering construction.

The *List of Imports for Compulsory Certification* issued by the Federal Customs in January 2005 mainly includes animals and plants and their products, foodstuffs, alcoholic and non-alcoholic beverages, textile materials and textile goods, machinery and mechanic equipment, and audio-visual apparatus.

2.2.2.3 Foreign exchange controls over imports

Russia requires that importers open accounts in authorized banks and the amount of freely convertible currency remit outside territory be equivalent to the amount of ruble, and subject to a maximal banking charge at 0.15% of their contract value.

2.2.3 Export administration

Russia exercises its export administration mainly by issuing export quotas and licences.

2.2.3.1 Export quotas and licences

Russsia imposes export quotas and licences on three categories of products, and they are products subject to quantitative restrictions under international agreements, special products affecting the interests of the state, and products in relatively large demand in the domestic market. Export quotas are distributed mainly through tendering and auctioning. Where there are surplus quotas after distribution, they may be granted on the basis of export performance.

2.2.3.2 Export controls on products for military-and-civil purposes

Export licences must be obtained for the export of dual-use products and technologies, while the issuance of such licences is based on whether the exportation is in conformity with international obligations that Russia is committed to.

2.2.3.3 Unified certificate inspection on exports

Russia applies a unified certificate inspection system over the quantity, quality and price of exports. However, the application of the system is no longer compulsory since March 1996. Currently, the system is applicable only to such products as petroleum, processed oil, natural gas, coal, ferrous and non-ferrous metals, timbers, and mineral fertilizers.

2.3 Investment Regime

Russia's *Foreign Investment Law* definitely stipulates that the statutory treatment accorded to foreign investors in the territory of the Russian Federation should not be less favourable to that accorded to domestic investors, unless otherwise specified in Russian law. According to the Article 9.2 of the Law, foreign investors and foreign-funded commercial establishments are entitled to special favourable treatment and legal safeguards so that their investment environment can be stabilized and are not to be affected by any changes in Russian laws and regulations over a certain period of time.

The *Law of the Russian Federation on the Circulation of Farming Land* provides that foreign citizens or legal entities holding more than 50% of the statutory capital can lease farming land for a period of less than 49 years.

According to The *Federal Tax Code*, as of July 2007, the profit tax rate will be cut to 24% and VAT rate to 18%, and a variety of social security fees (medical insurance, unemployment insurance, pension insurance) will be consolidated into a unified social tax, the rate of which will be reduced to 35% from a level of 40% of an enterprise's payroll.

2.4 Competent authorities

2.4.1 Governmental Bodies

In Russia, the following governmental authorities responsible for the administration of trade and investment include the Ministry of Economic Development and Trade, the Ministry of Finance, the Commission on Safeguards for Foreign Trade and Tariff Policies, the Russian Federal Assets Foundation, the Federal Registration Service of the Ministry of Justice, the Federal Customs Service, the Advisory Committee on Foreign Investment of the Federal Government, and the Supreme Court of Arbitration.

The following two agencies are playing an increasingly important role in Russia's foreign economic and trade activities:

2.4.1.1 Federal Customs Service

Under the Ministry of Economic Development and Trade, the Federal Customs Administration is made up regional customs authorities and a customs house directly subordinate to the central government, the chief officials of which are appointed by the Federal Government based on the nomination of the Minister of Economic Development and Trade. The Administration is mainly responsible for supervising customs procedures for imports and exports, exercising control over foreign exchanges, and combating illegal activities such as smuggling.

2.4.1.2 Advisory Commission on Foreign Investment of the Federal Government

This Commission was formed in 1994 to improve the investment environment in Russia, attract and utilize foreign investments. Subordinate to the Federal Government, the Commission is headed by a deputy prime minister of the Federal Government. The chief members on the Commission include representatives from large-sized foreign-funded enterprises in Russia, the European Development and Reconstruction Bank, the World Bank, the Ministry of Economic Development and Trade, the Ministry of Finance, the Central Bank and tax authorities of Russia. In September 2004, working groups were set up within the framework of the Commission, and the Ministry of Economic Development and Trade is responsible for the coordination between the Committee and its working parties. Currently, the findings of the routine meetings of the Commission as well as proposals have constituted an important basis for the Federal Government in formulating and adjusting its economic policies.

2.4.2 Non-governmental organizations

The Chamber of Industry and Commerce of the Russian Federation is an independent non-governmental non-profit organization established under the Constitution of Russia and the Act on the Chamber of Industry and Commerce of the Russian Federation, with 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 enterprises of Russia and other countries. This organization has and exercises the right of arbitration, and has a affiliated bureau of registration which is responsible for approving the applications for registration submitted by representative offices of foreign companies, conducting personnel registration for such offices, issuing permanent residence permits, and handling formalities involved in the extension of the validity of visas and the duration of residence.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

Russia's import tariffs are categorized into ad valorem duty, specific duty, and compound duty with the rates graded 0%, 5%, 10%, 15% and 20%.

In August 2005, Russian Foreign Trade and Tariff Rates Protection Commission declared that import duties on light industrial products and textiles were to be brought from 5% to 10%.

According to the decision approved by the Russian government in December 2005 fixing the import duty rate on rice and articles thereof, a rate of € 0.07 per kilogram is to apply as of January 1, 2006, which replaces the previous practice to impose an import duty of 10% of the value of a batch of goods assessed by Russia customs, but not lower than the rate of € 30 per metric ton. The new measure will seriously hinder China's rice imports.

Meanwhile, in order to develop its national industries and control the exportation of raw materials, the Russian government has taken or plans to take measures to reduce or exempt duties on import technologies and equipment (including industrial machinery and facilities) as well as on high-tech products . According to the *Federal Law on Special Economic Zones* ratified by the Russian government and Duma, the VAT rate originally dutiable on Russian exporters of commodities is to be brought to 0% as of January 1, 2006.

Russia has repeatedly raise export duties on crude oil so as to check oil exports. On August 1, 2005, the duty rate was brought from US$ 14 per metric ton fixed in 2004 to US$140 per metric ton.

In order to protect the development of domestic forestry, the Commission on Foreign

Trade and Tariffs Coordination has declared that the export duty on unprocessed timbers is to be raised to €4 per square meter with a margin of 6.5% as of January 1, 2006, and a further rise to €6 per square meter by 10% is to take place as of July 1, 2007, with a view to preventing bulky exports of timbers.

The restrictive measures described above will obstruct Chinese conventional exports to Russia and bulky imports of raw materials from Russia as well.

3.2 Import restrictions

3.2.1 Import prohibitions

As of September 2004, Russia prohibits importing meat products from China on the grounds of "insufficient knowledge about the preventions conducted in China against mouth-and-foot disease and the lack of reliable information about the actual epidemic development in that country". As the result of China's repeated strong demands, Russia lifts its import restrictions on China's aquatic products and rabbit meat, but prohibitions remain effective on other non-high-temperature treated meat products.

3.2.2 Import licensing

Russia requires that the licensing system be applied to those importers specializing in radioactive substance and products thereof, explosives and fireworks, narcotics, anesthetics and toxic substances, information protective devices (encoders and parts and modules), pharmaceuticals and medicine-making materials, epidemic-preventing medicines, polluters and derivatives, hazardous wastes, chemicals for plant protection, alcohols, distilled spirits and strong alcoholic drinks, carpets and textile carpeting (made in EU), sturgeons and products thereof (including roes), special apparatus used for collecting information secretly, etc.

3.2.3 Import quotas

Russia exercises control over meat imports (such as pork, beef, and chicken) by means of quota licenses. The volume of quotas is announced and quota tendering procedures are carried out on a yearly basis. According to authorities concerned, in 2006, Russia plan to import poultry meat 1.13 million tons with an import duty of 25% on quota products and 62.5% on non-quota products; bovine meat 435,000 tons with an import duty of 15% on quota products and 55% on non-quota products; swine meat 476,100 tons with an import duty of 15% on quota product and 60% on non-quota products.

3.3 Barriers to Customs procedures

Currently, Russia is rectifying its "grey customs clearance". In March 2005, the policemen from Russian tax authorities who are responsible for cracking down on economic crimes seized the Chinese shoes stored in the container warehouse of the flowers and birds market in Salvot. More than 100 containers of footwear owned mainly by 20 export businesses from Wenzhou, Zhejiang Province in East China were valued at over RMB 80 million. The violent seizure of the private properties of Chinese businessmen on the part of the Russian tax policemen who acted as law-enforcers is intolerable. A Sino-Russian joint working group has been set up to address the issue of “grey customs clearance”, but the problems arising from this issue can only be solved through joint efforts to enhance communications between two sides, instead of such unilateral actions as unjustified confiscation.

The Russian side holds that “grey customs clearance” will lead to heavy losses of tax revenues. On April 15, 2005, the Russian Premier Mikhail Fradkov signed the Pre-shipment Inspection Regulations. In accordance with the regulation, as of 2006 all imports deemed as “risky” should undergo inspections twice, namely, frontier clearance inspection and pre-shipment inspection in the exporting country. The commodities deemed as “risky” by the Russian Ministry of Economic Development and Trade mainly include such consumer goods as garments, shoes, some foodstuffs, household appliances and computer equipment. However, on June 3 of the same year, the Russian government resolved to postpone the implementation of pre-shipment inspection. On September 16, 2005, the State Customs Committee of the Russian Federation declared that the Russian customs plan to exercise routine supervision on the importation of daily necessities and strict supervision on the identities importers. In addition, importers are required to clearly state in the customs declaration the types of imports. On December 12, 2005, the Russian government decided to temporarily shelve the implementation of the Pre-shipment Inspection Regulation and authorized the Ministry of Economic Development and Trade to conduct reasonable additional inspection. Mr.Gref, the Minster of Economic Development and Trade, proposed to make inspection on “suspicious imports”. As it has not yet decided whether pre-inspection will be brought into effect, exporters feel that the risks involved are unpredictable, and this has impeded exports to a certain degree.

Resolution No.863 issued by the Russian government in December 2004 stipulates that as of January 2005 new formalities charges are to be collected for customs clearance.

1. Clearance formalities charges ranging from 500 Rubles to 10,000 Rubles by eight grades according to the customs value shall be imposed on foreign exports-in-transit, including the transport tools, within Russian customs territories.

2. With regard to the goods being transported by rail within Russian customs territories, 500 Rubles of clearance formalities charge shall be imposed on every batch of goods under the same B/L and loaded on the same train.

3. 500 Rubles of clearance formalities charge shall be imposed on every batch of negotiable securities and equivalent foreign exchanges being delivered under the same B/L via Russian customs territories.

3.4 Discriminatory taxes and fees on imported goods

In addition to tariffs, Russia imposes an 18% VAT on imports and a 10% VAT on foodstuffs and articles for children use, and 25%-90% consumption taxes on such luxuries as alcohols, alcoholic beverages and beers, cigarettes, jewelry, automobiles, and gasoline. However, the Minister of Finance pointed out that the VAT on domestic industries would be reduced from 18% to 13%.

The Chinese side hopes that Russians will gradually remove discriminatory measures against imports.

3.5 Technical barriers to trade

Currently, Russia still maintains various mandatory decrees and departmental regulations affecting technical standards, of which many are not in conformity with international standards. In practice, the Russian technical surveillance departments are reluctant to accept the certificates or inspection results issued or provided by overseas testing institutions. Russians' refusal to recognize the China's certification has brought about unnecessary burdens on Chinese exporters concerned. The Chinese side hopes that the Russian technical surveillance departments will make consultations with Chinese counterparts on the mutual recognition of the testing results by testing institutions on both sides.

Russia's certification system has affected importation of foreign commodities. It takes 12 to 18 months to complete the all inspection procedures for telecommunications equipment. Manufacturers of pharmaceuticals and wines and alcohols have to apply for overlapped accreditation.

3.6 Sanitary and phytosanitary measures

According to Russian requirement, the official inspection certificates for Chinese meat exports to Russia issued by the competent Chinese authority will not become valid unless endorsed by Russian veterinarians. Ignoring the agreement reached by both sides that Russian veterinarians' endorsement is required only for Chinese certificates issued for pork and beef, the Russian side demands that the measure apply to other products such as other animals' meat, poultry meat, casing, etc. Russia's continued application of this measure will place Chinese exporters in difficulties.

In May 2005, the Russian quality inspection department notified the Chinese side of the problems in the packaging of Chinese fruit and vegetable exports to Russia as a subject under discussion. Crown daisy chrysanthemum is not allowed to be used as padding or wadding inside the packages. Old bamboo baskets are forbidden. Wooden packing material shall not bear barks or wormholes. Besides, the procedures involved in Russians' inspection and quarantine as well as in the Chinese exporters' application for Russian certification are extremely intricate and time-consuming. What is more, the Russian side will usually demand special testing in addition to normal testing that imports from China must be subject to. All these practices on the Russian's side have affected normal trade activities between the two countries.

3.7 Trade remedies

On October 27, 2005, Russia initiated safeguard investigations against ammonium chloride imports from China.

3.8 Export restrictions

Since early 1999, the Russian government has been imposing 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 foods.

3.9 Barriers to trade in service

3.9.1 Telecommunications services

The *Law on Telecommunications* effective as of January 2004 contains special regulations on the intercommunication between the network of alternative operators and the network of Russian public telephones. According to the regulations, both the contracts and expenses with regard to the intercommunications are placed under the tight control of the Federal Ministry of Telecommunications. Meanwhile, according to the law, the license is valid for only 5 to 10 years, during which time the telecommunications operators are unlikely to gain returns on investment.

3.9.2 Construction Services

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

It is also stipulated that when more than 100 employees are employed at a construction site, more than 50% of them should be Russian citizens.

3.9.3 Transport services

Russia has not yet opened the market for passenger and cargo transportation by railway. Meanwhile, no joint venture is allowed to engage in cargo handling, container yard operation, shipping agency, or customs clearance. No foreign business is permitted to provide maintenance service to railway transportation equipment. Moreover, certain non-national-treatment restrictions are imposed on Chinese companies that provide cross border road transportation services, At present, Both Russian and foreign investors engaged in aviation-related research and manufacturing are granted by the Russian legislation some favorable treatments, including tax holiday and investment guarantee. However, foreign ownership is not allowed to be more than 25% of the whole share of an aviation enterprise. Moreover, directors and senior managers must be Russian citizens.

3.10 Other barriers

Russia's border procedures for the entry of Chinese service providers in Russian are intricate and costly.

In Russian firms, foreign employees can only take the following positions: general manager, deputy general manager and chief accountant. And the number of foreign candidates is under strict control. On the other hand, to recruit foreign workers in Russia, employers must hold the License for the Recruitment of Foreign Labor. Federal Migration Service (FMS of Russia) is responsible for the issuance of the license and the surveillance over the implementation thereof. The validity of the license is generally no more than one year. However, upon expiration the validity can be extended at employers' request, but the extension shall be no longer than one year.

All the working visas just allow single entry. And applicants are required to register immediately after they enter the country.

In order to improve the environment for foreign investment and prevent illegal recruitment of foreigners, the Russian government drafted an amendment to the Act on the Rights and Status of Foreign Citizens in Russian Federation, which has been submitted to Duma for approval. Accordinig to the Amendment, both the living and working conditions for foreign natural persons or legal entities will be improved. The procedures involved in granting work permits to foreign natural persons are to be streamlined, and related charges brought down accordingly. Besides, the formalities foreign applicants have to take up for residence are to be simplified: the current "examination and approval approach" will be replaced by the "notification approach". The requirements are to be lifted that foreign companies have to deposit for repatriation of their foreign employees and that foreign personnel working at representative offices affiliated to foreign companies be obligated to apply for work permits.

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 made by local governments in such respects as recruitment, corporate purchase and necessary infrastructure development, their investment projects are always failed. The approval procedures in Russia are quite complicated owing to overlapped governance brought about by division of administration over foreign investment between the federal government and local governments.

Russia maintains the franchise for the federal government. Besides, the maximum limit on foreign equit in some certain foreign invested projects or has specified the maximum limit on foreign funding in the statutory capital of economic entities have turned out to be restrictions imposed on foreign investors.

The *Draft Law on Hidden Resources* stipulates that mineral resources users can be foreign natural or legal persons who meet the requirement set by the laws of Russian Federation, but this stipulation does not apply to the cases specified by some federal laws or the Decision on Auction under the aforesaid draft law; mineral users can be foreign legal persons according to the Agreement on Product Distribution signed by parties concerned; in the case of special regulations laid down by the federal government, auction organizers are allowed to prevent or prohibit foreign natural or legal persons from bidding; it is stipulated that in the projects of rare or strategic mineral resources, the Russian ownership shall be no less than 50% while the balance can be shared by foreign owners.

According to the *List of industries, operative projects and regions forbidden to foreign investors and practitioners*, foreign investors are prohibited from investing in the following areas: nuclear weapons, nuclear power, national defense, and military industry; information and security; special products such as diamonds, currencies, and certifications, etc.; information on resources and ecological environment; epidemic prevention. Industries, operative projects and regions restricted to foreign investors in Russia include the conveyance and transformation of the federal electric power network; maritime, inner water and air transportations; railway transportation; the design, construction and maintenance of civil airports; highway construction; medical products and pharmaceutical manufacturing; the exploration, processing and recycling of precious metals and rare earth; the exploration and processing of precious stones (except diamonds); education; privatized special investment funds; the research and application of dual-use technologies; productive fishing; forestry; the production and sales of alcoholic products; accounting and auditing; animal epidemic prevention, etc.

The Philippines

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and the Philippines in 2005 reached US$17.56 billion, up by 31.7% year on year, among which China's export to the Philippines was US$4.69 billion, up by 9.8% year on year, while China's import from the Philippines amounted to US$12.87 billion, up by 42.1% year on year. China had a deficit of US$8.18 billion. China mainly exported electric products, electronic products, semi-conductor devices, electronic integrated circuits and microassemblies, product oil, cereals and cereal powders, coal, textile yarn and products thereof, etc. China's main imports from the Philippines included electronic integrated circuits and microassemblies, semi-conductor devices, electrical and electronic products, inductors and parts, bananas, fresh and dried fruits, nuts, processed oil, 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 the Philippines reached US$180 million in 2005, and the volume of the newly signed contracts was US$89.78 million. The volume of completed labor service cooperation contracts was US$960,000, and that of the newly signed labor service cooperation contracts was US$60,000. The turnover of completed design and consultancy by the Chinese companies reached US$3.37 million, and that of the newly signed design and consultant contracts was US$6.1 million. By the end of 2005, the accumulated turnover of completed engineering contracts by the Chinese companies had amounted to US$1.06 billion with the total contractual value of US$2.32 billion, the volume of the total completed labor service cooperation contracts reached US$27.92 million with the total contractual volume standing at US$52.04 million.

Approved by or registered with MOFCOM, China set up 2 non-financial Chinese-funded enterprises in the Philippines in 2005 with a total contractual investment of US$1.63 million. By the end of 2005, a total of 45 non-financial Chinese-funded enterprises had been established in the Philippines with the total contractual investment of US$18.58 million from the Chinese side.

According to MOFCOM, the Philippines invested in 190 projects in China in 2005, with a contractual investment of US$540 million and an actual utilization of US$190 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

Foreign trade and investment are subject mainly to such legislations as Tariff and Customs Code, Export Development Act, Omnibus Investment Code, Foreign

Investment Act, and Retail Trade Liberalization Act.

Other foreign trade and investment laws include Transaction Value Act, Tax Code, Food, Drug, and Cosmetic Act, Price Act, Anti-Dumping Act, Countervailing Act, Safeguard Measures Act, Intellectual Property Code, Tobacco Regulation Act, Electronic Commerce Act, Consumer Act of the Philippines, the Special Economic Zone Act, Iron and Steel Act, Mining Act, Build-Operate-Transfer Act, and Investment and Lease Act, etc.

2.2 Trade administration

2.2.1 Tariff system

The Philippine authorities impose ad valorem duties on most imports with rates ranging from 0% to 65% while imposing specific duties on alcoholic drinks, fireworks and firecrackers, tobacco products, watches, mineral fuel, cartoons, saccharin, and playing cards.

According to the Tax Code, the Customs levies excise duties on imports of non-necessities such as automobiles, tobacco, gasoline and alcohol.

In line with the value-added tax regime of the Philippines, 12% value added tax is levied on imported goods. The base for VAT is customs valuation plus tariffs and excise duties levied.

The Philippines also imposes document stamp tax on imported goods covering bill of lading, bill of receiving, bill of exchange, other transaction documents, insurance policy, bill as security, letter of authorization and other documents. Imported goods with an invoice value of over 5,000 pesos will be charged 250 pesos of import procedure fees.

2.2.2 Import administration

Import products are divided into 3 categories, namely products free to import, products restricted from import and products banned from import. Most products are free to import. Products banned from import are mainly related to national security, including military weapons and ammunitions, products containing gold, silver or other precious metals or products made of the alloys thereof, toy guns, worn-out clothes, fake and shoddy pharmaceuticals and other goods and components banned from import according to the relevant Philippine laws. Import licenses must be obtained for products restricted from import from the Philippine government bodies such as the Ministry of Agriculture and the Bureau of Food and Drugs. More than 130 products including automobiles, tractors, cars, diesel engines, gasoline engines, motorcycles, durable consumer goods, equipment for news printing and publication, cement and products related to health and public safety fall within the category of restricted import.

The system of tariff quota still applies in the Philippines. Normal in-quota tariff rates range from 30% to 50%. Out-of-quota tariff rates are between 35% and 65%. At the end of June 2005, absolute quotas were replaced by tariff quotas for importing rice in the Philippines with the in-quota tariff rate at 40% and out-of-quota tariff rate at 50%.

2.2.3 Export administration

The Philippine government encourages export trade by simplifying export procedures and adopting various incentive measures such as the exemption of additional taxes on export, rebate of VAT for the re-export of the imported goods and foreign exchange assistance.

Some products are restricted for export or prohibited from export from the Philippines. Permission should be gained from the Philippine competent authorities such as the Ministry of Agriculture and the Ministry of Environment and Natural Resources for exporting products in the restricted category including cement, petroleum and petroleum products, ammunitions and some raw materials of plant origin. Goods prohibited from export mainly include ramie seeds and seedlings, some wild animals and live fish.

2.2.4 Other related systems

The Philippine Customs adopts different inspection procedures for customs clearance of imported goods in view of different levels of risk. The Philippine government specifies that all importers or their agents should file import declarations to the Philippine Customs, which then processes these entries through its selectivity system to classify shipments. A low-risk shipment goes through the "green lane" and is generally subject to no documentary review or physical inspection but is covered by "post-audit review". A moderate-risk shipment goes through the "yellow lane" and is subject to documentary review but no physical inspection. A high-risk shipment channels through the "red lane" and is subject to both documentary review and physical inspection prior to its release. The Philippine Customs has also added a "super green lane", for qualified importers of extremely low risk, to provide immediate clearance.

2.3 Investment administration

The investment sectors have been divided into three categories by the Philippine authorities, namely encouraged investment sectors, restricted investment sectors and prohibited investment sectors. The Investment Priorities Program (IPP) published annually by the Philippine authorities lists the encouraged investment sectors and preferential policies to guide domestic and foreign investment towards state-designated industries, in which 100% ownership is granted to foreign investors. For highly-prioritized projects, more preferential terms are offered including financial policies such exemption of income tax, exemption of import duties when importing equipment, parts and components, exemption of dock dues for imported goods, and exemption of export fees and charges, as well as non-financial policies such as unlimited use of consignment facilities, simplified import and export customs clearance procedures and so forth.

Generally, the National Economic Development Authority (NEDA) of the Philippines renews and publishes Foreign Investment Negative List (FINL) every two years which clarifies the prohibited foreign investment sectors and defines the maximum ownership of foreign investment in restricted sectors.

2.4 Competent authorities

The Department of Trade and Industry (DTI) is the competent authorities responsible for implementing and coordinating trade and investment policies as well as promoting trade and investment facilitation. The Board of Investment (BOI) under DTI is in charge of the implementation and administration of foreign investment policies; the Bureau of Product Standards (BPS) shoulders the responsibility of administering and implementing technical standards and regulations on products; the Bureau of Import Services (BIS) is mainly in charge of the administration of regulations on the import of specific products as well as initiating and guiding the primary investigation with regard to anti-dumping, countervailing and safeguard measures.

The Tariff Commission of the Philippines is mainly responsible for making tariff policies, including the concession, modification and rebate of tariffs, the public hearing and consultation of anti-dumping and countervailing cases and the investigation involving safeguard measures.

Bureau of Customs, an affiliation to the Ministry of Finance, is responsible for levying import and export duties, VAT on import commodities and other additional taxes.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak

The Philippine authorities selectively raises tariff rates on some goods through the so-called "tariff rate recalibration" which has raised import duties on the goods whose rates had been lowered previously. Especially since 2003, the simple average rates of the Philippines have been raised from 5.8% to 7.4% in 2005. In line with the Executive Orders 418 and 419, the Philippine authorities raised tariff rates on part of auto imports from 20% to 25% and an additional tax of 500,000 pesos (about RMB78,000 yuan) each was levied on the import of some used autos in April 2005. In July 2005, the import duty of mixed fruit juice was heightened from 3% to 47%. The tariff rate of imported vegetables such as chives, broccoli, lettuce, cabbage, carrot, radish, cucumber, legume, peas, beans, spinach and ginger was raised to a uniform 25%. The ever-increasing tariff rates of the Philippines have constituted substantial barriers to the imported goods from China. Such administrative measures with random changes in tariff rates have brought uncertainty to imported goods. The Chinese side is concerned about it.

In 2005, tariff rates of lower than 5% on imports accounted for 64.5% of the total, yet 3.2% of the imported goods were levied high duties of over 20%. These goods included live animals, pork, meat of poultry, vegetables, rice, sugar, coffee, powered vehicles and motorcycles. The average tariff rate reached 43.5%. High tariff rates have led to negative impact on Chinese export enterprises and the Chinese side is concerned about it.

3.1.2 Tariff quotas

Some imports to the Philippines are subject to tariff quotas, including agricultural products such as rice, livestock and meat thereof, potatoes, corn, coffee, sugar, etc., among which, imported rice was shifted to tariff quotas from quotas in July 2005. Meanwhile, the quota for rice import was raised from 238,900 tons to 350,000 tons with the in-quota tariff rate being lowered from 50% to 40 % and out-of-quota tariff rate maintained at 50%. China exports some of the above-mentioned goods such as rice. China welcomes the relaxation of the import restrictions on rice, but the quota for rice import is much lower than the annual demand for rice in the Philippines and the out-of-quota tariff rate is still very high. The Chinese side hopes that the Philippine side can keep on lowering the tariff rate for rice.

3.2 Barriers to customs procedures

Though the Philippine government has specified different customs procedures for shipments with different levels of risk to enhance the efficiency of customs clearance, over 80% of the imports have to channel through the "red lane" due to such reasons as anti-smuggling, etc. Shipments through the "red lane" are subject to both strict documentary review and physical inspection at the port. Cumbersome documentary review and physical inspection have prolonged the customs clearance time, causing negative impact on the imports.

Since August 2005, the Philippines has imposed tariffs on the imports of tyre, certain glassware, soda powder, yellow phosphorus, flour and tiles from China on the basis of the reference prices provided by the Philippine Trade and Investment Center in Guangzhou, China instead of the import prices provided by importers. As the investigation leading to the reference prices is limited to the sales prices in certain markets located in certain regions, the prices are not representative but generally higher than the real import prices. The practice has aggravated the tariff burden on those products. The Chinese side hopes that the Philippine side can strictly abide by the relevant stipulations of the Agreement on Customs Valuation under the WTO and set the taxable prices of the Chinese exports reasonably so as to avoid negative impact on Sino-Philippine bilateral trade.

3.3 Discriminatory taxes and fees on imported goods

The Philippine authorities impose different duties on imported liquor and domestically-produced liquor. The government imposes 8.96 peso/liter excise tax on liquor distilled by using the raw materials available locally while the liquor made from imported raw materials is subject to excise taxes varying from 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 drinks with alcohol content ranging from 14% to 25%. If the alcohol content is higher than 25%, the tax of the product is levied as liquor. The imposition of excise duties on imported liquor has had negative influence on the export of Chinese alcoholic drinks.

3.4 Technical barriers to trade

The Bureau of Product Standards (BPS) under the Department of Trade and Industry (DTI) of the Philippines specifies that from January 2006, all color TV sets or black and white TV sets with sizes from 14 inches to 29 inches should be subject to the inspection and certification by the testing center of BPS and Solid Laguna Corporation. Products can not be put on the market without the designated certification labels. The practice of appointing Solid Laguna Corporation as the sole "third party" inspection agency will result in inconvenience in importing business and increase the cost of the imports. The Chinese side is concerned about it.

In September 2005, BPS under DTI modified and published Philippine National Standards (PNS) 155:2005 regarding specifications for porcelain dinnerware. The new standards specify the requirements for the materials, design performance and manufacture of porcelain dinnerware and greatly upgrade the standards. The tolerance for whiteness was raised from "65% minimum" to " 86% minimum", the tolerance for whiteness was changed from "not more 0.5%" to "0%", the tolerance for dissolved lead was changed from "limited to 5.0ppm" to "not exceed to 3.0ppm", and the boiling time for testing water absorption was changed from "4 hours" to "5 hours". The Chinese side will pay attention to the impact of the new standards on Chinese export enterprises of porcelain dinnerware.

3.5 Trade remedies

Up to the end of 2005, the Philippines had initiated seven cases of trade remedies against China. The outstanding trade remedy cases include the anti-dumping case of sodium tripoly phosphate initiated in 1999 and reviewed in 2004, the safeguard measures case of printed glass, float glass and mirrors filed in 2004, the safeguard measures case of imported tiles initiated in 2004 and the 2004 special safeguards case of onions imported from China. The Chinese side hopes that the Philippines will restrain itself from adopting trade remedy measures to maintain normal bilateral trade.

3.6 Government procurement

The Philippines is not a signatory to the Agreement on Government Procurement under the WTO. The legislation of the Philippine government requires counter-purchase if government institutions or government-controlled companies want to purchase goods worthy of more than US$1 million. The Department of Trade and Industry requires that foreign suppliers should be obliged to purchase Philippine goods worth more than half the value of its supply from the international trading company of the Philippines; otherwise they shall be fined. In addition, the Philippines has specified the eligibility of contractors in the government procurement for infrastructure projects such as water, electricity, telecommunications, and transportation, requiring that the contractors for infrastructure projects should be at least 60 percent Filipino-owned. Such regulations constitute obstacles to Chinese enterprises in bidding for the Philippine government projects. The Chinese side is concerned about it.

3.7 Export subsidies

The Philippines offers export subsidies to auto manufacturers through implementing the export incentives program for domestically manufactured automobiles. The program allows any auto manufacturer which exports finished vehicles from the Philippines to receive a benefit equivalent to US$400 per vehicle for year one and two, US$300 for year three, and US$100 by year five. In October 2005, the coverage of export subsidies was extended to auto parts. The Chinese side is concerned over the inconformity between the export subsidy measures of the Philippines and the relevant rules and regulations of the WTO.

3.8 Barriers to trade in services

3.8.1 Banking

The Philippines specifies that foreign ownership of bank assets should not exceed 30% of the total banking system assets of the Philippines and that the total capital should not exceed 50%. It is also required that the branches of foreign banks should not take from or provide to its mother banks and/or other banks loans more than four times of its permanent capital. Furthermore, only ten foreign banks are permitted to open full service branches in the form of wholly-owned subsidiaries in the Philippines. Foreign banks are limited to six branches each. Four foreign-owned banks that had been operating in the Philippines prior to 1948 are each allowed to operate up to twelve branches.

3.8.2 Insurance

The Philippines allows foreign insurance companies to set up wholly-owned foreign insurance institutions, but the minimum capital requirement on foreign insurance companies is on the rise. Foreign-funded insurance companies are not allowed to be engaged in insurance business of government-funded projects and private BOT projects, which has constituted apparent barriers to foreign insurance companies.

3.8.3 Securities and other financial services

The Philippines allows foreign securities companies to have access to its domestic securities market, yet foreign equity in securities underwriting is limited to 60 percent. Membership on a board of directors of foreign-invested mutual funds is limited to Philippine citizens.

3.8.4 Basic telecommunications

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

3.8.5 Public utilities

Relevant laws in the Philippines stipulate that foreign ownership of contractors of infrastructure works such as water, electricity, communications, and transportation system should not exceed 40% and that the managers of the contractors are limited to Philippine citizens.

3.8.6 Professional services

The Philippine authorities reserve the practice of licensed professions of engineering, architecture, law, medicine, and accountancy to Philippine citizens.

3.8.7 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.

The Philippines exercises 24-hour monitoring of the activities of the vessels on shore from socialist countries including China and limits scope of activities of the crew. The Chinese side hopes the Philippines to remove the afore-mentioned unreasonable measures at an early date.

4 Barriers to investment

The prevailing Corporation Code of the Philippines permits foreign investors to set up joint ventures, branches and representative offices. The law stipulates that Filipino shareholders should not be fewer than five in a joint venture, most of whom should be permanent residents of the Philippines. The secretary of a joint venture should be a Philippine citizen. The Philippine Securities and Exchange Commission also requires that the financial personnel of joint ventures should be permanent residents of the Philippines. According to the Code, prior to the operation of branches in the

Philippines, the mother company of the foreign party should have registered with the Philippine Securities and Exchange Commission. It is also required by Corporation Code that the branch should at least deposit negotiable securities with a real market value of 100,000 pesos at the Philippine Securities and Exchange Commission. Within six months after each fiscal year, the branch should deposit negotiable securities with a market value of 2% of its total revenues (no less than five million pesos) at the Philippine Securities and Exchange Commission. In addition, representative offices should register with the Philippine Securities and Exchange Commission and remit US$30,000 to the Philippines. The above-mentioned regulations on the establishment of joint ventures, branches and representative offices required of foreign investors by the Philippines have raised the threshold of foreign investment, constituting substantial barriers to foreign investment.

Kazakhstan

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Kazakhstan in 2005 hit US$6.81 billion, up by 51.4% year on year, among which China's exports to Kazakhstan amounted to US$3.9 billion, up by 76.4% year on year; and China's imports from Kazakhstan reached US$2.91 billion, up by 27.3% year on year. China had a surplus of US$990 million. China's main exports to Kazakhstan were textiles and garments, furniture, leather and leather products, plastic products, machinery and electronic products. China's major imports from Kazakhstan included copper and copper products, mineral fuel, mineral oil and its distilled products, bitumen, base metals and products thereof, precious metals and rare earth metals, etc.

According to the Ministry of Commerce of the People's Republic of China (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by the Chinese companies in Kazakhstan reached US$370 million in 2005, and the volume of the newly signed contracts was US$810 million. The volume of completed labour service cooperation contracts was US$5.92 million, and that of the newly signed labour service cooperation contracts was US$12.47 million. The turnover of completed design consultation contracts was US$17.69 million, with that of the newly signed design consultation contracts being US$18.67 million.

Approved by or registered with MOFCOM, 28 Chinese-funded non-financial enterprises were set up in Kazakhstan in 2005, with a total contractual investment of US$41.05 million from the Chinese side.

Statistics of MOFCOM show that Kazakhstan invested in 21 projects in China in 2005, with a contractual volume of US$24.05 million and an actual utilization of US$2.33 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

In Kazakhstan, major laws governing trade and investment include the Customs Code amended in 2003 and the Law on Foreign Investments published in 2003. In addition, other legislation governing this field includes Acts of the Registration of Legal Entities published in 1995, the Labour Law published in 2000, the Tax Code published in 2001, the Law on Currency Regulation, the Law on Licenses, Laws on Standardization, the Law on Subsidies and Countervailing Measures, the Law on Anti-dumping Measures, the Law on Safeguard Measures for Domestic Market upon Importation of Goods, the Patent Law, the Law on Trademarks, Service Marks and Appellations of Origins of Goods, the Copyrights Law, the Law on Protection of Integral Circuits Topologies, the Law on Unfair Competition, the Law on Bank and Banking, the Law on Financial Leasing, the Law on the State Regulation and

Supervisions of Financial Markets and Financial Organization, the Law on Architecture and Town Planning and Construction Activity, the Law on Telecommunications, the Law on Grain, the Law on Transportation, the Law on Anti-monopoly and Pricing, etc.

2.2 Trade administration

2.2.1 Import levy system

The current Customs Code specifies that there are three kinds of tariffs imposed by the Kazakhstan Customs: ad valorem duty, specific duty, and mixed duty. Tariff rates of Kazakhstan are usually adjusted annually. In 2005, the ad valorem duty rates ranged from 0% to 100%. Over 95% of the imports were charged 0% to 15% of ad valorem duties, and the weighted average duty rate is about 8.6%.

In Kazakhstan, a value added tax of 15% is also imposed on imports, the tax basis of which is the total of the customs clearance value and the customs duties. Certain consumer goods including different kinds of wine and alcohol, cigarettes, caviar, gasoline (with the exception of jet fuel), diesel oil and automobiles are also subject to excise duties.

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

2.2.2 Import administration

Kazakhstan has completely lifted the restriction on trading rights. Every natural person and legal person is free to conduct foreign trade business. All items are free to be imported into Kazakhstan without being subject to quota or licensing restrictions, with the exception of 11 categories including weapons, ammunition and medicines, which are still restricted from import.

2.2.3 Export administration

Kazakhstan encourages export. All items are eligible for export with the exception of nine categories including weapons and ammunition, which are subject to export licenses. The Customs Code specifies that all export items are exempted from export duties and value added tax, except the export of certain animal furs and hides and scrap metals, which are subject to export duties.

2.2.4 Certificates of origin

Generally, certificates of origin are not required of imports into Kazakhstan. However, Article 41 of the Customs Code states that a certificate of origin is required where: (1) goods are exported to Kazakhstan under a preferential tariff scheme; (2) goods from certain countries are subject to non-tariff measures, and the Kazakhstan Customs has reasons to believe that the goods in question are produced in those countries; and (3) a certificate of origin is required by international agreements and conventions to which Kazakhstan is a signatory, or by the relevant Kazakhstani laws concerning the protection of natural environment, public health, consumers' rights, maintaining social order and national security, and the national interests.

2.3 Investment administration

To encourage foreign investment, Kazakhstan enacted the Law on Foreign Investment in 2003, which offers the uniform legal protection and preferences for both foreign and domestic investors. Kazakhstan enforces its investment preferences through government-authorized organizations and encourages foreign investors to invest in priority sectors including agriculture, food processing, textiles and garments, manufacturing of machinery and equipment, chemical industry, construction, transportation and medical service.

There are mainly three categories of preferential policies offered by Kazakhstan, including tax reduction and exemption, exemption from customs duties and VAT on imports, and state grants in kind. Tax reduction and exemption are usually applied to domestic taxes such as property tax, land tax and profit tax, with a maximum preferential period of five years (with extensions included). Exemption from customs duties and VAT on imports is usually applied to equipment and components necessary to an investment project, with a maximum period of five years (extensions included). The state grants in kind include property ownership and the land use rights, the value of which shall be no more than 30% of the total investment.

To protect investors' rights and interests, the Kazakhstani Law on Foreign Investment states that investors are free to dispose of their after-tax income and are entitled to open local and foreign currency accounts in Kazakhstani banks. If the foreign investment is nationalized, the state will compensate the investor for his loss. The Law also states that investment disputes can be settled through consultations, or by a Kazakhstani Court or by the International Arbitration Court. When a third party has completed its investment, its stock can be transferred.

2.4 Competent authorities

The Ministry of Trade and Industry of Kazakhstan is the primary competent authorities governing the import and export trade. Its affiliated Committee for Investments is mainly responsible for implementing preferential policies for investment and verifying the enterprises' qualifications for preferential policies.

The Customs Control Committee under the Ministry of Finance of Kazakhstan is mainly responsible for enforcing the Kazakhstan Customs laws, administering the customs procedures, collecting customs duties and fees, carrying out customs supervision and recording customs statistics.

The Ministry of Justice of Kazakhstan is the competent authorities in charge of the registration of companies, enterprises and representative offices, auditing registration documents and granting registration certificates.

In addition, the Ministry of Energy and Mineral Resources, the Ministry of Information and Communications and the Ministry of Transport and Communications are responsible for part of the auditing related to the investment and operation of enterprises as well as granting licenses.

3 Barriers to trade

3.1 Tariff and tariff administration measures

The average tariff rate in Kazakhstan is 8.6%. However, Kazakhstan imposes much higher rates on certain imports, among which are canned fish and shrimps (30%), sugar (25%), and processed meat (30%). Some other imports are subject to a high import tariff rate of 100%. Besides, Kazakhstan also sets the minimum tariff duties on imports such as color television sets and recorders. The tariff rate on color television sets with screens ranging from 52cm to 75cm is 10%, but the minimum tariff on each piece is not lower than €40. Color television sets of other sizes are charged a rate of 10% and a minimum tariff of €20. The tariff structure of Kazakhstan has had negative impact on the relevant Chinese exports. The Chinese side is concerned over the issue.

At the end of 2004, the Kazakhstani government adjusted the standards for load limits of imports. Kazakhstan imposes a unified tariff on certain imports from China, charging by vehicle regardless of the load limit of the vehicle. Due to the strict load limit to imports in the new regulation, the tariff per unit of goods has increased at least by 30%. China is concerned about the unreasonable practice of charging the tax by vehicle.

3.2 Barriers to customs procedures

Since October 2002, Kazakhstan has authorized a third-party organization to do "customs audit" on imports, which usually determines the customs value of imports based on the international prices. The practice is not in accordance with Article 7 of the WTO Customs Valuation Agreement and results in overvaluation of about 20% of the imports.

The Kazakhstan Customs specifies that when declaring imports with photocopies or fax copies of documents, an importer must verify the authenticity of such documents through notarization and notify the Customs with a letter; the imports will not be released if an importer fails to provide the "Transaction Passport" issued by the Kazakhstan Customs and the Central Bank for the purpose of supervising the use of capital during the transaction. The cumbersome Customs clearance procedures and unreasonable documentation requirements of Kazakhstan have added to the importer's Customs clearance costs and risks and have constituted practical obstacles to Customs clearance. The Chinese side is concerned over this issue.

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

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

3.3 Discriminatory taxes and fees on imported goods

Kazakhstan imposes discriminatory taxes and fees on imports, which constitutes discrimination against the imports. The Kazakshstani Tax Code states that the excise duties on domestic products subject to taxation are paid in local currency, while those on some imports subject to taxation must be paid in Euros. For example, the excise duties on domestically-produced alcohol are 300 Tenge per liter, while those of imported alcohol are 3 Euros per liter. The influence of exchange rate fluctuation may lead to higher domestic taxes on imports. The Chinese side hopes that Kazakhstan can unify the domestic taxes and fees on domestic products and imports.

3.4 Technical barriers to trade

Kazakhstan sets special testing regulations on certain imports, which are required to pass the national safety test conducted by the Kazakhstani Committee on Standards, Metrology and Certification to ensure that they do not jeopardize human health, property or the ecological environment. Mechanical and electronic products exported from China, such as washing machines, refrigerators, lighting equipment, and food-processing equipment are subject to tests by the Kazakhstani Committee on Standards, Metrology and Certification. This regulation has both added to the inspection fee of enterprises and caused them great inconvenience. The Chinese side is concerned about this issue.

3.5 Sanitary and phytosanitary measures

Kazakhstan demands that imported food and feed are subject to strict sanitary and health tests. The Chinese enterprises complain that in testing relevant imports, Kazakhstan arbitrarily adds testing items and upgrades inspection standards, which become much higher than those for the like domestic products. The practice has constituted discrimination against imports. China hopes that Kazakhstan can unify the testing standards of the imports and the like domestic products, improve the transparency in the making and revision of sanitary and health testing standards, and grant enterprises a reasonable period of time to make adjustments, so as to reduce the unreasonable policy risks that relevant Chinese imports to Kazakhstan must endure.

3.6 Trade remedies

On December 31, 2004, the Kazakstani Ministry of Industry and Trade passed an act that provides provisionary safeguard measures for certain imported candies. As of January 8, 2005, the six-month provisionary safeguard measures were applied to three kinds of imported candies, imposing a protective tariff of 21% plus no less than €0.15 per kilogram on candies containing no cocoa powder and candies with or without filling. The act also imposes a protective tariff of 42% plus no less than €0.28 per kilogram on toffees containing no cocoa powder, hard candies and like candies. As China exports a great variety of candies to Kazakhstan, China watches the enforcement of these safeguard measures with great concern.

On October 15, 2004, the Trade Committee (now known as the Committee of Trade and Tourism) affiliated with the Kazakhstani Ministry of Industry and Trade initiated an anti-dumping investigation of active dry yeast imported from China. The case is still in progress. The Chinese side holds the view that its export of dry yeast to Kazakhstan constitutes no dumping and that its export does not lead to any injury to the dry yeast industry in Kazakhstan. Kazakhstan's abuse of anti-dumping measures has seriously affected the economic interests of the relevant Chinese enterprises. The Chinese side is concerned about this issue.

3.7 Government procurement

In October 2002, Kazakhstan enacted the Law on State Procurement, which sets strict regulations on the procedures and requirements for government procurement. However, in practice, government procurement in Kazakhstan still lacks transparency; and extensive preferences are granted to domestic suppliers. These regulations on bidding for government projects constitute discrimination against foreign enterprises. The Chinese side is very concerned about the issue.

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

3.8 Export restrictions

To support domestic manufacturers of paper products, heat insulation materials, and toiletry and hygiene products, and to encourage the export of processed products, the Kazakhstani government has passed a resolution prohibiting the export of regenerated paper, corrugated cardboard, waste and scrap paper as of September 26, 2004.

According to the new Tax Code of 2004, the Kazakhstani government imposes export duties on crude oil based on the fluctuation of the international price, with the rates ranging from 1% to 33%. The practice of imposing export duties based on the international price rather than on the actual export price and the unpredictability of progressive duty rates have, in effect, restricted the export of petroleum from Kazakhstan. The Chinese side is concerned about the matter.

3.9 Barriers to trade in services

3.9.1 Telecommunications

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

3.9.2 Construction

According to the Law on Architecture and Town Planning and Construction Activity of Kazakhstan, foreign investors can enter the construction sector in Kazakhstan in the form of joint ventures, with foreign ownership of no more than 49%. However, if a foreign-funded local company with 100% foreign equity joins a construction joint venture as a principal, then foreign ownership can exceed 49%. In general, Kazakhstan's restriction on foreign ownership makes it difficult for foreign investment to enter the construction sector in Kazakhstan.

3.9.3 Banking

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

3.9.4 Insurance

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

4 Barriers to investment

4.1 Barriers to investment in mining

According to Kazakhstan's new Mining Law revised in 2005, when a company applies for the license of concessions regarding its mining rights or to sell its shares, Kazakhstan's Ministry of Energy and Mineral Resources has the right not to issue the license. Meanwhile, the state has preemptive rights to purchase the mining rights or shares of not only a mining company, but also companies which have direct or indirect decisive power over the mining company. This regulation has constituted substantial obstacles for foreign investors to entering or withdrawing from Kazakhstan's mining sector, especially to the acquisition of Kazakhstan's domestic mining companies. The Chinese side is greatly concerned over the issue.

Kazakhstan's new Mining Law also states that mining fees are charged on the basis of floating rates, which increase proportionally with the increase of the annual mining volume. Additionally, in Kazakhstan's new Tax Code, the excess profit tax rate has been increased from 4%-30% to 15%-60%. Many foreign investors complain that these new regulations have made the situation of underground-resources miners more difficult, increased investors' burden of taxes and fees and reduced their rate of return.

Kazakhstan has also passed a new Law on Production Sharing Agreements for the Purpose of Offshore Oil Operations (PSAs). According to PSAs, when a foreign investor exploits offshore oil in Kazakhstan, the minimum state share of the project's profit is 10% before the investment is recouped, and 40% after the investment is recouped. It normally takes 25 or 30 years to recoup the investment.

4.2 Barriers to investment in land

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

4.3 Labor permit

Kazakhstan requires that a foreign employee working in Kazakhstan apply for a labor permit, which still remains one of the main obstacles hampering foreign investment. In 2001, Kazakhstan established a system limiting the number of labor permits issued to foreign personnel. The system sets quotas on labor permits on the basis of the total number of labor force of the country annually. Many companies investing in Kazakhstan complain that the Kazakhstani government often denies the visa applications of company managers and technicians without sound justification, or provides them with only a short-term stay. This regulation has had a negative effect on the production and management of foreign-funded enterprises.

The Republic of Korea

1 Bilateral trade relations

According to China Customs, the trade volume between China and ROK in 2005 hit US$111.93 billion, up by 24.3%, among which China's exports to ROK were US$35.11 billion, up by 26.2%, while China's imports from ROK were US$76.82 billion, up by 23.4%, with a deficit of US$41.71 billion on China. China's main exports to ROK included clothing and related accessories, chemicals, steel and converted products, oil and converted products, corn, coal, television spare parts, spare parts of radio sets and wireless telecommunication equipment, integrated circuit and micro-electronic parts, aquatic produce, etc. On the other hand, China's main imports from ROK included integrated circuits and micro-electronic parts, steel and converted products, oil and converted products, television parts and accessories, radio sets and spare parts of wireless telecommunication equipment, consumer electronic products and components, spare parts for automatic data processing equipment, color display tubes, semiconductor devices, printed circuit, etc.

According to the China's Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts in ROK by Chinese companies recorded US$210 million in 2005, and the amount of the contracts signed in 2005 was US$250 million; the amount of completed labor service cooperation contracts US$310 million, and that of the newly signed in 2005, US$260 million. By the end of 2005, the accumulated turnover of engineering contracts completed by Chinese companies was US$ 430 million, with that of all the contracts signed reaching US$660 million, and the amount of the completed labor service contracts had reached US$2.36 billion, with that of all the contracts signed amounting to US$2.83 billion.

In 2005, 22 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$12.9 million. By the end of 2005, there were altogether 113 Chinese-funded non-financial enterprises in ROK, with a total contracted contribution of US$920 million.

According to MOFCOM, Korean-invested projects in China numbered 6,115 with the contracted amount hitting US$19.76 billion and actually contributed US$5.17 billion. By the end of 2005, the number of Korean direct investment projects in China had reached 38,868 and the amounts of the contracted investment and actual contribution stood at US$70.32 billion and US$31.11 billion respectively.

2 Introduction to trade and investment regime

2.1 Legislation on Trade and Investment

The framework of ROK's laws governing the regimes of foreign trade and investment includes Foreign Trade Act, Foreign Investment Promotion Act, Foreign Exchange Transaction Act, Customs Act, and other sector-specific laws and regulations, among which Foreign Trade Act and Foreign Investment Promotion Act serve as the basic regulations in the fields of trade and investment. In addition, ROK's decrees related to regulation of foreign investment in ROK include Regulations on Foreign Investment and Technology Inducement, Regulations on Tax Reductions or Exemptions for Foreign Investors, Special Tax Treatment Control Act, etc. ROK's laws related to intellectual rights protection include Patent Act, Trademark Act, Computer Programs Protection Act, Unfair Competition Prevention and Business Secret Protection Act. Other sector-specific laws include Banking Act, Telecommunications Business Act, Electricity Business Act, Ship Act, Broadcasting Act, etc.

Food Safety Basic Law formulated in March 2005 will take effect on March 31, 2006.

In addition to the above-mentioned laws and regulations, the Ministry of Commerce, Industry and Energy announces from time to time specific policies and measures regarding foreign trade in its Import & Export Notice, Comprehensive Notice of Import & Export, and Special Notice of Import & Export published either regularly or irregularly.

In addition, the multilateral trade agreements signed by the ROK government such as the extended GATS negotiations on financial services and basic telecommunications, Agreement on Government Procurement and Agreement on Trade in Civil Aircraft have the same legal effects as the domestic laws.

2.2 Trade Administration

2.2.1 Tariff system

ROK's import tariff rates are classified into basic tariff rates, temporary tariff rates and elastic tariff rates, etc. Temporary tariff and elastic tariff are regulated and imposed by the ROK government under different circumstances. ROK's import tariffs rates also include the concession rates subject to the negotiations by the ROK government and other countries, such as World Trade Organization (WTO) Conventional Tariff, conventional tariff for developing member countries of Economic and Social Council of Asia and Pacific (ESCAP), concession tariff negotiated among developing countries under the GATT framework, etc.

ROK's tariff imposition are based on Ad Valorem Duty measured by commodity prices and Specific Duty measured by commodity quantity. In practice, more than 99% duties are accessed on an ad valorem basis.

ROK's elastic tariff rates, comprised of anti-dumping duties, retaliatory tariffs, emergency tariffs, adjustment tariffs, countervailing duties, price equilibrium tariffs, and quota tariffs, are vital in regulating imports and exports as well as protecting its domestic related industries.

2.2.2 Import administration

In principle, all commodities except rice can be freely imported, subject to special registrations and import approvals. However, the Import & Export Notice published by the Ministry of Commerce, Industry and Resources (MOCIE) from time to time imposes restrictions on the import of specific commodities temporarily.

The import of special items specified in the Import & Export Notice requires import license application which shall be submitted to the related government bodies or the trade associations and approval by related authorities. In addition, special items defined by the MOCIE in its Annual Trade Plan require approval by the Minister.

In most cases, the supplier's qualified local agent completes the import registration process.

2.3 Investment administration

In the wake of Asian financial crisis, full liberalization and incentive policies are applied to foreign investment.

In accordance with the scope of liberalization, 1121 sectors in ROK are classified into four categories (based on the standard industry). The first category is the sectors not suitable for foreign investment including 63 sectors such as public administration, foreign affairs, and war industry. The second category is sectors suitable for foreign investment but not officially liberalized including television broadcasting and radio broadcasting. The third category includes 27 sectors under investment restriction. The ROK government sets the ceiling limitation for shareholding ratio of foreign investors below 50% in such sectors as fishery, cattle farming, energy transmission and air freight, below 49% in telecommunications and generally below 33% in cable and satellite broadcasting. The other 1029 sectors are fully open to foreign investment.

Related administration agencts implement the market access approval system over foreign direct investment for the purpose of capital flow and market access administration. All relevant restrictions to foreign direct investment will be collected by the MOCIE and announced in the Comprehensive Notice of Foreign Investment each year.

2.4 Competent authorities

2.4.1 Government authorities

The Ministry of Commerce, Industry and Resources works as the core competent authority for trade and investment administration, responsible for the formulation and implementation of ROK trade and investment policies, while its subordinate Korea Trade Commission is responsible for implementing trade remedies including anti-dumping, countervailing and protective measures, investigating unfair trade practices disrupting import and export and putting forward proposals for punishment. Meanwhile, MOCIE exercises its guidance and surveillance over governmental investment institutions, non-governmental organizations and trade associations such as the Korean Trade-Investment Promotion Agency, the Korean International Trade Association and the Korean Chamber of Commerce and Industry.

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 related to banking, foreign exchanges and taxation. The Korea Customs Service is in charge of implementing ROK's tariff polices and cracking down illegal trade. The other administrative authorities such as the Ministry of Agriculture and Forestry, the Ministry of Maritime Affairs and Fisheries, the Ministry of Culture and Tourism, the Ministry of Construction and Transportation, the Ministry of Information and Communications, formulate and implement policies governing trade in the goods and services that are under their administration.

2.4.2 Other relevant organizations

Korea Trade-Investment Promotion Agency (KOTRA) is a non-profit organization established by the Korean Government with the aim to promote trade and investment. KOTRA has over 100 overseas branches. Its subordinate Invest Korea provides foreign investors with one-stop services, assisting them in going through the prerequisite administrative formalities, formulating investment proposals and offering consultation and assistance related to law and taxation.

Founded in 1946, Korean International Trade Association is a non-profit non-governmental organization. With 86,000 member enterprises, its services include registration for foreign trading enterprises, trade intermediacy, conducting overseas market surveys, introduction of related international and domestic laws and regulations, and providing various consultations of special topics.

Other relevant organizations include the Korean Small Business Corporation which provides various services for the development of Korean small-and-medium sized enterprises, the Korean Export Insurance Corporation which provides export risk insurance to exporters, as well as the Korean Chamber of Commerce and Industry which enhances international non-governmental economic cooperation.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

The average level of tariff in ROK was under 8 percent in 2005, but the actual tariffs of some agricultural and industrial products are much higher than those in other industrialized countries. For instance, the weighted average of ROK's bound tariffs on all agricultural products is 64.1 percent.

3.1.1 Adjustment Tariffs

An adjustment tariff lower than 100% is, in addition to the basic tariff, applied to the agricultural, forestry, animal and aquatic imports whose domestic counterparts are weak in competition or whose increase is likely to result in the disruption of domestic market or injure related domestic industries, and to those imports whose domestic counterparts are subject to provisional protection on such reasons as environmental protection, domestic consumers' interests and the balance of domestic industry development. The imports subject to the adjustment tariffs scheme and the related rates are published once every year and the imposition runs from January 1 till December 31.

In 2005, 18 kinds of products are subject to adjustment tariffs, with the average level at 38.5%. Compared with the level of 2004, the adjustment tariff on poulp squid (frozen) is canceled and those on 8 kinds of products including sea-bream, sea bass, croakers, frozen shrimps, squid (frozen), oak mushroom, Chinese vermicelli and bean sauce pies were cut down by 2%-5%. The Chinese side found that among the 18 kinds of products subject to the adjustment tariffs, eel, sea bass, croakers, salted or in brine shrimps, oak mushroom, Chinese vermicelli, bean sauce pies, mixed seasonings (including red pepper paste) are totally or mostly Chinese imports in which Chinese producers enjoy competitive advantages. The types of products subject to the tariffs and the related rates are adjusted annually, which is not only uncertain and unforeseeable for Chinese exporters, but also adversely affects the trade stability between China and ROK. Although ROK reduces the number of types and lowers the adjustment tariff level year by year, but the reductions are quite limited in either respect.

3.1.2 Tariff quotas

In the negotiations of the Uruguay Round, ROK was allowed to implement tariff quotas on such agricultural products as rice and corn. In 2005, ROK maintained tariff quotas on 63 major kinds of agricultural products. Some of the covered items are subject to an over-quota tariff rates above 200%. For example, the rates of sesame, garlic, mung bean, date and green tea are 630%, 360%, 607.5%, 611.5% and 513.6% respectively. Most agricultural products in which China enjoys competitive advantages are subject to tariff quota administration by the ROK Government, so the over-quota tariff rates have, in fact, impeded the export of related Chinese products to ROK.

3.1.3 Special safeguard duties on agricultural products

The amendments to the Customs Act and its related decrees made by the Korean government in 2004 stipulates that as of January 1, 2005, if the imports of 45 agricultural and forestry products such as mung bean, red bean, buckwheat, soybean, peanut, and ginseng exceed the certain quantity, the special safeguard duties that can reach 1067% at maximum shall be imposed, and this measure shall remain valid for one year. Among the 45 products, 21 are Chinese imports. In accordance with the amendment, 810% and 561% emergency tariffs are imposed on the imports of mung bean and red bean respectively, if their aggregate quantity exceeds 33,052 tons; 307% emergency tariffs on peanut if the imports exceed 4,845 tons: 297% to 1005% emergency tariffs on the imports of 19 kinds of ginseng including Saengsam (unprocessed ginseng) and Red Ginseng and converted products if they exceed the import limit of 41 tons. On December 29, 2005, ROK made slight adjustments on the coverage of products subject to Special Safeguard Duties on agricultural products in 2006 and the related tariff level, and the covered goods are reduced to 44. According to ROK Customs statistics, Chinese imports of red bean and peanut were heavily affected by this measure, reduced by 20% and 30% respectively. The Chinese side hopes that the ROK Customs will strictly observe relevant WTO agreements so as to avoid the injury to bilateral trade.

3.1.4 Application of tariff items

The ROK Customs usually adopts ‘main ingredient’ or ‘import purpose or motive’ criteria in deciding the tariff items applicable to ‘blended products’, namely those containing various ingredients. This practice frequently results in unreasonably high tariff rates applied to certain products. "Blended products" disadvantaged by this practice include potato flakes, soybean flakes.

3.2 Barriers to customs procedures

3.2.1 Selected inspection of agricultural products

As of July 2003, the ROK Customs conducts pre-clearance examination on selected agricultural products under the reason for cracking down smuggling of agricultural products. The average rate of random inspection on selected imports is 3% to 5% only, but 20% on agricultural products and 100% on frozen chilli and mixed seasoning. This practice prolongs the clearance of related Chinese agricultural products and increases cost of trade.

3.2.2 Pre-clearance tariff examination

As of 2000 the ROK Customs conducts pre-clearance examination on selected agricultural products under the reason for preventing “duty evasion by low-priced customs declaration”. The ROK Customs further intensified its pre-clearance examination on 18 agricultural products to be imported into ROK such as sesame, perillaseed, ginger, dried red bean, dried mung bean, seasoned peanut, soybean for bean sprout, onion, barley, sweet potato starch, frozen chili, frozen garlic, pickled garlic, fresh (chilled) whole garlic, fresh (chilled) garlic grains, garlic temporarily marinated for storage, dried garlic, carrot, etc. The agricultural products subject to examination must receive price examination by the ROK Customs for the possibility of duty evasion. Currently, the Korean Customs further intensified its pre-clearance examination. The Korean Customs evaluates the prices of products declared by importers by examining sales contracts and the modes of payment involved or by comparing the declared prices with the unit prices that the customs have constructed from their instant calculation. Only the products deemed proper in price are allowed to clear the customs. However, the Korean customs generally do not disclose their benchmark prices.

The 18 products subject to ROK’s pre-clearance tariff examination are mainly Chinese imports. Except for perillasee, frozen chili, carrot, frozen garlic, the other 14 products shall be subject to quotas. The pre-clearance tariff examination has prolonged the customs clearance for related Chinese agricultural imports, thereby impeding Chinese agricultural exports to ROK. The Chinese side has expressed concern over the transparency and implementation of the measure.

3.3 Technical barriers to trade

The certification methods applied to the products declared are frequently altered by Korean Administration for Technical Standards (KATS) without prior notice, at the request of the Korean domestic enterprises. Such practices have compelled Chinese exporters to put in double expenses and time for certification, hence increasing costs and uncertainty for Chinese exports to ROK market.

3.4 Sanitary and phytosanitary measures

The Chinese products significantly affected by ROK’s inspection and quarantine measures include agricultural products, aquatic products, products of animal origin, food and food additives, medicines and medicine materials.

3.4.1 Agricultural products

As of June 1, 2005, ROK initiated new regulations regarding the inspection on wooden packing for imports according to the Regulations on Wooden Packing

Material in International Trade (shortened as ISPM No. 15) issued by the International Plant Protection Convention. According to the new measure, unprocessed wooden packing materials, such as wooden pallets, wooden cases, stow-wood and wooden padding shall receive heat treatment according to International Standard ISPM No. 15 or MB fumigation required by ROK, and sterilization labels are to be stenciled on two surfaces of each packing material or containers. In addition, for conifer wooden packing from Japan, China' s mainland and Taiwan, U.S., Canada, Mexico and Portugal, heat treatment (with the core temperature of the wood remaining at 56°C for 30 minutes consecutively) or MB fumigation is required.

In accordance with related Korean laws, fresh fruits are subject to the risk evaluation on plant diseases and pests by Korean inspection and quarantine agencies. The evaluation process will usually take years to complete. Currently, Chinese fresh fruits are not importable to ROK. In October, 2003, Chinese quarantine departments submitted the application for the risk evaluation on plant diseases and pests risks on cherry and longan. However, the import of these fresh fruits has not been approved by the Korean side.

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

3.4.2 Chinese traditional medicine materials

3.4.2.1 Pesticide residues and residual limits of heavy metal

In April, 2005, Korean Food and Drug Administration (KFDA) promulgated Amendment to the Recommendation on the Limits of Pesticide Residues/Heavy Metals in Materials for Traditional Chinese Medicines and Related Testing Methods. The Amendment not only includes new items for testing pesticide residues and adjusts the maximal residual limits but also establishes the maximal residual limits for heavy metal content in the materials for traditional Chinese medicines as follows: the maximal content for plant medicines: lead (Pb) 5mg/kg; arsenic (As) 3mg/Kg; mercury(Hg) 0.2mg/kg, and cadmium (Gd) 0.3mg/kg; for pilose antler: arsenic 3mg/Kg. The aggregate residue limit of heavy metal in patent medicine or preparation with herbal medicines as the main ingredients (exclusive of preparation containing mineral medicine material) must be lower than 30mg/kg. The Chinese side has expressed great concern over the Amendment and hopes the Korean side can timely provide solid scientific evidence for the adjustment of maximal residual limits so as to avoid the impact on materials for traditional Chinese medicines exported to ROK.

3.4.2.2 Pilose antler

Currently, China's exports of pilose antler to ROK account for 10-15% of its import market share. The inspection on imported deer horns is generally conducted by the institutions designated by Korean Food and Drug Administration (KFDA). Its purpose is to detect the ash content which is required to be lower than 35%. It is known that of all the countries in the world only ROK conducts such inspections. 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 KFDA as well as the method applied by Korean inspectors has aroused serious concern on the part of Chinese exporters.

3.4.3 Aquatic products

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.

The ROK government conducts "clearance after precise inspection" on some Chinese aquatic products to ROK. In January 2005, the Korean Aquatic Products Inspection Bureau declared to increase the number of products subject to "clearance after precise inspection" in order to ban illegal marketing and improve sanitary safety of food. As of January 10, 2005, the measure "clearance after precise inspection" applies to frozen food, dried food and pickled food except live and fresh aquatic products. As of July 1, 2005, the measure also extends to cover live (except fish) and fresh aquatic products.

Currently, special import regulation is administered on 6 aquatic products, namely loach, eel (2 varieties), blood clam, scallop and oyster. Chinese companies exporting above-mentioned products are required to receive the precision inspection from Korean quarantine authorities at least once a month, and should any inconformity be found in the case of one company, all other companies exporting the same products to ROK shall be required to receive the precision inspection.

This practice, usually lasting for 3-4 days, greatly prolonged time needed for customs clearance, thus reducing the fishes' survival rate and hampering Chinese export of live fishes to ROK. The Chinese side has expressed much concern over it.

3.4.4 Animal products

3.4.4.1 Registration system for production enterprises

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. Currently only 11 Chinese animal meat processing companies have gone through registration and acquired qualifications for export to ROK, thereby tightly limiting Chinese animal meat exports to ROK.

3.4.4.2 Import quarantine recognition system

This system is applied to all imported animal products. According to the system, exporting countries are required to make application and submit relevant documents on its animal diseases, if any, to be evaluated and endorsed by competent Korean authorities. Non-OIE-member countries shall be subjected to on-site inspections and investigations by competent Korean authorities and are able to export related products after a bilateral quarantine agreement is signed. Claiming that China is not a member country of OIE and is affected by mouth-feet-disease, Korean authorities have banned the import of artiodactylous products produced in the whole territory of China mainland. Furthermore, according to the requirements of Sanitary Conditions for Import of Coarse Fodder formulated by ROK's Ministry of Agriculture and Forestry, countries that are banned to export artiodactylous animals and related products to ROK are automatically not included on the list of countries free to export coarse fodder to ROK. Subsequently, Chinese coarse fodder exporters have to accept one-by-one quarantine recognition by Korean authorities before being allowed to export this product to ROK.

3.4.4.3 Meat inspection

In the second half year of 2003, ROK imposed import ban on poultry meat from China, for the reason of outbreak of avian flu in China. Through the Chinese side's active negotiation with ROK, in the second half of 2004, ROK began to allow the import of Chinese heat-treated poultry meat and endorsed 11 Chinese heat-treated poultry production enterprises. However, ROK insisted on rigid inspection on every heat-treated poultry product, which retarded customs clearance and increased the storage expenses and costs. In addition, the Korean quarantine departments refuse to inspect the exports of some enterprises on the pretext that the suppliers of the materials used by Chinese enterprises in processing are not approved by the Korean side. The subsequent rejection by Korean importers has subjected Chinese exporters to great loss.

3.4.5 Regionalization of epidemic-infected area

As far as regionalization of epidemic area is concerned, the total territory of China mainland has always been regarded as a whole region by ROK, which means if an epidemic or a pest forbidden to enter the Korean territory is discovered in products originating from a region of China, ROK will accordingly ban the import of products of the same kind from other regions on China mainland.

The Chinese side has expressed concern over the consistence between the ROK measures and the "principle of regionalization of epidemic areas" under the WTO

SPS Agreement and hopes the Korean practices will not exert unnecessary adverse impact on the normal trade in animal products between China and ROK.

3.5 Trade remedies

3.5.1 Anti-dumping measures

Up to the end of 2005, ROK had initiated 20 antidumping investigations and ten safeguard investigations involving Chinese exports. Most antidumping investigations were concluded with imposition of antidumping duties or price undertakings, and 10 cases involve Chinese exports. The antidumping duties are imposed on 7 Chinese exports: disposable lighter, alkplali battery, silicon-manganese alloy, printing paper, sodium dithionite, choline oxide, and titanium dioxide. The on-going antidumping investigations are against two products: extension-processed long-staple polyester silk and floor or wall tiles.

In January 2005, with regard to titanium dioxide of Chinese origin, the Korean government made the final adjudication by imposing 4.82% to 23.08% anti-dumping duties on relevant imports from all Chinese manufacturers. In June and November 2005, the Korean government conducted anti-dumping investigations against Chinese floor or wall tiles and extension-processed long-staple polyester silk respectively. In the recent anti-dumping investigation launched by ROK, the total amount of the involved tiles is valued at US$58.66 million. On November 24, 2005, Korean Trade Commission made a preliminary ruling that China-made tile exports constituted dumping, and proposed that the Korean government impose provisional anti-dumping duties ranging from 7.25% to 37.4%. Chinese enterprises request that the Korean side exempt some expensive high-grade products that Korean enterprises do not produce from investigations and their petition be taken into consideration in the final ruling.

In the anti-dumping investigations conducted against choline oxide and titanium dioxide in 2005, ROK acknowledged the market economy status of some Chinese enterprises and related industries under investigation. On November 16, 2005, ROK officially declared China's market economy status, which has been favorably received by the Chinese side.

3.5.2 Special safeguards and special restrictions on textiles

So far, ROK has not proposed investigations on special safeguards against or special restrictions on Chinese textiles. The Chinese side hopes, after acknowledging China's market economy status, the Korean side will waive the rights to conduct such special safeguard investigations as stipulated in Article 16 of the Protocol on China's Accession to the WTO and such investigations as specified in Paragraph 242 of the Working Group's Report on China's WTO Accession, so as to facilitate the further development of economic and trade relations between the two countries.

3.6 Government procurement

ROK is a signatory country to the WTO Agreement on Government Procurement. 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 contracts, which is inconsistent with accepted trade practices. For example, bidding companies are required to render a guarantee bond equivalent to 10% of the contract value before bidding, and this bond may be seized, partially or wholly, by the Korean authorities on various reasons. In addition, it is stipulated in the public bidding import contract that if the Korean side deems prices of agricultural products lower than prices required, it may refuse to give shipping instructions. This provision is significantly arbitrary, and may directly threaten the reimbursement of the bond and the execution of the contract. After the arrival of the imports at Korean ports, apart from the inspections to be conducted according to the relevant Korean laws and regulations, Korean Agricultural & Fishery Marketing Corporation may carry out quality or quantity inspection by itself, and if the result of either inspection proves not consistent, the involved goods will be rejected, even though approved at the port of shipment. The above practices have increased risks sustained by Chinese exporters in participating in ROK's public bidding for import of agricultural products under government procurement program, and pose unreasonably heavy burden on Chinese exporters. The Chinese side hopes that ROK will further improve bidding methods and follow international customary practices by recognizing the result of inspection conducted by exporting countries and conducting re-inspection in importing countries.

According to some Chinese enterprises, after the Chinese enterprises won the bidding for onions in 2005, the Korean Agricultural & Fishery Marketing Corporation came to conduct on-site inspections at the Chinese points of origin or the place of shipment within a short period (3 days or so) shortly before delivery and required that no cracks appear on the skin of the onion or no mud on the fibrous root and that. Moreover, the criteria for the length of the rhizome are arbitrarily set by the inspectors. The Koreans' requirements are obviously beyond what the contracted stipulations. Even if Chinese enterprises have the goods re-processed in accordance with their requirements, punctual shipment is generally impossible as the time left is too limited. As a result, these excessively stringent standards imposed by Korean inspectors have in effect not only impeded Chinese bid-winners from exporting products to ROK, but also brought about subsequent losses of the performance bond they have paid.

3.7 Barriers to trade in services

3.7.1 Financial services

ROK applies different standards to the supervision over foreign banks' branches in

ROK and Korean local banks. It requires that, if a foreign bank wishes to establish a new branch in ROK, all the procedures required for the establishment of the first branch in ROK be completed and that relevant information be submitted. No such requirements are needed in case of the application for establishment of new branches submitted by a domestic bank. Besides, some Korean measures are not favorable for the business development of Chinese banks in ROK, such as treating foreign banks' branches as their subsidiaries with regard to the business scope and capitals of foreign banks, and imposing capital limits on the supplementary institutions of foreign banks' branches. ROK's restrictions on the size of loans to individual borrowers and of credits and large loans to groups as well as on the size of inter-bank lending and borrowing have limited the financing ability and asset sizes of Chinese-funded banks in ROK.

Chinese banks also complain that the expenses involved for the access to the Won Settlement System charged on foreign banks are dearly high.

3.7.2 Telecommunications

Korean authorities require that foreign ownership in telecommunications services not exceed 49%.

3.7.3 Legal services

Currently foreigners are not allowed to set up law offices or conduct legal consultancy in ROK.

The existing laws forbid Korean law offices to employ foreign lawyers or come into partnership with foreign offices. Foreign lawyers can only act as legal advisers at Korean law offices and are not allowed to practice as lawyers.

3.8 Other barriers

3.8.1 Multiple-entry visa

In spite of the agreement signed between Chinese and ROK 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 living and working 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. It is reported that since 2003 over 100 Chinese companies have been obliged to close down because the Korean side refused to issue or extend visas. The Chinese side has expressed concern about this issue and hopes the Korean side will solve the problem appropriately.

3.8.2 Transparency in legislation

Koreans are expected to improve the transparency in formulating and implementing their laws and regulations. Relevant Korean authorities often make internal policies, namely 'Guidelines', regarding inspection and quarantine of imported products, in particular, agricultural products and aquatic products, but these "guidelines" are seldom made public. The implementation of laws and regulations by Koran officials seem so discretionary that the exporters involved tend to feel at a loss, thus bringing about much uncertainty to their business operation.

3.8.3 Interests protection for shipping companies

No relevant customs regulations are available in ROK for protecting the interests of foreign shipping companies, and this has subjected 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, merely because of price fluctuations in their market. 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.

4 Barriers to investment

4.1 Barriers to investment access

So far, preschool education institutions, elementary schools, middle schools, universities, postgraduate academies and special schools, which are regarded as non-profit judicial entities by ROK, have not been allowed to make overseas remittance freely or to be engaged in foreign investment.

4.2 Barriers to investment operation

4.2.1 Dual payment of unemployment insurance

In accordance with Korean laws, enterprises must pay employment insurance (namely, unemployment insurance) for their employees. The Korean side requires

Chinese-funded enterprises pay insurance for Chinese employees as well as Korean employees. However, Chinese employees who are mostly provisionally dispatched overseas have paid required unemployment insurance in China. The dual payment of unemployment insurance will increase financial burden on Chinese-funded enterprises in ROK while Chinese employees are unable to enjoy the benefits from employment insurance paid in ROK.

4.2.2 Reimbursement of national annuity

In accordance with Korean laws, foreign enterprises in ROK must pay national annuity (namely, endowment insurance) for all employees. However, Chinese employees in Chinese-funded enterprises have paid endowment insurance in China. To settle this problem, the Korean and Chinese sides signed PRC and ROK Provisional Measures Agreement on Mutual Exemption from Endowment Insurance Payment that took effect on May 23, 2003. In accordance with the agreement, Chinese employees working for Chinese-funded companies, offices and other organizations as well as self-employed business persons are exempt from paying national annuity after submitting relevant documents and the Korean side ought to reimburse the national annuity paid by Chinese employees before May 23, 2003. So far, the Korean side has reimbursed a portion of annuity paid by Chinese-funded enterprises during the period from January 2003 to May 23, 2003, but failed to reimburse the national annuity paid before 2003. The Chinese side hopes the Korean side will reimburse the national annuity paid by Chinese-funded enterprises before 2003 as soon as possible in accordance with the agreement.

Canada

1 Bilateral trade relations

According to China's Customs, the bilateral trade volume between China and Canada in 2005 reached US$19.17 billion, up by 23.5%, among which China's export to Canada was US$11.65 billion, up 42.8%, while China's import from Canada was US$7.51 billion, up 2.2%. China had a surplus of US$4.14 billion. China mainly exported electromechanical products, electrical appliances, clothing and accessories, furniture, iron and steel products, toys, plastics and products thereof, automotive vehicles and components thereof, footwear, etc. Major imported products of China from Canada included fertilizers, paper pulp, iron ore, cereals and cereal powders, nickel and products thereof, plastics and products thereof, 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$23.88 million in 2005, and the volume of the newly signed contracts was US$18.88 million. The volume of completed labour service cooperation contracts was US$0.72 million, and that of the newly signed labour service cooperation contracts was US$2.29 million. By the end of 2005, the accumulated turnover of engineering contracts completed by the Chinese companies in Canada was US$110 million, with that of all the contracts signed reaching US$120 million, and the volume of the completed labour service contracts reached US$39.62 million, with that of the total contracts signed reaching US$77.71 million.

According to MOFCOM, 21 Chinese-funded non-financial enterprises were set up in Canada in 2005, with a contractual investment of US$51.09 million from Chinese investors. By the end of 2005, there were accumulatively 194 Chinese-funded enterprises in Canada with a total contractual investment of US$520 million from Chinese investors.

According to MOFCOM, Canadian investors invested in 964 projects in China in 2005, with a contractual volume of US$2.72 billion and an actual utilization of US$450 million. By the end of 2005, Canada investors had accumulatively invested in 8,900 FDI projects in China with a contractual volume of US$16.96 billion and an actual utilization volume of US$4.98 billion.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

Canadian laws related to trade and investment mainly include: Customs Act, Customs Tariff Act, Export Act, Export Development Act, Export and Import Permits Act, Special Import Measures Act, Special Import Measures Regulations, Import Permits

Regulations, Investment Canada Act, Investment Canada Regulations, Companies Act, Canadian International Trade Tribunal Act, Marking of Imported Goods Order, Consumer Packaging and Labeling Act, Precious Metals Marking Act, Canada Agricultural Products Act, Textile Labeling Act, and Textile labeling and Advertising Regulations, etc.

Canadian laws and regulations affecting inspection and quarantine mainly consist of Food and Drugs Act, Hazardous Products Act, Meat Inspection Act, Fish Inspection Act, Health of Animals Act, and Wild Animal and Plant Trade Regulations.

2.2 Trade administration

2.2.1 Tariff system

The domestic market of Canada is highly liberalized, average tariff level comparative low. The average ad valorem duty in 2005 was about 1.83%.

The Canadian Customs Tariff was made by the Canadian Department of Finance based on relevant multilateral and bilateral agreements. Canada Border Services Agency (CBSA) is in charge of levying duties, a right to which all provinces are not entitled. Most imported goods are subject to ad valorem duty while some are subject to specific duty. Certain products are sometimes subject to 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. Most of the imports from China enjoy the preferential tariff rate with the exception of most textile products and clothing, footwear, a small number of industrial products, refined sugar, and certain agricultural products.

2.2.2 Import Administration

2.2.2.1 Import Control

According the Export and Import Permits Act, Canada Import and Export Controls Bureau (EICB) is in charge of monitoring imports according to the Import Control List (ICL). The ICL consists of a list of products put under control, among which some products are only restricted when they come from specific countries or regions. An import permit is required for any product listed in the ICL. Currently controls are exercised on four kinds of products, including agricultural products (poultry, eggs and dairy products), textiles and clothing, certain iron and steel products, weapons and military supplies, a total of 154 categories.

a. Agricultural products

As of 1995, Canada exercises Tariff Quota (TRQ) administration over agricultural products. For all agricultural TRQ categories except margarine, wheat, barley, wheat products, and barley products, importers are required to obtain a quota allocation from competent authorities. For margarine, import permits are issued by the International Trade Canada (ITCan) on a first-come, first-served basis until the quota has been filled. For barley, wheat, barley products and wheat products, a General Import Permit (GIP) is granted until the quota has been filled.

b. Textiles and clothing

As of April 1, 2005, only those clothing and textile products from the U.S., Mexico, Chile, and Costa Rica that are eligible for a tariff preference level (TPL) benefit are subject to import permit requirements. For imports not eligible for TPL benefit, import permits are no longer required.

c. Iron and Steel products

The Canadian Government implements a monitoring program over the importation of iron and steel products. Carbon steel products and special steel products are put under the ICL. On 31 August 2005, EICB issued a notice to the effect that the new monitoring program for iron and steel products would last till 31 August 2008.

2.2.2.2 Prohibited imports

Canada prohibits the importation of the following goods: material which is considered to be obscene, treasonable, seditious, hate propaganda, or child pornography; used or second-hand automobiles of all kinds (except from the USA); used or second-hand aircraft of all kinds; debased or counterfeit currency; certain birds; aigrettes, egret plumes and certain other feathers; used or second-hand mattresses; articles manufactured or produced by prisoners; reprints of Canadian works protected by copyright; matches made with white phosphorus.

2.2.2.3 Rules of origin

There are three main types of certificates of origin in Canada: Certificates of origin required under free trade agreements; Form A, Certificate of Origin, or the exporter's statement of origin, goods subject to general preferential tariff and goods other than textiles and apparels originating in a Least Developed Country; Form B255, Certificate of Origin, Textile and Apparel Goods originating in a Least Developed Country.

Exporters shall have to present the certificates if a Customs officer requests them.

2.2.3 Export Administration

The Canadian Government exercises export control over some products, which are listed in the Export Control List (ECL). These products include: agricultural products (refined sugar, sugar-containing products and peanut butter); textiles and clothing; military, strategic dual-use goods; nuclear energy materials and technology; missile, chemical or biological goods of non-proliferation concern; softwood lumber, unprocessed logs and certain other forest products; miscellaneous goods including goods of U.S.-origin, Roe Herring and certain items with medical value. All goods destined for countries on the Area Control List are subject to export control. Currently, there are only two countries on the Area Control List: Angola and Myanmar.

Goods subject to export control require an Export Permit. There are two types of permit: General Permit and Individual Permit. While General Permits allow for the pre-authorized export of certain eligible goods to certain eligible countries by a simplified process, Individual Permits are specific to an individual importer or exporter. Most controlled goods require an Individual Permit for import or export.

In addition, goods must be reported to the CBSA by filing an export declaration prior to export: when the goods are valued at CAN$2,000 or more; and the final destination of the goods is a country other than the United States, Puerto Rico, or U.S. Virgin Islands.

2.3 Investment administration

Industry Canada is responsible for promoting and examining the proposals of non-Canadian citizens in acquiring a key interest in any of the non-cultural sectors in Canada. Canadian Heritage is in charge of examining proposals for investing in cultural sectors.

The Canadian Government facilitates inward investment made by Canadian and non-Canadian citizens. According to the Investment Canadian Act (hereinafter referred to as "the Act"), no restrictions are imposed on foreign investment in all ordinary circumstances. The establishment of a new Canadian business is subject to prior notification only, that is, the only thing the investor has to do is notify Investment Canada of the proposal at any time prior to implementation, or within 30 days thereafter. No further presentation of the details of the proposal is required if the proposal is an ordinary one. No examination or approval is required unless the new establishment falls under the protected sectors.

However, according to the Act, an investment is reviewable if the interests to be acquired equals or exceeds the following thresholds:

For non-WTO investors, the thresholds are

(1) CAN$5 million (included) for a direct acquisition;

(2) over CAN$50 million (included) for an indirect acquisition; and

(3) the 5 million threshold will apply however for an indirect acquisition if the asset value of the Canadian business being acquired exceeds 50% of the asset value of the global transaction.

A threshold is calculated annually for reviewable direct acquisitions by or from WTO investors, except for investment in sectors related to uranium, financial services, transportation services, and conventional cultural sectors. The threshold for 2005 is CAN$250 million, higher than that of CAN$237 million in 2004. The threshold for 2006 is further increased to CAN$265 million, which means a direct acquisition by WTO investors of a Canadian business below the new threshold is not reviewable and only requires filing with the Canadian Government. Pursuant to Canada's international commitments, indirect acquisitions by or from WTO investors are not reviewable and only require filing with the Canadian Government.

For investment by WTO investors in uranium industry, financial services, transportation services, and conventional cultural businesses, thresholds for non-WTO investors shall apply.

2.4 Competent authorities

The authority to administer foreign trade is vested with International Trade Canada, which is mandated to help Canadian enterprises expand into the international market, and to represent Canada in negotiating and supervising trade agreements. The Export and Import Controls Bureau (EICB) authorizes, under the discretion of the Minister of International Trade, the import and export of goods restricted by quotas and/or tariffs. It also monitors the trade in certain goods and ensures personal security of Canadians and citizens of other countries by restricting trade in dangerous goods and other materials.

Created in December 2003, the Canada Border Services Agency (CBSA), the successor to the Canada Customs and Tariff Bureau, operates as an agency under the Public Safety and Emergency Preparedness (PSEP) portfolio. The CBSA is responsible for providing integrated border services that support national security priorities and facilitate the free flow of persons and goods, including animals and plants.

Canadian International Trade Tribunal is responsible for initiating safeguard investigations based on the complaints made by domestic producers and making decisions as to whether domestic enterprises have incurred a serious injury or a threat to serious injury as a result of a surge in imports.

Health Canada is responsible for establishing policies and standards for the safety and nutritional quality of food sold in Canada. The Canadian Food Inspection Agency (CFIA) is in charge of food inspection and quarantine and at the same time consolidates the delivery of federal food, animal and plant health inspection programs.

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.

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%), flowers (e.g. Orchids, 16%; Roses, 10.5%), cigarettes that contain tobacco (12.5%), natural gas (12.5%), textiles (14%), clothing (18%), certain leather products (e.g. gloves other than those used for cricket or other sports, 15.5%), certain footwear (18%), watercrafts (20 or 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, beverages, tobacco, textiles and leather products. Though there is a zero tariff rate on coco beans, import duty on coco powder is around 6%. Natural mineral water is subject to a zero tariff rate, but an 11% import duty is imposed on mineral water added with sugar or flavor. While a zero tariff rate applies to unprocessed tobacco, rolled cigars with tobacco and cigarettes are subject to import duties ranging from 4% to 12.5%. Wool and animal hair when not carded or combed enjoy the zero tariff rate, but an import duty of 8% is imposed on semi-processed products such as yarn of wool or of fine animal hair (carded or combed). Tariff rates on woven fabrics rise to a level between 12% and 14%. 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 on articles of leather escalate to a level between 7% and 15%.

3.1.3 Tariff quota

Tariff quota administration is conducted by the Canadian authorities upon some agricultural products, including dairy products, poultry, meat, eggs and wheat and barley products. Very high tariff rates are imposed upon such agricultural products as live poultry, poultry meat, poultry eggs, turkey, whey, butter and cheese if they go beyond the access commitment. For example, the tariff rate over access commitment on imported milk is 243% with the collected tariff not lower than CAN$2.82 per kilo. For other dairy foods for smearing, the tariff over access commitment is as high as 313.5% and that on meat and edible offal of the poultry (fresh, chilled or frozen) as high as 154.5% and 238%.

3.2 Technical barriers to trade

In 2005, Canada made 48 TBT notifications to the WTO, mainly concerning radio communications equipment, emission standard of passenger cars and engines, safety measures for motor vehicles, grading of eggs and inspection requirements for packaging.

3.2.1 Safety requirements for lighters

In 2004, the Canadian government adopted the amendment to the act on lighters, requires those who produce, sell or import all non-luxury lighters (those domestic-made lighters sold under 2.5 Canadian dollars and imported ones under 2.5

Canadian dollars according to Customs valuation) to keep conformity certificate for three years since the production or importation of the lighters, showing that the these lighters contain child-resistant measures. Associating product safety with price is obviously not in line with the WTO Agreement on Technical Barriers to Trade. Therefore, the Chinese side hopes that the Canadian side will make reasonable amendment so as to comply with the WTO rules.

3.2.2 Specifications of packages contained in the Processed Products Regulations

The Processed Products Regulations lay down detailed requirements on quality, labeling, packing, hygiene and safety standards for a wide range of processed fruit and vegetable products sold in Canada, including canned fruits, vegetables, vegetable soup ingredients, and vegetable juice, etc. For instance, the Regulations impose a requirement on manufacturers of baby food to sell in only two standardized container sizes: 4.5 ounces (128ml) and 7.5 ounces (213ml). Only three container sizes are prescribed for mandarin orange. This requirement to sell in prescribed container sizes creates an unnecessary obstacle to trade in relevant products between Canada and China.

3.2.3 Nutrition labeling for food

As of December 12, 2005, food manufacturers and importers in Canada with a sales volume exceeding CAN$1 million are required to comply with nutrition labeling requirements as prescribed in the Food and Drugs Regulations. One year is given to the manufacturers to carry out the relevant standards, which means, tolerance is given to food produced or imported before December 12 2005 without nutrition facts. However, the standards should be strictly observed after 12 December 2006. For small-scale producers, a grace period of 2 years till 12 December 2005 is given before requirements are fully met. According to the relevant regulation, Canadian food producers and importers must make sure that the food labeling or advertising contains such wordings as 'nutrition facts', 'valeur nutritive' or 'valeurs nutritives'. When making a new health or nutrient content claim, they are required to indicate clearly the content of calories and 13 key nutrients. Besides, the Regulations also provide about 272 different labeling samples. However, instead of being chosen randomly, the labeling samples are to be selected according to the size of the available display surface on the packaging of the food, which is often 15%. Therefore, domestic enterprises should pay close attention to the relevant labeling regulations and their development in Canada and will have a further look at the regulations to see whether they fall within the necessary administrative procedure.

3.3 Sanitary and phytosanitary measures

In 2005, Canada made 64 SPS notifications to the WTO, mainly concerning the amendments to the Food and Drugs Act, the Pest Control Products Act, sanitary requirements for imported bean products and wood products.

3.4 Trade remedies

Canada is one of countries that frequently resort to trade remedy measures, affecting a wide variety of products. In 2005, Canada launched 5 trade remedy investigations and reinvestigations against Chinese exports. There were 2 antidumping and countervailing cases involving laminate floor and hot rolled steel plate respectively, 2 safeguard investigations on the importation of bicycle and un-manufactured tobacco from other countries, and a special safeguard investigation involving outdoor barbeques.

3.4.1 Antidumping and countervailing investigations

On 17 May 2005, the CBSA made a final ruling on the original investigation over laminate floor that dumping and subsidies exist in laminate floor originated or imported from China with weighted average dumping margin of 7.8% and weighted average amount of subsidy of 3%. On June 16, 2005, the Canada International Trade Tribunal (CITT) made a final ruling to the effect that laminated floor originated or imported from China caused injury to the domestic industry of Canada. The Chinese side expresses dissatisfaction over the ruling by pointing out that the investigation was launched based on the letters of complaints which lacked 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. The Chinese side argues that the ruling is inconsistent with facts and the Canadian side has failed to comply with Paragraph 2 of Article XI of the Agreement on Subsidies and Countervailing Measures (SCM) as well as the relevant domestic laws of Canada.

On 14 November 2005, the CBSA issued a notice, initiating an antidumping and countervailing reinvestigation against laminate floor imported from China between 1 January 2006 and 30 September 2006. The investigation would be conducted based on the recognition of the market economic status of the laminate floor industry in China. However, should there be evidence provided by the relevant interested parties during the process of the investigation to the contrary of the above status, CBSA would issue questionnaires to the Chinese Government and producers to collect further information.

Besides, Canada also initiated an antidumping reinvestigation against hot rolled steel plate originated or imported from China to reestablish the normal value and export price of the investigated product. CBSA is going to make a determination in March 2006.

3.4.2 Special safeguard investigations

In July 2005, the Canadian International Trade Tribunal officially filed a case to initiate a special safeguard investigation over barbeques originated or imported from China. This is the first special safeguard investigation launched by the Canadian side against Chinese exports, following the negative result of the antidumping and countervailing investigation made over the same item in 2004.

On 11 October 2005, the CITT determined that increased imports of barbeques from China have constituted a serious injury to its domestic industry, thereby causing a substantial disruption in the Canadian market. The CITT recommended that an annual surtax of 15% be levied on Chinese barbeques for a row of three years. During the consultations with the Canadian side, the Chinese side pointed out that the determination was groundless instead of being objective as there was an increase in the export of domestic-made barbeques from Canada when Canada was importing barbeques from China.

3.4.3 Safeguard investigations

On 10 February 2005, the CITT launched a safeguard investigation against imported bicycles and bicycle frames. This was the second safeguard investigation launched by Canada since the establishment of the WTO. On September 1, 2005, the CITT made a final report, determining that imported bicycles and related products have caused a serious injury to its domestic industry and recommending a three-year surtax be imposed on imported bicycles and bicycle frames. The Chinese side believed that several mistakes were made and the relevant rules of the WTO were not followed when this case was handled by the CITT. For instance, no due consideration was given to the number of imported bicycles from China, which was quite small in recent months. Besides, there were other reasons than import that caused injury to the domestic industry but the CITT failed to identify. Therefore, the Canadian side should not have solved the problems resulting from their own industrial development by resorting to safeguard measures.

2005 was the year during which Canada frequently took trade remedy measures. When initiating the antidumping and countervailing investigation against the same Chinese products, the Canadian side required Chinese exporters to fill in two separate questionnaires within a very short period of time. At the same time, a questionnaire and 7 follow-up questionnaires were issued to the Chinese Government. This has turned out to be a heavy burden on the Chinese Government and enterprises. Apart from continuing to make antidumping and countervailing investigation on Chinese products, the Canadian side made a further pursuit of Chinese products by resorting to special safeguard measures after the antidumping and countervailing investigation ended up with a result which was considered undesirable by the Canadian side. Such practice is not beneficial to the normal development of economic and trade relations between the two sides. And the Chinese side hopes that the Canadian side will do what is best for maintaining and promoting economic and trade cooperation between the two countries before taking up any trade remedy measures against Chinese exports, in particular such discriminatory measures as special safeguard measures.

3.5 Subsidies

Established in 1996, Technology Partnerships Canada (TPC) is a Canadian Government program that supports the R&D and innovation activities of the private sector. TPC provides loan funding or companies incorporated in Canada that operate in three strategic areas, including environmental technologies, enabling technologies, and aerospace & defence technologies. Funding covers approximately 25% to 20% of a project's total costs, but may be significantly higher. By April 2005, the program has made well over CAN$2.7 billion in funding commitments for over 600 projects, of which about 70% has been disbursed. The Canadian Government restructured the TPC program in 1999 after a WTO Dispute Panel requested by Brazil determined that it was providing an illegal subsidy. In September 2005, the Canadian Government decided that upon expiration of the TPC grogram on April 1 2006, a new program named 'TTP' will be launched to provide further support to its aerospace & defense industry. The Chinese side expresses concern over the compliance of such program with the relevant rules of the WTO.

3.6 Barriers to trade in services

The Canadian Government imposes restrictions on market access to the service sectors where major national interests, political, economic and cultural sovereignty are involved. These sectors include basic telecommunications, broadcasting and financial services.

3.6.1 Air transport

According to the Transportation Act, foreign ownership of a Canadian airline is limited to 25%.

3.6.2 Banking

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 aggregate foreign ownership no more than 25%.

There are also restrictions imposed on the business scope of foreign-funded banks, such as barriers to retail banking. That means branches of foreign banks are not allowed to compete with Canadian banks in personal financial services. According to the Banking Act, with some exception, an authorized foreign bank shall not make a loan in Canada on the security of residential property in Canada.

3.6.3 Insurance

Pursuant to the Insurance Companies Act, the aggregate foreign ownership of a Canadian life insurance company shall be no more than 25% with individual ownership limited to 10%.

3.6.4 Television and broadcasting services:

According to the rules made by the Canadian Radio-television and Telecommunications Commission (CRTC), non-Canadian citizens are not allowed to have broadcasting licenses. Besides, foreign ownership of a broadcasting and media service in Canada is limited to 20% of voting shares (maximum 33.3% in the case of a parent corporation).

3.6.5 Telecommunications

Under the terms of the WTO Agreement on Basic Telecommunications Services, Canada's Commitment permit foreign firms to provide local, long distance, and international services through any means of technology. However, Canada retained a 46.7% limit on foreign ownership for all services except fixed satellite services and submarine cables. In addition to the equity limitations, Canada also retained a requirement for "Canadian control" of basic telecommunications facilities which stipulates that at least 80% of the members of a board of directors must be Canadian citizens.

3.6.6 Cultural sectors

Canadian book publishing and distribution firms may be indirectly acquired by foreign investors, who are required, however, to negotiate specific commitments to promote Canadian publishing. Foreign investors may directly acquire Canadian book firms under limited circumstances.

Canadian policies prohibit foreign acquisitions of Canadian-owned film distribution firms. A new distribution firm established with foreign investment may only market its own proprietary products. Indirect or direct acquisition of a foreign distribution firm operating in Canada is only allowed if the investor undertakes to reinvest a portion of its Canadian earnings in a manner specified by the Canadian Government.

4 Barriers to investment

4.1 Barriers to investment access

Though Canada encourages foreign investment, there are laws and administrative policies which restrict foreign access to and ownership in sectors deemed sensitive, such as fishery, nuclear industry, transportation, etc. For instance, foreign investors are not allowed to have a majority ownership of businesses in the energy or mining sector. With regard to fishing, foreigners can own up to 49% of companies that hold Canadian commercial fishing licenses. Although the Canadian government is relaxing control and restrictions on certain sectors according to its WTO commitments, various investment restrictions maintained at provincial level still have an adverse effect on foreign investors. 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 withdrawal

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.

Kenya

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Kenya in 2005 reached US$480 million, up by 29.7%, among which China's export to Kenya was US$460 million, up by 31.0%, while China's import from Kenya was US$20 million, up by 4.0%. China mainly exported medicine, footwear and headwear, textiles and clothing, batteries, industrial and farming tools, office supplies, daily commodities, etc. The major imported products of China from Kenya included textile raw materials, coffee, tea and tea products, and leather.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in Kenya reached US$35.32 million in 2005, and the volume of the newly signed contracts was US$67.24 million. The volume of completed labor service cooperation contracts was US$0.67 million, and that of the newly signed labor service cooperation contracts was US$5 million.

Approved by or registered with the MOFCOM, 2 Chinese-funded non-financial enterprises were set up in Kenya in 2005, with a total contractual investment of US$200,000 by Chinese investors.

According to the MOFCOM, Kenya invested in 2 projects in China in 2005, with a contractual volume of US$10.4 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

2.1.1 Legislation on trade administration

Major trade-related laws in Kenya include the East African Customs Management Act, the Customs and Excise Act, the Finance Act, the Imports, Exports and Essential Supplies Act, the Banking Act Cap 488, the Insurance Act, the Value Added Tax Act, the Export Processing Zones Act, the Standards Act, the Public Health Act, the Food, Drugs and Chemical Substances Act, the Pharmacy and Poisons Act, the Mining Act, the Trading in Unwrought Precious Metals Act, the Plant Protection Act, the Suppression of Noxious Weeds Act, the Agricultural Produce (Export) Act, the Agricultural Act, the Dangerous Drugs Act, and the Fisheries Act.

Laws regulating government procurement include the Local Government Act, the Government Contracts Act and the Public Procurement And Disposal Bill.

The Customs and Excise Act provides the legal basis for Kenya to take antidumping and take anti-dumping and countervailing measures against imports. However, so far there is no specific legislation covering safeguard measures.

Other trade-related laws and regulations in Kenya include the Industrial Property Act, the Copyright Act, the Trade Marks Act, the Seeds and Plant Varieties Act, and the Standards Act.

2.1.2 Legislation on investment administration

The major investment-related laws in Kenya consist of the Foreign Investment Protection Act, the Trade Licensing Act, and the Investment Promotion Act. These laws provide for the rights and obligations of foreign investors, detailed investment procedure, application for investment approval, competent departments, investment incentives, etc. Sector-specific rules are incorporated in relevant regulations, such as the Transport Licensing Act, the Land Control Act, the Water Act, the Hotels and Restaurants Act, the Tourism Industry Licensing Act, the Mining Act, etc.

2.2 Trade administration

2.2.1 Tariff system

Kenya is one of the few countries where a single tariff structure is applied. The main form of tariff is ad valorem tariff. In 2004, East African Community was founded between Uganda, Tanzania, and Kenya in the form of a Customs Union, which imposes a Common External Tariff (CET) on goods from countries outside the Community, and levies no or very low tariff within the Community. As of January 1st, 2005, goods imported from outside the Community are subject to a three band tariff, in which 0% is on raw materials and capital goods, 10% on semi-processed and intermediate goods, and 25% on finished goods. The Community also imposes a tariff rate of 35% or 55% on certain wheat, sugar, tobacco, cement, etc. Apart from import duties, the Kenya government also imposes value-added tax on imports, and excise on imported products like wine, bottled water, soft drinks and tobacco, etc.

2.2.2 Import administration

According to the Trade Licensing Act, a trade license is required by Kenyan Ministry of Trade and Industry to do import business in Kenya. Non-Kenyan citizens are not allowed to do import business.

Out of concern for security, health and environment, Kenya has established an import licensing system, which classifies goods into two categories. The first category is prohibited imports, which include eleven products, such as false money and counterfeit currency notes and coins, pornographic materials, narcotic drugs, chemicals, etc. The second category covers restricted imports, which can only be imported when approved by the departments concerned, or meeting the relevant standards issued by plant quarantine, health or environmental authorities. Among these goods are products of animal and plant origin, weapons, automobiles, and precious medals, etc. However, there are exceptions to the regulation of cases where an import license is not required for goods to be sold in duty-free shops or export processing zones, or ammunitions purchased by the Government.

The East Africa Customs Management Act provides for a drawback of import duty on materials and goods imported for the manufacture of goods to be exported, transferred to a free port or transferred to an export processing zone. The importer will need to obtain authorization from the Commissioner of Customs before applying for a drawback. The Commissioner determines the duty drawback coefficient applicable based on the claim for drawback which should be presented within a period of 12 months from the date of exportation of the goods.

Additionally, the Plant Protection Act of Kenya stipulates that imported plants, the Customs shall deny entry of seeds and fruits (excluding canned fruit) without a phytosanitary certificate issued by the Kenya Plant Health Inspectorate Services (KPHIS).

2.2.3 Export administration

As in the case of import business, the Trade Licensing Act stipulates that a trade license is required by Kenyan Ministry of Trade and Industry to do export business in Kenya.

2.2.3.1 Export licenses

Out of concern for public and food security, conservation of wildlife and natural resources and preservation of national heritage, the Kenyan Government imposes export licensing control over a small number of products including cast iron scrap, wood-charcoal and timber, antiquities and works of arts, and products related to endangered species, etc.

2.2.3.2 Export tariffs and export incentives

The Customs and Excise Act stipulates that export duties are charged upon raw hides and skins, and scrap metal. The Ministry of Finance is responsible for changing the rates of export duties.

According to its Economic Recovery Strategy for Wealth and Employment Creation 2003-2007, the Government of Kenya has adopted various incentives to encourage export, such as reducing or remitting excise and providing for export drawback etc. Besides, a Tax Remission for Export Office (TREO) Scheme has been implemented. According to the TREO Scheme, a local manufacturer can apply for a remission of import duty and VAT on raw materials used in the manufacture of goods for export.

2.3 Investment administration

2.3.1 Market access

Pursuant to the Investment Promotion Act, foreign investors who intend to invest in

Kenya shall apply to the Kenya Investment Authority for an investment certificate, which is only granted if the amount to be invested by a foreign investor is at least US$500,000 or the equivalent in any currency, and the project to be invested in shall be legal and beneficial for Kenya.

As a matter of fact, a foreign investor can invest in any economic sector in Kenya free of any product limit. The formal limits on foreign ownership only exist in telecommunications and insurance, in which foreign ownership of a business is limited by policy to 70% and 77% respectively. Companies listed on the Nairobi Stock Exchange are required to have at least 25% of national ownership.

2.3.2 Foreign exchange and foreign investment protection

A floating exchange rate system is adopted in Kenya and there are no exchange controls. A foreign investor is free to repatriate his capital and after-tax profit.

The Foreign Investment Protection Act specifies that the Kenyan government ensures the safety of foreign investment and will only expropriate the foreign investment for national use under special conditions with full compensation to the investor. Meanwhile, both China and Kenya are members of the Multi-lateral Investment Guarantee Agency (MIGA), which covers Chinese investors in Kenya against risks involving government acts, war and civil disturbance and transfer restriction.

2.4 Competent authorities

The Kenya Ministry of Trade and Industry is the major competent authority for the administration of international trade and investment. Its main functions include: researching and developing Kenyan industries, making and implementing trade and industrial development policies, promoting export and attracting foreign investment, handling trade- and investment-related issues such as intellectual property rights (IPR), standards on goods, and issuing trade licenses, etc. The Ministry consists of the following departments: the Department of External Trade (DET), the Export Promotion Council, Export Processing Zones Authority, Kenya Bureau of Standards, and the Regional Divisions of DET.

The Department of External Trade is responsible for the supervision of foreign trade policies, the promotion of bilateral and regional trade relations, the promotion of foreign trade and the introduction of foreign investment, etc. The Export Promotion Council is mainly responsible for facilitating the business of exporters or export products manufacturers, promoting the export of goods and services, and coordinating all the export-related activities. Export Processing Zones Authority mainly provides convenience and services for enterprises in the zones, and issues the permit to establish an enterprise in the export processing zones as well as the permit to establish an export processing zone. Main functions of the Kenya Bureau of Standards include scientifically formulating the national technical standards and disseminating information relating to standards and technology regulations. The Regional Divisions of DET are responsible for issuing trade licenses required for import and export.

The primary function of the Customs Service Department is to collect tariffs, excise, and VAT on imports. Additionally, the Department is also responsible for collecting trade statistics and preventing illegal entry and exit of prohibited goods such as drugs and weapons.

The Kenya Ministry of Finance is mainly responsible for auditing the applications of drawback on customs taxes and VAT under the Tax Remission for Exports Office (TREO) Scheme.

The basic functions of the Kenya Investment Authority include providing one-stop service information and assistance to investors, issuing investment certificates or required licenses for investors, and promoting foreign investment in Kenya.

The functions of the National Investment Council include formulating investment-promoting guidelines for the government, investigating into the possible factors influencing Kenya's economic development and foreign investment, and promoting the communication between government and enterprises in terms of implementing national investment policies.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak

The overall tariff level in Kenya is quite high. Existing commonly in all sectors, tariff peaks are mainly focused on farm products, textiles and clothing, and chemical products. High tariff rates between 35% and 100% exist in certain sectors, and the highest tariff is imposed on farm products (with a rate of 100% or 200 U.S. dollars per ton, whichever is higher). Tariff rates on certain fabrics, clothing, and bedding are as high as 50%.

3.1.2 Tariff escalation

The current Kenya Customs tariffs show that tariff escalation exists in almost all categories of products. However, tariff escalation is comparatively prominent in textiles and clothing. Take cotton textile material and textile products as an example. There is a zero import tariff rate on cotton, 10% on cotton yarn, 25% on cotton fabrics and as high as 50% on certain cotton fabrics.

3.2 Barriers to customs procedures

3.2.1 Customs procedures

Customs procedures for imports are time-consuming. Generally, over 10 steps are required for a typical import clearance transaction. Besides, the trade facilitation institutions are not in one place, which makes the clearance more complicated. The Kenya Customs requires more than 20 copies of bills of documents to be passed from one officer to another. The documents are not only processed slowly, but also sometimes subject to repeated examination. Similar procedures are also applied on paying of tax refunds and obtaining tax waivers and rebates on imports used for manufacture.

To inspect imports, the Kenyan Customs opens almost every container, the practice of which not only delays the goods from passing the Customs, but also increases the likelihood of breakage.

3.2.2 Customs valuation

Though Kenya has implemented the Agreement on Customs Valuation since 2001, customs officials constantly uplift the declared valuation of goods instead of using the c.i.f. value provided or the supplier's invoice, which usually results in a completely higher tax liability. Information on custom valuation methods and tariffs are not disclosed. Additionally, importers are hard to question the tax liability, because the clearance process will be delayed when a dispute of valuation occurs and the high demurrage costs arising therefrom exert a heavy burden on the importer.

3.2.3 Pre-shipment inspection

As from June 30, 2005, pre-inspection certification is required for goods to be imported into Kenya. All goods must demonstrate compliance with Kenya Standards or approved equivalents by evidence of a "Test Report or Certificate" from an ISO/IEC17025 accredited laboratory or recognized by the International Laboratory Accreditation Co-operation (ILAC) or the International Federation of Inspection Agencies (IFIA). Goods imported without the above mentioned certificates or reports would be held at the port of entry at the importer's expense until their quality is determined.

The new regulation has significantly affected the export of Chinese products to Kenya in the following two aspects. First, the quality certification has led to a substantial increase in the export cost. According to this regulation, all products to be exported to Kenya must obtain test reports or certificates from approved organizations. However, the Kenyan market requires a small quantity of a great variety of goods and products. If every product needs a test report, then the cost will be greatly increased. Second, the Kenya Bureau of Standards has assigned the certification of Chinese products to Intertek Testing Services, a company that monopolizes product testing and is known for its low efficiency.

In order to facilitate the pre-shipment certification of Chinese products, the Chinese government has initiated talks with the Kenya Bureau of Standards. In August of 2005, the General Administration of Quality Supervision, Inspection and Quarantine of China signed a cooperation treaty framework with the Kenya Bureau of Standards during Kenyan President Mwai Kibaki's visit to China, which has laid a good foundation for Kenya to accept product certificates issued by Chinese product testing agencies.

3.3 Technical barriers to trade

In Kenya, trade-related technical regulations are not complete and there are no specific technical standards. Where there are technical standards and regulations, some of these are not in conformity with the international standards. Furthermore, there has been a lack of transparency in the work of such organizations as the Kenya Bureau of Standards and the Kenya Customs. As a result, Chinese exporters are not able to get timely information about technical standards and quality test procedures from relevant authorities. In the case of cements, since Chinese exporters are not specifically informed of the relevant technical standards, Chinese cements exported to Kenya are constantly held up at the port. Hence Chinese enterprises have suffered economic losses.

On August 17, 2005, the Memorandum of Understanding on Cooperation in Quality Inspection was signed between the General Administration of Quality Supervision, Inspection and Quarantine of China and the Kenya Bureau of Standards.

3.4 Export Restrictions

Apart from export restrictions on a few items for reasons of public food safety and animal, plant and resource protection, Kenya also requires that warehoused goods, goods under duty drawback, and transhipped goods shall not be exported in vessels of less than two hundred and fifty tons register. The regulation has set an unnecessary obstacle to normal export transportation.

3.5 Inadequate intellectual property right protection

Kenya is a member of and a signatory to a series of international organizations and conventions such as the World Intellectual Property Organization (WIPO), Paris Convention, and the Berne Convention. Although the Kenyan Government has made laws governing IPR such as the Trademark Act, the Copyright Act and the Industrial Property Act on IPR protection, the enforcement of such laws and the punishment on piracy is insufficient. The main Chinese products exported to Kenya are often pirated in Kenya, such as medicine, footwear and headwear, textile products, batteries, office supplies and detergent. The Chinese side is very concerned about this issue.

3.6 Other barriers

On March 21, 2005, the Kenyan government issued a new regulation regarding obtaining work permits and identification cards, and passports administration. The new regulation requires applicants for passports, citizen cards, work permits and identification cards go to the relevant departments to apply in person. The Kenyan government no longer issues such certificates to those who apply by proxy.

The new regulation sets strict restrictions on the issuing of work permits. A foreign applicant can obtain a work visa unless no Kenyan citizen can fill the position offered to him and he has exceptional skills. If a local employer has already hired foreigners with work permits, once these positions can be filled by local people, their permit will not be renewed upon expiration. The Chinese side hopes that Kenya will consider reducing some restrictions on work permits.

4 Barriers to investment

4.1 Barriers to investment access

There are no entry barriers for foreign direct investment (FDI) in Kenya, but the Kenya Investment Promotion Act specifies that a foreign investor needs to invest no less than US$500,000 to get investment approval from the Kenya Investment Authority. In contrast, the threshold for a local investor is only 5 million Kenyan Shillings (an equivalent of US$65,000). This regulation creates great obstacles to foreign investment, especially in non-capital-driven industries such as the service industry.

4.2 Barriers to investment operation

The Kenyan Government has set different treatment standards for foreign investment in terms of business areas, products, enterprise ownership, and the use of land, and has imposed many restrictions on business activities conducted by foreign investors. All these have seriously deterred foreign investors from investing in Kenya.

4.2.1 Restrictions on business areas

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

4.2.2 Restrictions on products

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

4.2.3 Restrictions on ownership

Ownership restrictions are set on companies listed on the Nairobi Stock Exchange, which are required to have at least 25 percent national ownership.

4.2.4 Restrictions on land use

The Kenya Land Control Act prohibits either non-citizen private enterprises or joint venture enterprises make any agricultural land transaction (including land dealing, transfer, leasing and mortgage) . However, this Act gives full discretionary powers to the President to grant exemption to any land control transaction. Presidential exemption thus becomes the main channel through which foreign investors can acquire agricultural land. There are no official procedures or published guidelines that investors can follow, which makes the process for foreign investors to acquire agricultural land very lengthy and unpredictable.

Malaysia

1 Bilateral trade relations

According to China Customs, the bilateral trade volume between China and Malaysia in 2005 reached US$30.71 billion, up by 16.9%, among which China's export to Malaysia was US$10.61 billion, up by 31.2%, while China's import from Malaysia was US$20.1 billion, up by 10.6%. China had a deficit of US$9.49 billion. China mainly exported cereal, machinery and electronic products, textile yarn and products thereof, clothing and accessories, steel, crude oil, footwear, and vegetables, etc. The major imported products of China from Malaysia included machinery and electronic products, palm oil, plastics, natural rubber, unprocessed wood, product oil, steel, and crude oil, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of engineering contracts completed by Chinese companies in Malaysia reached US$230 million in 2005, and the volume of the newly signed contracts was US$310 million. The volume of completed labour service cooperation contracts was US$ 26.18 million, and that of the newly signed labour service cooperation contracts was US$25.07 million. The turnover of finished designs and consultations was US$0.78 million and there were no newly signed contracts. Up to the end of 2005, the aggregate turnover of engineering contracts completed by Chinese companies in Malaysia reached US$2.07 billion, with a total contractual volume of US$3.65 billion. The aggregate volume of completed labour service cooperation contracts was US$ 190 million, with a total contractual volume of US$240 million.

Approved by or registered with the MOFCOM, 15 Chinese-funded non-financial enterprises were established in Malaysia in 2005, with a total contractual investment of US$15.85 million from the Chinese parties. By the end of 2005, total number of such kind of enterprises in Malaysia reached 130, with an accumulated contractual volume of US$61.8 million from the Chinese parties.

According to MOFCOM, Malaysian investors invested in 371 projects in China in 2005, with a contractual investment of US$1.27 billion and an actual utilization of US$360 million. By the end of 2005, Malaysian investors invested in a total of 3,611 FDI projects in China, with a total contractual investment of US$9.73 billion and an actual utilization of US$3.84 billion.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

Malaysian legislation affecting foreign trade and investment mainly includes Customs Act, Customs Import Control Regulations, Customs Export Control Regulations, Customs (Rules of Valuation) Regulations, Plant Quarantine Act, Protection of New Plant Varieties Act, Countervailing and Anti-Dumping Regulations, Promotion of Investments Act, Guidelines for Foreign Investment, Exchange Control Act, Patents

Act, and Communications and Multimedia Act.

As of 1 May 2005, the Drug Control Authority under the Ministry of Health in Malaysia put into effect the Drug Registration Guidance Document (Amendment) passed in April 2004. The amendment prescribes the mandatory requirement for the use of a hologram security device on medicinal products sold in Malaysia. It is applicable to all pharmaceutical and traditional products, locally manufactured or imported.

Starting from 1 July 2005, the Nutrition Labeling Regulation came into effect in Malaysia, requiring the compliance of more than 50 types of common consumer food with the enacted regulation.

2.2 Trade administration

2.2.1 Tariff system

2.2.1.1 Import duties

Tariff is the major means of controlling imports in Malaysia. Imported goods are mainly subject to ad valorem duty though specific duty is levied on certain special products. Presently, while there are no import duties on most of imported raw materials, components and machinery, high tariff rates are levied on luxury goods such as automobiles, and goods produced by sectors that are protected in Malaysia. Mandated by the Customs Act, the Minister of Finance has the right to exempt certain bodies or products from import duties.

In compliance with the Association of Southeast Asian Nation (ASEAN) Free Trade Agreement, Malaysia lowered the import duties for a number of items, effective as of January 1, 2005. The import duties for CBU vehicles and CKD vehicles and components from other members of the ASEAN dropped to 20% and 0% respectively, and those from non-ASEAN countries to 50% and 10% respectively.

2.2.1.2 Export duties

Export duties ranging from 5% to 30% are mainly imposed on commodities such as wild animals, logs, petroleum, and palm oil. Crude petroleum is subject to a flat rate duty of 20%.

2.2.2 Import administration

Imported items are classified into four categories: prohibited items; products requiring licenses, including poultry, beef, rice, sugar, and color copying machines, etc.; items subject to temporary import restrictions to protect a domestic industry, including milk, coffee, certain wire and cables, some iron and steel products, etc.; items that may be imported only after meeting specific criteria.

According to the Nutrition Labeling Regulation enacted by Malaysia as of 1 July

2005, proper nutrition labeling is required for imported food. The nutrition label should contain the content of vitamins, minerals, cholesterol, dietary fiber, and fatty acids. No medical terminologies are allowed to be used in the instructions on the label. The regulation covers a total of over 50 kinds of common consumer food, including domestic and imported fine cereal products, all kinds of bakery products and desserts, dairy products, powdered milk, soft drinks including plant drinks, soy bean milk, and other drinks made of soy beans.

2.2.3 Export administration

Export control is conducted in Malaysia over three schedules: items prohibited from being exported, including weapons and ammunitions, corals, turtle eggs, rattan, etc.; goods subject to export licensing, including animals and animal products, rice, sugar, rubber, textiles, iron and steel, etc.; items which can be exported.

A special permit is required for the exportation of rubber, and quota control is exercised over the exportation of rubber wood. Due to the fact that there has been a shortage of raw materials for the furniture-making industry in Malaysia, the Government in June 2005 made a decision to impose an across-the-board ban on the exportation of rubber wood in order to increase the added value of goods made of wood. Those who had obtained the quota for the year were allowed to use quota in 2005. The ban was effective as of 1 January 2006.

2.3 Investment administration

The government of Malaysia is gradually liberalizing control over foreign investment by allowing foreign investors to establish wholly-owned businesses in certain sectors. Besides, there is no limit regarding the time for the withdrawal of investment. Furthermore, as of January 1, 2006, foreign banking institutions incorporated in Malaysia are allowed to establish up to 4 additional branches within one year.

2.3.1 Investment incentives

Investment incentives adopted by Malaysia include the reduction and exemption of income tax and investment tax as well as import duties and sales tax. To encourage foreign investment in the research and development of advanced and high technologies, the Malaysian Government has dedicated a special zone located in Kuala Lumpur where a Multimedia Super Corridor was established to attract foreign investors engaged in the development of electronic, information, and communications technologies, the production of such products, and the provision of technical services. Apart from the abovementioned preferential tax policies, the enterprises located in the Corridor also gets support in telecommunication fees, applying for research grants, getting listed in the local market, and raising fund overseas. To encourage local and foreign companies to invest in the manufacturing industry, the Malaysian Government provides such investment incentives as granting new industry status to those companies, providing bonus to the same amount of the investment and reinvestment tax.

2.3.2 Restrictive measures regarding foreign investment

The requirement for acquisition of properties is now more stringent for foreigners. According to the Guidelines for Foreign Investment issued by the Malaysia Foreign Investment Committee (FIC) in August 2004, acquisition of property(ies) with a total value of RM10 million and above or an entire building or property development project by foreigners has to be registered under a local company and will be subject to conditions for acquisition (including equity, employment, share capital and property development). The only exemption to the equity condition is when foreigners acquire industrial property for their own manufacturing operations. Multimedia Super Corridor (MSC) status companies can purchase any properties in the MSC area without the approval of the FIC, provided that the property is used solely for its operational activities.

2.4 Competent authorities

2.4.1 Major authorities responsible for trade administration

The Ministry of International Trade and Industry (MITI) is responsible for making and implementing trade-related rules and policies, exercising quota control, issuing import and export licenses for general products and motor vehicles. The Trade Practices Unit (TPU) under the MITI is in charge of anti-dumping and countervailing investigations. The Malaysian Customs supervise the importation and exportation of goods, collect duties, and provide information regarding import and export licensing and tariffs. Malaysian External Trade Development Corporation is responsible for promoting the export of finished and semi-finished goods as well as providing relevant export services.

Import and export licenses for products from different industries are issued by their competent authorities. For instance, the Ministry of Agriculture is responsible for plants and products of plant origin while the Atomic Energy Licensing Board is responsible for radioactive substances and radioactive instrument, the Malaysian Department of Veterinary Services is in charge of animals and animal products.

2.4.2 Major authorities in charge of investment administration

Bank Negara Malaysia is the major competent authority for investment administration. Key industrial projects involving overseas investment require the approval of Bank Negara Malaysia. The Malaysian Industrial Development Authority (MIDA) under the Bank is responsible for attracting foreign investment in the manufacturing industry. The Malaysia Foreign Investment Committee (FIC) is mainly responsible for examining and approving the proportion of foreign investment and for reviewing the applications regarding foreign investment in other manufacturing industries than furniture making.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

Simple average applied ad-valorem tariff for 2005 in Malaysia is 8.1%.

3.1.1 Tariff peak

Tariff peak still exists in certain sectors. The proportion of tariffs exceeding 15% still accounts for nearly one quarter of all tariffs. Tariff protection is high for automotives, textiles, clothing and leather products, food and beverages with rates exceeding 20% on 16.9% of tariff lines.

3.1.2 Tariff escalation

Tariff escalation can be manifested in the tariff policy. For instance, zero tariff rate is applied to cocoa while a 15% rate is levied on cocoa preparations; there is no tariff on cotton while a 10% rate is imposed on textile yarn and a 20% rate is on cotton knitwear and clothing.

3.1.3 Tariff quotas

Altogether 19 categories of imports involving 73 tariff lines are subject to TRQ control in Malaysia. These products include swine products, poultry products, milk, eggs, round cabbage, coffee beans, sugar and tobacco. The tariff rates beyond access commitment are subject to high ad valorem or specific duty, the highest ad valorem duty up to 160%.

3.2 Import restriction

In Malaysia, approximately 27% of the total tariff lines, mainly with regard to animal and vegetable products, wood, machinery, vehicles and transport equipment, are subject to non-automatic import licensing administration. All imports of heavy machinery for construction need approval from MITI, which will be given only if this machinery is not available locally. This has turn out to be an obstacle impeding Chinese products of the abovementioned kind from entering the market of Malaysia, over which the Chinese side expresses concern.

3.3 Discriminatory taxes and fees on imported goods

In 2005, following the reduction of import tariffs for CBU vehicles and CKD vehicles and components, the Malaysian Government increased the automobile excise taxes to a level between 60% and 250%. Proton and Perodua, two local automakers received a 50% tax rebate on excise taxes and other local manufacturers also received tax rebates to different extents.

The tax rebate practice only applicable to domestic automakers is an unfair treatment to imported automobiles, which is against the National Treatment principle of the WTO. Therefore, the Chinese side expresses concern over the matter.

3.4 Technical barriers to trade

The importation of traditional Chinese medicine containing Borneol and Fu Zi is banned. Restrictions are imposed on the indication on the packaging or advertisement of such functions as cancer-preventing, contraceptive, libido boosting, diabetes or rheumatism treatment. Besides, before a Chinese medicine enters the market, the exporter must be represented by a locally-incorporated company in the registration and application process with the Drug Control Authority (DCA). During the process, the exporter shall reveal the prescription to the DCA. The medicine can only be imported and sold with MAL's permit. Having a medicine registered in Malaysia is a complicated and protracted process, which has increased the cost and risk of the exportation of traditional Chinese medicine. The Chinese side expresses concern.

3.5 Sanitary and phytosanitary measures

According to relevant regulations, importers must obtain import licenses from the Malaysian Department of Veterinary Services under the Ministry of Agriculture or from the Malaysian National Quarantine Bureau for the importation of poultry and livestock products. Besides, all meat, processed meat products, poultry, eggs, and egg products must receive Halal certification. The certificate is issued on the joint recommendation of the Malaysian Department of Veterinary Services and the Department of Islamic Development Malaysia (JAKIM) following an on-site inspection. It is reported by relevant enterprises that the Halal certification process is confusing and lacks transparency. The Chinese side expresses concern over the matter.

3.6 Government procurement

Malaysia is not a signatory to the plurilateral WTO Government Procurement Agreement. The Malaysian government policy calls for procurement to support national objectives, such as encouraging greater participation of the bumiputeras (indigenous Malays), in the economy, transfer of technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local service-oriented companies, and enhancing Malaysia's export capabilities. Therefore, foreign companies do not have the same opportunity as some local companies to compete for procurement contracts and on many occasions only when they formed partnership with local companies could they participate in the government procurement biddings. 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 Financial and telecommunications services

While allowing foreign individuals to acquire shares in local insurance companies or banking institutions, there are limits imposed on foreign shareholding, which is 30% and 51% for banking institutions and insurance firms respectively. With regard to telecommunications services, foreign investors shall acquire no more than 49% of the shares of a local telecommunications company. Besides, foreign investors are required to obtain approval from authorities in charge of energy, telecommunications, and postal services in Malaysia.

3.7.2 Fishery

Foreign vessels are subject to fishing licensing control in Malaysia and there are a number of restrictions. First, foreign vessels are required to pay a certain amount of licensing fee for fishing in waters within the territory of Malaysia. Additional restrictions may be attached to the license by the Head of the Fishery Authority, such as the requirements for employing local Malays, transferring fishing technologies as desired, accepting inspectors sent by the Malaysian Government, and paying for the cost incurred by the Government for sending the inspectors.

3.7.3 Legal services

Foreign law firms may not operate in Malaysia except as minority partners with local law firms, with their stake in any partnership limited to 30%. Foreign lawyers may not practice Malaysian law or operate as foreign legal consultants, nor may they affiliate with local firms or use their international firm's name. Their scope of service is limited to advice concerning home country and international law.

3.7.4 Construction services

Foreign architectural firms may not have Malaysian architectural firms as registered partners. A foreign architectural firm may operate in Malaysia only as a joint-venture participant in a specific project with the approval of the Board of Architects. Foreign architects may not be licensed in Malaysia but are allowed to be managers, shareholders, or employees of Malaysian firms.

3.7.5 Engineering services

There are harsh regulations in Malaysia regarding the provision of engineering services by foreigners. Foreign engineers may be licensed by the Board of Engineers only for specific projects, and must be sponsored by the Malaysian company carrying out the project. The license is only valid for the duration of a specific project. Besides, foreign engineering companies may collaborate with a Malaysian firm, but the Malaysian company is to design and is required to submit the plans for domestic approval.

3.7.6 Labor services

The Government of Malaysia restricts the employment of non-local residents in Malaysia and monitors the recruitment procedure of the enterprises so as to maintain a set ratio between local labor and foreign labor. Malaysia hasn't opened its labor market to general labor services from China and exercised a strict control over the number of employees as well as skilled and unskilled labor sent from China to Chinese companies in Malaysia. And it is difficult for the Chinese to obtain work permit. All these have created an unfavorable environment for China to provide labor services in Malaysia, over which the Chinese side expresses concern.

4 Barriers to investment

Presently, there is no limit regarding recent foreign acquisition of shares in the manufacturing industry while a 30% limit is imposed on foreign shareholding in businesses in broadcasting services, water and energy supply, banking and medical and health care services. Generally, foreign companies must cooperate with a local company or register a branch in Malaysia in order to conduct business.

According to relevant regulations of Malaysia, enterprises are required to apply to the Malaysia Industrial Development Authority for conducting business in the manufacturing sector. However, the criteria for approval are quite abstract, for instance, the possibility of fitting the business into the overall plan for industrial development in Malaysia, or it being in line with the economic strategy or social policy of Malaysia. In the absence of definite criteria, it is totally within the Authority's discretion to handle individual cases. When a local firm and a foreign firm submit applications at the same time for the same project, the local firm tends to get the approval. Therefore, the Chinese side expresses concern over the matter.

The United States of America

1 Bilateral trade relations

The United States of America (hereinafter referred to as the 'US') was the second largest trading partner of China in 2005. According to the China Customs, the bilateral trade between China and the US reached US$211.63 billion in 2005, an increase of 24.8%. This figure includes China's exports to the US of US$162.9 billion, up 30.4%, and China's imports from the US of US$48.73 billion, up 9.1%. China's surplus amounted to US$114.17 billion for the year. China's exports to the US consisted mainly of machinery, electronic products, footwear, toys, furniture, trunks and bags, plastics and plastic products, garments and other textile products, photo-optical equipment, automobiles and auto parts, steel products, etc. China's imports from the US consisted mainly of yellow soybeans, aircraft, machinery and electronic products, cotton (not carded or combed), craft paper and mechanical wood pulp paper, unspecified measuring and checking instruments, miscellaneous chemical products, polypropylene and other plastic products, aluminum oxide, cross-country cars, and other goods.

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$410 million in 2005, with the volume of newly signed contracts reaching US$530 million. The volume of completed labor service cooperation contracts was US$87.34 million, and that of newly signed labor service cooperation contracts was US$58.42 million. By the end of 2005, the accumulated turnover of engineering contracts completed by Chinese companies in the US had reached US$2.43 billion, with the number of all contracts signed reaching US$3.33 billion, the volume of completed labor service contracts reaching US$1.99 billion, and total contracts signed reaching US$1.94 billion.

According to MOFCOM, 125 Chinese-funded, non-financial enterprises were set up in the US in 2005, with a total contractual investment of US$220 million by Chinese investors. By the end of 2005, a total of 1,008 Chinese-funded, non-financial enterprises had been set up in the US with a combined total contractual investment of US$1.31 billion.

According to MOFCOM, US investors invested in 3,741 projects in China in 2005, with a total contractual investment of US$13.51 billion and an actual utilization of US$3.06 billion. By the end of 2005, US investors had accumulatively invested in 49,006 FDI projects in China with a total contractual investment of US$112.12 billion and an actual utilization of US$51.09 billion.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

2.1.1 Legislation on 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 of or useful supplement to statutory laws. The statutory laws ratified by the US Congress are contained in the Statutes at Large, and most are now incorporated into Title 19 of the United States Code (USC), while the precedents are carried in various legal reporters.

Currently, the following laws have constituted the pillars of the US legal system governing trade: The 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 barrier issues, Generalized System of Preferences (GSP) scheme for 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, the Trade Agreement Act of 1979, the Trade Expansion Act of 1962,etc.

2.1.2 Legislation on 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 include the International Investment and Trade in Services Survey Act, the Agricultural Foreign Investment Disclosure Act, and the Defense Production Act of 1950 (commonly known as the Exon-Florio Amendment), etc.

2.1.2.2 Legislation on national treatment and sectoral restrictions

The US places restrictions on foreign investment in energy, mining, fishery, etc., through various legislation; 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, there are 49 bilateral investment agreements that the US has signed with other countries or territories and that have taken effect. Additionally, many bilateral and regional trade agreements the US has signed also contain provisions on investment.

2.2 Trade administration

2.2.1 Tariff system

2.2.1.1 Average tariff rate

US tariff rates on industrial goods averaged 4% in 2005, while those on agricultural goods averaged 12%.

2.2.1.2 The tariff administration

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, mostly agricultural products, are levied specific duties; however, others are levied compound duties.

2.2.2 Import administration

The US utilizes tariffs to administer and regulate imports. Additionally, the US maintains tariff quotas on the importation of sensitive products, including agricultural products. Out of concern for issues such as environmental protection and national security, the US Congress has enacted numerous domestic laws authorizing the executive branch to utilize such measures as quotas, import bans, and import surcharges to restrict certain imports. Meanwhile, there exist a large number of product standards used in business practices in the US, which to a certain extent have also played a role in import restrictions. For example, imported poultry and poultry products are subject to the requirements and regulations of the Animal and Plant Health Inspection Service and the Food Safety and Inspection Service of the Department of Agriculture.

2.2.3 Export administration

2.2.3.1 Export control

2.2.3.1.1 Export control system

The US maintains export controls over certain products for reasons of national security, foreign policy purposes, to prevent the proliferation of bio-chemical weapons and missile technology, or to ensure sufficient domestic supply. Based on the Export Administration Act of 1979 (EAA), and the Export Administration Regulations (EAR), the US has put in place a number of export control systems to prevent exports to unauthorized destinations. Currently, export controls are exercised through authorization by the President on an emergency basis. The Export Administration Act of 1979 (EAA) expired on September 30, 1990, and to date, no new law has replaced it. The US government uses licensing to control exports. The main factors considered in export review include the destination, the end-user, the product and its end-use. Parties involved in the sales of products and sales services, including banks, insurance companies, shipping lines and foreign forwarders, are also reviewed in the process of export licensing.

2.2.3.1.2 Re-export control system

The US government also requires that companies which are not established and operating within the US be subject to a re-export control system. The US government dictates that foreign companies must obtain re-export licenses for items containing 25% or more of US-origin content when the items are exported from a third country. When such items are re-exported to countries listed on the US State Department's list of "countries supporting terrorism," the requirement is stricter and all items with 10% or more of US-origin content require re-export licenses. On August 2 2005, the US amended the Controlled Substances Import and Export Act and approved the Controlled Substances Export Reform Act of 2005, under which the US Attorney General is able to authorize the export and re-export of controlled substances.

2.2.3.2 Export promotion

The US uses export financing, duty-free treatment for foreign trade zones, duty drawback upon exportation, export incentive for small-and-medium-sized businesses and other measures to promote exports.

2.2.3.2.1 Export financing

The Export-Import Bank of the United States uses various types of loans, guarantees, and insurance schemes to provide financing to exporters and international buyers. President Bush's fiscal year 2006 federal budget will provide US$200 million to fund the Bank's program budget.

2.2.3.2.2 Duty-free treatment for Foreign-Trade Zones

According to 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. Finished products using US parts and foreign-sourced materials pay no duties on the added value.

2.2.3.2.3 Duty drawback system

In accordance with Section 313 of the Tariff Act of 1930, customs duties or other taxes levied on imported merchandise or raw materials can be refunded at the time of exportation.

2.2.3.2.4 Export incentive to small and medium sized enterprises

The Small Business Service under the US Department of Commerce is responsible for providing export support to small and medium sized enterprises, including export information, consultation, short-term export financing and recycling working capital. Meanwhile, in order to promote the export by small and medium sized enterprises (SMEs), the government also uses the Market Development Cooperator Program (MDCP) to provide technical and financial assistance to non-profit organizations that are committed to supporting SMEs in their efforts to enhance competitiveness and tackle the international market. In 2005, 36 organizations applied for MDCP awards and 5 were selected to receive awards.

2.2.4 Other trade-related tariff systems

2.2.4.1 Reciprocal free trade agreements

By the end of 2005, the US had signed with 12 countries and territories bilateral free trade agreements, including Chile, Israel, Singapore, Australia, Andes, Central America —Dominican Republic and other countries. On January 19, 2006, the US signed a bilateral free trade agreement with Oman, which will provide both countries duty-free access to each other's market for 100% of industrial and consumer products. 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.

2.2.4.2 Preference schemes

The US has also unilaterally established tariff preference schemes, mainly applicable to developing countries and least developed countries, with one of the oldest schemes being the Generalized System of Preferences (GSP) which was established in 1976. According to the GSP, the US provides preferential duty-free entry to more than 4,650 products from 144 designated beneficiary countries and territories.

Similar preferential arrangements include the Caribbean Basin Initiative proposed in 1983, the African Growth and Opportunity Act of 2000 (AGOA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA) amended in 2002.

2.2.5 Other related systems

2.2.5.1 Customs system

The US import procedures have undergone significant changes since 2002. 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 certain 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 US 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. Relevant laws and regulations include Subtitle IV of the Tariff Act of 1930, Sections 201- 204 of the Trade Act of 1974, Section 337 and Section 421 applied only to China.

Remedies available to exports are aimed at protecting the interests of US companies and increasing the overseas market access for US goods and services, this being the main focus of the application of Section 301 of the Trade Act of 1974.

2.2.5.3 Impact of political and economic measures on trade

The US government is authorized to impose restrictions or controls on imports and exports out of political or economic safety concerns provided the restrictions or controls meet the requirements of relevant laws. These laws include the International Emergency Economic Powers Act, the Trading With the Enemy Act, the Narcotics Control Trade Act, the International Security and Development Cooperation Act of 1985, and numerous other laws.

2.3 Investment administration

The US has traditionally pursued a liberal foreign investment policy and basically places no restriction on investment. There has been little change to this liberal investment regime in the past 20 years, although in some sensitive sectors, such as aviation, communications, atomic energy, finance, and marine transportation, there does exist certain specific restrictions on national treatment and market access. Out of concerns for national security and statistical needs, reporting requirements are established and investment in some sectors is subject to various review requirements and limited national treatment and market access.

2.3.1 Investment report

The International Investment and Trade in Services Survey Act provides for the collection of information by the Federal Government on foreign investment in the US for analytical and statistical purposes. Foreign investment is required to report to respective competent government authorities, with medium and long-term portfolio inward investment reporting to the Department of Treasury. Any foreign person who acquires or transfers any interest, other than a security interest, in agricultural land shall submit a report to the Department of Agriculture no later than 90 days after the date of such acquisition or transfer. With regard to other general foreign direct investment, an initial direct investment survey report must be filed with the Bureau of Economic Analysis of the US Department of Commerce within 45 days after the direct investment transaction occurs. An exemption may be claimed if the new US affiliate has no more than $3 million in total assets and owns less than 200 acres of US land immediately after being established.

2.3.2 Investment review

In general, foreign investment is not subject to review. However, the Exon-Florio Amendment provides authority for the President to take action on national security grounds with respect to any foreign acquisition, merger or takeover of a corporation engaged in commerce in the United States. But this does not cover the establishment of a start-up or "Greenfield" investment.

Committee on Foreign Investments in the United States (CFIUS) is in charge of review of foreign acquisitions. The review can be self-initiated by CFIUS or initiated after CFIUS receives a voluntary notification.

Generally notification with CFIUS is voluntary. However, CFIUS may initiate a review of any transaction that has not been notified during a three-year period after the completion of that transaction. If CFIUS later decides that it objects to the purchase, the US can force the new foreign owner to divest itself of the 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 concurrently maintain close contacts with major committees of the Congress and with advisory bodies of the private sector.

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 and duties". Therefore, signing free trade agreements, implementing or revising tariff measures and other trade-related measures must all be based on specific Congressional legislation or otherwise be made with special authorization by the Congress.

The Senate and the House of Representatives have more than 10 subordinate committees that 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

In the area of foreign trade administration, main responsibilities of the executive branch lie in three main dimensions: foreign trade negotiations shouldered by the USTR and the State Economic Committee in direct response to the President; import and export administration implemented by the Department of Commerce, the Department of Agriculture and the US Bureau of Customs and Border Protection; and tariff imposition which is handled by the US Bureau of Customs and Border Protection.

2.4.2.1 United States Trade Representative (USTR)

Being the principal trade advisor, negotiator and spokesperson on trade issues for the President, the USTR is the cabinet member specifically responsible for coordinating trade and investment policies and for negotiating with other countries in the aforesaid areas. The USTR's responsibility and importance have increased steadily with several new pieces of legislation.

According to the Uruguay Round Agreement Act, the USTR is responsible for all negotiations under the WTO. The Office of USTR also 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 the 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 in other countries, 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.

To help combat intellectual property violations and enforce intellectual property laws, President Bush, acting under the Consolidated Appropriations Act of 2005, announced on July 22, 2005, the establishment of the Office of the Coordinator for International Intellectual Property Enforcement, whose responsibilities are to address international intellectual property violations, protect American intellectual property overseas, and coordinate and leverage the resources within the federal government in the aim of protecting American intellectual property overseas. The Coordinator will play a significant role in the ongoing implementation of the Bush administration's Strategy Targeting Organized Piracy (STOP!) Initiative launched in 2004.

2.4.2.3 International Trade Commission (ITC)

The International Trade Commission (ITC) is a federal agency which has extensive investigative power in trade issues. The ITC's main duties include establishing whether any domestic industry has suffered material injury because of imports sold at a price lower than normal value or because of subsidized imports, taking action against unfair trade practices such as IPR infringement (which can be vetoed by the President), and recommending trade remedies to the President for seriously injured industry affected by import surges.

2.4.2.4 The Customs

US Bureau of Customs and Border Protection (BCBP) is responsible for tariff collection, and execution of laws and regulations in relation to international trade.

2.4.2.5 Coordinating organizations

2.4.2.5.1 Trade policy coordinating organizations

Coordination between 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.

2.4.2.5.2 Investment policy coordinating organizations

The Committee on Foreign Investments in the United States (CFIUS) was established in 1975 as an inter-agency committee made up of 12 members including the Secretaries of Commerce, Defense, Homeland Security, Justice and State, all under the chairmanship of the Secretary of Treasury. The major responsibility of CFIUS is to implement investment policy of the US, and mainly to examine foreign mergers and acquisitions of US companies under the Exon-Florio Amendment.

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 Advisory Committee for Trade Policy and Negotiations (ACTPN) is the top-level committee that provides overall trade policy advice, including advice on trade agreements and trade negotiations. Members are appointed by the US President. The second tier is made up of policy advisory committees representing overall sectors of the economy, such as industry, agriculture and services, which provide advice to the government with regard to any possible impact that different trade measures may have on relevant sectors. The third tier are technical, sectoral, and functional advisory committees composed of experts from various fields and responsible for providing specific technical information on trade issues 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 constitute tariff peaks. Currently, 7% out of the total tariff headings of the US have a tariff rate three times higher than the average tariff rate, and 4% 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. 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. Take products under a single tariff heading as an example. Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers with outer surface of leather, of composition leather, or of patent leather are imposed a tariff rate of 8%, while those with outer surface of plastics 20%. The tariff rate for drinking glasses, other than of glass-ceramics, valued not over $0.30 each is 28.5%, while that for drinking glasses, other than of glass-ceramics, valued over $5 each is 5%. Golf shoes, under welt footwear for men, youths and boys are imposed a tariff rate of 5%, while house slippers, under footwear with outer soles of rubber or plastics, valued not over $3 per pair are 48%. Women's or girls' briefs and panties containing silk or silk waste is imposed a tariff rate of 2.1%, while women's or girls' underpants with man-made fibers 16%. Such tariff structure has put Chinese products, which occupy a large share of the low-end market in the US, at a disadvantage in competition.

3.1.2 Tariff escalation

Tariff escalation is still a serious problem in the US. Some finished products are imposed higher tariff rates than semi-finished products. Take products under a single tariff heading as an 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%. The tariff rate for cultured pearls worked is 0, while that for articles of cultured pearls is 5.5%. Wood sawn or chipped lengthwise, sliced or peeled, of a thickness exceeding 6 mm is imposed a zero tariff rate, while wooden forks and spoons under tableware and kitchenware 5.3%. Such a tariff structure has considerably hindered China's export of higher-value-added products such as semi-finished or finished products to the US, and has undermined the interests of Chinese enterprises.

3.1.3 Tariff quotas

The US 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 2005 included almost all dairy products, sugar and sugar products, peanut and certain peanut products, sweetened cocoa powder, chocolate crumb, infant formula containing oligosaccharides, mixes and doughs, mixed condiments and seasonings, mutton, beef, cotton, etc. High tariffs are imposed on products exceeding the established quota. For instance, the average tariff rate for in-quota nonfat dried milk is 2.2%, while that of off-quota is 52.6%.

3.2 Import restrictions

In December 2005, the International Trade Administration of the DOC published a final rule notice that extended the Steel Import Monitoring and Analysis (SIMA) system until March 21, 2009. This action also expands the list of covered items to include all basic steel mill products, but it also removes certain downstream steel products, which were formerly covered, such as certain fittings and flanges, certain cold-formed shapes, and certain bars. The SIMA system was originally outlined in the President's March 5, 2002 Proclamation about Steel Safeguards. The monitoring system required all importers of steel products to obtain a license from the DOC prior to completing their Customs import summary documentation to ensure the effectiveness of the safeguard measure. After termination of the safeguard measures, the monitoring system continued in effect until March 21, 2005. According to the provisions of this notice, the data collected on the licenses are made available to the public weekly after the DOC review. The purpose is to provide statistical data on steel imports entering the United States 7 weeks earlier than is otherwise publicly available. SIMA system provides timely information, therefore it is likely that US steel industry and trade associations will speed up the application of the investigation of steel imports in the future. In addition, it is very likely that foreign steel exporters will face more U.S. investigation because of the broad coverage of steel products monitored.

3.3 Barriers to customs procedures

The US Customs 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 goes quite beyond that necessary for normal customs clearance. These formalities, which are both complicated and costly, have constituted barriers to exporters, particularly to small exporters.

The US Customs 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 requirement has in practice resulted in an increase of cost.

In addition, the liquidation period has been extended up to 210 days, during which the US Customs may still request additional information necessary to establish the classification of the products and the country of origin. The US Customs may extend the liquidation period beyond 210 days without giving a detailed explanation. In some cases a minor problem or error with the invoice is sufficient. As apparel articles often have a short life span (e.g. fashion items must be sold within two to three months) and have to be marketed immediately, if the importer is not able to re-deliver the goods upon Customs' request for final tariff determination, Customs will apply a penalty as high as 100% of the value of the goods.

3.4 Technical barriers to trade

The US has a very complicated and decentralized system of technical standards and governing laws. In total, 17 agencies of the federal government and 84 independent organizations have the right to draft technical regulations. State or local governments have also enacted many different technical regulations in the areas of manufacturing, transportation, environmental protection, food and drugs.

The system of certification and conformity assessment in the US is also rather fragmented and complicated. There are currently 55 certification systems in the US, but no centralized quality certification authorities. Government organizations, local government agencies and non-government organizations can all conduct quality certification. In conformity assessment, "third-party" assessment is commonly used in the US, and many have been made a compulsory requirement by legislation at the state or federal level, such as the DOT Certification, UL Certification, and ASME Certification. In the area of energy-saving products certification, Energy Star is a recognized label to indicate standby energy efficiency of electric appliances.

3.4.1 Safety Standard for Cigarette Lighters

In 2004, the US Consumer Product Safety Commission (CPSC) voted to grant the petition from the Lighter Association, Inc. asking the Commission to adopt the voluntary "Standard Consumer Safety Specification for Lighters" (ASTM F-400) as a mandatory standard under the Consumer Product Safety Act (CPSA). In April 2005, a notification named "Safety Standard for Cigarette Lighters; Advance Notice of Proposed Rulemaking" was issued. This advance notice of proposed rulemaking

(ANPR) initiates a rulemaking proceeding under the CPSA. One result of the proceeding could be issuance of a rule requiring that cigarette lighters meet certain safety requirements. The ASTM F-400 standard is substantially different from the commonly used ISO9994, which do not have such requirements as contained in Section CR, Appendix A2 of ASTM F-400. This will in practice force Chinese lighter producers to use two standards and has violated the principle of adopting international standards as required by the WTO Agreement on Technical Barriers to Trade. Chinese lighter producers are concerned that if the rule is passed, the implementation of the standards will be time-consuming, and consequent delay could result in huge costs. For example, inspection may take as long as several days in US ports, the cost of which may well be higher than the cost of a lighter. As Chinese-made lighters have an overwhelming market share in the US, China will closely watch the development of this rule.

3.4.2 Standard for the flammability of bedclothes, mattresses and mattress/foundation sets

In January 2005, the US Consumer Product Safety Commission (CPSC) issued the "Standard to Address Open Flame Ignition of Bedclothes; Advance Notice of Proposed Rulemaking" and the "Standard for the Flammability (Open Flame) of Mattresses and Mattress/Foundation Sets; Standard to Address Open Flame Ignition of Bedclothes". Products covered include mattresses and mattress/foundation sets, bedclothes, etc. CPSC is proposing a flammability standard under the authority of the Flammable Fabrics Act which would address open flame ignition of mattresses and mattress and foundation sets ("mattresses/sets"). The proposed requirements will generate a smaller size fire, thus reducing the possibility of flashover occurring. Bedding products covered in this notification include bed sheets, blankets, mattress sets, pillows, down quilts and other bedclothes, which are all major textile items China export to the US. Therefore, China will closely follow the progress of the proposed rule and its possible impact.

3.4.3 Tire testing rules

The new tire testing standard FMVSS139, which requires more stringent safety parameters, will be introduced in the US as of June 1 2007. The new standard will have a major impact on China's export of new pneumatic tires for passenger cars and certain tires for light trucks to the US. It will particularly affect the export of radial tires in terms of high speed and endurance tests. When the new rule takes effect, tires failing to meet the new standard will be denied entry into the US market, while those already in the US market will have to be recalled. The new rule indicates a higher threshold for products destined to be exported to the US.

3.4.4 Energy conservation standards for certain products

In November 2005, the US issued a notice on Energy Conservation Standards for Certain Consumer Products and Commercial and Industrial Equipment, citing consumer protection and energy saving as the aim and the purpose of the notice. The Department of Energy issued the Technical Amendment and placed in the Code of Federal Regulations (CFR), as per product category or equipment description, the energy conservation standards and related definitions that Congress has prescribed in the Energy Policy Act of 2005 for various consumer products and commercial and industrial equipment. A total of 15 categories of products are covered, including fluorescent lamp ballasts, ceiling fans and ceiling fan light kits, low voltage dry-type distribution transformers, commercial package air conditioning and heating equipment, commercial refrigerators, freezers and refrigerator-freezers, commercial clothes washers, etc. The new standards, as per product, will be enforced over the period from 2007 to 2010. As required by the new energy act, energy conservation standards for household appliances such as air-conditioners and refrigerators, which are the major products exported to the US by China, will be raised considerably. China will closely watch the development of the standard issue.

3.4.5 Labeling

The US maintains stringent requirements on food labeling. Most foods are required by the Food and Drug Administration (FDA) to list the content of at least 14 nutrients. The stringent labeling requirement has considerably increased the cost to exporters in developing countries, constituting a practical import restriction to those countries not in a position to conduct food content analysis.

On January 1, 2006, the FDA started to enforce two new mandatory food-labeling requirements. Trans fatty acids are required to be declared in the nutrition label of conventional foods. However, trans fat does not have to be listed if the total fat in a food is less than 0.5 gram per serving. The FDA also requires food labels to clearly state if food products contain any ingredients, no matter how minimal the amount, that contain protein derived from allergenic foods. The new requirements will inevitably increase the burden on Chinese food exports to the US. China raises its concern as to whether these specific labeling requirements are either excessively burdensome or not entirely necessary.

In 2005, the US filed 72 TBT notifications with the WTO, 8 of which are notifications of draft amendments on food labeling, covering vegetables, fruits, eggs, wines, distilled spirits, malt beverages, etc. China will closely watch the progress of these draft regulations.

3.5 Sanitary and phytosanitary measures

In 2005, the US filed 171 SPS measure notifications with the WTO, accounting for 26% of the total the WTO received in the year.

3.5.1 Chemical residue limit standard

The US makes or amends regulations and laws governing chemical residue limits standards frequently. In 2005, the US filed with the WTO 35 notifications on the final rules governing the maximum chemical residue limit contained in agricultural products and foods such as grapes, tomatoes, and wheat. Such changes have a major effect on Chinese agricultural products and food processors. Chinese businesses affected are expressing concerns regarding this issue.

3.5.2 Food inspection and quarantine

3.5.2.1 Automatic detention on imports

Section 801(a) of the Federal Food, Drug, and Cosmetic Act (hereinafter referred to as Section 801(a)) authorizes the FDA to place automatic detention on imports posing potential hazards. Automatic detention is appropriate when at least one sample has been found to violate the standard and the violation represents a potentially significant health hazard, or if there exists any information, historical record or notification from other countries, after having been evaluated by the FDA, indicating that a product from a specific geographical area or country could pose a health hazard. Recommendations for automatic detention can also be based on multiple samples showing violations of the Act but which do not pose a significant public health hazard. If automatic detention is placed on the shipment by the FDA, the shipment must receive inspection by local laboratories upon its arrival in US ports, and cannot be released for sale in the US unless it is inspected and found to be safe and examined and approved by the local branch of the FDA.

The system of automatic detention can, to a certain extent, help to ensure quality and safety of imports into the US. It is deemed, however, by China that the system is unsound in the following aspects:

Sampling for the purpose of automatic detention does not stress representation of the samples. Inspection conclusions made by the FDA or its recognized laboratories are final and request for re-inspection is usually denied even if inspection organizations in exporting countries do not agree with the conclusion.

Moreover, automatic detention can be placed on a certain product from all other countries, or on part of or all producers of a certain product from a certain country, and can be maintained as long as the FDA considers the shipments do not meet required standards, which consequently has a huge adverse impact on the sales and production of businesses affected. In addition, unlike in normal inspections, where the costs are usually covered by the FDA, costs incurred as a result of automatic detention are fully borne by importers, thus greatly increasing exporters' costs as well. In 1989, canned mushrooms from China were placed in automatic detention, which was not removed until 2004. The producers affected suffered a great loss.

3.5.2.2 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 2002, prescribing stringent guidelines for fighting food-related and bio terrorism. To enforce this Act, the FDA proposed four interim regulations in 2003, namely, Administrative Detention, Establishment and Maintenance of Records, the Registration of Food Facilities, and Prior Notice of Imported Food Shipments, with the first three becoming established final rules in 2004.

While China recognizes the efforts by the FDA to fight against terrorism, it is concerned about the following adverse impact caused thereby.

First, the new regulations will slower customs clearance and increase business costs for exporters.

Secondly, the new regulations have increased uncertainty in the export market. According to the original rules, the FDA is authorized to detain imports pursuant to Section 801(a). Chinese exports have suffered frequent blocks as a result. A total of 2,071 shipments from China had been denied entry into the US market during the period from January to December 2005, up 12% over the same period of the previous year, making China the biggest target. The regulation on Administrative Detention will further increase the uncertainty for Chinese products to enter the US market.

Generally speaking, the US inspection and quarantine procedures are unduly complicated and are based on inadequate scientific grounds. The overuse of inspection and quarantine and even discriminatory measures have increased the cost of importing relevant products, restrained normal trade and violated Article 5.4 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, which provides that "member should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects".

3.5.3 Progress of the issue of Ya pear export

China and the US signed the 2005-2006 Working Plan of Phytosanitary Measures for Chinese Ya Pear Export to US, and its supplementary provisions in September and in December 2005, respectively. China's export of Ya pears, which was suspended for over 2 years, has been resumed. The US has imposed stringent phytosantary measures on Chinese Ya pears, which have considerably increased costs for Chinese exporters.

China will continue the communication and consultation, as well as technical cooperation with the US, to ensure the smooth trade of Ya pears between the two countries.

3.5.4 Risk assessment for ready-to-eat meat and poultry products

Since 2004, the US has sent expert teams to China five times to inspect the processing facilities of ready-to-eat meat and poultry products in China and China's monitoring system for poultry meat remains. Request for on-line public comment on the draft risk assessment recently expired at the end of 2005.

Risk assessment on imports by the US is time-consuming, and burdened with undue requirements at every stage, and thus has practically hindered the export of Chinese ready-to-eat meat and poultry products to the US market. It is China's desire that the US accelerate the risk assessment process, thus resuming the import of China's cooked meat and poultry products at the earliest date possible.

3.5.5 Regulations on prohibiting the use of certain cattle origin materials

After the US Food and Drug Administration (FDA) had issued the rule to prohibit the use of certain cattle material in human food and cosmetics in 2004, the FDA then proposed in October 2005 to amend the agency's regulations to prohibit the use of certain cattle origin materials in the food or feed of all animals. These materials include the following: the brains and spinal cords from cattle 30 months of age and older, the brains and spinal cords from cattle of any age not inspected and passed for human consumption, the entire carcass of cattle not inspected and passed for human consumption if the brains and spinal cords have not been removed, tallow that is derived from the materials prohibited by this proposed rule that contains more than 0.15 percent insoluble impurities, and mechanically separated beef that is derived from the materials prohibited by this proposed rule. These measures will further strengthen existing safeguards designed to help prevent the spread of bovine spongiform encephalopathy (BSE) in US cattle. The proposed regulation has set higher standards for food or feed of animals produced in China.

3.6 Trade remedies

According to the statistics from the US International Trade Commission, in 2005 the US imposed anti-dumping duties on such Chinese products as wooden bedroom furniture, crepe paper, frozen or canned warm-water shrimp and prawns, tissue paper, magnesium, and chlorinated isocyanurates. 4 anti-dumping investigations were initiated against Chinese products, including certain artist canvas, diamond saw blades, lined paper school supplies and carbon and alloy steel wire rod, accounting for 60% of the total anti-dumping investigations initiated in the US in 2005. In addition, two anti-circumvention investigations were initiated against petroleum wax candles, as well as 27 safeguard investigations against textile products, and 1 product-specific safeguard investigation against circular welded non-alloy steel pipe. US$570 million-worth Chinese exports were affected by these anti-dumping and safeguard measures initiated in 2005.

Although there were fewer cases of anti-dumping investigations against Chinese products than the previous year, unfair practices by US investigating authorities remain in place.

3.6.1 Existing problems in antidumping investigations against Chinese products

3.6.1.1 Continued refusal of China's full market economy status

By the end of 2005, the US had continued to refuse the recognition of China's market economy status regardless of the progress and achievements China has made in building its market economy. Because of the aforesaid position of the US government, Chinese exports have suffered heavy losses in dealing with anti-dumping investigations against them. According to a study report entitled Eliminating Non-market Economy Methodology Would Lower Antidumping Duties for Some Chinese Companies released by the U.S. Government Accountability Office (GAO), on average, the rates applied to China were over 20 percentage points higher than those applied to market economy countries. This difference is attributable primarily to the comparatively high country-wide duty rates applied to Chinese companies not eligible for individual rates. These country-wide rates averaged about 98 percent – over 60 percentage points higher than the average duty rates assigned to market economy companies not receiving individual rates. At the 16th meeting of the Sino-US Joint Commission on Commerce and Trade (JCCT) held in 2005, the US agreed to strengthen substantial consultations with China on the issue of China's market economy status. China hopes that the US will, from the broad perspective of bilateral trade and economic relations, reach agreement with China on this issue and grant Chinese exporters fair treatment.

3.6.1.2 Market Oriented Industry (MOI) and surrogate country

3.6.1.2.1 Market Oriented Industry (MOI)

According to relevant US laws, in antidumping investigations, if the respondent company can prove that its industry meets standards for Market Oriented Industry (MOI), the DOC should adopt the cost data of this respondent company or its industry in calculation of production cost and dumping margin, rather than adopting a Surrogate Country approach. In practice, however, the DOC refuses to grant MOI status to Chinese companies under various pretexts. So far, no Chinese respondent has yet won the MOI status.

3.6.1.2.2 Surrogate country

To non-market economy countries, the DOC usually uses surrogate country data to determine the normal value and set dumping margins. In practice, India, Pakistan, and Indonesia are usually used as candidates for surrogate country and India is usually a favorite choice because of the easy availability of information in India. In the preliminary results made in 2005 against artist canvas and diamond saw blades, the DOC used India in both cases as the surrogate country regardless of the real situation involved in the two cases.

3.6.1.2.3 Selection of surrogate price for factors of production

In anti-dumping cases against Chinese products, price data which is widely applicable in surrogate countries is usually used to determine the normal value of a product and set the dumping margin against the affected company. If imported materials are used, under certain conditions, the DOC will use the real import price to calculate the cost of the imported material. These regulations have given great discretionary power to the DOC, which is likely to abuse its power to adopt unfair prices against Chinese producers in determining the normal value of Chinese products. For example, in the anti-dumping case against artist canvas, the DOC insisted on using the price of India's imported cotton fabric, instead of the price of domestically produced Indian cotton fabric as the surrogate price notwithstanding the realities of responding Chinese enterprises. Anti-dumping margins against Chinese producers were artificially raised as a result.

3.6.1.3 New anti-dumping policy of the DOC in 2005

Since January 2005, the DOC has issued new policies and proposals one after another to impose more barriers and make it more difficult for Chinese exporters to deal with US anti-dumping investigations.

3.6.1.3.1 New procedures for applying weighted-average rates and policy of exporter/producer combination rates

In April 2005, the US DOC issued new policies towards China and other non-market economy countries.

First, new procedures will be applied towards companies that wish to obtain weighted-average rates. The new procedures have become more stringent in terms of timelines, and have also restricted those companies with inadequate or incomplete applications with limited opportunities for "correcting" their applications. The questionnaire also requires exporters to submit documents that are difficult to obtain, such as Customs Declaration Form 7501, and sets stringent requirements for the accuracy of documents submitted.

Secondly, a system of "exporter/producer combination rate" is applied towards companies that have obtained weighted-average rates, which can prevent exporters who have a higher rate from shipping their merchandise through an exporter assigned an average rate.

The above two measures have given the DOC more discretion and have made it more difficult for responding companies to obtain the weighted-average rates, and will have a major impact on future anti-dumping investigations, as well as on producers and exporters who are subject to current anti-dumping orders.

3.6.1.3.2 New sampling method

A new sampling method was introduced in October 2005 when the DOC conducted its annual administrative review regarding brake rotors from China and certain softwood lumber products from Canada. A random sampling based on the so-called "sales volume probability" was adopted in selecting mandatory respondents. According to the new method, the top large companies will no longer have a 100% probability of being selected as mandatory respondents, but will be assigned an average rate which will be difficult to predict and control. However, small businesses totally unprepared for responding to the whole investigation process are likely to be selected instead, and assigned a high rate due to a lack of resources or inability to respond to the full investigation, or because of its own cost and price problems. Moreover, if part or all of the mandatory respondents are assigned a punitive high rate, the weighted-average rate will be increased considerably, which could place most companies in a dire situation regarding their exports to the US. Meanwhile, the uncertainty in sampling has also increased difficulties in trade.

3.6.1.3.3 Changes in calculating value of imported materials

At the request of domestic industries, the DOC proposed to amend its method of calculating the value of imported materials starting in May 2005. The current program provides that if most of the materials are imported, i.e. with a percentage over 50%, the DOC will continue to use real import price to determine the total consumption of that material. If the percentage of import is less than 50%, the actual importing price will only be applied to the imported portion while a surrogate price will be assigned to the domestically-sourced portion. Former practices by the DOC, however, have shown that once the imported part reaches 15%-20%, real importing price are usually used to determine the consumption of that material. The new policy has considerably raised the percentage requirement, and will make it more difficult for Chinese companies to obtain a lower anti-dumping rate.

3.6.1.3.4 New Shipper Review Amendment Act to make it more difficult for new exporters

The US Senate has just approved the New Shipper Review Amendment act. The act will take effect when approved by the House of Representatives. According to the new act, importers are required to submit a cash deposit, instead of a bond or security, for entry of merchandise subject to antidumping orders via new shippers. This requirement will create difficulties and higher costs for new shippers in their efforts to export.

The proposed change in calculating the value of imported materials, (which is still under discussion), and the amended policy affecting exporters waiting for approval, will have a substantial impact on Chinese companies responding to anti-dumping investigations and Chinese exports to the US. China will closely follow these developments.

3.6.1.4 Zeroing

In accordance with the Tariff Act of 1930, as amended, the DOC uses zeroing when setting the dumping margin. This methodology has been ruled by the WTO as a violation of the WTO Anti-dumping Agreement. China believes that the US practice has injured Chinese companies' rights under the WTO Anti-dumping Agreement, and that further, the US should correct this action as soon as possible.

3.6.2 Product-specific safeguard measures

3.6.2.1 Legal issues on US product-specific safeguard measures

Section 421 of the US Trade Act of 1974 (hereinafter referred to as Section 421) sets forth regulations on procedures utilized and entities involved in implementing product-specific safeguard measures against various Chinese products. It is deemed by China that Paragraph 16 of the Protocol on the Accession of the People's Republic of China to the WTO does not provide sufficiently detailed procedures and entities with regard to investigations related to product-specific safeguard measures and enforcement thereof. It is China's further contention that Section 421 does not provide detailed regulations related to several important concepts and procedures relating to product-specific safeguard measures. In particular, Section 421 is inconsistent with relevant WTO rules relating to the definition of "significant cause", the criteria to determine the timeline for "rapid increase" or the conditions for the increase, the definition of "other related factors", the definition of "similar or directly competitive products", etc. China hopes that the US will make the necessary corrections, modifications and amendments to Section 421 so as to bring it in line with the corresponding and relevant WTO rules.

3.6.2.2 US investigations for product-specific safeguard measures

In 2005, the ITC initiated a product-specific safeguard measure investigation against Chinese circular welded non-alloy steel pipe in accordance with Section 421. The ITC, in complete disregard to the fact that no disruption has been caused to the US market, and further, in the absence of any established causality, has ruled that the Chinese product has caused injury or threat of injury to the domestic industry in the US, and citing China's general overcapacity of steel as a reason, proposed to the US President various safeguard measures against the specific product. This practice of the ITC is against China's WTO commitments and further, is a serious violation of the WTO's non-discrimination principle.

On December 30, 2005, the US President decided not to impose safeguard measures against China's steel pipe.

3.6.3 Special restrictive measures on Chinese textile products (Paragraph 242)

In April 2005, the US Court of Appeals for the Federal Circuit overruled the preliminary injunction made by the US Court of International Trade in December 2004 enjoining the interagency Committee for the Implementation of Textile Agreements (CITA) from further accepting, considering, or otherwise proceeding on requests for safeguard measures on textile products from China based on the threat of market disruption as provided under paragraph 242 of the Report of the Working Party on the Accession of China. During the year, CITA, based on market disruption, or the threat of market disruption, initiated several investigations against Chinese textile products in order to restrict their import. These investigations were initiated by the CITA directly, or at the request and petition of the US textile industry. The investigation proceedings, which had been suspended since 2004, were thus resumed. By the end of October 2005, 24 textile products, the export of which to the US had reached US$4 billion in 2004, had been placed under investigation. The final ruling by CITA subjected 9 products to quota, including cotton knit shirts and blouses, cotton trousers, cotton and man-made fiber underwear, man-made fiber knit shirts and blouses, man-made fiber trousers, cotton yarn of combed fibers, men's and boys' cotton and man-made fiber woven shirts, cotton and man-made fiber brassieres and other body supporting garments, and other synthetic filament fabric.

In the US investigation proceedings, there exist unreasonable and unfair practices which are clearly inconsistent with China's WTO commitments and which are in violation of various WTO rules. For instance, there is much confusion with regards to the conditions for entities to enforce safeguard measures, enforcement procedures, determination of causality, eligibility of petitioner, the information requirement for petitioners, identification of similar products, and proof of injury. Starting from October 2004, grounds for imposing quotas on textile products have been expanded from "market disruption" to "the threat of market disruption", thus allowing even more discretion by way of US rulings, and drastically lowering the threshold in allowing the imposition of quotas and permitting the entire proceeding to be conducted too hastily. As a result, Chinese textile products are confronted with even more severe and substantial threats. China has expressed on many occasions its hope that the US could fully recognize the adverse impact the abuse of special textiles safeguard measures has on bilateral trade and economic ties. Further, China has called on the US to refrain from unnecessarily utilizing paragraph 242, and that in accordance with relevant WTO principles, make all necessary corrections, modifications, and amendments to the Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China made by CITA.

Seven rounds of negotiations have been conducted between China and the US on textile trade issues since June 2005. On November 8, 2005, the two sides finally reached an agreement and signed the Memorandum of Understanding between the Governments of the United Sates of America and the People's Republic of China Concerning Trade in Textile and Apparel Products. In the agreement, China and the US agreed on the maximum export amount for 21 categories of textile products from China by the end of 2008. The US committed not to pursue any safeguard actions as provided for by Paragraph 242 with respect to products that were integrated before 2002. In categories not covered by the agreement, the US will exercise restraint in the application of its right under Paragraph 242. The US dropped all safeguard measure investigations since the signing of the agreement and on November 22 2005, the US Bureau of Customs and Border Protection was ordered to allow prompt entry to all embargoed Chinese merchandise.

3.7 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 or her products are domestic products or foreign products. The Act does not directly prohibit the purchase of foreign products by government agencies. It stipulates clearly, however, that in evaluating price offers, a 6% margin should be added to foreign products. If the 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 expresses its concern over this issue.

In addition, many other federal laws also contain requirements to buy American goods. These laws include various fund appropriation regulations, road and transportation laws enacted by the US General Services Administration (GSA), the US National Aeronautics and Space Administration (NASA), and the Tennessee Valley Authority (TVA), as well as the Clean Water Act of 1997, the Rural Electrification Act of 1936, and the Rural Electrification Act of 1938. Many of these laws and regulations contain provisions governing financing for federal purchases from states or local areas, but are nevertheless exempt from the relevant GATT or WTO Government Procurement Agreement after the US submitted application to the WTO.

State governments also have their own government procurement regulations, most of which use the same principles contained in the Buy American Act of 1933. These state-level restrictions have also constituted discrimination against foreign products, particularly in the areas of steel, coal, automobiles, printed products and related services.

3.8 Export restrictions

The US, under the Export Administration Act of 1979, has long maintained control over the export of products for military use or products with potential dual uses to China, and also over the export of high technology to China in high tech sectors, such as wireless products, chips, software, security products and radar, and has set forth specific requirements for domestic production, sales and research and development of high tech products. The phasing out of export controls over relevant products has remained one of the important issues for trade negotiations between China and the US. In 2005, the US stated that on the basis of its obligations under the Wassenaar Arrangement, it was proposing a new export control rule against China to apply a new export licensing system against items with military end use and end users not covered in the Controlled List. To avoid adverse impact of the new rule on trade of high technology between China and the US, China has on many occasions raised this issue with the US. There is also strong opposition from the high tech industry in the US.

3.8.1 Export license administration

The DOC exercises control over the export and re-export of American products through export licensing. The US ranks export destinations in China by levels of cooperation in export licensing. Easiest to deal with are Western subsidiaries operating in China, followed by new Chinese entities that operate on a transparent Western business model. After that are companies that were spun off from Chinese research institutes and, finally, companies that have done work for Chinese military or security forces.

Generally, the average time needed for obtaining a license from submission of the application to the issuance of the license is three months at shortest, and one year at the longest, much more lengthy than in other countries, such as Germany and Japan. This time-consuming process has in fact increased the cost of exporting to China. While most of China's applications for licenses are approved, stringent conditions are attached, such as follow-up verification to ensure the use of exported equipment in permitted fields. The US government also sets forth specific requirements for commercial contracts, requiring that all contracts which US high technology exporters sign with Chinese clients carry a clause which reads, "All exports must identify the end use or end-user, and allow for on-site verification by the US for the end use and end user of the technology or product". In 2004, China and the US signed the Memorandum of Understanding on on-site verification of end-users. On the basis of the MOU, the US has made several requests for coming to China to conduct on-site verification of suspected products.

In addition to the export licensing system, if there are foreign natural persons involved in projects of controlled technology, the DOC also requires that unless American companies and other organizations have obtained its approval, foreign persons from certain countries are not allowed to participate. Of nearly 1,000 deemed export license applications filed in the fiscal year of 2003-2004, about 400 of them were for technology involving work performed by people from China.

3.8.2 Controlled list

The US government maintains control over the destinations and end-users of export items through the use of the lists such as the Specially Designated Nationals List (SDN), the Specially Designated Global Terrorists List (SDGT), the Denied Persons List, the Debarred Parties List and the Embargoed Countries List. Export to countries, individuals, or organizations identified on the lists are prohibited or restricted. In 2005, 19 Chinese entities remain on the Warning List made pursuant to Supplement No. 4 to Part 744 of the Export Administration Regulation (EAR), with this number rising to a 50% share of the total, thus making China the biggest target now under close scrutiny by the US. Moreover, in 2005, two Chinese citizens were included on the Denied Persons List by the US Department of Defense, and are thus prohibited from trading with American companies for a term of three years. Several Chinese citizens from Hong Kong SAR were added to the Specially Designated Nationals List of the Office of Foreign Assets Control of the US Department of Treasury. Eight Hong Kong companies were added by the US Department of Commerce as the Unverified Company, and were assigned a "red flag" warning mark in transactions requiring license and review.

3.8.3 Sanctions

The US government regards the export administration system established and enforced by China as inadequate for US non-proliferation standards. Therefore, the US government often uses "proliferation of weapons" as the pretext to impose sanctions on Chinese companies. Out of 114 sanctions imposed by US Department of Defense on controlled items in the period from 2001 to 2004, 79 were against Chinese companies, nearly all imposed on the basis of non-proliferation. Companies having links with the Chinese military are the main target of US control and sanctions. In January 2005, the US State Department imposed sanctions on seven mainland Chinese companies, on one Taiwanese company, and one Chinese citizen under the pretext of "aiding Iran's efforts to develop ballistic missiles and having violated the Iran Nonproliferation Act 2000". The two-year-long sanctions, which will expire after December 27 2006, prohibits the companies from doing business with the US government and will also prevent them from receiving export licenses required to buy certain U.S. controlled equipment. On November 23 2005, the Bush administration, on the basis of "credible information" that six Chinese companies had transferred material for making missiles and weapons of massive destruction to Iran in violation of the Iran Nonproliferation Act, imposed sanctions on these six Chinese companies.

It is held by China that the Chinese government has consistently pursued a responsible and committed attitude towards the issue of proliferation prevention, and has taken a series of effective measures to strengthen its export control. Unwarranted sanctions on Chinese companies by the US government invoking its domestic laws are unreasonable, and will not be beneficial to the bilateral cooperation in proliferation prevention. China expresses its dissatisfaction and opposition to these continuous sanctions by the US, and urges the US to promptly cease these actions.

3.9 Subsidies

3.9.1 Agricultural subsidies

The Farm Security and Rural Investment Act of 2002 (FSRI 2002) provides the legal framework governing agricultural subsidies and investment from 2002 through 2007. In fiscal year 2005, the US government, pursuant to the Act, has increased subsidies to promote export of agricultural products and provide support to domestic agriculture.

In the area of export support, the fund, which has aimed to promote the export of agricultural products and to improve their competitiveness in the international market, has kept an upward momentum over the past five years. In fiscal year 2005, the US government spent US$ 4.528 billion on Export Credit Guarantee Programs, up US$812 million over the previous year, and spent US$188 million on Export Enhancement Programs, maintaining the same level as the previous year. The amounts included US$140 million spent on Market Access Programs, US$34 million spent on Foreign Market Development Programs, and US$2 million spent on Quality Samples Programs. The spending on Export Subsidy Programs reached US$34 million, including US$28 million on Export Enhancement Programs, while in 2004, the spending was only US$3 million on Dairy Export Incentive Program.

In the area of domestic support, in fiscal year 2005, the US government spent US$5.347 billion on Direct Payments, up 1% over the same period for the previous year, and US$ 3.942 billion on Counter-cyclical Payments, up 387% over the same period for the previous year. In addition, US$638 million worth of sales subsidies were provided to cotton, an amount almost double the figure of the previous year.

FSRI 2002 was ruled by the WTO in 2004 as being partly inconsistent with the WTO agreement. Although the US had declared in June 2005 its intention to amend its Export Credit Guarantee Program (GSM-102), Intermediate Export Credit Guarantee Program (GSM-103) and Supplier Credit Guarantee Program (SCGP) to implement the WTO ruling, the US has still provided huge subsidies to its agricultural industry compared with fiscal year 2004. China hopes that the US will revise its domestic policy to fully implement the relevant WTO rulings at the earliest date possible.

3.9.2 Other subsidies

In October 2004, the Job Creation Act of 2004 was passed in the US to implement the earlier WTO rulings on illegal export subsidies granted to domestic companies under the US Foreign Sales Corporation Act and the Extraterritorial Income Act. The Job Creation Act of 2004 has conditionally repealed the former tax breaks and, in order to compensate any losses thereby incurred by US domestic companies, and has at the same time created a new tax deduction applicable to manufacturers. The new law provides that taxable overseas income repatriated by US companies to US territory for employee training, fixed assets, research and investment will be applied a tax rate of 5.25%, instead of 35%. A series of preferential measures are also granted to small and medium sized enterprises. For example, for small businesses, the new law provides a 15-year recovery period and straight-line depreciation for qualified leasehold improvement property.

It is maintained by China that the Job Creation Act of 2004 is unreasonable in the following ways:

First, a transition relief is provided until the end of 2006 to tax breaks established under the Extraterritorial Income Act. Relevant WTO rulings were not properly implemented due to these illegal export subsidies made to US companies. China hopes to see an end to such practices.

Secondly, the Act provides eligible domestic manufacturers a deduction on their taxable gross income. The deduction would be phased in over six years: 3% in 2005-2206, 6% for 2007-2009, and 9% for 2010 and thereafter. The deduction is available not only to manufacturers, but has been unreasonably expanded to cover sectors such as film and video, construction engineering, and software development. It is estimated that the new Act will provide US$76 billion of domestic support to US companies, far above the original US$50 billion provided under the US Foreign Sales Corporation Act and the Extraterritorial Income Act. China expresses great concern with regards to the potential impact this tax reduction program will have on Chinese manufacturers.

3.10 Barriers to trade in services

A great number of restrictive measures exist in the US market for trade in services. Those measures stand as barriers for export of services to the US.

3.10.1 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 has constituted barriers to foreign professional service providers.

3.10.2 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 regarding 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 its borders, and further, as these regulations usually vary from state to state, many difficulties are created for foreign operators.

3.10.3 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 operations.

In business operations, there exists the issue of not granting national treatment. Foreign insurers are also discriminated against regarding the requirements for registered capital, taxation and management fees.

3.10.4 Banking

With regard to market access, the US places stringent restrictions on the market network and business scope of foreign banks. If a foreign bank wants to set up a new branch, it has to once again go through the application procedures although 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 2005, only three Chinese banks, namely, Bank of China, Bank of Communication and CITIC Bank had established branches in the US. Many Chinese bankers have expressed concerns over the difficulties in applying for an approval to establish branches or representative offices in the US. In addition, the restrictions on mergers, acquisitions and the holding of majority stakes of US banks by foreign banks are very rigorous in the US, which has seriously and negatively affected the business of foreign banks.

With regard to business operations, 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 19, 1991, are not allowed to join the federal deposit insurance system, which results in the deposits in foreign banks not being covered by U.S. deposit insurance. These measures have seriously restrained the development of foreign banks in the US.

3.10.5 Marine transportation and domestic water transportation

Marine transportation is one of the most protected sectors in the US. The Merchant Marine Act of 1920 places restrictions on coastal shipping and domestic transportation by foreign vessels. Domestic transportation can only be operated by US vessels. Ownership by foreign individuals, companies or governments of shipping companies engaged in coastal and freshwater transportation in the US is limited at 25%. If foreign ownership is over 25%, shipping companies will be denied rights to undertake such transportation. Sale of vessels registered in the US to foreign companies without the authorization of the Secretary of Transportation is a violation of law and such companies are held liable by US laws. Transportation covered by the Federal expenditure must also be undertaken by US vessels.

3.11 Unjustifiable protection of intellectual property right

An important trend in US foreign trade policy is to strengthen the fight against violations of US intellectual property by foreign companies in the exportation of products to the US. The governing law in this regard is Section 337 of the Tariff Act of 1930, as amended, under which the ITC conducts investigations into asserted unfair trade practices in imports, and imposes remedy measures such as general exclusion orders, limited exclusion orders, cease and desist orders. In practice, the main target of a Section 337 investigation is any violations of US intellectual property by foreign companies in the exportation of products to the US, particularly infringements on US patents.

In recent years, Section 337 investigations involving Chinese products have risen rapidly. In 2005, among the 29 Section 337 investigations initiated by the ITC in 2005, seven were filed involving certain products from China. Products involved were network controllers, rubber anti-degradants, components thereof, and products; color television receivers and color display monitors; pool cues with self-aligning joint assemblies and components; audio processing integrated circuits, and products containing parts thereof; laminated floor panels; laser bar code scanners and scan engines, and components thereof.

As early as in 1989, it was ruled in the GATT Panel report that Section 337 of the Tariff Act of 1930, as amended, and practices in Section 337 investigations were not consistent with Paragraph 3, Article 4 of GATT in 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, no substantial changes were made. China maintains that Section 337 of the Tariff Act of 1930 is in many aspects still inconsistent with Paragraph 3, Article 4 of GATT and relevant provisions of TRIPS, and discriminates against imports in investigations. The inconsistencies are reflected in several aspects. First, Section337 has provided double remedies to US products by discriminating against foreign companies and violating the principle of national treatment. Secondly, the criteria for the adoption of a general exclusion order are unduly low and unclear, thus creating great uncertainty and arbitrariness that have unjustifiably hurt the interests of the foreign exporters. Third, certain Section 337 investigations only name the country of origin of investigated products without naming investigated companies, which in fact has deprived involved foreign companies the right to respond, and have undermined the interests of the involved foreign companies. Fourth, the authorization by Section 337 to ITC to self-initiate Section 337 investigation has insufficient grounds, and is inconsistent with TRIPS. China expresses great concern over this issue and the resulting adverse impact these actions have on China's normal trade with the US.

3.12 Other barriers

There have been three main changes to US visa policy since the September 11 terrorist attacks. First is the requirement for bio identification such as index finger scans. Second is the expansion of interviews to cover students and business visa applicants, who in the past were not required to give in-person interviews. Third is the additional requirement to evaluate the security risk presented by the applicant. As a result, visa applications take longer to process. Some waiting periods in certain cities can be as long as 80 to 100 days just to get an interview. Due to the lack of visa officers, applications have been kept in backlog and delay. Moreover, due to the lack of transparency in visa procedures and great discretion by visa officers, there exists great uncertainty in visa applications. Many eligible applicants have been refused and normal business visits to the US are hindered.

The US government has also expanded use of the Technology Alert List, which refers visa application involving non-sensitive technology sectors such as automation for additional clearance. Every year, an average of 2% of all visa applications, or 160,000 cases are referred for clearance. China, India and other Asian countries are those under strict examination and review. The increasingly strict visa policy has made it difficult for Chinese companies to establish commercial links with US companies and has injured Chinese companies' interest. Beginning from June 20 2005, the US started to grant one-year-valid multiple-entry visas, rather than 6-month-valid multiple-entry visas, to Chinese citizens on business or travel trips to the US. China welcomes this move and hopes that the US will continue to improve its visa policy by increasing staff, raising visa issuance efficiency, transparency and predictability so as to ensure the normal commercial exchanges between the two countries.

4 Barriers to investment

4.1 Discriminations in taxation

Foreign branches in the US or any American corporation that has at least one 25% foreign shareholder are required to maintain or create books and records relating to transactions with related parties. The documents must be stored at a place specified by the US tax authorities and an annual statement filed containing information about dealings with related parties. There are stiff penalties for non-compliance with the provisions. Although their purposes, the prevention of tax avoidance and evasion, are reasonable, they are burdensome and add to the complexity for foreign-owned corporations doing business in the US.

4.2 Investment review out of national security concern

The Exon-Florio Amendment authorizes the US President to investigate any merger, acquisition or take-over that might threaten the national security of the US. The investigation is carried out by the Committee on Foreign Investments in the United States (CFIUS). 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 investor's rights does not require court review, nor are the investors compensated for such losses.

In practice, domestic political factors in the US often play a role which affects such transactions. Both Lenovo's offer to acquire IBM Personal Computing division and the bid of China National Offshore Oil Corp (CNOOC) to acquire Unocal were played up by certain US Congressmen and the US media. Lenovo finally won the deal after many negotiations and the rigorous scrutiny by CFIUS, while CNOOC had to drop the acquisition after Capitol Hill had unnecessarily played up the issue.

4.3 Restrictions on market access and investment

Foreign ownership is expressly restricted by US federal laws in certain sectors considered particularly sensitive, such as radio and TV broadcasting, domestic air, marine transportation and fishing. In addition, certain highly regulated sectors, such as banking, insurance, electric and gas, and communications, are subject to discretionary governmental action, especially on the state level. Foreign investment therein is often subject to a higher level of scrutiny.

4.3.1 Mineral leasing and energy development

Energy resources generally are regulated by both state and federal laws. Exploration and development of energy resources, as well as their refinery, wholesale and marketing are all operated by private companies, which obtain the right to development and production through public tender for leasing or selling. However, the federal Mineral Lands Leasing Act allows mineral lands owned by the federal government to be leased only to US citizens and to corporations organized in the US. The latter may be foreign-owned, but in general a greater than 10% foreign ownership is allowed only to the extent the foreign owners' country grants similar rights to US citizens - that is, reciprocity is required. The Secretary of the Interior determines what countries do not provide reciprocal treatment.

The Mineral Leasing Act of 1920, which governs rights to mine coal, oil, oil shale and natural gas on land sold by the federal government subject to reserved mineral mining rights, restricts such mining to U.S. citizens, corporations and other U.S. entities. Also, for an alien to obtain an interest in a mineral lease held by a U.S. citizen under the Mineral Leasing Act of 1920, the Secretary of the Interior must approve any subleases or assignments of such leases.

On August 8 2005, President Bush signed the Energy Policy Act of 2005. In view of CNOOC's bid to acquire Unocal, an additional provision was put in the Act, which requires that the Secretary of Energy, in consultation with the Secretary of Defense and Secretary of Homeland Security, shall conduct a study of the growing energy requirements of China and the implications of such growth on the economic or national security interests of the United States, and shall report to the President and the Congress on the findings of the study, as well as any recommendations the Secretaries consider appropriate, not later than 120 days after the date of the enactment of the Act. For various reasons, the report was postponed to February 2006. China will closely watch the progress of this study and possible action by the US government.

4.3.2 Land and real estate

Foreign persons are allowed to invest in real estate in the US through buying, selling or leasing. There are special regulations, however, on investment in certain lands. As restricted by US laws, land owned by US Land Administration is not allowed for sale to foreign persons. Over 30 states, particularly those with extensive farming areas, have laws restricting foreign interests in real estate to different extents. The disposition of a US real property interest by a foreign person (the transferor) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding.

Mexico

1 Bilateral trade relations

According to China Customs, the bilateral trade volume between China and Mexico in 2005 reached US$7.76 billion, up by 9.2%, among which China’s export to Mexico was US$5.54 billion, up by 11.4%, while China’s import from Mexico was US$2.22 billion, up by 4.0%. China had a surplus of US$3.31 billion. China mainly exported electrical machines, electrical appliances, Audio-Visual equipment and related parts and accessories, boilers, mechanical instruments and related parts, plastics and converted articles, toys, game or sporting goods and accessories, medical instruments and apparatus, iron and steel and converted products, etc. China’s major imports from Mexico included iron and steel, copper and converted products, aluminum and converted products, mechanical equipment and electrical machines and appliances, chemicals, plastics and converted articles, chemical staple fibres, ores, slag and calx, 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$380 million in 2005, and the volume of the newly signed contracts was US$ 210 million. The volume of completed labour service cooperation contracts was US$6.69 million, and that of the newly signed labour service cooperation contracts was US$1.26 million. By the end of 2005, the accumulated turnover of engineering contracts completed by the Chinese companies in Mexico was US$900 million, with that of all the contracts signed reaching US$700 million, and the volume of the completed labour service contracts had reached US$58.96 million, with that of the total contracts signed reaching US$68.23 million.

Approved by or registered with the MOFCOM, three Chinese-funded non-financial enterprises were set up in Mexico in 2005, with a total contractual investment of US$6.45 million contributed by Chinese investors. By the end of 2005, there were accumulatively 51 Chinese-funded enterprises set up in Mexico with a total investment of US$170 million from Chinese investors.

According to the MOFCOM, Mexicans invested in 12 projects in China in 2005; with a contractual volume of US$32.70 million and an actual utilized sum of US$7.10 million. By the end of 2005, Mexico investors had accumulatively invested in 84 FDI projects in China with a contractual volume of US$130 million and an actual utilization volume of US$48.41 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

2.1.1 Legislation on trade administration

The main laws and regulations governing foreign trade in Mexico include Article 131 of the Mexico Constitution, the Foreign Trade Act and its Regulations, Regulations on Unfair International Trade Practices, the Law on Economic Competition, the Law for Acquisitions, Leases and Services, the Law for Public Works, the Customs Law, General Import and Export Tariff Law, the Law on Metrology and Standardization, and the Industrial Property Act, etc.

The Foreign Trade Act (hereinafter referred to as FTA) is the basic law governing foreign trade in Mexico. The FTA, combined with other related laws, regulates and adjusts Mexico's foreign trade activities. On December 3, 2004, the Mexican House of Senate approved the amendments to the FTA, including the shortening of the time period between the initiation of an anti-dumping investigation and the making of the final award by the Ministry of Economy from 260 days to 210 days; the prior inquiries that must be made among domestic producers before decisions are made either to approve or refuse importation or exportation of certain goods; the nomination of the agencies and the formulation of procedures with regard to the examination of tariffs and screening of new exporters; the mandate that is to granted to the Ministry of Economy to conduct investigations based on adequate evidence.

2.1.2 Legislation on investment administration

The Foreign Investment Law (hereinafter referred to as FIL) is the main law governing foreign investment in Mexico.

In addition to the FIL, foreign investments, when made in some sectors, shall be governed by the laws and regulations applicable to the specific areas, for instance, the Federal Telecommunications Law, the Natural Gas Regulations, the Railroad System Act, and Port Act.

2.2 Trade administration

2.2.1 Tariff System

2.2.1.1 The average tariff rate and its changes

In 2005, the Mexican simple average bound tariff rate was 34.9%, the simple average applied tariff rate, 13.1%, and the simple applied tariff rate for agricultural products, 24.31%.

In 2005, the tariff rates for 4,176 products ranged from 5% to 10%, and the major items were chemicals, iron and steel, and photographic goods; those for 2,926 products, from 10% to 15% mainly covering textiles, apparel and chemical products; those for 1,855 products, from 15% to 20%, mainly including agricultural products and aquatic products; 634 products with tariff rates beyond 20%, such as leather, rubber and footwear.

2.2.1.2 Tariff administration

In Mexico, there are 7 ad valorem tariff rates on its imported goods, namely, 0%, 5%, 10%, 15%, 20%, 35% and 45%. The items in the Mexican tariff reduction/elimination list are often subject to adjustment. Tariff changes are issued through Presidential decrees published in the Official Journal.

Mexico adopts an import and export quota system. The quotas must be allocated through public biddings, other means as stipulated in international treaties signed by Mexico, or by any justified procedure established by the Ministry of Economy. Most quotas for agricultural products are reserved to specific countries. MFN tariff rates may apply to the non-agricultural products when quota certificates have obtained.

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

2.2.2 Import and export licensing and prohibitions

2.2.2.1 Import licensing and prohibitions

The import licensing system of Mexico is established on the basis of the Foreign Trade Act and its related regulations. The Ministry of Economy publishes the catalogue or list of commodities under licensing administration through the Official Journal.

The import licensing administration stipulates that imported goods shall be reported to the Mexican department in charge at least 10 days in advance. If the declared price is lower than the reference price determined by the Ministry of Treasury, a pre-shipment inspection must be undertaken. The import license has a validity of one year and shall be applied for renewal upon expiry.

The products on which Mexico maintains import prohibitions are marijuana and its preparations, suctorial medicament, sulphur thallium, biacetyl morphine, glutamate, etc. Mexico also applies import and export prohibitions on a number of products as provided for in the United Nations Security Council resolutions.

2.2.2.2 Export licensing and prohibitions

Mexico conducts export licensing administration for certain goods. The involved products include livestock, petrochemical products, radioactive products, leather and meat of endangered animals, currencies in circulation, corn powder, etc.

The prohibited products for exportation include specific animal products, plants, narcotics, tropical timber, archeological relics, etc.

2.2.3 Technical standards and inspection and quarantine of animals and plants

The Mexican Standardization System consists of about 800 NOMs (Norma Oficial Mexicana ---Official Mexican Standard) by which products must be certified for compliance and about 11000 voluntary standards NMX (Norma Mexicana —Mexican Standard) that improve and assure the quality of Mexican products. Mexican voluntary standards become mandatory in the following cases: when a company or individual voluntarily adopts it; when a NOM makes reference to it; Government procurement.

Under the Law on Metrology and Standardization, regulatory agencies are authorized to issue emergency technical regulations to avoid possible damage done by importation when they conclude that there is an imminent risk of damage to a legitimate objective. Emergency regulations may be applied for up to six months and in no case may the technical regulation be issued more than twice consecutively. Before the second issue, a regulatory impact statement should be submitted to the Ministry of Economy. In addition, the NOMs and the NMXs should be reviewed every five years from the date they come into effect. The result of the review should be notified to the Technical Secretariat of the National Standardization Commission. If it is not notified, the application of the regulation is suspended and the agencies that issued it should publish the cancellation in the Official Journal.

2.3 Investment administration

The Mexican Foreign Investment Law provides that unless specifically stipulated otherwise, Mexico allows foreign investors to invest in most of the economic sectors within its borders, even allowing 100% foreign ownership in operation.

All the foreign invested firms must register at the Foreign Investment Registration Office under the Ministry of Economy; and a few foreign investment projects shall be subjected to the examination and approval procedure of the National Commission of Foreign Investment (hereafter referred to as NCFI). As to some projects concerning national security, the NCFI is entitled to halt the foreign investment. The examination and approval of the NCFI is required when the total fixed assets of a foreign firm reach 394 million Peso (about US$41.47 million) or when a foreign investment project is to exceed 49% of the equity. The related business sectors include: specific dock services including piloting, mooring and lighterage, administration of air terminals, private education services legal services, credit information companies, securities rating institutions, insurance, cellular telephone services, pipelines laying, the drilling of petroleum and gas wells, the construction of railways and roads, etc.

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

2.4 Competent authorities

The governmental bodies responsible for foreign trade administration are the Ministry of Economy, the Ministry of Foreign Affairs, the Ministry of Treasury, the Ministry of Agriculture, the Ministry of Communications and Transport, the National Foreign Trade Bank, the Customs Administration, and the National Commission of Foreign Investment.

The Ministry of Economy is in charge of foreign trade, responsible for making economic and trade policies, coordinating international trade policies with the Ministry of Foreign Affairs, coordinating and directing FDI, jointly researching and formulating tariff level with the Ministry of Treasury, administering licenses on imported and exported goods, addressing rules of origin and monitoring foreign trade, stipulating import and export quotas, formulating trade protection measures, and export encouraging policies, organizing negotiations with relevant foreign countries, etc.

Under the Ministry of Economy, there are the International Commerce Negotiations Office, the Standardization, Foreign Investment and International Commerce Custom Office, and the Industry and Commerce Office. They all exercise management on foreign trade. Besides, the International Trade Measures Office under the Ministry of Economy, is responsible for conducting for different trade remedy measures.

Under the Ministry of Foreign Affairs, there is the Vice-Ministerial Office of Economic Relations and International Cooperation. It is mainly responsible for coordinating and dealing with policymaking issues on bilateral trade and economic affairs with relevant countries as well as on OECD affairs. Its focus is to do some liaison and coordinating work in the economic and foreign trade affairs through diplomatic channels, in collaboration with the Ministry of Economy.

Subordinate to the Ministry of Treasury, the Mexican Customs Administration's responsibilities include: managing the Customs houses on behalf of the government, formulating tariff levels in collaboration with the Ministry of Economy, conducting customs valuation, levying customs duties, investigating and formulating the level of anti-dumping duties for imported goods, and collecting duties.

Under the leadership of the Ministry of Economy, the Mexican Foreign Trade Commission (hereinafter referred to as MFTC) works as a consultative body. The MFTC comprises representatives of the Central Bank, the Federal Competition Commission, the Ministry of Foreign Affairs, the Ministry of Treasury, the Ministry of Economy, the Ministry of Energy Resources, the Ministry of Agriculture, Rural Development, Fisheries and Food, the Ministry of Environment and Natural Resources, etc. The METC is responsible for holding consultations with all the federal public administrative departments on the matters concerning trade policy formulation, including giving consultative advice or making recommendations on the proposed and existing regulations on tariff and non-tariff import measures, export restrictions, and contingency measures, but its advice and recommendations are not binding. The MFTC deals with policies concerning merchandise trade only; issues concerning service trade or investment are beyond its competence.

As a consultative body on foreign investment The National Foreign Investments Commission (NFIC) provides guidelines for the areas where the rules and regulations regarding investment are to be implemented. It also conducts evaluation of a foreign investment project and makes decisions accordingly in case the investor shall be subject to its approval.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak

In Mexico, some tariff rates of imported goods go beyond 35.0% and the highest rate of agricultural products reaches 72.0%. Among the agricultural products, the average bound tariff rate of animals and related products is 36.5%, and its average applied tariff rate is 42.3%; the average bound tariff rate of dairy products is 33.8%, and its average applied tariff rate is 42.2%; the average bound tariff rate of tobacco products is 52.5%, and its average applied tariff rate is 53.1%. All these statistics have shown that among the three major categories, the tariff rates of some products are on the high side.

3.1.2 Tariff escalation

Mexico levies much higher average tariff on processed products than on raw materials, and the most concerned industries include textiles, clothing, leather, and basic metal industry. The average tariff rate of the processed textile products is 20% higher than that of the raw materials, and this, to some extent, has restricted China's textiles exportation to Mexico. In 2005, the tariff rates of some textile raw materials were reduced by 10%, which further widened the gap between the tariff rate of the processed textiles and that of the raw materials. As to 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 quotas

In 2005, tariff quotas were implemented on 0.5% of the total Mexican subject goods.

5.2% of the agricultural products were affected by tariff quota, including poultry, animal fat, milk, cheese, beans, tomato, coffee, wheat, barley, corn and products rich in sugar. In addition, Mexico applies different kinds of tariff quotas schemes to the trading partners with whom Mexico has signed some preferential agreements. The numerous different tariff quotas schemes contribute to the complexity of 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 vehicles and cars, weapons, office equipment, etc. The written application for import license must be accompanied by the quoted invoice issued by the foreign exporter, and the validity of the import license is 9 months and can be extended to another 3 months if necessary.

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

3.3 Barriers to customs procedures

The Mexican government sets reference prices or officially established evaluation prices for some 200 goods, including categories of liquor, apparel, chemicals, footwear, steel, hand tools, appliances, plywood, apples, rice, poultry, etc. If the declared customs value is less than the established reference price, a guarantee must be posted to represent any difference between duties and taxes. The Mexican government have the right, within six months, to decide whether to start a formal investigation or to release the guarantee. These measures do not specify the process of verification or determination regarding the customs value of the imported goods, and therefore lack the corresponding remedy measures, thus bringing about possible unfair treatment to parties concerned. In addition, the Mexican government requires a guarantee for a product whose declared value is lower than the reference price. The 6-month long decision-making period is too lengthy and may constitute difficulties in capital turnover on the part of importers involved. This measure obviously impedes low cost imports from entering into Mexican market.

In 2005, The Mexican Customs Ministry announced modifications to the designated ports of entry for certain agri-food products such as apples, beans, corn, fish, fat, sugar, meat, animal skins, and alcoholic beverages. This practice has caused great inconveniences to Chinese exporters of agricultural products.

3.4 Discriminatory taxes and fees on imported goods

Mexico imposes a 20% tax on the transfer or, as applicable, the importation of soft drinks and other beverages that use any sweetener other than cane sugar. The services related to those products, for example, consignment, agency, etc. shall be levied a 20% distribution tax as well, but drinks sweetened with Mexican cane sugar are not subject to these measures. In addition, the taxpayers of the above two taxes must also meet the bookkeeping requirements. In 2004, the United States appealed to the WTO for establishing a panel to deal with the above-mentioned practice of Mexico.

On October 7, 2005 the WTO Dispute Settlement Body ruled that Mexico's practice of imposing soft drink tax and distribution tax on imported soft drinks and syrups (final products), together with its bookkeeping requirements, was discriminatory and inconsistent with the national treatment in Article 3.2 and Article 3.4 of the GATT 1994.

3.5 Technical barriers to trade

On September 23, 2005, the Mexican Ministry of Environment and Natural Resources, Ministry of Energy Resources, and Ministry of Economy jointly published the Draft Official Standards on Environment Protection of Fossil Fuel, which sets the environmental protection standards for both liquid fossil fuel and gas fossil fuel in Mexican market. The standards are binding both to producers and importers of these products. China will keep a close watch on the development and implementation of the above mentioned draft documents and standards.

3.6 Sanitary and phytosanitary measures

On September 16, 2005 Mexico adopted the Guidelines for Regulating Wood Packing Materials used in International Trade (ISPM15). It sets a certain transitional period and requires that this official standard be applicable to wooden padding and wedges as of July 1, 2006. China will continue to observe the implementation of the above regulations.

3.7 Trade remedies

3.7.1 Anti-dumping

Mexico is an active user of anti-dumping measures and ranks among the top ten countries which have initiated anti-dumping investigations against China.

In 2005, Mexico initiated 5 anti-dumping investigations against Chinese products. The involved products are toothbrushes, tires for station wagons and light trucks, leather and similar goods, canned mushrooms, and plastic pencil sharpeners. The investigations against toothbrushes and leather and similar goods have finished and the Mexican Ministry of Economy has decided not to impose anti-dumping duties; in the case of plastic pencil sharpeners, Mexico has decided to levy a temporary anti-dumping duty of US$34.5 per kilogram and will continue the investigation. In addition, the Mexican Ministry of Economy still imposes an anti-dumping duty of US$18 per piece on the 1.5-20 ton hydraulic bottle jacks imported from China, and a high temporary anti-dumping duty of 191.5% on Chinese mushrooms. On July 26, 2005, the Mexican Ministry of Economy decided to investigate the alleged evasion of anti-dumping duties on concrete steel valves imported from China. This is the first anti-circumvention investigation against China in the past few years.

3.7.1.1 The unfair practices in the Mexican anti-dumping measures

In 2005, the Mexican Ministry of Economy decided to maintain high anti-dumping duties of 533%, 312% and 181% respectively on baby garments, selected hardware tools, and brass and bronze padlocks imported from China. Since the above mentioned baby garments and hardware tools are not manufactured in Mexico, these Chinese imports will not cause injury to Mexican domestic firms. Mexico's imposition of anti-dumping duties on imported products which are not produced domestically is inconsistent with Article 3 of the WTO Anti-dumping Agreement and Articles 28 and 29 of the Mexican Foreign Trade Act.

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

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

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

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

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

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

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

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

Mexico used anti-dumping measures on many Chinese products before China’s entry into the WTO. Mexico has committed to have the measures lifted gradually after China’s accession and to bring its existing anti-dumping measures in conformity with the WTO Anti-dumping Agreement. The transitional period is 6 years (until January 1, 2007). Mexico's fulfillment of its commitments up till December 31, 2005 is as follows:

(1) Anti-dumping measures have been removed from the products including wrought iron joint, fluorspar, furazolidone, some toys, inner and outer tires of bicycles, generators, electrical appliances, equipment and related parts, high-frequency receiving and emitting instruments, instant coffee machines, and selected organic chemicals.

(2) Anti-dumping measures remain effective on the products including bicycles, shoes and boots, brass and bronze padlocks, baby carriage, door locks, gas-fuelled, non-refillable lighters, some hardware tools, textiles, toys, pencils, apparels, some organic chemicals (consisting of 26 products including citric acid, sodium citrate, etc.), porcelain tableware and other wares, concrete steel valves, candles, and wireless dust collector.

3.7.2 Safeguard measures

On October 23, 2005, the Mexican Ministry of Economy published in its Official Journal the Guidelines on the Implementation of the Transitional Safeguard Mechanism specified in China's WTO Accession Protocol. The guidelines stipulate that in line with the relevant Mexican laws, the General Administration of International Trade Practices under the Ministry of Economy shall, in the name of the federal government, conduct investigations on Chinese products and adopt corresponding special safeguards. The Guidelines also contains specific stipulations on conditions of implementation of the special safeguards, investigation proceedings, confirmation of damages, and time of implementation. However, Mexico is believed to negotiate with China before adopting the special safeguard measures.

3.8 Subsidies

Currently, the Mexican government provides subsidies amounting to 26.6 billion Peso (about US$2.3 billion) for farmers producing basic agricultural products through its "target income plan" every year. Other financial support schemes include supply of diesel oil, electricity and other necessities. These schemes belong to the amber box (trade-distorted subsidy) of the WTO Agreement on Agriculture and affect market price and production.

Among the developing countries, only Mexico boasts a high ratio of 34 per cent in terms of the ratio of amber box aggregate measurement of support to its total agricultural output. In other developing countries, it is on average less than 4 per cent. Therefore, Mexican domestic agriculture is greatly supported by the government and its agricultural products can enjoy a competitive advantage over foreign agricultural products.

4 Barriers to investment

Mexico still maintains 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. Although foreigners can purchase the land in the "restricted zone" by trust through Mexican banks, they should register in advance with the Ministry of Foreign Affairs and the purchased land can not be used for inhabitancy. Without ownership of the land, the purchaser has only the right to use the land. Moreover, in Mexico there are no measures similar to the ownership guarantee insurance to safeguard the interests of foreigners after they purchased the land.

Mexico restricts the ratio of foreign investment in its telecommunication industry. The highest ratio of direct foreign investment in companies providing telecom network and services is 49%. In the Mexican telecommunication market, its domestic company 'Telmex' enjoys a dominant position and other foreign companies find it hard to compete with it.

The Mexican Labor Law stipulates that the ratio between foreign employees and Mexican employees in a foreign company should not be higher than 1:8. In principle, the company's technical personnel or professionals should be Mexicans, and only when there are no qualified Mexicans to fit the positions can foreigners be employed temporarily.

South Africa

1 Bilateral trade relations

South Africa is China's largest trading partner in Africa. According to customs statistics released in China, the bilateral trade volume between the two countries totaled US$ 7.27 billion in 2005, up 23.0% over the previous year, among which China's exports to South Africa arrived at US$ 3.83 billion, an increase of 29.6%, whereas China's imports from South Africa grew by 16.4% to hit US$ 3.44 billion. China had a trade surplus of US$ 0.39 billion with South Africa. China mainly exported to South Africa electro-mechanic products, garments and accessories, cereals and cereal powders, electric appliances and electronic products, textile yarn and related products. The major imports of China from South Africa were, among others, iron sand and iron fine ores, magnesium sand and magnesium fine ores, and paper pulp.

According to figures of China's Ministry of Commerce (MOFCOM), in 2005, the turnover of the completed engineering contracts by Chinese companies in South Africa stood at US$ 79.60 million, and the volume of the newly signed 27 engineering contracts reached US$ 52.51 million. In the same year, the volume of the completed labor service cooperation contracts by Chinese firms in South Africa summed US$ 3.19 million, and that of the newly signed 5 labor contracts added up to US$ 7.55 million. By the end of 2005, the accumulated turnover of the engineering contracts completed by Chinese businesses in South Africa amounted to US$ 170 million, with that of all the engineering contracts signed standing at US$ 530 million, and the accumulated volume of the completed labor service contracts reached US$ 56.68 million, with that of the total labor contracts signed running to US$ 76.71 million.

Approved by or registered with MOFCOM in 2005, 12 Chinese-funded non-financial enterprises were set up in South Africa, with a total contractual investment of US$ 19.40 million from Chinese investors. By the end of 2005, the number of non-financial enterprises invested and established in South Africa by Chinese firms had come to 132, the overall contractual commitment arriving at US$ 260 million.

South African firms invested in 67 projects in China in 2005, a decline of 23.0% over last year, but the contractual volume of investment rose significantly by 71.0% to reach US$ 280 million, with an actual utilization of US$ 110 million. By the end of 2005, South African companies had accumulatively invested in 488 FDI projects in China with a contractual investment of US$ 770 million and an actual invested capital of US$ 310 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

2.1.1 Legislation on trade administration

Legislation concerning foreign trade administration in South Africa includes the International Trade Administration Act, the Import and Export Control Act, and the Customs and Taxation Act. In 2005, South Africa amended its Customs and Taxation Act.

2.1.2 Legislation on investment administration

The Export Credit and Foreign Investments Re-insurance Act and the Exchange Control Amnesty and Amendment of Taxation Laws Act are the two major legislation on foreign investment in South Africa. Other laws pertinent to foreign investment include the Companies Act, the Income Tax Act, the Financial Institution (Investment Funds) Act, and the Labor Act. All the areas of foreign investment come under these laws.

In 2005, South Africa revised, inter alia, its Exchange Control Amnesty and Amendment of Taxation Laws Act and its Income Tax Act.

Another legislation related to foreign investment in South Africa is the Competition Act, which provides strict criteria for approval of mergers and aims to encourage competition between businesses.

In addition to the above-mentioned legislation, investment-related laws in South Africa include the Environment Act as adopted on 31 May 2004.

2.2 Trade administration

2.2.1 Tariff system

According to its WTO accession commitments, South Africa has significantly reduced its tariff. South Africa's average tariff stands at 5.8% at present, with an average tariff of 9.1% and 5.3% for agricultural and non-agricultural products respectively. In 2005, South Africa cut its import tariff on acetate, acetyl cellulose and related products as well as on some imports subject to specific duties.

According to the Customs Union Agreement signed by South Africa, Botswana, Lesotho, Namibia and Swaziland in 2002, these five countries have established a Southern African Customs Union (SACU) administering a uniform tariff. After the agreement went into effect, member countries divide tariff receipts among themselves according to a pre-arranged formula. The supreme decision-making body for SACU is the Council of Ministers (COM).

2.2.2 Import administration

Any company registered in South Africa's Department of Trade and Industry can engage in import trade, with no need to apply for special trading rights. The import of most products has been liberalized in South Africa, but certain special products are subject to licensing administration. In accordance with the Import and Export Control Act, these products include, among others, fish and fishery products, certain vegetables and other agrarian products, certain dairy products, certain red teas, fermented beverages, alcoholic beverages, petroleum and certain petrochemical products, radioactive mineral products, certain footwear, all kinds of waste products, certain medicines and pharmaceutical products, environmentally hazardous products, gambling devices, and arms. Importers should apply for a license before importing any of these products and no shipment should be made overseas prior to the granting of the import license. Importers should submit import license application to the relevant authorities at least two weeks before shipment to allow sufficient time for the approval. Application materials include the name of the imports and any information demanded by the authorities to be made available about the imports. Once issued by the Import and Export Administration Bureau, the import license is to remain valid for 12 months.

2.2.3 Export administration

It is required that South African exporters be registered in the Customs House. 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 Minister of Trade and Industry and published on government bulletins. The exporters of diamond should register in South African Diamond Commission. According to South African regulations, the export of waste metals, which are deemed national resources, is placed under restriction. Before an export license is granted, waste metals should first be made available to South African lower stream enterprises at a discounted rate of their export prices, normally 15% discount for non-ferrous metals and 7.5% discount for ferrous metals. The government can only issue export licenses if the lower stream enterprises do not respond to the offer or do not need the waste metals. 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 related systems

South Africa has now abolished its foreign exchange control under the current account. However, to guard against financial fraud and money laundering, South African banks have, as required by the Financial Intelligence Center Act, tightened their monitoring over the funds of their clients.

2.3 Investment administration

South Africa has tried to promote investment, particularly foreign investment, through a number of state-initiated programs. As from 1 January 2001, South Africa has adopted the policy of taxation according to residence. According to the agreements with other countries on the avoidance of double taxation, non-residents in South Africa are still subject to taxation on their earnings in South Africa. The South African taxation categories fall into two broad types – direct taxation and indirect taxation. The former includes income tax, corporate secondary tax, capital earnings tax, and endowment tax, whereas the latter covers 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.

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. Generally speaking, no restriction is imposed upon the remittance abroad of investment earnings by non-residents.

2.4 Competent authorities

The Department of Trade and Industry (DTI) and the International Trade Administration Commission (ITAC) regulate foreign trade in South Africa. The Department of Trade and Industry conducts foreign economic relations and trade negotiations, signs bilateral and multilateral trade agreements, keeps in touch with provincial economic development agencies, and coordinates trade and investment relations between provinces in the country. On the other hand, the International Trade Administration Commission carries out anti-dumping and countervailing investigations in the SACU region, 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 agencies 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 Tariff and tariff administrative measures

Chinese companies complain that in spite of tariff reforms, South Africa's tariff schedule remains complex and can create uncertainty for exports to the country.

3.2 Import restrictions

Imports such as waste products are subject to licensing from the Import and Export Administration Bureau under South Africa's Department of Trade and Industry, which should seek the agreement of the relevant competent departments involved prior to the issuance of an import license. Chinese firms report that they often have to face frequent delays in getting licenses issued when exporting related products to South Africa, which adversely affects their normal export to the country.

3.3 Technical barriers to trade

According to the new trademark regulation promulgated by South Africa's International Trade Administration Commission, as from 23 May 2005, foreign textile products, clothing and footwear can be imported into the country and sold on the domestic market only if they satisfy all the following six stipulations on trademarks: 1) designating the country of manufacturing, the registration number of the manufacturer and/or the import registration number of the importer, and the degree of product processing, 2) complying to South African Standardization Bureau's identification and marking standards regarding Universal Product Code (UPC) of textile products and clothing (SANS011) and UPC of synthetic and natural fibers (SANS0235), 3) itemizing the composition of raw materials by weight or by quantity and their respective percentages, 4) stating specifically as such, if the products have been reprocessed and re-treated, 5) specifying the names of the fibers in the order of their weight or quantity, in the case of a fiber product made through plastic spraying by two or more fibers differentiable by chemical means, and 6) indicating the ratio of labor cost to raw material cost of the product.

The mandatory provision of the South African government requiring all the above mentioned products to spell out the ratio of labor cost to raw material cost adds production processes and operation costs to foreign textile, clothing and footwear enterprises. As one of the major exporters of these products to South Africa, China is watching with concern the enforcement of the new trademark regulation.

3.4 Trade remedies

South Africa is among the countries that most frequently subject Chinese exports to anti-dumping investigations. In 2005, the South African authorities initiated five anti-dumping investigations on Chinese exports, involving primacord and delay detonators, styrene, toughened glass for automobiles, garlic, and tires.

South Africa's International Trade Administration Commission announced in October 2005 that after investigation, it had come to its initial ruling that dumping of stainless steel tube of Chinese origin on the SACU market was determined and that a provisional cash deposit at 49.81% of the import value was to be imposed. Although China's export of such products to South Africa was not particularly large during the period of investigation, affecting US$ 1.01 million's worth of Chinese exports, the anti-dumping measure has seriously restricted Chinese enterprises to continue and expand their exports of the products in question to South Africa.

After negotiations between the two sides, the South African government formally recognized in 2004 China's status as a market economy, pledging not to resort to the relevant stipulations in Article 15 of the Protocol on Accession of China to the WTO in future anti-dumping inquiries against Chinese exports. China's Ministry of Commerce has established a very good working relationship with the South African International Trade Administration Commission, which deals with anti-dumping investigations. On problems existing in South Africa's anti-dumping investigations launched against Chinese exports, for example, the implementation of South Africa's commitment as to its recognition of China as a market economy, the determination of the causal relationship between dumping and injury, the conclusiveness of evidence of injury to South African industries, and the issue of public interest, China's Ministry of Commerce have taken up these matters with the International Trade Administration Commission of South Africa and received encouraging results. Of all the 6 rulings made between 2005 and January 2006 on anti-dumping charges against China, 2 investigations were brought to an end after it was concluded that no cause and effect relationship existed between dumping and injury, 1 investigation was terminated because the case had exceeded the time limit of investigation, 1 investigation did not result in any punitive measures because Chinese exports represented less than 3% of the South African total imports, 1 case awarded zero tariff to the Chinese enterprises that had responded to the investigations, and 1 case was rejected on the ground that the application filed by the complainants to launch an investigation did not agree with the fact.

Generally speaking, the South African authorities responsible for undertaking anti-dumping investigations have allowed all sides to fully present their views and based their rulings on objective facts, for which the Chinese government expresses its appreciation.

3.5 Government procurement

South Africa is still not a signatory to the WTO Agreement on Government Procurement. In the process of government procurement in South Africa, the principle of fairness and transparency is not always strictly enforced. To support the development of its own industries, South Africa leans towards domestic enterprises in its government procurement.

3.6 Inadequate intellectual property right protection

South Africa is a member of the World Intellectual Property Organization (WIPO). Since 2000, South Africa has made some progress in the protection of intellectual property rights, particularly concerning those related to imported products. However, problems such as counterfeit trademarks and copyright infringement still widely exist.

4 Barriers to investment

According to the relevant laws in South Africa, certain groups of South African companies are restricted in access to financing through local credit institutions, which include companies with 75% or more of capital or assets held by foreign investors, companies with 75% or more 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:

$$\text{Percentage of valid capital} = 100\% + 100\% \times \frac{\text{Shares held by local companies (\%)}}{\text{Shares held by foreign investors(\%)}}$$

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 does not apply to trade credits extended by commodity dealers 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.

In addition to financing restrictions, other notable factors also obstruct China's investment in South Africa. A grievance often voiced by many Chinese enterprises is South Africa's visa system. It often takes considerable time to be granted an entry visa, thus seriously hindering the transfer of personnel on the part of Chinese-funded enterprises in South Africa. More annoyingly, South Africa also subjects transit Chinese nationals to visas. As from 1 December 2005, the new South African Immigration Act requires that people from China and other 16 countries should apply for a visa when they visit South Africa for transit, whereas people from the rest of the world do not need to have a visa issued in the case of transit. As South Africa is a gateway to many other African countries, the discriminatory transit visa policy has caused much inconvenience to the Chinese who are going to other countries via South

Africa, including Chinese official delegations holding diplomatic and business passports as well as business people holding ordinary passports. In November 2005, the Chinese Foreign Ministry took up the matter with South Africa's Department of Internal Affairs. China will continue to pay close attention to the progress made by South Africa in solving this problem.

A number of incidences involving criminal violence against Chinese business people and Chinese-invested enterprises have occurred in South Africa over the past few years, which have considerably weakened the confidence of the Chinese business community in investing in South Africa. As the economic and trade relations grow between the two countries, the Chinese side hopes that the South African government will take adequate measures to protect the interest of the Chinese people and enterprises doing business in South Africa.

Nigeria

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Nigeria in 2005 reached US$2.83 billion, up by 29.7%, among which China's export to Nigeria was US$2.3 billion, up by 34%, while China's import from Nigeria was US$530 million, up by 13.8%. China had a surplus of US$1.77 billion. China mainly exported motorcycles, machinery equipment, auto parts, rubber tires, chemical products, textiles and garments, footwear, cement, and etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in Nigeria reached US$770 million in 2005, and the volume of the newly signed contracts was US$ 980 million. The volume of completed labour service cooperation contracts was US$17.42 million, and that of the newly signed labour service cooperation contracts was US$36.31 million.

According to the MOFCOM, 17 Chinese-funded non-financial enterprises were set up in Nigeria in 2005, with a total contractual investment of US$19.04 million.

According to the MOFCOM, Nigeria invested in 24 projects in China in 2005, with a contractual volume of US$61.64 million and an actual utilization of US$8.56 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

The main law governing investment is the Nigerian Investment Promotion Commission (NIPC) Decree No.16 of 1995, under which NIPC was established and its functions and procedures are defined.

Other laws governing investment include the Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree No.17 of 1995, the Investments and Securities Decree No. 45 of 1999, and etc.

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2.2 Trade administration

2.2.1 Tariff system

At present, Nigeria maintains an average tariff rate of 28.6%. The average tariff rate for agricultural products is 50%, and for non-agricultural products 25%.

In September 2005, at the meeting chaired by Nigeria President Obasanjo, the Nigerian Federal Executive Council approved a new tariff system. The new tariff system took effect as of October 1, 2005, and will expire at the end of 2007.

As stipulated by the new tariff system, pharmaceutical products, industrial machinery and equipment under Tariff Heading Chapters 84-89 are granted a one-year import duty free treatment, while raw materials, other means of production and spare parts are levied a 5% import duty rate, intermediate products (semi-finished) products 10%, finished products 20%, and rice 100%. The import duty rate for cigarettes is lowered from the original 150% to the current 100%. Chemical fertilizer imports are exempt from duties and value-added tax (VAT). Vegetable oil import is banned, but olive oil is an exception.

Import duties are collected by the Nigerian Customs Service in association with government-appointed accounting and auditing firms and paid to the Federal Treasury through the selected banks. Tariff rate for special goods is determined by the Federal Ministry of Finance.

2.2.2 Import and export administration

The General Import Licensing Procedure has been abolished since 1986, following the introduction of the Structural Adjustment Program. However, narcotic drugs, psychotropic substances and some pharmaceuticals harmful to health and security remain subject to import licensing.

According to the Import Guidelines of Nigeria taking effect as of April 1, 1996, all goods exported to Nigeria must obtain Clean Results Finding (CRF) and Import Duties Report (IDR). Exporters are not allowed to deal in trade unless registered with the Nigerian Export Promotion Commission (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 repatriated free of control.

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 other matters.

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 measures

3.1.1 Tariff peak

Nigeria has high tariffs and tariff peaks. For example, the tariff rate is 98.2% for fruit and vegetable products, 89.4% for tobacco products, 150% for cigars, 75.3% for beverages and 42.7% for textiles and garments. Since textiles and garments are China's major export items to Nigeria, accounting for 15% of China's total exports to Nigeria, such kind of tariff structure has adversely affected the competitiveness of Chinese relevant products on Nigerian market.

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 industrial products, foodstuff, consumer products and luxury goods are levied a higher level of tariffs. 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. Since garments and wooden furniture are the main items of China's exports to Nigeria, such a tariff structure has considerately hindered China's exports of higher-value-added products such as semi-finished or finished products to Nigeria.

3.2 Import restrictions

3.2.1 Import bans

On April 6 2005, the Nigerian Ministry of Finance issued a revised list of prohibited import items to replace Notification No.12237/S.25/V/172 released on February 25 2004. The main items subject to import ban are live or dead birds including poultry, pork and pork products, beef and beef products, birds' eggs, flowers, cassava / tapioca products, fresh fruits and dry fruits, corn, sorghum, millet, wheat flour, vegetable fat and oil, confectionery, cocoa products, noodles, biscuits, beverages, beer, bentonite and barite, bagged cement, pharmaceuticals, toothpaste, soap, detergents, mosquito repellent coils, disinfectants, plastic sanitary appliances, household items, toothpick, renovated and second-hand tires, crepe paper and cardboard, textile fabrics, textile products and yarn, all species of footwear and bags, cutlasses, axes, pick axes, spades, shovels and similar tools, second-hand compressors, second-hand air conditioner and second-hand refrigerators/freezers, second-hand automatic vehicles, assembled bicycles and spare parts, wheel barrows, furniture, generator silencers, game players, and ballpoint pens.

Among the items listed above, approximately 20 kinds of Chinese products are affected, including textiles, footwear, cases and bags, cement, and ballpoint pens. The import ban has seriously affected China's export to Nigeria. China questions the justifiability of the ban and its consistency with relevant WTO rules, and expresses concerns over Nigeria's frequent making of import bans.

3.2.2 Import licensing

Specific licensing requirements remain in place for a number of restricted products, including petroleum products, and generators. Applications to import prohibited goods or restricted products subject to import licenses or permits must be made three months in advance of importation. The quantity allocated to each importer, or to be imported from each country, is stated in individual licenses and permits. The quantity is determined on the merit of each application. However, there is usually a lack of clarity in the dealing of these applications, and has brought uncertainty to China's export to Nigeria. China expresses concerns over this issue.

3.3 Barriers to customs procedures

Customs procedures in Nigeria continue to present major obstacles to trade with Nigeria. Importers face inordinately long clearance procedures and high berthing and unloading costs. The Nigeria government currently practices a double inspection system requiring both pre-shipping inspection and 100% on-arrival inspection. Cargoes are kept waiting for clearance at the ports, some even delayed for several months. Currently at fastest it takes a week to clear goods, and normally 2 to 3 weeks, far longer than the committed no more than 48 hours.

The Nigerian government announced on July 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 tariff 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. Moreover, the port authorities collect certain port service fee, depending on the category of products. These tax burdens have, to some extent, hindered normal trade. China expresses great concern over this issue.

Nigeria requires that all imported products must be inspected by the third-party inspection agencies appointed by the government, and also authorizes them to carry out the customs valuation. Chinese enterprises have complained that these inspection agencies often deliberately create difficulties for enterprises, and evaluate imported products arbitrarily. It has seriously undermined the interests of Chinese enterprises.

3.4 Technical barriers to trade

The WTO TBT Notification (No.G/TBT/N/NGA/1) issued on February 8, 2005, said that SONCAP certification would become mandatory for importing products such as electrical products, certain auto products and toys. SONCAP is a series of conformity assessment and certification procedures applied to certain categories of controlled products exported to Nigeria. Controlled products must meet the technical standards and regulations of Nigeria or other sanctioned international standards before loading. This measure was scheduled for implementation as of March 1, 2005. According to the conformity assessment procedures, products that are incompatible with the standards set by Nigeria will not be able to pass Nigeria Customs. According to statistics, in 2004, China's export of the products involved in the conformity assessment list to Nigeria reached US$400 million, and more than 70 enterprises exported over US$ 1 million. Only one organization, INTRTEK, has been appointed to conduct the SONCAP certification. Chinese enterprises have complained that the certification fee charged by INTRTEK is quite high, especially for enterprises exporting small parts. Through representations made by the competent Chinese authorities, Nigeria decided to postpone the previously settled date of April 16 2005 to July 16 2005 for implementing the mandatory conformity assessment procedures. China will pay close attention to the development of this issue, as well as its impact on related Chinese products.

3.5 Export restrictions

In Nigeria, the following products are banned from export: corn, 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. China questions the justifiability of the ban and expresses concern over its inconsistency with WTO rules.

The European Union

1 Bilateral trade relations

The European Union (hereinafter referred to as the EU) continued to be the largest trading partner of China in 2005, and was China's fourth largest investor; while China was the second largest trading partner of the EU (second to the United States). According to the China Customs, the bilateral trade volume between China and the EU in 2005 reached US$217.31 billion, up by 22.6% year on year, among which China's export to the EU was US$143.71 billion, up by 34.1% year on year, while China's import from the EU was US$73.60 billion, up by 5.0% year on year. China had a surplus of US$70.11 billion. China mainly exported electrical appliances and electronic products, machinery, wool and textile products, knitwear, toys, furniture, footwear, optical and photographic equipment, leather products, bags and cases, iron and steel products, plastics, organic chemicals, etc. Main imports from the EU included machinery, electrical appliances and electronic products, airplanes, autos and auto parts, 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. The trade with these five countries reached US$155.82 billion, accounting for 71.7% of the total bilateral trade between China and the EU.

According to the Ministry of Commerce of the People's Republic of China (hereinafter referred as MOFCOM), the turnover of completed engineering contracts by Chinese companies in the EU reached US$910 million in 2005, and the volume of the newly signed contracts was US$840 million. The volume of completed labor service cooperation contracts was US$100 million, and that of the newly signed labor service cooperation contracts was US$85.42 million. Since 1976, the accumulated turnover of engineering contracts completed by the Chinese companies in the EU has reached US$3.01 billion, with that of all the contracts signed being US$3.56 billion, and the volume of the completed labor service contracts has reached US$970 million, with that of the total contracts signed being US$1.13 billion.

Approved by or registered with MOFCOM, 77 Chinese-funded non-financial enterprises were set up in the EU in 2005, with a total contractual investment of US$280 million from the Chinese side. By the end of 2005, accumulatively 672 Chinese-funded enterprises had been set up in the EU with a total contractual investment of US$1.08 billion from the Chinese side.

Statistics of MOFCOM show the EU invested in 2942 projects in China in 2005, an increase of 16.3% year on year, with a contractual investment of US$11.99 billion, up by 39.9% year on year, and an actual utilization of US$5.26 billion, up by 21.5% year on year. By the end of 2005, the EU had accumulatively invested in 22,680 FDI projects in China with a contractual investment of US$87.37 billion and an actual paid-up capital of US$47.78 billion.

2 Introduction to trade and investment regime

The economic integration in the European Community began in the 1950s. In July 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 officially launched on 1 January 1999, marking the establishment of the European Economic and Monetary Union among the members of the EU.

On 1 May 2004, the EU was expanded to 25 members, with the full membership extended to ten countries of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. On 25 April 2005, Romania and Bulgaria signed the Treaty of Accession and will become the full members of the EU as of 1 January 2007. In addition, the EU has initiated negotiations for accession with Croatia and Turkey.

In October 2004, leaders of the 25 EU Members States signed the Treaty Establishing a Constitution for Europe, marking a further step towards deepening the integration based on the Constitution. However, the referendums held in France and the Netherlands on 29 May and 1 June 2005 respectively vetoed the Constitution. At the EU summit held in June 2005, leaders of the EU Member States decided to suspend the process of voting for the approval of the Treaty Establishing a Constitution of Europe and the deadline for approving the Treaty was extended.

A series of common policies have been gradually developed and completed during the process of integration over the last 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.

2.1 Legislation on trade and investment

2.1.1 Legislation on trade administration

Article 133 of the Treaty establishing the European Community lies at the foundation of the EU Common Commercial Policy. The Article 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 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 the end of 2005, the Treaty had 25 signatories including 13 old EU members (Britain and Ireland excluded) as well as Norway and Iceland. All the ten new EU members are also signatories to the Schengen Agreement which will be implemented after 2006 depending on the actual situation of each Member State. Switzerland approved the accession to the Schengen Agreement by means of referendum and will be a member to the Agreement as of 2007.

Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (or the Community Customs Code) and its implementation rules and Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff made uniform regulations on the common customs tariff (including commodity classification list, harmonized tariff rates, preferential tariff rates and GSP), rules of origin and Customs valuation.

2.1.2 Legislation on investment administration

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 policies and laws based on its own conditions.

2.2 Trade administration

2.2.1 Tariff system

2.2.1.1 Tariff level

In 2005, products with tariff rates below 10% accounted for 79%, among which products with zero tariff rates accounted for 27% of the total. After the enlargement, all the new Member States except Hungary and Malta which have the arrangement for the transitional period implement the Common External Tariff (CET) upon accession. In general, the weighted average tariff rate based on the trade volume has decreased from 9% to 4% in the ten new members.

2.2.1.2 Tariff administration

The EU exercises the Common Customs Tariff, implementing uniform tariff rates and administration. Council Regulation (EEC) No. 2658/82 on the tariff and statistical nomenclature and on the Common Customs Tariff lies at the foundation of the EU tariff administration. The tariff system of the EU adopts the CN code in line with the Harmonized System run by the World Customs Organization. An updated version of the tariff rates list is published as a Commission Regulation by the EU every year. The collection of Customs tariffs is rather complicated in the EU. Most products are subject to ad valorem duties, yet non ad valorem duties such as compound duty, mixed duty, and other technical duties are applied to certain agricultural products, chemical products, salt, glass, spare parts for watches and clocks, etc. Seven measures are adopted by the EU in the collection of the mixed duty. In addition, some agricultural products are subject to multiple technical duties including seasonal duties.

Furthermore, the EU also adopts the measure of autonomous tariff suspensions and quotas which allows a total or partial waiver of the normal duties applicable to imported goods. If such a measure applies to a limited quantity of goods it is referred to as a quota, if the quantity is unlimited it is known as a suspension. In principle, only raw materials, semi-finished goods or components not available within the Community can benefit from a suspension.

In January and July 2005, the EU adjusted the tariff rates on certain industrial, agricultural and fishery products and suspended tariff on some products in the categories of vegetables, food, chemical products, plastics, textiles, ceramics, glass, optical products, and machinery and electronics. Meanwhile, tariffs which were originally suspended were again imposed on certain products in the above categories.

2.2.2 Import administration

2.2.2.1 General import quotas

Pursuant to Council Regulation (EC) No 520/94 of 7 March 1994 establishing a Community procedure for administering quantitative quotas and its implementation rules and Commission Regulation (EC) No 738/94 of 30 March 1994 laying down certain rules for the implementation of Council Regulation (EC) No 520/94 establishing a Community procedure for administering quantitative quotas, the EU adopts a uniform import quota regime, including the relevant import quota allocation methods, principles of import license administration and procedures for administrative decisions. Upon accession, the new Member States should terminate their original import quota administration and import licensing administration.

The EU divides importers into traditional ones and new ones when allocating import quotas. Import quotas are mainly allocated in the following three ways: method based on traditional trade flows, namely a priority one portion of the quota is reserved for traditional importers; method based on the order in which applications are submitted, or "first come, first served" principle; and method allocating quotas in proportion to the quantities requested. Quotas may be administered by one of the three methods or by a combination of these methods. When none is appropriate, the EU may adopt special administrative measures according to stipulated procedures.

The regulation does not apply to the agricultural products, to textile products or to the products covered by special import rules.

2.2.2.2 Import quotas for agricultural products

Pursuant to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organization of the market in fruit and vegetables and Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organization of the markets in processed fruit and vegetable products, the EU exercises import quotas on certain imported agricultural products, including tomatoes, alliaceous vegetable, cabbages, lettuce, carrots, cucumbers, leguminous vegetables, fresh or chilled, nuts, plantains, figs, pineapples, citrus fruit, grapes, melons, apples, apricots, cherries, peaches, fresh and provisionally preserved fruit and nuts, and the processed products of the above-mentioned fruit and vegetables.

2.2.2.3 Import surveillance measures

Where the trend in imports of a product originating in a third country covered by Council Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports and repealing Regulation (EC) No 518/94 threatens to cause injury to Community producers, and where the interests of the Community so require, import of that product may be subject, as appropriate, to import surveillance measures of retrospective Community surveillance (surveillance over statistics) or prior Community surveillance. Surveillance documents issued by the relevant importing Member State regarding products subject to prior Community surveillance should be submitted. One surveillance method may not be applicable to all the EU Member States. And the validity of the method is one year.

2.2.2.4 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.

2.2.2.5 Rules of origin

Rules of origin implemented by the EU are generally classified into two categories of non-preferential rules and preferential rules. Non-preferential rules are used for all kinds of commercial policy measures, like, for instance, anti-dumping duties and countervailing duties, trade embargoes, safeguard and retaliation measures, quantitative restriction, but also for some tariff quotas, for trade statistics, for public tendering, for origin marking, and so on. In addition, the EU's export refunds in the framework of the Common Agricultural Policy are often based on non-preferential origin. Preferential rules are applied to preferential arrangements signed between the EU and a third country, but also to autonomous preferential arrangements unilaterally made by the EU, such as GSP etc..

2.2.3 Export administration

Export licensing and end-user monitoring systems 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. Pursuant to Council Regulation (EC) No 1334/2000 of 22 June 2000 on setting up a Community regime for the control of exports of dual-use items and technology, the EU 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 services 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 expired at the end of 2005. The Council Degree No. 980/2005 on the EU's new GSP schemes was passed in June 2005 and entered into force on 1 January 2006. The main amendments in the new Decree are as follows:

Firstly, the new simplified system has three schemes instead of five, of which the provisionary form of the second arrangement, the "GSP Plus", was effective as of 1 July 2005. The other two arrangements are General scheme and "Everything but Arms".

Under the General scheme, import rates on sensitive products are reduced by 3.5 percentage points compared with those of the MFN rates. Non-sensitive products are exempted from import duties. The "GSP Plus" scheme waivers all import duties on goods from the beneficiaries. To benefit from "GSP Plus" countries need to demonstrate that their economies are poorly diversified, and therefore dependent and vulnerable. More criteria must be met in order to be beneficiaries of "GSP Plus" scheme. According to the "Everything but Arms" arrangement, all products except arms from the 50 least developed countries in the world can enter the EU duty free.

Secondly, the new GSP extends the coverage of products. Under the General scheme, product coverage increases from about 6900 to about 7200. It incorporates 300 additional products mostly in the agriculture and fishery sectors.

In addition, the new GSP simplified the mechanism for graduation. The former criteria of share of GSP imports, development index and export-specialization index have been replaced with a single straightforward criterion: share of the imports from GSP countries in the Community market. This share would be 15%, with 12.5% for textiles and apparel.

In line with the new GSP scheme, the EU will reevaluate the market share of the imports which enjoy GSP treatment to determine the "graduation" of a product. The new GSP scheme specifies that the case of textiles and clothing will be reviewed annually to properly reflect the possibility of sharp increases.

Up to now, most of China's industrial products (under 62 chapters of 14 sections) including textile products have all graduated, but agricultural and mineral products are still covered by the GSP scheme.

2.2.5 Trade remedy measures

The EU legislation governing trade remedies mainly includes Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, Council Regulation (EC) No. 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European community, and Council Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports and repealing Regulation (EC) No 518/94 (regulation on safeguard measures) and relevant regulations.

According to Article 16 of the Protocol on China's Accession to the WTO, the EU published Council Regulation (EC) No 427/2003 of 3 March 2003 on the 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 and Council Regulation (EC) No 1995/2003 of 10 November 2003 amending Regulation (EC) No 427/2003 on a transitional product-specific safeguard mechanism for imports originating in the People's Republic of China. These regulations provide for the determination of market distortion and trade diversion, the procedures for investigation and bilateral consultation and the adoption of product-specific safeguard measures.

In line with Paragraph 242 of the Report of the Working Party on the Accession of China to the WTO, the EU published Council regulation (EC) No 138/2003 of 21 January 2003 amending Regulation (EEC) N0 3030/93 on common rules for imports of certain textile products from third countries, stipulating special safeguard measures applicable to China, including bilateral consultation and specific import restriction measures which might be adopted.

2.2.6 Other related system

2.2.6.1 The 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. On 30 June 1960, the European Commission formally proposed the scheme for the Common Agricultural Policy, which has been implemented since 1962.

In March 1999, the EU summit decided the financial framework for the period 2000-2006. The plan commonly referred to as Agenda 2000 intends to reform the CAP. The Council of Agricultural Ministers, in June 2003, approved the EU CAP 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. Aid to farmers would no longer be related to the volume of goods they produce. The farmers' and consumers' interests need to converge even further. Farmers are being encouraged to produce high-quality products, in quantities more in line with demand and to use sustainable farming practices that safeguard the environment.

In the Ministerial Declaration adopted at the sixth WTO ministerial conference held in Hong Kong in December 2005, the EU committed to abolish its cotton export subsidies with other developed members in 2006 and to remove all kinds of export subsidies to agricultural products before the end of 2013. In addition, the EU is implementing a special funding package of Euro 5.8 billion with duration of three years specifically tailored to the needs of agriculture, agricultural development and adjustment of new members after enlargement.

2.2.6.2 The Common Fisheries Policy

According to the Common Fisheries 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 administration 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 fishery resources and the sales of fishery products.

In December, 2002, the EU approved the reform program and decided to implement the new CFP as of 2003. The basic objectives of the new policy are to promote the sustainable development of the ecosystem, environment and economy of fisheries, as well as to conserve fish stocks, protect the marine environment and safeguard the economic viability of the EU fishing fleet by reducing the overcapacity of the fishing fleet, and providing economic aid to the fishing population who have given up fishing. The policy mainly contains the long-term measures on managing fisheries, 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. The new CFP specifies that government funding for the fishing industry should be restricted to funds to improve security and working conditions on board. A Community Fisheries Control Agency due to start work in 2006 has been set up to coordinate the drive to uniformity.

2.2.6.3 The 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 Common

Consumer Protection Policy, the EU Member States may formulate more stringent protective measures 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.

The consumer policy strategy for 2002-2006 adopted in May 2002 states that the EU Common Consumer Protection Policy should lay emphasis on guaranteeing essential health and safety standards, enabling individuals to have an input when these policies are made, ensuring that consumer concerns are integrated into the whole range of relevant EU policy areas, and establishing a coherent and common environment so that shoppers are confident about making cross-boarder purchases.

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.

The main priority for the EU tax policy is to address the concerns of tax obstacles to all forms of cross-border economic activity and of unfair tax competition. Since 2001 the EU has presented options for coordinated action to tackle tax obstacles and inefficiencies in the company tax, VAT, excise duties, and car tax areas. The European Commission is also of the view that more transparency and information exchange would help to reduce the risk of financial and corporate malpractice.

2.2.6.5 Customs administration

The EU carries out the uniform customs administration. After the enlargement, the customs administration of the new EU Member States is integrated with the EU uniform customs administration system. To promote trade facilitation and improve customs surveillance and administration, the EU started to implement “Customs 2007” as of January 2003. The plan aims to establish customs electronic information sharing system and an electronic customs declaration system among the Member States as well as to provide technical support of the new Member States so as to assist these countries in approaching the EU unified level of common customs procedures and trade facilitation.

Customs administrative measures with different transitional periods for some new Member States accessed in 2004 regarding certificates of origin, the import of agricultural products, value added tax and tariff quotas for specific products have been adopted based on the different conditions of those members. With the improvement of the electronic customs declaration system and the implementation of the deposit account system in the EU, the customs procedures of the new Member States will be gradually simplified.

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 signed in October 2004 made amendments to the trade and investment policies. The Constitution Treaty integrates the jurisdiction over foreign direct investment (including foreign investment inflow and overseas investment) previously belonging to Member States into the EU Common Trade Policy, making it the exclusive rights of the EU. However, the Treaty has not taken effect yet.

2.4 Competent authorities

Currently, when decisions concerning the Common Commercial Policy (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 the 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 of the business circles and of the intermediary agents, shall be sought.

2.4.1 The European Council of Ministers

The European Council of Ministers (hereinafter referred to as the Council) is the decision-making body of the Common Commercial Policy. Following the relevant voting procedures, 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 the Article 133 Committee, and the decision shall be made by the Council, not by any other bodies on its behalf.

When a decision is made by the European Council of Ministers, the principle of "qualified majority" is usually followed while "unanimity" is applied in certain specific cases. In November 2004, the European Council of Ministers began to adopt the new "qualified majority" voting scheme as provided in the 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. Meanwhile, the positive votes should represent at least 62% of the EU population.

2.4.2 The European Parliament

Pursuant to the Treaty establishing the European Community, the European Commission shall consult the European Parliament in trade agreement negotiations. In routine 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 regarding the trade policy and regulations is greatly enhanced after the Treaty of Nice took effect.

2.4.3 The 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 Council for Common Commercial Policy implementation, making recommendations on negotiations and conducting negotiations on trade agreements with trading partners at the mandate of the Council. In certain areas, the Commission has its own decision-making rights such as promulgating the regulations and decisions on antidumping.

DG Trade of the Commission is responsible for the implementation and administration of the Common Commercial Policy.

2.4.4 The Article 133 Committee

The Article 133 Committee, set up according to Article 133 of the Treaty establishing the European Community, is composed of representatives of the 25 Member States. Each Member State has one full and one substitute member to represent it on that committee. The major functions of the Committee are to coordinate the EU's trade policy, to provide consultancy to formulate the Common Commercial Policy of the EU, and to be in charge of the preliminary review of the relevant trade policy proposals to the Commission.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peaks

In 2005, tariff peaks were maintained in importing such goods as meat, vegetables, fruit, vegetable oil, food, beverage, tobacco, textile products, footwear, bicycles, etc. The ad valorem tariff rates reached 74.9% and 57.7% respectively on tobacco and cigarettes, and high tariffs were imposed on the above-mentioned goods in the form of non ad valorem duties. China exports to the EU a large quantity of footwear, vegetables, fruit, fish meat, food, tobacco and bicycles, which were all within the scope of goods subject to high tariff rates. Protecting the uncompetitive industries through tariff peaks not only prevents reasonable competition of the relevant industries, but also affects the normal trade of the above-mentioned goods between China and the EU.

3.1.2 Seasonal duties

Seasonal duties were imposed on tomatoes, oranges, citrus fruit, grapes, apples, pears, apricots, cherries, peaches and plums by the EU in 2005. Except that tomatoes and oranges were charged seasonal duties in the form of compound duty, the EU imposed seasonal import duties on the above goods in the forms of ad valorem duty, compound duty and mixed duty. In addition, the EU published standard import value of most of the above products, which were subject to frequent changes. The practice has led to complicated duties and changeable rates. As China exports these goods to the EU in large quantities, the complicated and changeable seasonal duties adopted by the EU have resulted in more uncertainty to the Chinese enterprises exporting to the EU.

3.1.3 Other technical duties

Besides ad valorem duties levied as part of import duties on certain sugar products, cocoa, biscuits, bread and potatoes, the additional duty is also levied on the basis of the agricultural content of milk fat, milk protein, sucrose/invert sugar and starch/glucose on the product concerned. Specific methods for duties are published once a year. The practice of tax imposition based on parameters of agricultural components has caused much uncertainty which has increased the export risk for the enterprises.

3.2 Import restrictions

3.2.1 Quantitative restrictions on the import of textiles

On 13 October 2004, the European Council of Ministers passed a decree stipulating that as of 1 January 2005, the EU would abolish all 210 quotas on textile products and garments from the WTO members. On 14 June 2005, the Memorandum of Understanding of China-EU Textile Trade was signed and the EU imposed quantitative restrictions on textiles products of 10 categories from China again. As numerous orders had been placed by the European importers prior to that, the quotas were used up soon. Millions of Chinese textile products, which had exceeded EU's import quotas for the year, were blocked at European ports. After consultation, the European Commission announced the method for solving the blocked textile products on 13 September on the basis of the agreement signed in Beijing on 5 September, which adjusted the import volume to the level enough for solving all the blocked products. According to the method, China should resolve half of the blocked textile products through adjustment, while the EU should resolve the other half by increasing the import quantity unilaterally. To prevent such an event from happening again, both sides agreed to adopt the flexible provisions agreed upon in 2006 and 2007.

The Chinese side welcomes the EU's practice and its undertaking to exercise restraint on the application of its rights under Article 242, but the Chinese side will be concerned about the effectiveness in the EU's implementation of the bilateral agreement.

3.2.2 Import surveillance

The EU's import surveillance does not affect the automatic import licensing, but adds burden to the European importers and causes unnecessary barriers to trade.

In January 2005, the European Commission adopted prior Community surveillance over footwear products of five six-digit and one eight-digit tariff subheadings from China by means of automatic import licensing, and certain footwear products were subject to import surveillance. The provisions shall apply until 31 January 2006 at the latest and shall be valid throughout the EU Member States. The release for free circulation in the EU market of the footwear products under these tariff subheadings are subject to the import surveillance document issued by the competent authorities of the Member States, for which the importers should provide more than a dozen items of information. Although it is free to obtain the document and there are no quantitative restrictions, the practice adds unnecessary burden to the Chinese footwear exporters.

In March 2005, the European Commission extended the period of import surveillance over certain steel products originating in third countries from 31 March 2005 to 31 December 2006. The EU deems it necessary to extend the prevailing prior Community surveillance on the basis of the accelerated pace of increasing imports and a threat of injury to the EU steel producers in order to provide advanced statistical information permitting rapid analysis of import trends. As the official bulletin especially points out that China has been increasing its production capacity at a very accelerated pace, and that China has reduced its import and increased its export, the Chinese side will watch closely the impact on the export of steel products from China to the EU due to the implementation of the provision in question.

3.3 Barriers to customs procedures

The 25-member EU adopts the same Community Customs Code and its implementation rules, but they appear to leave to the discretion of national customs authorities decisions in a number of key areas of customs administration. This has resulted in disparate administration of these customs measures in a number of respects. First, there are differences in the classification and valuation of goods as well as differences in procedures for the classification and valuation of goods, including the provision of binding classification and valuation information to importers. Second, there exist differences in procedures for the entry and release of goods, including use of automation in some Member States but not others, different certificate of origin requirements, different criteria among Member States for the physical inspection of goods, different licensing requirements for importation of food products, and different procedures for processing express delivery shipments. Third, differences also exist in procedures for auditing entry statements after goods are released into the stream of commerce in the European Communities. In addition, there are differences in penalties and differences in procedures regarding the imposition of penalties for violation of customs rules. Finally, record-keeping requirements are also different.

The disparate administration of customs measures in the EU has increased the uncertainty for the Chinese exporting enterprises.

3.4 Technical barriers to trade

The EU has promulgated in recent years a large number of technical regulations, standards and developed conformity assessment procedures. Some have officially taken effect, of which some contain stringent requirements, and some even lack sufficient scientific proof, which directly or indirectly constitutes technical barriers to imports. The impact of these practices on Chinese exports to the EU has become increasing apparent.

3.4.1 Technical regulations

3.4.1.1 Directives on electrical and electronic equipment

On 13 August 2005, Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2005 on waste electrical and electronic equipment (Directive WEEE) took effect. The Directive states that producers of products placed on the market after 13 August 2005 should provide deposit ensuring the expenses incurred in the collection, treatment, recycling and environment-friendly disposal of waste electrical and electronic products to be paid by the producers, and that producers pay for the disposal of waste products (not intended for private household users) placed on the market (historical wastes) before 13 August 2005 according to the market share of the producers. Medical equipment is one of the ten categories Directive WEEE covers. In July 2005, the EU decided that the application of Directive WEEE for medical equipment should be extended to 2008.

Besides, Directive 2002/95/EC of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (Directive RoHS) specifies the maximum amount of six hazardous substances including lead, mercury, cadmium, chromium VI, PBB and PBDE used in electrical and electronic equipment placed on the market as of 1 July 2006. Because the EU has not announced the specific testing standards and the designated testing organizations, enterprises wonder how they can get the RoHS inspection report. Moreover, the Directive does not specify how Member States should monitor the implementation of RoHS and how to punish activities violating the Directive.

The product scope covered by the two directives almost includes all electrical and electronic equipment for civilian use, thus directly affecting the export of household electrical appliances and electronic products from China to the European market.

China is particularly concerned over the sharing of the cost for the disposal of historical wastes and the method for deposit as well as the current absence of standard testing methods for the implementation of RoHS directive and the amendment to the exemption list.

These problems will increase the cost for enterprises to take counter-measures and there will be more uncertainty in their export business. It is not conducive to foreign producers to provide products in conformity with the two directives timely. China hopes a uniform RoHS testing standard will be published at an early date and that the EU will approve and authorize the labs responsible for testing harmful and hazardous substances in electrical and electronic equipment announced by the Chinese government so as to facilitate the inspection of products to be exported to the EU.

3.4.1.2 REACH Proposal (draft)

In November 2005, the EU Proposal Concerning Registration, Evaluation and Authorization of Chemicals (Draft) was passed by the European Parliament in the first voting. The voting approved over 1000 amendments to the draft REACH including two major modifications. First, it substantially reduces the testing requirements for about 17,500 to 20,000 chemicals with an annual production or import of 1 to 10 tons. Therefore, the number of chemical substances subject to testing has been reduced from about 30,000 to 15,000. The second one is a compulsory requirement. Hazardous substances must be replaced by safe chemical substances if there are any substitutes. It is expected that the draft REACH will be finally voted in autumn 2006. If passed, REACH regulation will replace 40 existing legal acts and create a single system for all chemical substances and be implemented in all the 25 Member States of the EU.

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, certain aspects are not reasonable. First, it will increase the production cost by a large margin for the over complicated registration procedures and high testing fees. Second, according to the regulation, only the enterprises and individuals within the EU territory have the right to register and provide data regarding the registration, evaluation, authorization and limited use of chemical components contained in relevant chemicals and downstream products. The exclusive requirement results in different treatment towards the EU producers and non-EU producers. Moreover, the regulation does not state specific procedures for evaluation and approval of chemicals, which may lead to discretion in government enforcement. The Chinese side is concerned about the negative impact it may have on downstream industries and international trade of chemical products.

The Chinese side hopes that the EU will take into consideration the gap between the developing countries and the developed countries in technology and capital and grant certain preferential treatment or transitional arrangement to the developing nations. Pursuant to REACH requirements, if the testing data is in conformity with GLP Standard (Good Laboratory Practice), it can be submitted to the EU enterprise or individual to complete registration. But at present, there are not any internationally accredited GLS Standard Labs in many developing countries. The EU should give certain technical support and financial aid to the developing countries with regard to the GLP system and lab building.

3.4.1.3 The Eco-design Requirements for Energy-using Products (EuPs)

The European Commission issued Directive 2005/32/EC of the European Parliament and of the Council on establishing a framework for the setting of ecodesign requirements for energy-using products (EuPs) in July 2005. It is provided that manufacturers should control products' energy consumption by means of product design or adopting environmental management system, conduct conformity assessment in pursuant to the implementation rules formulated by the European Commission separately, and the CE marking be attached. Otherwise, the product is not allowed to be placed on the market. In line with the regulation, the EU Member States should formulate relevant laws and regulations to officially implement the directive as of 11 August 2007 at the latest.

China holds the view that the requirements in the directive are beyond the necessary limit of legislation. It constitutes great technical and financial difficulties to developing countries if enterprises are required to carry out environmental evaluation in the whole process from designing to discarding of the energy-using products. The implementation of the directive will lead to extremely severe barrier to export from the developing countries including China.

3.4.1.4 The Directive on electromagnetic compatibility

In December 2004, the EU published the revised Directive 2004/108/EC of the European Parliament and of the Council, of 15 December 2004, on the approximation of the Law of Member States relating to electromagnetic compatibility, which will replace the current revised Directive 1989/336/EEC and take effect in July 2007. The newly amended directive further specifies the basic requirements all related equipment must meet, namely protection, information and labeling requirements. Besides, it also simplifies conformity assessment procedures. In addition, the new directive has made major revisions in the following two aspects: more strict requirements for information and documents; and special system for fixed equipment. But the directive is hardly operational as it extends the discretion of relevant implementing agencies, thus increasing difficulty for enterprises to be in conformity with the directive. The Chinese side has expressed its concern.

3.4.1.5 The Directive banning the use of cadmium in batteries for electrical vehicles

Directive 2000/53/EC which is modified on the basis of the proposal made by the European Commission stipulates that the use of cadmium in batteries for electrical vehicles should be banned as of 1 July 2005, but allows the use of cadmium in batteries for electrical vehicles sold before 1 July. According to the proposal of the Commission, besides replacing the use of cadmium in batteries for electrical vehicles, the led content in auto parts, including led alloy tyre, engine components and handles on windows and doors will also be restricted.

The EU is a major market for electrical vehicles. China has expressed its concern over the impact of the practice in question on the export of Chinese electrical vehicles to the EU.

3.4.1.6 The directive prohibiting the use of six types of phthalates in toys

In December 2005, the European Parliament passed Directive 2005/84/EC of the European Parliament and of the Council on amending for the 22nd time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (phthalates in toys and childcare articles) , which prohibits the use of six types of phthalates in toys, of which DEHP, DBP and BBP will be permanently prohibited while the other three types (DINP, DIDP and DNOP) will be prohibited in toys likely to be put into children's mouths. The ban is not only applicable to toys produced within the EU territory, but also to toys imported to the EU. The new directive has set higher requirements on producers and will be burdensome to the exporters.

3.4.2. Technical standards

After making representations and lobbying by the interest parties, the EU announced that it would not implement temporarily the EN 13869 Standard (the CR Standard) for lighters and igniters with the ex-factory prices of less than 2 Euros to install child-resistant device in April 2004.

On 27 May 2005, a draft resolution was circulated by DG Health and Consumer Protection of the European Commission, requiring the 25 Member States to implement the CR Standard for lighters on account of the danger caused to children by disposable lighters. Article 1 of the draft still maintains that the defining line for disposable lighters is the unit price at 2 Euros. In July 2005, a mission was sent by MOFCOM to make representations regarding the EU CR draft resolution on lighters, during which the Chinese side pointed out that the statistics cited by the EU draft resolution are out-dated, inaccurate and short of logic, thus, not constituting legal conditions for the EU to make the draft. Meanwhile, the mission also pointed out that the linkage between the price and the safety of a product and the test method are not in conformity with the relevant stipulations of the WTO. At the safety committee meeting of the European Commission on the Directive on General Product Safety held on 15 July 2005, the Commission canceled the voting arrangement due to the disparate opinions on CR Standard draft resolution among the Member States, which undermines the foundation for voting.

In December 2005, DG Health and Consumer Protection of the European Commission circulated the new revised draft resolution among the Member States, requiring compulsory implementation of the CR Standard. The new draft resolution partially accepted the viewpoints of the Chinese side during the representation and gave up the defining line of "2 euros" as the product coverage. Instead, it is replaced by the technical definition. And it also revised the testing organization and export restrictions. The Chinese side will keep on watching the development of the EU's new CR draft resolution.

3.4.3 Labels of origin of imported products

According to the current EU regulations, only documents of origin should be submitted for customs declaration when importing products from a third country. Producers do not have the responsibility to attach labels of origin to the product. In case of so doing, the producer should ensure that the information is absolutely right in order to avoid misleading consumers or competitors.

In September 2005, the European Parliament adopted a report on the textile and clothing industry after 2005. The report laid emphasis on the necessity of compulsory regulations on labels of origin and names of producers for textile and clothing products so that consumers are in the position to know the origin of the product.

3.5 Sanitary and phytosanitary measures

3.5.1 Technical regulations

3.5.1.1 Legislation on food and feed safety control

The legislation was approved by the European Parliament in March 2005 and entered into force on 1 January 2006. It especially requires that the import food should be in conformity with the standards laid down in the new legislation on food, otherwise the Commission has the right to cancel the right to import.

The Chinese side has expressed its concern over it and hopes to enhance communication and cooperation with the competent departments of the EU in this respect in order to facilitate the smooth development of trade.

3.5.1.2 Legislation on healthcare products

Since the entry into force of the European legislation on healthcare products in August 2005, over 300 healthcare products containing a variety of nutritious ingredients such as selenium yeast, boron, chromium, etc. have been ordered to stop selling. If the product containing ingredients beyond the 140 substances permitted, it is regarded as illegal. The legislation will be implemented in two stages. The first stage of implementation starting from 1 August 2005 is to ensure the ingredients contained in the healthcare products; while the second stage will take effect 18 months later to ensure the cap of the nutritious ingredients in the healthcare products.

The legislation will exert a great impact on healthcare products containing vitamins and certain minerals to enter the European market. Many a healthcare product will not be able to sell on the European market because the nutritious elements are not contained in the list. In fact, these nutritious ingredients are good to human health, for instance, boron is good for bone and organic chromium is useful for the adjustment of blood sugar. The European healthcare products producers and healthcare products association have filed lawsuit with the European Court of Justice. They hold the view that the legislation has restricted consumers' rights to make their own choices and request that the legislation be revised. But the final ruling of the European Court of Justice maintained the validity of the European legislation on healthcare products. China exports a great amount of vitamins to the EU. Therefore, the Chinese side is highly concerned over the impact the legislation will have on Chinese enterprises.

3.5.1.3 Legislation on the import of organic foodstuffs

Council Regulation (EEC) 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs lies at the foundation of the production, processing, labeling, standards, and management of organic products in the EU. The revised legislation states that organic products can only enter the EU through the intergovernmental mutual recognition agreement. In other words, only those products from the countries that are listed as "the third countries" of the EU can have access to the EU. At present, only six countries are listed as "the third countries". In late September 2005, a new resolution of postponing the implementation of the legislation till the end of 2006 was passed by the EU.

China has applied to the EU for being listed as the "third country". But it will generally take at least two years for the EU to go through the evaluation procedure due to its complexity and strictness. The Chinese side hopes that the EU can objectively evaluate China's application and that the mutual recognition system on organic products between the EU and non-EU countries will be more open and that the procedures will be further simplified.

3.5.1.4 New regulations on labeling genetically-modified (GM) food

As of April 2004, the EU started to implement new regulations on labeling genetically-modified food, which is the strictest among the like regulations in the world. It requires all food be labeled if genetically-modified organisms exceed 0.9% so as to ensure the adequate right to know on the part of consumers. 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 regulation in question will not constitute barriers to international trade of the relevant products.

3.5.1.5 Amendments to Directive as regards indication of the ingredients

present in foodstuffs

Pursuant to Directive 2003/89/EC of the European Parliament and of the Council on amending Directive 2000/13/EC as regards indication of the ingredients present in foodstuffs, all the EU Members States should ban the sale of products not in conformity with labeling requirements as of 25 November 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 amended the directive as regards the ingredients present in foodstuffs, requiring food labels list multiple ingredients causing allergies in March 2004. The directive also lists the 12 ingredients which may cause allergies, including grains containing gluten, fish, beetled animals, eggs, peanuts, soybeans, milk and milk products (including lactin), tree nuts, celeries, mustard, sesame, and sulphite. These ingredients must be indicated on food labels. The decision will affect the agricultural export from other countries to the EU to a certain extent.

3.5.1.6 The decision on the withdrawal of the authorizations for plant protection products containing five active substances

In March 2005, Commission Decision 2005/303/EC was issued by the European Commission. According to the Decision, the EU will not permit four active substances of cresylic acid, dichlorophen, imazamethabenz, ksugamicin and polyoxin to be contained in plant protection products. Authorization of plant protection products containing the four active substances in question would no longer be issued as of 30 September 2005, but the sales and use of the products containing the said substances are permitted before 2006.

In December 2005, Commission Decision 2005/864/EC was published. In line with the Decision, the EU would no longer issue authorizations for plant protection products containing endosulfan and the validity of the authorizations already issued would not be extended. All the EU Member States must withdraw authorizations for plant protection products containing endosulfan before 2 June 2006 and stop using the products in question before 2 June 2007.

Pesticides containing the above-mentioned active substances are generally used in products such as grains, citrus fruit, cucurbits, pome fruit, stone fruit, strawberries, black currants and other berries, cotton, and tobacco. Some pesticides are commonly used in China. Therefore, export from China to the EU will be greatly affected due to the decision. For example, after the withdrawal of authorizations for plant protection products containing endosulfan, the EU has changed the maximum residue limit of endosulfan in tea from 30 mg/kg to 0.01 mg/kg, which means that the new standard is 3000 times stricter than the original one, and much stricter than the prevailing international standard. Tea is the traditional Chinese staple export product. Tea export from China to the EU may be in a woeful predicament due to the new EU standard and the Chinese side will be highly concerned over the issue.

Besides, the EU allows some members to use these pesticides for different purposes.

For instance, Ireland permits the use of dichlorophen on lawns; while the UK allows it to be used on the walls and lawns of green houses and kindergartens. Greek has registered that kasugamycin and polyoxin is only used for strawberries, and Spain uses it for potatoes, cucumbers, cotton, citrus fruit, soybeans and plants for appreciation, while Hungary can use it for pome fruit, black pepper, potatoes and cucumbers. The disparate application of the same product to different plants in different countries aggregates the difficulty for Chinese exporters to understand the European market and has constituted barriers to the export of Chinese products to the EU to a certain extent.

3.5.2 Technical standards

3.5.2.1 Laying down harmonized standards for the testing for certain residues in products of animal origin imported from third countries

In January 2005, Commission Decision 2005/34/EC on laying down harmonized standards for the testing for certain residues in products of animal origin imported from third countries was issued, which stipulates the minimum required performance limits (MRPLs) in products of animal origin imported from third countries. On the basis of the Decision, the MRPLs laid down in Annex II to Decision 2002/65/EC shall be used as reference points for action. Where results of analytical tests are at or above the MRPLs, the consignments shall be destroyed or re-dispatched; where the results of analytical test indicate the existence of residues of prohibited substances but are below the MRPLs, the consignments will not be prohibited from entering the EU market, but the competent authorities shall retain a record of the findings in case of recurrence. If the recording of four or more confirmed results below the reference points for action shows a recurrent pattern indicating the same prohibited substance from the same origin, the Commission shall bring the matter to the attention of the exporting country and shall make appropriate proposals.

3.5.2.2 Upgrading the performance criteria of the articles intended to come into contact with foodstuffs

In April 2005, the European Commission issued the Commission Directive 2005/31/EC on amending Council Directive 84/500/EEC as regards a declaration of compliance and performance criteria of the analytical method for ceramic articles intended to come into contact with foodstuffs. The Directive specifies the migration limits for lead and cadmium contained in imported ceramic articles intended to come into contact with foodstuffs. The new criteria are much stricter than the original ones. The Directive requires that appropriate documentation to demonstrate that the ceramic articles comply with the migration limits for lead and cadmium set out in the Directive shall be made available by the manufacturer or the importer into the Community to the national competent authorities. Ceramic articles not in conformity with the criteria set out in the Directive will be prohibited from manufacturing and importing as of 20 May 2007.

In November 2005, the European Commission issued Commission Directive 2005/79/EC amending Directive 2002/72/EC relating to plastic materials and articles intended to come into contact with food, renewing the list of certain monomers and additives used in plastic materials and articles intended to come into contact with food, of which, the standard for the content of PVC gaskets containing epoxidised soybean oil widely used in food packaging is much stricter than before. Plastic materials and articles not in conformity with the Directive will be prohibited from manufacturing and importing as of 19 November 2007.

The change in criteria may lead to barriers to the export of relevant Chinese products. The Chinese government and enterprises concerned will pay attention to the issue.

3.5.2.3 Amendments to maximum residue levels of certain pesticides including aldicarb

In January 2006, the European Commission issued the draft directive amending Council Directive 1986/362/EEC, 986/363/EEC and Annex to Council Directive 1990/642/EEC regarding the maximum residue levels (MRLs) of aldicarb, atrazine, azinphosethyl, cyfluthrin, ethephon, fenthion, methamidophos, methomyl, thiodicarb, paraquat, and triazophos. The Annex to the Directive in question revised certain MRLs in the above-mentioned pestcides. The Chinese government is concerned about the impact the draft directive is to bring about on the bilateral trade between China and the EU.

3.5.3 Traceability labeling on fishery products

The EU requires all fishery products sold on the EU market must have traceability labels as of 1 January 2005, otherwise the product is rejected. Traceability labels indicate the management process of the production, processing, packing, and transportation of the materials of fishery products by making use of bar codes and manual readable method. In case there are health and safety problems, the origin of the fishery products can be found through the traceability labels immediately.

3.5.4 Residue monitoring plans and import ban on the products of animal origin imported from China

3.5.4.1 The approval of residue monitoring plans regarding products of animal origin imported from China

In line with Council Directive 1996/23/EC, the EU Member States are not allowed to import products of animal origin from the countries listed in the Directive unless the residue monitoring plans regarding the chemicals listed in the Directive are submitted to and approved by the European Commission.

In April 2004, the European Commission issued Commission Decision 2004/432/EC on the approval of residue monitoring plans submitted by third countries in accordance with Council Directive 96/23/EC, listing the names of countries approved by the Commission with regard to the submission of monitoring plans and the categories of products approved. Two modifications have been made to the list of the countries approved by the EU afterwards. In the list revised in May 2005, only the residue monitoring plans regarding products of pigs and sheep, poultry, fishery products, rabbit meat and honey originating in China were approved. Therefore, products covered by the approved monitoring plans are fewer compared with those of other countries approved by the EU, such as Argentina, Bulgaria, Mexico, Romania, and Russia. This is not in line with the efforts made by China in formulating and implementing the monitoring plans. China hopes the EU will approve more monitoring plans through objective evaluation.

3.5.4.2 Import ban regarding products of animal origin from China

In addition to the above monitoring plans, special protective measures have also been set out by the EU on importing products of animal origin from China. In January 2002, the EU issued Commission Decision 2002/69/EC concerning certain protective measures with regard to the products of animal origin imported from China, banning the import of all products of animal origin intended for human consumption or animal feed from China with the pre-context that chloramphenecol had been detected in fishery products from China. Through the continuous efforts of the Chinese government and enterprises concerned, the EU lifted the import ban on certain products of animal origin from China in the same year. On the basis of Commission Decision 2005/573/EC published in July 2005, the EU completely lifted the import ban on the following products, including fishery products (except aquaculture fishery products and shrimps), gelatine and pet food. For some other products, including aquaculture fishery products, shrimps (including peeled shrimps and crayfish), casings, rabbit meat, honey and royal jelly, besides meeting the general regulations regarding the EU's import from third countries, new additional regulations specifically for China must be met. In other words, the EU Member States can authorize imports of consignments of products only if they are accompanied by a declaration of the Chinese competent authorities stating that each consignment has been subjected before dispatch to a chemical test in order to ensure that the products concerned do not present a danger to human health.

Furthermore, due to bird flu and foot and mouth disease, the EU also prohibits the import of meat of poultry, pork, mutton, beef and dairy products from China. The Chinese side hopes that the EU can make timely evaluation on the latest development of the disease risks and lift the import ban when condition permits.

3.6 Trade remedies

3.6.1 The automatic extension of trade remedy measures with the EU enlargement

According to the Treaty of Accession, the EU extended all the prevailing trade remedy measures to 25 members in May 2004 and the previous relevant legislations in the ten new Member States became nullified. 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 1 May 2004 will base on statistics in the EU of 15 members, but the result will be applied to the EU of 25 members. The Treaty of Accession also stipulates the enforcement methods for the transitional safeguard measures in the new Member States. In other words, 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 industry in question, the new Member States are allowed to apply for emergent remedy measures from the EU.

With regard to the objections to the automatic extension of trade remedy measures with the EU enlargement from other countries, the EU allows foreign enterprises subject to trade remedy measure restrictions to strive for adjusting the original restrictive measures through provisional review. Active review mechanism does exist in the EU, but 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.

3.6.2 Anti-dumping measures

3.6.2.1 Large number of anti-dumping cases against China

Chinese products have been the biggest targets of anti-dumping investigations initiated by the EU in recent years. In 2005, the EU initiated eight anti-dumping investigations against China, one case fewer than that of the previous year. Meanwhile, final rulings on nine cases regarding anti-dumping against Chinese products were made, which was much more than the three cases of the previous year. The anti-dumping cases against China filed by the EU in 2005 had the features of time concentration, high values, more enterprises involved and more final rulings made.

3.6.2.2 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. Since China lodged a formal request with the EU on negotiating China's full market economy status in May 2003, China has, for many times, passed on relevant information to the EU for technical evaluation by the European Commission. In 2005, in the final rulings of the anti-dumping cases, the EU granted 40 Chinese enterprises the market economy status.

In September 2005, the Joint Statement of the China-EU summit was issued after meetings between leaders of both sides. With regard to market economy status, the

Joint Statement points out: “The EU side welcomed the achievements China has made towards building a market economy. The two sides agreed to launch high-level dialogues to address outstanding issues with a view to achieving positive progress on the issue of MES.” The Chinese side hopes that the EU side will make timely, comprehensive and accurate evaluation on the progress China has made in its market economic reform and that both sides should have more exchanges of views through consultations in order to solve the issue at an early date.

On 30 June and 7 July 2005, the EU initiated anti-dumping investigations against the Chinese exports of labor protection shoes and leather shoes respectively. Up to now, the EU has rejected all the applications for market economy status by the enterprises surveyed regarding labor protection shoes and leather shoes. Shoes are one of the staple exports from China, involving the employment of a large number of people. Before 2005, export of certain shoes from China was subject to the EU quota restrictions. The anti-dumping cases initiated by the EU side shortly after the lifting of quotas are not conducive to the long-term stable development of Sino-EU economic and trade relations.

The Chinese side holds the view that the export of Chinese leather shoes to the EU has not led to any injury to the EU’s industries; therefore, there is no causal relationship between the two. That the EU vetoed all the applications for market economy status by the Chinese enterprises surveyed constitutes a major policy setback on the issue of market economy in terms of anti-dumping against China. The anti-dumping investigation against Chinese leather shoes is not in conformity with the relevant regulations of the WTO Anti-dumping Agreement. It has also seriously disturbed the normal development of trade of shoes between China and the EU. The Chinese side hopes the EU will deal with the issue cautiously with a view to maintaining the Sino-EU economic and trade relations.

3.6.2.3 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 by means of individual treatment, and five criteria are provided for in this respect. In the Commission Regulation 1972/2002, the EU officially includes the five criteria determining individual treatment in its anti-dumping legislation.

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 a market economy producing like products. There is no doubt that the production situation in the exporting country differs from that in a surrogate country. After the initiation of the investigation procedure, the European Commission allows only 10 days for the responding enterprises to comment on the choice of the surrogate country or recommend another surrogate country. The European Commission’s choice of a surrogate country enables it to artificially raise the dumping margins due to the time limit and complexity in choosing a surrogate country, which is unfavorable to the Chinese responding enterprises.

3.6.3 Safeguard measures

In April 2004, the Commission Decision 658/2004 published the final ruling of safeguard measures against canned citrus fruit imported from China, stating that tariff quota restrictions on canned citrus fruit will remain effective from 11 April 2004 to 8 November 2007, during which general tariff rates or preferential rates would apply to in-quota consignments while out-of-quota consignments would be subject to an additional tariff of Euro 30/ton. In June 2005, the European Commission issued a statement, hoping to collect data to examine the results of the safeguard measures in question with a view to evaluating the necessity of adopting the measure continuously. The impact of the safeguard measures in question on relevant Chinese enterprises can not be neglected. The Chinese side hopes that the EU will terminate the safeguard measures at an early date on the basis of the comprehensive evaluation.

In July 2005, the European Commission announced to initiate safeguard measure investigation against the import of frozen strawberries. As China is one of the major suppliers of frozen strawberries to the EU, the Chinese side will pay close attention to the investigation.

3.7 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. The long-term agricultural subsidies adopted by the EU has been deteriorating the international market environment of agricultural products and harming the agricultural interests of developing countries. The reform program on the CAP in 2003 did not change fundamentally the basic situation of international agricultural market distortion it had caused. In addition, the EU also subsidizes such sectors as airplane manufacturing and ship building, fishery, tobacco, brewery, coal mining and shipping. These subsidy policies have exerted, to different extents, impact on fair trade in different industries internationally.

In April 2005, the Appellate Body of the WTO made the ruling that most of the government subsidies for sugar export by the EU had violated the relevant WTO rules. At the end of October 2005, the arbitrators of the WTO made the ruling that the EU should revise its policy of sugar subsidies before 22 May 2006 so that it would be in line with the WTO rules and the commitment of concession. In November 2005, most members of the EU reached agreement on reducing subsidies to the sugar industry, according to which the EU will, within four years, gradually lower the price of sugar by 39%, while the compensation for the loss of sugar farmers will be increased from 60% to 65%. The Chinese side is concerned about the conformity of the EU subsidies to other products with the WTO rules.

3.8 Export restrictions

Since the end of the 1980s, China has been listed as one of the arms embargo target countries by the EU according to the relevant EU export control regulations. In December 2003, the EU Brussels summit officially included lifting the arms embargo on China in its agenda. The Joint Statement of the 7th China-EU Summit published in The Hague after the meetings between leaders of China and the EU on 8 December 2004 stated that "The EU side confirmed its political will to continue to work towards lifting the embargo." But the meeting of the EU foreign ministers held in June 2005 decided to give up the original plan of lifting the arms embargo in June and expressed the view that no time table would be set in this regard. In effect, the practice has shelved the issue that should have been resolved.

The Chinese side holds the view that the discriminative practice of the EU export control against China has impeded the further development of bilateral trade and that the Chinese side requests the EU to lift the embargo with a view to ending the political discrimination against China so as to pave the way for the normal development of China-EU relations. The Chinese side hopes that the EU will honor its political commitment in real earnest and take substantial actions at an early date to lift the arms embargo on China.

3.9 Barriers to trade in services

3.9.1 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. In addition, Germany exercises local capital supervision and control on German branches of commercial banks of non-OECD countries. In other words, supervision and control are based on the working capital invested in Germany, while global supervision and control based on the working capital of the head office are practiced in cases of German branches of OECD countries. This supervision and control method has seriously restricted the loan business of branches of commercial banks from non-OECD countries.

The requirements on the qualification of managerial personnel of the branches of foreign banks in Germany are very harsh. It is provided that a general manager shall at least have three-year working experience in the EU countries or one-year working experience in Germany. The Chinese-funded banks complain that under the above mentioned terms, the general manager sent by the head office to the branch in Germany is prevented from performing his duty for at least one year, and these requirements greatly affect the routine operation of Chinese-funded banks in Germany.

In its banking regulations the Netherlands requires that priority should be given to the like domestic enterprises in the merger and acquisition of domestic banks. Only under the circumstances when no like domestic enterprise considers taking over in six months after the bank's announcement, will foreign businesses have the eligibility to merge and acquire. Besides, the merger and acquisition contract between the foreign business and the selling bank will not have legal effect until unanimously approved by the original boarder of directors of the selling bank and by the professional committee of the parliament.

The UK classifies banks into full-capacity banks and wholesale banks, which can only engage in wholesale financing business, according to the services provided. Up to now, no Chinese-funded bank has obtained the license of a full-capacity bank in the UK.

The Greek legislation provides that the majority of the board of directors of foreign-funded banks shall be EU citizens.

Italy exercises differential treatment between non-EU banks and domestic banks. If a bank of non-EU country wants to set up the first branch in Italy, it should be approved by the Central Bank, the Ministry of Foreign Affairs and the Ministry of Economy of Italy. With regard to technical review, if the regulatory authorities believe that the financial regulatory level of a non-EU country cannot meet the standard required by the Italian legislation, they can reject the commercial banks of the country in question to set up branches in Italy. In addition, when settling a foreign exchange transaction of over Euro 12,500, banks and other financial institutions should apply for approval from the government department of foreign exchange administration of Italy.

The above mentioned regulations have, to varying degrees, caused inconvenience to the normal operation of Chinese-funded banks in relevant countries. The Chinese side is concerned over them.

3.9.2 Exhibition

At the excuse of low prices of the Chinese products which may arouse dissatisfaction among other exhibiting companies, some Italian exhibition authorities prohibit or restrict Chinese companies from participating in specialized exhibitions of jewelry, optical instruments, textiles and garments and toilet and bathing products; and at exhibitions already participated by Chinese companies, they will, at various excuses, refuse to increase exhibiting space or allocate unpopular locations to Chinese exhibiting companies.

3.9.3 Tourism

The Italian legislation provides that tourism practitioners from non-EU countries are not allowed to be tourist guides. Local Chinese immigrants do no have the right to sit for qualification exams of tourist guides. A Chinese tourist guide cannot do his business unless accompanied by an accredited Italian tourist guide.

3.10 Unreasonable protection of intellectual property rights

According to Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, geographical indications of non-EU countries cannot be registered unless they can be equally protected like the EU ones. Besides, the Regulation does not specify legal procedures for non-EU nationals to apply for the protection of geographical indications in the EU. In 2003, the EU published Council Regulation (EC) No 692/2003 amending Regulation (EEC) No 2081/92. The new Regulation provides for the same application rights for non-EU countries, but the procedures of applying for the protection of geographical indications by non-EU nationals are very complicated. It usually takes one and a half to three years for the EU organizations or individuals to apply for the protection of geographical indications, while it takes three to five years for the non-EU organizations or individuals to apply for the same.

The Memorandum of Understanding on Geographical Indications between China and the EU was signed in September 2005. Both sides agree to protect geographical indications through mutual recognitions, opening of markets and mutual cooperation, but the Chinese side holds the view that the revised EU regulation on the protection of geographical indications does not address the issue of national treatment in the application system regarding the EU geographical indications. In April 2005, the Dispute Settlement Body of the WTO approved the report of the panel, stating that the above regulation of the EU violates the principle of national treatment of the WTO. With a view to honoring its commitment under the WTO, the EU agreed to revise the regulation before 3 April 2006. The Chinese side hopes the EU will implement its commitment in due time.

3.11 Other barriers

3.11.1 Working visa

In recent years, the visa policy of certain EU Member States on employees sent by Chinese companies to their invested companies in Europe has seriously restrained the investment of Chinese enterprises in Europe. The EU Member States impose harsh 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 validity of 12 months or even of 3 months.

The employees sent by some Chinese enterprises to work in France can only get visas for a short stay of 3 months, and the French government does not allow them to apply for visa extensions in France. In addition, it takes at least 6 months to obtain the working visa to France. There are also administrative obstacles to obtaining business permits and to family reunion.

On the basis of Sino-Italian Agreement for Economic Cooperation, both governments should grant long-term working visas to employees from respective countries. However, the Italian side has always been granting business visas to employees from with validities of three or six months, thus, forcing them to come back for visas every six months.

It is quite difficult and complicated for Chinese employees to get visas to Germany. It usually takes six months to go through the complete procedure. This has also affected the continuous development of and investment by Chinese enterprises in Germany.

It is very complicated, manipulative and untransparent in applying for visas and residence permits from Lithuania by Chinese employees. And it usually takes several months or half a year for Lithuanian embassies to approve and grant visas.

These requirements and practices have increased the operation costs of Chinese enterprises in these countries.

3.11.2 Residence permits

Upon arriving in the EU, the managerial staff sent from China to the Chinese-funded enterprises usually encounters additional requirements when applying for residence permits. The competent authorities in certain EU Member States require the Chinese staff to submit various kinds of documents, some of which are not required for staff sent from other countries. The Chinese companies established in Belgium, Luxembourg, Germany and Bulgaria complain that the application procedures for the residence permits and working permits are very complicated for employees sent from China. Such practices have practically impeded the investment from China to the EU counties.

4 Barriers to investment

There are 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.

4.1 Restrictions on access

The French legislation only allows French nationals, nationals of the EU Members States or nationals of countries with bilateral agreements to operate in certain sectors, including private research institutions, insurance brokerages, casinos and gambling clubs, forwarding agencies, public market trading, AV and communications, commodity brokerages, tobacco retailing, beverage retailing, publication companies engaging in the French language, security enterprises, telecommunications, performing and pharmacists.

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), including investment in "sensitive industries", 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; and investment by foreign state-owned enterprises.

The articles of association of many Swedish corporations provide the clause of "restrictions on the ownership of foreigners", stipulating 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 articles of association, the company is regarded as a foreign company. Foreign companies are not allowed to own Swedish natural resources such as mines, oil fields, farms, forests and water resources, neither can they have more than 20% 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 addition, there are more restrictions on access to other sectors such as maritime operation, strategic materials, publication and insurance.

In the Czech Republic, industries subject to investment restrictions include military products, extraction of nuclear fuels, mortagage banking, asset management companies, passenger airlines, passenger and cargo road transportation, bonds underwriting, and construction engineering service. In seven years following the EU accession, foreign nationals will not be allowed to purchase agricultural farmland in the Czech Republic.

Hungary restricts foreign ownership to varying degrees in civil aviation, television and broadcasting. In ten years following the EU accession, Hungary will prohibit foreigners from purchasing its domestic land.

Foreign investment in banking should gain administrative approval in advance in Poland. Permit should be granted by competent government authorities if foreign investment is engaged in the areas of mine exploration and extraction, 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.

4.2 Others

In March 2004, France published 10 new measures aiming at attracting foreign investment, mainly involving the simplification of procedures, the exemption of businessman identity card and the reduction and exemption of tax. However, the above measures for facilitating and encouraging investment are only applicable to enterprises of OECD members. Chinese enterprises investing in France are not covered. Besides, some Chinese-funded enterprises in France complain that the French side lacks confidence in letters of guarantee provided by Chinese banks, which has affected the operation of Chinese-funded enterprises in France. The harsh examination on qualifications of Chinese enterprises by the French side has, to a certain extent, affected the normal business activities of the Chinese-funded enterprises in France. Besides, the rigid labor system and high cost have increased the difficulty of business management and operation of the Chinese-funded enterprises.

The German legislation provides that foreign investment in Germany should gain the approval of the competent German trade associations. According to the regulations, if the foreign investment is likely to affect the development of the existing German enterprises, the foreign investment in question may not be approved. In addition, it takes too much time for the approval of setting up Chinese-funded enterprises in Germany to be approved. The lengthy approval process, the complicated procedures and the lack of transparency have affected the normal business operation of Chinese-funded enterprises in Germany.

There are too many laws governing taxation and investment which are subject to frequent changes in Greece. Take the investment promotion law and taxation law for example, over the past 20 years, ten investment promotion laws have been promulgated. On average, there is one such law every two years. In terms of taxation law, there is almost one law promulgated every year. Besides, it usually takes 60 days and involves 6.5 procedures on average for a foreign investment project to be examined and approved. However, the law stipulates that the duration for government examination and approval should be two years. The frequent changes in legislation and the lengthy period required for government administrative examination and approval have added the investment risks for enterprises.

In the Czech Republic, it is required that nationals of non-EU members should register a company (a legal entity) prior to purchase real estate either for commercial or for residential use, but there are exceptions for permanent residents or nationals with spouses of the Czech Republic. This means if a Chinese company wants to purchase land for investment purpose, it should set up a new company in the Czech Republic so as to be the owner of the land.

The above regulations and practices have, to varying degrees, constituted barriers to business activities of Chinese-funded enterprises in those countries.

Japan

1 Bilateral trade relations

Japan was China's third largest trading partner in 2005. According to customs statistics released in China, the bilateral trade volume between China and Japan in 2005 hit US$ 184.45 billion, up 9.9% over the previous year, among which China's exports to Japan accounted for US$ 83.99 billion, gaining 14.3%, while China's imports from Japan registered an increase of 6.5% to arrive at US$ 100.45 billion. China had a trade deficit of US$ 16.46 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, mineral oils, iron and steel, and metal materials. China's imports from Japan included, among others, electro-mechanic products, 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. The momentum of Sino-Japanese trade seemed to have slowed down in 2005, with the growth rate in bilateral trade falling behind the average growth in China's foreign trade.

As was released by China's Ministry of Commerce (MOFCOM), in 2005, the turnover of the completed engineering contracts by Chinese firms in Japan totaled US$ 100 million, and the volume of the newly signed engineering contracts reached US$ 110 million; the turnover of the completed labor service cooperation contracts stood at US$ 1,090 million, and the volume of the newly signed labor service contracts was worth US$ 1,190 million. All these figures indicate an increase, compared with last year. By the end of 2005, the accumulated turnover of the engineering contracts completed by Chinese companies in Japan added up to US$ 340 million, with that of the signed engineering contracts running into US$ 420 million; the accumulated volume of the completed labor service cooperation contracts amounted to US$ 5.27 billion, and that of the signed labor contracts came out at US$ 6.77 billion.

Upon the ratification or on the record of MOFCOM, 18 Chinese-funded non-financial enterprises were set up in Japan in 2005, with a contractual investment of US$ 12.46 million from the Chinese investors. By the end of 2005, a total number of 291 Chinese-invested non-financial companies had been established in Japan, with an overall contractual investment of US$ 1,180 million.

According to the figures of MOFCOM, Japanese firms invested in 3,269 projects in China in 2005, with a contractual investment of US$ 11.92 billion and an injected capital of US$ 6.53 billion. By the end of 2005, Japan had accumulatively invested in 35,124 projects in China, with a pledged investment of US$ 78.57 billion and an actual capital input of US$ 53.37 billion.

2 Introduction to 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, Import and Export Transactions Law, and the relevant government regulations such as Cabinet Orders, Ministerial Ordinances, Circulars, Notices and Announcements. Among these, Foreign Exchange and Foreign Trade Law specifies 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 tariff mainly includes Customs Law, Customs Tariff Law, and Temporary Tariff Measures Law. 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. 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 include, for example, the Law on the Uniform Trademarks for Exports of Small and Medium-sized Enterprises, the Law on the Design of Exported Goods, 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

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.

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.

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. Based on Foreign Exchange and Foreign Trade Law, Import and Export Transactions Law, and Export Administration Ordinance, Japan's trade regime also provides for export controls, restrictions on the supply of technologies, prior approval and post-export examination of exports.

2.3 Investment administration

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

At present, foreign direct investment in Japan has, in aggregate, been liberalized, with the notable exception in four major sectors, namely, agriculture-forestry-fishery, mining industry, petroleum industry, and leather industry. However, the Radio Wave Law, the Broadcasting Law and the NTT Law all have prescriptions restricting the access of foreign companies to Japan's telecommunications market. The Law on Vessels, in effect, excludes foreign investors from engaging in Japan's domestic ocean carriage. According to the pertinent articles and clauses in the Law on Vessels, Japan's domestic maritime shipping market is open only to vessels registered in Japan; foreign companies are permitted to invest in Japan's domestic shipping market only after they have established a company in Japan.

2.4 Competent authorities

2.4.1 Government ministries and agencies

As the leading government body in the administration of foreign trade in Japan, 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. 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.

As the central bank in Japan, the Bank of Japan (BOJ) deals with reports, examination and approval of foreign exchange matters.

2.4.2 Other relevant organizations

The activities of Japan External Trade Organization (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 economies; 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.

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

Japan's tariff rates on agricultural and marine products are exceedingly high. Over 80% of farm and fishery products are subject to customs duties, mostly at more than 15%. Japan's imposition of high tariff on agricultural products impedes the export of the relevant Chinese products to Japan. China is closely monitoring the trend of Japanese tariff on agricultural products.

3.1.2 Tariff escalation

Tariff escalation is particularly apparent in agricultural, marine and food products. For example, 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 drinkable tea range 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 fall 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%.

3.1.3 Tariff quotas

There is a great demand for konnyaku (Amorphophalus) on the Japanese market, but Japan imposes an annual tariff quota of 267 tons on Chinese exports of konnyaku, most of which (250 tons) must be sold exclusively to konnyaku processing plants in Okinawa. 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 Japanese 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, on the pretext of 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 is allocated. China hopes that Japan will make efforts to improve its transparency in the administration of tariff quotas.

3.1.4 Others

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, which poses, in a certain extent, an obstacle to the growth of trade between China and Japan.

3.2 Import restrictions

3.2.1 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 are allocated to specific countries directly designated by the General Food Policy Bureau 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. Of all the 9 tenders under the GB method carried out in 2005 financial year (up to 3 March 2006) totaling 596,032 tons of rice, China managed to win only a negligible 19,030 tons in the first tender.

(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 General Food Policy Bureau under the Ministry of Agriculture, Forestry and Fisheries, which 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 General Food Policy Bureau.

The Chinese side 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 watch closely the measures taken by the Japan authorities to reform its import rice tendering regime and to improve its transparency.

3.2.2 Import quotas on laver products

Japan subjects the import of certain marine products such as laver (*nori*) to quantitative restrictions. Before 2005, Japan allocated its annual import quotas exclusively to South Korean laver products. At the request of Chinese enterprises involved, China initiated in April 2004 its trade barriers investigation into Japanese import administrative measures on laver products. The Chinese side believed that Japan's administrative measures on the import of laver products had violated relevant WTO agreements and its own commitments under the WTO framework, and constituted a discrimination against Chinese businesses. After friendly consultations between the Chinese and the Japanese government, Japan's Ministry of Economy, Trade and Industry released its 2005 quota scheme for laver import in February 2005, replacing the earlier country-specific quota with a global quota. As a result, China's Ministry of Commerce terminated its trade barriers investigation on Japanese import administrative measures on laver products on 28 February 2005. China exported to Japan some 120 million sheets of laver products in 2005.

Noting that Japan has not opened its market in the trade of roast laver products to Chinese enterprises, the Chinese side has taken the matter up with the Japanese authorities. Japan expressed that it would open its roast laver market to China in 2006.

3.3 Barriers to 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 Label of origin for 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 food products sold in Japan shall bear a mark of origin as from December 2000. In September 2004, Japan's Ministry of Agriculture, Forestry and Fisheries 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 of production. Japan amended once again its regulations in September 2005, demanding that the place of processing and the place of origin should be clearly differentiated for processed food, prohibiting unclear labeling, and adding 20 categories of processed food "close to fresh and live food products" to its mandatory list required to bear a label of 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 a result of such practices on the part of the Japanese government and exaggerated reports on the part of the Japanese media of the hazardous residues of pesticides in some Chinese agricultural products, quite a number of Japanese consumers have been misled to believe that Chinese agricultural products are not healthful. Therefore, the above measures constitute a great barrier to the export of relevant Chinese farm products to Japan, and China, hoping that the Japanese government and media will evaluate Chinese agricultural products objectively and accurately, is very concerned with the issue.

3.4.2 Amendment to the Enforcement Order on the Law for Promoting the Effective Use of Resources

The Amendment to the Enforcement Order on the Law for Promoting the Effective Use of Resources, which involves a variety of electronic and electrical products, contains many oppressive stipulations on sales volume, environmental protection, disclosure of information about the use of chemicals and so on. One of the stated objectives for making such an amendment is, as is declared, to "solve the problem of the growth of foreign products on the domestic market." This does not accord with the WTO principle of the elimination of quantitative restrictions, nor does it come under the legitimate goal of the Agreement on Technical Barriers to Trade. Rather, it is a discrimination against imported goods. The amendment, if adopted and put into force, will exert a considerably damaging effect upon relevant Chinese exports. China is deeply concerned with the proposed amendment and hopes that Japan will further clarify the requirements in the amendment.

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 unconventional quarantine measures on Chinese exports negatively affects China's trade with Japan in relevant agricultural products.

3.5.1 Agricultural chemical residues

3.5.1.1 Positive list system

In May 2005, the Japanese government notified other WTO members of its Final Draft on the Positive List System of Agricultural Chemical Residues in Foods, which is to be implemented as from May 2006. The Final Draft specifies nearly 50,000 provisional maximum residue limits (MRLs) for a total number of 734 pesticides, veterinary drugs and feed additives in imported foods and agrarian products, which will significantly affect the access of foreign foods and farm products to the Japanese market. Japan is China's largest export market for agricultural products. China exported to Japan US$ 7.93 billion's worth of agricultural products in 2005, an increase of 7.3% over the previous year, accounting for 29.2% of China's total exports of agricultural products. Initial analysis indicates that Japan's positive list system and its new standards for MRLs will inflict heavy damage on China's major exports. As the positive list system has substantially changed Japan's administrative regime of agricultural chemicals and the new MRLs differ significantly from Japan's current standards, China has followed the track of the positive list system, made a series of research on it, and taken up the matter with the Japanese side in the Japan Trade Policy Review in the WTO and on many other bilateral occasions. China will continue to monitor closely the impact of the implementation of the positive list system on China's exports of agricultural products to Japan.

3.5.1.2 MRL for chlorpyrifos in spinach

In Japan, the maximum residue limit (MRL) for chlorpyrifos in spinach is 0.01 ppm. Only very few 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 believes 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).

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 and hopes that Japan will rectify the unreasonable regulation as soon as possible.

3.5.2 Harmonization with international standards

Japan's Food Sanitation Law provides that additives in foods be examined and approved by the Ministry of Health, Labor and Welfare, only approved additives be used in the production of foods, and the production or importation of foods with non-ratified additives be banned. The Ministry'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. China is greatly concerned with the glaring inconsistency of the Japanese technical regulations with international norms.

3.5.3 Inspection and quarantine procedures

In most cases, after the food products subject to inspection and quarantine in Japan are sent to the inspection and 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 in the afternoon. Confirmatory laboratory analysis will be conducted in case of suspected data. The longest time for spinach products to go through customs formalities is 3 months after the first day of their arrival on the Japanese port. The complicated and onerous quarantine procedures often lead to delays in customs clearance and add to the cost of Chinese exporters.

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 200 pesticides. Because of the intimidating workload involved in the testing of these 200 pesticides, there still seems to be a lack of equipment and human resources, thus affecting the smooth progress of inspection and quarantine.

3.5.4 Plant fumigation

According to Article 9 in Japan's 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 Quarantine of Imported Plants, 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. In addition, 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. The Chinese side hopes that transparency of Japanese administrative measures in this regard should be improved so as to facilitate bilateral trade.

3.5.5 Certification of marine food processing facilities

Japan Fisheries Association announced in October 2005 that a new certification regime of hazard analysis and critical control point (HACCP) for marine food processing facilities would be implemented as of 1 April 2006. The new certification regime targets any and all marine food processing establishments. As from 1 April 2006, new, supplementary and continual examination and approval procedures will be carried out according to the new regime. During the notification period from 1 October 2005 to 31 March 2006, either the new or the old certification regime could be applied. China is watching with concern the new certification regime.

3.5.6 Sterilization of and import restriction on straws

Pursuant to the relevant requirements in the Plant Protection Law and the Livestock Contagious Disease Prevention Law, Japan subjects imported rice straws of Chinese origin to conditional import administrative measures. Chinese straws are only allowed to be imported into the country after they have been disinfected at the facilities designated by the Ministry of Agriculture, Forestry and Fisheries according to the disinfection standards verified by the Ministry.

The number of quarantine on Chinese straws by the Japanese authorities has been increasing year by year since 2002. On 20 May 2005, a rice stem borer (Chilo suppressalis), a species which also exists in Japan, was detected on 124 tons of Chinese straws in Niigata port by the Japanese authorities. On this ground, Japan asked Chinese inspection and quarantine authorities to stop issuing quarantine certificates to the facilities involved. On 27 May 2005, the Japanese Ministry of Agriculture, Forestry and Fisheries announced that the import of fodders such as straws from China was to be suspended, on the groundless assumption that the epidemic of Foot-and-Mouth Disease (FMD) was spreading in China and would probably affect the areas producing straws for export to Japan. The above measures on the part of the Japanese side, which have caused severe economic losses to the Chinese businesses involved, do not comply with the relevant stipulations of international animal organizations and the understandings reached between China and Japan in their negotiations on the hygiene requirements of straws that China exports to Japan. China is greatly concerned with this issue.

3.5.7 Import licensing for live Chinese mitten-handed crabs

On 27 July 2005, Japan's Ministry of Environment added fresh and live Chinese mitten-handed crabs (Eriocheir sinensis, or in their popular Chinese name, *da za xie*) to its second designated list of special alien species. According to the relevant regulations in the Invasive Alien Species Act, a strict licensing system will be applied to the import and safekeeping of the Chinese mitten crabs. From October to February next year, a large number of Chinese mitten crabs will be exported to Japan from China. Because of the particular way of preparing them for eating, the Chinese mitten crabs must be kept alive and fresh until they are prepared and cooked in the restaurant. Therefore, all the parties involved in the business, from importers (including transporters at various levels and wholesalers) to restaurants, must apply for a license for import, transport or safekeeping. Those who engage in the business without a license will be subjected, in the case of individuals, to imprisonment of less than 3 years or a fine of 3 million Japanese Yen, and in the case of legal persons, to a fine of less than 100 million Japanese Yen.

China hopes that the Japanese side will take into full account facility of business and operation of the relevant parties concerned such as importers, transporters, wholesalers and retailers, simplify the procedures in licensing, and grant licenses in a timely manner and in sufficient numbers so as not to affect the normal export of the Chinese mitten-handed crabs.

3.5.8 Mandatory inspection on buckwheat

On 26 October 2005, the Japanese Ministry of Health, Labor and Welfare issued a circular, effective from that date, to the quarantine agencies in Japan, requiring that mandatory inspection be carried out to check whether buckwheat, including buckwheat flour, imported from China contains aftatoxin. Japan retained 29 items of inspection on Chinese agricultural products in its 2005 mandatory inspection program, at the same time increasing and strengthening its monitoring inspection.

3.5.9 Testing standards for agricultural chemical residues in tea

Japan currently subjects tea to more than 80 items of tests for agricultural chemical residues, and as from 2006 the testing items for tea will be expanded to cover well over 280 items, which would cause great inconvenience to Chinese exporters of tea to Japan. Admittedly, Japan has used European and US trace standards of pesticide for reference in its testing items for tea, but Japan tends to treat the testing items differentially, relaxing them for its domestic pesticides and applying them more rigorously to pesticides of other countries. Such a discriminatory measure runs counter to the Agreement on Technical Barriers to Trade.

3.5.10 Discriminatory inspection and quarantine measures on bivalve shellfish

Since 1991, Japan has subjected all bivalve shellfish exports (including live parti-colored clams) from China to stringent and time-consuming inspections of shellfish diarrhea and paralytic toxins. For every shipment of shellfish from China, only after the inspection, which may take tens of hours, upon arrival at the Japanese port has been completed, can the shipment be unloaded and put temporarily in the mudflat for cultivation. A different policy is, however, applied to imports of live parti-colored clams from North Korea, South Korea and other countries: after several regular inspections on the imports each year, every shipment is allowed to be put directly on the Japanese market. The discriminatory practice on Chinese shellfish has caused much inconvenience to the Japanese importers of Chinese products, increased their incidental costs, and reduced the quality and freshness of Chinese fishery products, thus cutting the competitiveness of Chinese exports and incurring heavy economic losses to Chinese enterprises. China hopes that the Japanese Ministry of Health, Labor and Welfare will put an end the soonest possible to the discriminatory practice of time-consuming inspection of toxins on Chinese exports of live parti-colored shellfish by either recognizing the certification issued by the Chinese inspection and quarantine authorities or treating Chinese exports in line with Korean exports.

3.6 Trade remedies

By the end of 2005, 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 trade remedy investigation on Chinese exports. However, every safeguard investigation initiated by Japan involves an important Chinese commodity in trade with Japan and affects a large amount of trade volume. For example, the anti-dumping investigation on siliconmanganese involves the least amount of trade volume, but still comes to nearly US$ 50 million, whereas the rest three safeguard investigations each put more than US$ 100 million at risk.

Because of the joint efforts made by China and Japan, bilateral economic and trade relations have maintained a continued and speedy growth for the past fours since China's accession to the WTO. In recent years, the Japanese government has come under mounting pressure from domestic industries to launch trade remedy measures against Chinese exports. China has received pre-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.

Japan has not, to date, acknowledged the status of China as a complete market economy, which is not conducive to the healthy development of economic and trade relations between the two countries and does not help to solve China's huge deficit in trade with Japan. China hopes that Japan will grant China the status of a complete market economy as early as possible.

3.7 Export restrictions

Japan has put in place the so-called "catch-all" security safeguard export control regime. Under the regime, the Japanese government will collect relevant information and make up a "catch-all" list of foreign companies subject to export control. Japanese companies shall seek "prior consultation" with the Ministry of Economy, Trade and Industry before exporting sensitive goods or technologies to a foreign company named on the list. The implementation of the regime lacks transparency and fairness. Japan once accused some Chinese companies of engaging in proliferation activities, which severely affected the normal trade of the Chinese companies with Japan. The Chinese side has repeatedly taken up the issue with the relevant Japanese authorities, hoping that Japan will enhance its transparency and fairness in implementing the regime.

In addition, the restrictions on the supply of technologies as stipulated in the Foreign Exchange Ordinance cover a wide range, and the criteria for technologies subject to examination and approval before export are far from being transparent. 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

Japan 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, but with demanding requirements on foreign bidders as regards construction period, technical superiority 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.

3.9 Unjustifiable protection of intellectual property right

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 of the same year. 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.

On 14 March 2005, Japan promulgated the Notification of the Agricultural Seeds and Seedlings Law Enforcement Regulation and the Ordinance of the Ministry of Agriculture, Forestry and Fisheries (G/TBT/JPN/140). The government agency in charge of this matter is the Ministry of Agriculture, Forestry and Fisheries, and the date of approval is June 2005. The notice requires the labeling of the application of agricultural chemicals, the name of the active composition of agricultural chemicals and the amount of the active composition. In addition, new species of plant seeds and seedlings have been added. Such a labeling will, no doubt, increase the cost of inspection, cause greater technical and economic burdens on the companies involved, and constitute a de facto trade barrier to foreign enterprises which are not very familiar with this measure. The Japanese government should revise this measure to ensure equal treatment to both domestic and foreign companies, take into full consideration the current technological and productive situations of developing countries, and grant preferential treatment and appropriate transitional period to developing countries.

In recent years, agricultural exchange and cooperation between China and Japan have become increasingly closer. To extricate themselves from the predicament of the graying farm population, the costliness of labor, the narrowness of cultivated fields, and crop failures caused by bad weather, Japanese enterprises have come to China, engaging in cultivation business through contract cultivating and contract purchasing. Japanese importers also import agricultural products from China on condition that they are of Japanese plant species, and ask Chinese farmers to buy seedlings provided by them in order to shift all the burdens of capital risks in buying the seedlings, cultivation risks, and sales risks to Chinese farmers and enterprises. China is very concerned with the impact that the above regulation may have on the bilateral trade in agricultural products.

3.10 Other barriers

3.10.1 Social security insurance and pension insurance for Chinese staff in Japan

One of the problems troubling Chinese-funded firms in Japan is that of social security insurance and pension insurance for their Chinese staff working 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 laws and regulations, the annuities paid by the Chinese employees will not be refunded if they come back to China after their stay in Japan for a few years. China hopes that Japan will amend the relevant regulations to relieve the burden on Chinese-funded enterprises in Japan.

3.10.2 Business visas

Japan has always adopted very strict standards when issuing short-term business visas to the Chinese. Visa applications by 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 as well. 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 inconveniences to their business operations. Sometimes the Chinese business people going to Japan for training programs under the equipment import contract cannot obtain visas, thus affecting the smooth execution of the contract and posing an obstacle to the long-term cooperation between Chinese and Japanese enterprises. China hopes that the relevant Japanese authorities will try to improve their efficiency and transparency in business visa issuance, release relevant information in the English language on the websites of the related government agencies, relax the standards in issuing short-term business visas, further clarify and simplify the procedures of visa issuance, and provide facility for the visits of business people between the two countries.

Saudi Arabia

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Saudi Arabia reached US$16.07 billion in 2005, up by 56.1%, among which China's export to Saudi Arabia was US$3.82 billion, up by 37.8%, while China's import from Saudi Arabia was US$12.25 billion, up by 62.8%. China had a deficit of US$8.43 billion. China mainly exported to Saudi Arabia new pneumatic tires of rubber; woven fabrics of synthetic filament yarn; women's or girls' suit, ensembles, jackets, blazers, dresses and skirts; men's or boys' suits, ensembles, jackets, blazers, and trousers; furniture and parts; air conditioning machines; footwear; clothing; trunks and handbags; and etc. China mainly imported from Saudi Arabia crude petroleum oil and crude oil obtained from bituminous minerals; acyclic alcohols and their halogenated, sulphonated, nitrated or nitrosated derivatives; polymers of ethylene in primary forms; petroleum gases; cyclic hydrocarbons; oil products; propylene, ethers, and either-alcohols in primary forms.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in Saudi Arabia reached US$320 million in 2005, and the volume of the newly signed contracts was US$1.26 billion. The volume of completed labor service cooperation contracts was US$13.98 million, and that of the newly signed labor service cooperation contracts was US$10.78 million. By the end of 2005, the accumulated turnover of engineering contracts completed by Chinese companies in Saudi Arabia was US$630 million, with that of all the contracts signed US$2.14 billion, and the accumulated volume of the completed labor service contracts had reached US$97.86 million, with that of the total contracts signed US$110 million.

According to MOFCOM, three Chinese-funded non-financial firms were set up in Saudi Arabia in 2005, with a contractual investment of US$3.35 million. By the end of 2005, there had been a total of ten Chinese-funded non-financial firms set up in Saudi Arabia with a total contractual investment of US$10.11 million.

According to MOFCOM, Saudi Arabian investors invested in 16 projects in China in 2005, with a contractual investment of US$50.28 million and an actual utilization of US$9.37 million. By the end of 2005, Saudi Arabian investors had accumulatively invested in 61 FDI projects in China with a contractual volume of US$170 million and an actual utilization volume of US$77.48 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

Saudi Arabia became the 149th member of the World Trade Organization (WTO) on December 11, 2005, committing that in areas such as the protection of intellectual property rights, the application of technical regulations and standards, as well as the protection of food safety and human, animal and plant life and health, it would fully implement the relevant WTO Agreements. To this end, the Saudi Arabian government has promulgated trade and investment related legislation over the past few years, including Import Licensing Guidelines & Procedures, Sanitary and Phytosanitary Measures, Foreign Investment Act, Law on Ownership of Real Estate by Non-Saudis, Saudi Arabian Standards Organization Technical Directives, Negative List excluded from Foreign Investment, Trade Information Law, Enhanced Money Laundering Regulations, Executive Rules of the Foreign Investment Act, Tax Law, Real Estate Law, Capital Markets Law and Anti-dumping Law. Regulations under preparation and review include Commercial Agency Regulations, Companies' Law, Unfair Competition Law, Customs Valuation Guidelines, Labor and Workmen Law, Residence and Sponsorship Regulations, and Tourism Guidelines.

2.2 Trade administration

2.2.1 Tariff system

The tariff rate in Saudi Arabia averages 5% (ad valorem CIF price). Members of the Gulf Cooperation Council (GCC) are granted duty-free treatment when certificate of origin or accreditation certificates are provided.

2.2.2 Import and export administration

Saudi Arabia applies free trade policy to general products, placing no quantitative or price controls on imports. However, Saudi law prohibits importation of the following products: weapons, alcohol, narcotics, pork, pornographic materials, distillery equipment, and certain sculptures.

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.

2.2.3 Foreign exchange administration

Saudi Arabia imposes no foreign exchange restrictions on capital receipts or payments by residents or nonresidents, beyond a prohibition against transactions with Israel. In practice, Saudi Arabia pegs its currency, the Saudi Riyal, to the U.S. Dollar.

2.3 Investment administration

According to the Negative List excluded from Foreign Investment issued by Saudi Arabia in 2003, foreign investment is prohibited in three manufacturing sectors, including oil exploration, drilling and production; manufacturing of military equipment, devices and uniforms; and manufacturing of civilian explosives, as well as 16 service sectors, including catering to military sectors, security and detective services, insurance services, real estate investment in Makkah and Madina, real estate brokerage, printing and publishing, and telecommunications services. However, according to the Report of the Working Party on the Accession of the Kingdom of Saudi Arabia to the World Trade Organization, Saudi Arabia has committed to open sectors such as insurance, telecommunications services, wholesale and retail trade. For example, foreign insurance companies will be permitted to open and operate direct branches in Saudi Arabia, or to form a joint venture insurance company with local insurers, in which foreign participation is limited at 60 per cent. In the sector of basic telecommunications, foreign participation in a facilities-based joint venture is limited at 49 per cent, 51 per cent by the end of 2007, and 60 per cent by the end of 2008. For wholesale and retail trade, foreign participation is limited at 51 per cent, and 75 per cent after the end of 2008.

According to the Foreign Investment Act, solely foreign funded enterprises or joint ventures are allowed in Saudi Arabia. Except sectors outlined in the Negative List excluded from Foreign Investment, foreign investment is allowed in all other sectors. The minimum level of investment for agricultural projects is SR25 million (approximately RMB53.33 million), for industrial projects SR5 million (approximately RMB10.66 million), and for service projects SR2 million (approximately RMB 4.27 million). Foreign investors are not required to look for local partners and are allowed to own company assets. Solely foreign owned enterprises are entitled to apply loans from the Saudi Industrial Development Fund (SIDF).

2.4 Competent authorities

The Saudi Arabian Ministry of Commerce & Industry is responsible for foreign trade administration. The mandate of the ministry in the area of trade administration includes the making of trade laws and regulations, the formulation and implementation of trade policies, bilateral and multilateral consultations on economic and trade issues with other countries and international economic and trade organizations, making decisions on import ban, trade negotiations with foreign 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), reporting to the Supreme Economic Council (SEC), is responsible for investment administration. The Board of

Directors established under SAGIA is made up of deputy ministers and private business representatives. The mandate of the Board includes preparing state policies designed to promote and enhance local and foreign investment and submitting them to the Council, proposing implementation plans and criteria to improve the investment climate in the Kingdom and submitting them to the Council, making decisions on foreign investment application, monitoring and evaluating the performance of local and foreign investment and drafting a periodical report in this regard, and proposing the Negative List excluded from Foreign Investment and submitting it to the Council.

3 Barriers to trade

3.1 Tariff and tariff administration measures

Saudi Arabia applies a 12% tariff on 492 products, such as carpet, to protect local industries. A number of Saudi infant industries enjoy 20% tariff protection, including those producing sesame extract, furniture, cooking salt, edible offal, rabbit meat, mineral water, and plastic pipes. In addition, long-life milk and nine other agricultural products are subject to a 25% tariff. Saudi Arabia imposes a 40% tariff on dates. Saudi Arabia also imposes a 100% tariff on cigarette and other tobacco imports.

3.2 Import restrictions

The importation of certain articles requires special approval from competent 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); and natural asphalt.

3.3 Technical barriers to trade

According to the Saudi Arabian Standards Organization (SASO), certain imported products must get certificate of the International Conformity Certification Program (ICCP) before entering the Saudi market. The ICCP accords favorable treatment to products manufactured in the Gulf Region, is more trade-restrictive than necessary, charges ad valorem fees unrelated to cost, and lacks transparency. China has raised concerns about the ICCP in the context of its consistency with the WTO Agreement on Technical Barriers to Trade.

3.4 Sanitary and phytosanitary measures

The Saudi Arabian Ministry of Commerce & Industry announced in September 2005 that it has launched an investigation into the issue of cancer-causing chemicals found in certain food imported from China, and would conduct a comprehensive inspection into similar products imported from China in order to prevent them enter the Kingdom through different means. This measure was taken because South Korea and Hong Kong Special Administrative Region of China announced sequentially that caner-causing chemical substance had been found in eel and other freshwater fishes imported from China. China pays close attention to this issue.

As a result of bird flu outbreaks in certain countries and regions, the Saudi government announced in October 2005 that it would work out comprehensive prevention and control measures to prevent an outbreak of bird flu within the Kingdom. As one of the preventive measures, the Saudi government decided to impose a ban on the import of poultry and poultry products from 16 countries, including China. China requests that the Saudi government conduct tests and inspections to reevaluate safety conditions of relevant Chinese exports and remove the ban at an earlier date.

3.5 Barriers to trade in services

Saudi Arabia gives preferences to national shipping carriers for up to 40% of government-related cargoes. Under these rules, the Saudi national shipping company and United Arab Shipping Company receive preferences.

3.6 Other barriers

Foreign companies must provide 25% of their job openings to Saudi citizens. In some places the rate is deliberately raised to 30% or even higher. Otherwise foreign staff in foreign companies will be denied working visas. Certain public affairs offices do not handle requests from non-Saudis. This practice has caused higher costs and lower efficiency for foreign companies.

Female employees face great difficulties in obtaining Saudi visas. Particularly there is little possibility for women to obtain long-term working visas. This has affected the normal business of Chinese companies based in Saudi Arabia. China expresses concerns about the discriminatory treatment to female employees in terms of working visas application.

China hopes that on the issue of working visa, the Saudi government would grant fair treatment to Chinese applicants who are needed by engineering projects and who have completed proper formalities.

4 Barriers to investment

Foreign companies are allowed to register solely foreign owned subsidiaries in Saudi Arabia in the name of foreign investment. Chinese companies, however, after having registered and obtained investment permit, are required to present "Qualification

Certificate", a classification certificate granted by the Ministry of Municipal & Rural Affairs for submitting tender and contracting projects. Procedures for applying "Qualification Certificate" are complicated. Performance of the parental company is not recognized and reexamination is required for the subsidiary, which means that even if registered, a Chinese subsidiary is not able to start normal business, or even if approved after the examination, a Chinese subsidiary is not able to obtain a higher level of qualification because the performance of the parental company is not taken into account. This practice has seriously affected the business of Chinese companies. China expresses concern over the justification of this measure and requests that the Saudi government give Chinese companies the same treatment as companies from other countries.

As there is a lack of coordination among different ministries of the Saudi government, foreign companies would find their registration application rejected by the Ministry of Commerce & Industry on the grounds that the business scope they apply for is not open to foreigners even if they have obtained investment permit from the SAGIA. As a result, their registered capital is frozen, normal business impossible to start and heavy losses incurred.

Moreover, according to relevant regulations of the Saudi government, paying up the registered capital is a necessary condition for registering a company. When the legal person of a company is to open an account in a local bank, long-term residence permit must be presented, which is not available until the company has been registered. The lack of coordination among the three links has seriously affected the investment by Chinese companies in Saudi Arabia. China expresses concerns about the obstacles to registration Chinese companies have encountered and hopes this issue could be settled properly by the Saudi government.

In Saudi Arabia, Saudis, foreign persons, or businesses jointly owned by Saudis and foreign persons must obtain tax-paying certificates from the General Bureau of Zakat and Income Tax. Personal wages or salaries are not taxable. Saudis or GCC nationals are only subject to Zakat and enjoy exemption from income tax, while foreign companies or individuals are only subject to income tax and enjoy exemption from Zakat. Domestic companies in Saudi Arabia pay a 2% Zakat. Although income 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 difference in tax rates applicable to Chinese companies and that to Saudi domestic companies.

Thailand

1 Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Thailand in 2005 reached US$21.81 billion, up by 25.8% year on year, among which China's export to Thailand was US$7.82 billion, up by 34.8% year on year, while China's import from Thailand was US$13.99 billion, up by 21.2% year on year. China had a deficit of US$6.17 billion. Major Chinese exports to Thailand included electric power machinery and parts, computers and parts, iron and steel products, machinery, equipment and parts, chemical products, cloth, household electrical appliances, mineral products and metal scrap, integrated circuits, daily necessities, etc. China's main imports from Thailand included computers and parts, plastic resin, natural rubber, crude oil, chemical products, cassava products, integrated circuits, iron and steel products, timber and products thereof, LPG, etc.

According to the Ministry of Commerce of the People's Republic of China (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by the Chinese companies in Thailand reached US$300 million in 2005, and the volume of the newly signed contracts was US$880 million. The volume of completed labor service cooperation contracts was US$7.8 million, and that of the newly signed labor service cooperation contracts was US$3.35 million. The turnover of the newly signed design and consultant contracts was US$1.6million. By the end of 2005, the accumulated turnover of completed engineering contracts by the Chinese companies had amounted to US$1.8 billion with the total contractual value of US$3.51 billion; and the volume of the completed labor service cooperation contracts had reached US$140 million with the total contractual amount standing at US$200 million.

Approved by or registered with MOFCOM, China set up 16 non-financial Chinese-funded enterprises in Thailand in 2005 with a contractual investment of US$72.17 million by the Chinese side. By the end of 2005, a total of 278 non-financial Chinese-funded enterprises had been established in Thailand with a total contractual investment of US$250 million from the Chinese side.

According to MOFCOM, Thailand invested in 147 projects in China in 2005 with a contractual investment of US$1.04 billion and the paid-up capital reached US$95.90 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

The Thai legislation governing trade and investment promotion mainly includes Controlling Importation and Exportation of Goods Act of B.E. 2522 (1979), Customs Act (No. 12), BE 2497, Export Standard Act (N0. 2), B.E. 2522 (1979), Anti-Dumping and Countervailing Duty Act, B.E. 2542 (1999), Safeguard Measures Act, B.E. 2542 (1999), Foreign Business Act, B.E. 2542 (1999), Counter Trade Act, Direct Sales and Direct Marketing Act, B.E. 2543 (2002), Electronic Transactions Act, B.E. 2545 (2002), Trade Association Act, B.E. 2509, Exchange Control Act, B.E. 2485, and Trade Competition Act, B.E. 2542 (1999), etc.

2.2 Trade administration

2.2.1 Tariff system

The average tariff rate of Thailand is 12.7%. Pursuant to the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China, Thailand exercises reduction in tariff rates on products imported from China. Accordingly, tariff rates of over 20% in 2005 should be reduced to below 20%; tariff rate of 15% on products should remain unchanged; tariff rates between 10% and 15% should be lowered to 10%; those of 5% to 10% should be lowered to 5%; and those at 5% should remain unchanged.

2.2.2 Import administration

The free import policy is in place in Thailand. Most products can be imported to Thailand freely. Any importer able to open a letter of credit can conduct import business. Thailand applies import ban, tariff quotas and import licensing on some products.

Products subject to import ban mainly include those related with public health and national security, including second-hand motorcycles and spare parts, household refrigerators using chlorofluorocarbons, renovated medical equipment and gambling machines.

Tariff quotas are applied to 23 agricultural produces such as longan, but they are not applied to imports from ASEAN members. Animal feed is levied MFN quota rate as corn plus additional import fees.

Import licenses are required for 26 categories of items, including raw materials, petroleum, industrial materials, textiles, pharmaceuticals, and agricultural items. Import of food, pharmaceuticals, certain minerals, arms and ammunition, and art objects require special permits from the competent government authorities.

2.2.3 Export administration

The Thailand economy is export oriented. Most products can be exported freely to other countries. Export administration mainly includes export registration, export quotas, license, export duties, export ban or other restrictive measures. Export products subject to export duties include rice, skins and leathers, teak and other kinds of wood, rubber, scrap steel or iron, and hiders.

2.2.4 Foreign exchange control

Inward remittances are free of controls in Thailand, but foreign currency must be deposited in a foreign currency account or converted at an authorized bank within seven days of being remitted to Thailand. Foreigners staying in Thailand for less than three months, embassies, and international organizations are exempt from this requirement, however. The proceeds of exports with a value of more than Baht 50,000 (US$12,900) must be remitted as soon as received and within 120 days of export, and deposited within seven days of receipt.

Commercial banks are authorized to undertake most routine foreign remittance transactions without prior approval of the Bank of Thailand.

2.3 Investment administration

The Thai legislation provides that any natural or legal person without Thai nationality shall enjoy the same rights of a Thai company when conducting business in Thailand unless otherwise stipulated in laws. According to Foreign Business Act promulgated in 1999, there are three categories of restrictive industries for foreign investment. Foreigners are forbidden to do business in the first category for special reasons, and the category involves such activities as planting, animal husbandry, forestry, newspapers, etc. The second category involves activities that are deemed to affect Thailand's national security, or have possible negative impact on arts and culture, customs and folk craftsmanship, or cause possible damages to natural resources or ecological environment such as the production, sales, and repairing of arms and components, domestic transportation and aviation industry. Foreign investment in this category shall seek business license from the Minster of Commerce of Thailand based on the approval by the Thai Cabinet. The third category contains those activities that are deemed to be areas in which Thai businesses are not yet ready to compete with foreigners, including rice milling, rice powder and other plant powder processing, aquaculture, lime production, accounting service, legal service and catering. Foreign investment in this category shall seek the approval from the Director-General of the Department for Business Registration.

2.4 Competent authorities

The major competent authorities responsible for trade and investment in Thailand include the Ministry of Commerce, the Investment Promotion Committee of the Ministry of Industry and the Department of Customs of the Ministry of Finance. The Ministry of Commerce is responsible for the formulation and implementation of policies concerning foreign trade administration and export promotion, promoting trade, solving problems in domestic and foreign trade, and developing information technology system for trade. The Investment Promotion Committee of the Ministry of Industry is responsible for reviewing and implementing preferential measures for investment promotion, encouraging investment to be oriented towards the priority regions beneficial for national economy and social development, providing services for investors by helping them obtain business licenses, seeking partners for investors, and resolving specific problems for joint ventures after they start to operate. The Department of Customs of the Ministry of Finance is mainly in charge of collecting duties, levying value added tax and excise duties in the process of import and export. It also shoulders the responsibility of supervision and administration of the Customs over cracking down on smuggling and tax evasion as well as promoting international trade facilitation.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff escalation

Tariff escalation exists in Thailand. Higher tariff rates are applied to non-finished products and intermediary products than those to finished products. Primary and capital goods are subject to a 5% tariff rate; intermediary products are subject to a 10% tariff rate; finished products are subject to a 20% tariff rate while special products which need to be protected are subject to a 30% tariff rate.

3.1.2 Tariff quotas

Thailand applies tariff quotas to 23 agricultural produces, namely longan, coconut pulp, milk, butter, potatoes, onion, garlic, coconut, coffee, tea, dried capsicum, corn, 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, and high tariff rates are applied to out-of-quota imports. For example, the import quota for corn is 54,440 mt which is subject to a 20% tariff rate, while out-of-quota corn imports are subject to a 73.8% tariff rate.

The Chinese side will watch closely the implementation of the tariff concession measures, and it is hoped that Thailand will open the market for agricultural products currently subject to tariff quotas at an early date.

3.2 Import restrictions

Thailand requires all processed foods should be accompanied by a detailed list of ingredients and a manufacturing process description in applications for food import registration. The requirement of disclosing the ingredients and the manufacturing process of food has been viewed as barrier to import by many countries.

Thailand's Food and Drug Administration (TFDA) under the 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 three years, and recertification is required for each renewal, as well as the stamping at the

Commercial Councilor's Office of the Chinese Embassy in 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 requirements are burdensome to Chinese exporting enterprises.

Some Chinese enterprises complain that the administration of motorcycle import license of Thailand is not transparent, which has hindered the export of complete motorcycles from China.

3.3 Technical barriers to trade

3.3.1 Certification requirement

The Thai government requires the compulsory certification of 60 products in ten sectors, including agriculture, construction materials, consumer goods, electrical appliances and accessories, PVC pipe, medical equipment, LPG gas containers, surface coatings, and vehicles.

3.3.2 Technical standards

On 25 August 2005, the Thai Industrial Standards Institute of the Ministry of Industry announced the standard of safety requirements for household refrigerators and suggested that the standards be compulsory. The standard specifies the safety requirements and testing methods of household refrigerators. The applicable scope includes the nominal voltage of single-phase appliances not exceeding 250 volt and that of other electrical appliances not exceeding 480 volt. The standard is related to the general harm done to family members or people nearby brought by the electric power compressors used in the equipment. The Chinese side will pay attention to the above measures.

3.4 Sanitary and phytosanitary measures

3.4.1 Testing of chemical additives in foodstuffs

Thailand's Food and Drug Administration (TFDA) imposes new testing regulations in view of food safety. The new regulations taking effect as of 1 April 2005 requires that many imported food products undergo testing and certification for a number of chemical additives. These new rules are burdensome to importers and lack risk evaluation.

3.4.2 The Residual Toxic Substances in Foods

On 1 July 2005, Thailand imposed new rules on the residual toxic substances in foods. The residual toxic substances mean toxic substances in agriculture including their derivatives in different forms, i.e. conversion products, metabolites, reaction products, or any other toxic extraneous matter in such substances which are contaminated in foods. Toxic substances in agriculture mean substances purposively applied to prevent, destroy, lure, repel or control pests and animals or unattended plants and animals during cultivation, storage, transportation, distribution, or selling as well as applied to control ectoparasites in animals and to control plant growth, i.e., defoliaged, defruiting, inhibited young leaves, or substances applied in pre- and post-harvested plant products to prevent deterioration during storage and transportation; but not including those substances applied as fertilizer, nutritious substance for plants and animals, food additives and veterinary drugs.

As regards residual toxic substances in foods, the following standards must be complied with: (1) The toxic substances in agriculture which MRLs are applied must be of those officially registered and the established Maximum Residue Limits. (2) The tolerances of those toxic substances in agriculture which are officially prohibited under the Notification of Ministry of Agriculture and Cooperatives (MOAC) are not permitted, except for the established Extraneous Maximum Residue Limits.

In cases other than the above two standards, the residual toxic substances must be complied with the established MRLs set forth by Codex Alimentarious Commission, Joint FAO/WHO Food Standard Programme.

The rule will affect food export to Thailand. The Chinese side will pay close attention to it.

3.5 Government procurement

Thailand is not a signatory to the WTO Agreement on Government Procurement. A series of restrictions have been set by the Thai government in its government procurement tenders on foreign bidders. For example, preferential treatment is provided to domestic suppliers, which receive an automatic 15% price advantage over foreign bidders in initial bid round evaluations. A procuring government agency reserves the right to accept or reject any or all bids at any time and may also modify the technical requirements during the bidding process. The latter provision allows considerable leeway to government agencies in managing tenders, while denying bidders any recourse to challenge procedures. The Chinese companies complain that the above practices put them in an unfair position in the bidding.

In addition, according to the Counter Trade Act, a counter-purchase of Thai commodities valued at not less than 50% of the value of the principal contract is required of foreign bidders for any government procurement contract exceeding Baht 300 million. As part of a counter-trade deal, the Thai government also may specify markets into which commodities may not be sold; these are usually markets where the Thai commodities already enjoy significant access. These regulations increase the cost of operation for foreign companies that have won in the bidding.

China has expressed deep concern regarding the above-mentioned practices, hoping that the competent Thai authorities will create a fair and level playing field for foreign participation in the Thai government procurement.

3.6 Export subsidies

Thailand maintains programs to support trade in certain manufactured products and processed agricultural products, including various tax benefits, import duty reductions, credit at below-market rates on some government-to-government sales of Thai rice, and preferential financing for exporters. The Thai government terminated its packing credit program in compliance with the WTO commitments but received an extension of its WTO exemption period for Industrial Estate Authority of Thailand and the Board of Investment until December 2005. China will keep on watching the implementation of the export subsidy measures of Thailand.

3.7 Barriers to trade in services

3.7.1 Banking

According to the regulations of the Thai government, foreigners are permitted to hold a maximum of 25 percent of the equity in Thai banks. Within the "Financial Sector Master Plan" drafted by the Bank of Thailand and approved by the Parliament, this percentage may be increased to 49 percent at such time as the Central Bank deems appropriate. The Plan will allow foreign banks to open three to five branches out of Bangkok, but no specific time table is given. At present, foreign banks are limited to one branch. Furthermore, foreign banks must maintain minimum capital funds of Baht 125 million (US$3.1 million) invested in government or state-owned enterprise securities or deposited directly with the Bank of Thailand.

3.7.2 Construction

Construction is not in the list of encouraged investment. To register and start business operation in Thailand, foreign contractors are required to form joint ventures with local companies with foreign ownership not exceeding 49%. There are strict restrictions on the managerial staff brought in by the foreign contractors. Generally, companies with a registered capital exceeding Baht 100 million should employ at least 4 local workers for employing one foreign national, and those with a registered capital of less than Baht 100 million should employ at least 5 local workers for employing one foreign national. The introduction of general labors is strictly restricted. Foreign-funded contractors are only allowed to participate in projects of public infrastructure construction exceeding Baht 500 million, but generally they are not allowed to take part in projects financed by the Thai government budget.

The Thai government also has relevant qualification and performance requirements for contractors bidding for specific engineering projects. Except for international bidding, Thailand does not recognize engineering performance of foreign contractors out of Thailand. Therefore, a number of large scale contractors are subject to various restrictions despite of their outstanding reputation and achievements internationally.

3.7.3 Telecommunications service

The Thai government began to allow foreign participation in the telecommunications sector through establishing joint ventures in 1989, but at the limited level. According to regulations, foreign ownership in companies providing basic services should not exceed 50%, while foreign ownership in companies providing value-added services should not exceed 40%. In 2004, the Thai National Telecommunications Commission (NTC) was founded. Empowered by the Constitution, the Commission makes adjustment to the telecommunications industry independently, but controversial issues such as licensing, interconnection, competition, tariff rebalancing, and standards-making still remain unresolved. Licenses for new Internet Service Providers (ISPs) and many value-added services have yet to be issued. Pursuant to the WTO agreement, Thailand committed to fully liberalize its telecommunications service sector including basic telecommunications business and value-added services in January 2006 by permitting foreign investment in the sector. The Chinese side will pay attention to the implementation of the commitment.

3.7.4 Law

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.

3.7.5 Labor service

Thailand is a big country in terms of labor export, thus, setting strict controls on the introduction of labor. The Thai working permits are not available to common foreign nationals providing labor services. 39 categories of labor are restricted to enter Thailand to work. They include common labor, workers in the areas of agriculture, forestry, animal husbandry, fishery (except managerial personnel of agricultural products), brick makers, carpenters or other construction workers, wood carvers, and drivers (except pilots and mechanists). Such practices have restricted China's labor export to Thailand. At present, China exports a labor force of around 2,000 people to Thailand annually, of whom half are for contracted engineering projects while the rest are 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.

3.7.6 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.

3.8 Other barriers

The Thai government retains authority to set price ceilings for 20 goods and services, including medicines, sound recordings, milk, soda, sugar, fuel oil, and chemical fertilizer. Price control review mechanisms are not transparent. Price control determinations are sometimes based on outdated assumptions, including exchange rates, and go for long periods without review, even upon repeated petition for review by affected parties.

The above regulations which place foreign firms on an unequal footing with the local firms violate the principle of liberalization of the WTO. The Chinese side has expressed its concern and hopes Thailand to take measures to improve the situation.

4 Barriers to investment

4.1 Barriers to investment access

The Thai Foreign Business Act includes three lists of business activities. Foreign legal persons are permitted to engage in List Two if they can meet the following two requirements: (1) Thai nationals or non-foreign nationals according to the Act have the ownership of no less than 40% in the foreign-funded companies (the Minister of Commerce can relax the regulation of ownership according to the decision of the Cabinet for due reasons, but the ownership should not be less than 25%); (2) Thai nationals should have over 2/5 of directors on the board in foreign-funded enterprises.

Thai ownership should not be lower than 51% in the areas of agriculture, animal husbandry, fishery, exploration and mining and in the service sector stipulated in the Foreign Business Act of 1999. When foreign juridical persons start business operation in the industries where foreign investment needs permission according to Foreign Business Act, the minimum investment should be no less than Baht 3 million. No less than Baht 2 million of foreign investment is required in other industries.

4.2 Barriers to investment operation

Land ownership by foreigners is prohibited in Thailand except that the land is used for industries encouraged by the Thai Board of Investment.

Thailand lifted the restrictions on export volume and the proportions of local content of parts and raw materials in investment measures so as to keep in line with the stipulations in international trade and investment agreement, but restrictions on local content still remain in the production of dairy products, and the assembly of auto engines and motorcycles.

Turkey

1 Bilateral trade relations

According to customs statistics in China, the volume of bilateral trade between China and Turkey in 2005 totaled US$ 4.87 billion, up 42.8% over the preceding year, among which China's exports to Turkey jumped by 50.7% to arrive at US$ 4.25 billion, while China's imports from Turkey reached US$ 0.62 billion, an increase of 5.1%. China enjoyed a trade surplus of US$ 3.63 billion with Turkey. China mainly exported to Turkey electro-mechanic products, audio-video instruments, machinery, motor vehicles and their spare parts, plastics and plastic products, and mineral fuels. China's main imports from Turkey included, among others, mineral products, iron and steel, inorganic chemical products, certain machinery and its components, and chemical short-staple fibers.

According to the figures released by China's Ministry of Commerce (MOFCOM), in 2005, the turnover of the completed engineering contracts and the volume of the newly signed engineering contracts by Chinese companies in Turkey stood at US$ 71.70 million and US$ 55.21 million respectively, and the turnover of the completed labor service cooperation contracts by Chinese firms in Turkey came into US$ 1.39 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 2005, with a contractual investment of US$ 0.35 million.

According to MOFCOM, companies from Turkey invested in 31 projects in China in 2005, with a contractual investment of US$ 34.84 million and an actual utilization of US$ 22.16 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

2.1.1 Legislation on trade administration

The Foreign Trade Regulations Law is the major legislation in Turkey in the administration of trade. Other laws pertaining to trade administration include the Customs Law, the Law on the Prevention of Unfair Competition by Imports, the Free Zones Law, and the Law on Measures to be Taken by the Government Relating to Taxes for the Purpose of Promoting Exports.

2.1.2 Legislation on investment administration

The major legislation in Turkey governing foreign investment is the Foreign Direct Investment Law. Other legislation regulating foreign investment includes the Decree on Foreign Investment Framework and the Circular of the Decree on Foreign Investment Framework.

2.2 Trade administration

2.2.1 Tariff system

As a result of the customs union with the European Union in 1996, Turkey applies the EU common external tariff (CET) to all industrial products and to the industrial components of processed agricultural products from third countries.

Turkey enacted a new Decree on 25 August 2004, including into its Generalized System of Preferences (GSP) all industrial products covered by the EU's GSP regime and offering the same preferential terms as the EU. The customs duty rates applied to the industrial components of processed agricultural products are aligned to the EU's common external tariff rates. In addition, in order to increase the competitive capacity of the domestic producers, Turkey has significantly reduced or suspended customs duties applied to imports of certain products predominantly used as raw materials or intermediate inputs in chemical and electronic industries.

Goods imported into Turkey may be subject to five types of charges: customs duty rates, excise duties, the Mass Housing Fund (MHF) levy (on fishery products), special consumption tax (SCT), and the value-added tax (VAT). Customs duties fall into five kinds: ad valorem, specific, compound, mixed and formula duties. The VAT is levied at 1%, 8% and 18%, down from the previous five rates. Agricultural and basic goods are charged 1% and 8%, while some non-agricultural and luxury items are charged 18%. The VAT applies to the CIF and the customs duty of the imports.

2.2.2 Import administration

2.2.2.1 Customs procedures

The format of the Turkish customs declaration has been aligned on the single administrative document (SAD) used in the EU for customs procedures. All imported goods must be presented to customs through the SAD accompanied by pertinent documents. Form EUR1 is required for imports from non-EU countries with which Turkey has free trade agreements.

Certain goods can be imported only through specialized customs offices. For example, customs formalities for motor vehicles, tractors, and their spare parts and accessories are carried out by Yesilkoy and Gebze Specialized Customs Directorates; textile fabrics by Bursa and Halkali Specialized Customs Directorates; some petroleum products, by Gebze Specialized Customs Directorate; and plants and plant products, by Mersin Specialized Customs Directorate

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 the 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, specifying the standards for processing and added value of the relevant products, apply to imports from countries with which Turkey has signed bilateral or multilateral trade preference arrangements.

2.2.2.3 Import restrictions and licenses

Turkey bans the imports of hashish, opium, silkworm eggs, any kind of soil, leaf, stem, straw and natural manure used for agricultural aims, computer game machines, and products that bear the brand of a manufacture or the brand name of a commercial product, or a commercial title against related international conventions for industrial property.

According to the Communiqué of Standardization for Foreign Trade, Turkey places the import of the following products under licensing: agricultural products such as fresh fruits and vegetables, dry fruits, beans, edible vegetable oils, and cotton; solid fuels, wastes, scrap metals, medicinal materials, pharmaceutical products, detergents, foods, animal products, veterinary drugs, some chemical products, tobacco and their products, and alcoholic beverages.

Turkey promulgated in 2004 the Decree Concerning the Execution of Import Surveillance and the Regulation Concerning the Implementation of Import Surveillance as its legislative base for supervising imports. When the import of a particular product poses a threat of injury to domestic producers of the same or competing products and when the import of the product in question is deemed in the national interest, the Directorate General of Imports of the Undersecretariat of the Prime Ministry for Foreign Trade can impose surveillance over the product upon application or by its own judgment. The imported product under surveillance must be accompanied with an import license for the said product issued by the Directorate General of Imports of the Undersecretariat of the Prime Ministry for Foreign Trade in addition to other documents as required by the customs laws and regulations.

Pursuant to Article 20 in the Decree Concerning the Surveillance and Safeguard Measures Against Imported Products of Chinese Origin issued in April 2004, quantitative restrictions upon certain footwear and ceramics of Chinese origin have been lifted on 1 January 2005.

2.2.3 Export administration

Exporters in Turkey are required to register with the Exporters Union and their local Chamber of Commerce.

Turkey prohibits the export of the following products: cultural-historical works and natural fauna, India hemp, tobacco seedling and tobacco plants, Angora goats, all the wild animals and hunting animals, except the ones mentioned in the List of the Goods Permitted for Exportation, tree species of walnut, mulberry, cherry, plum, yew, ash, elm and linden, exports under the protocols and changes of the Vienna Convention on the Conservation of the Ozone Layer, natural bulbs of flowers that are prohibited to export, firewood and charcoal, liquidambar orientalis, and certain chemicals.

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 being imported 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.

2.3 Investment administration

2.3.1 Investment promotion policies

The Turkish Investment Encouragement System can be divided into two categories, General Investment Encouragement Program (GIEP) and Aids Granted to Small and Medium Sized Enterprises' (SMEs) Investments. Based on different investment encouragement measures eligible, the following regional classification is established in Turkey: developed regions, priority development regions, and normal regions.

2.3.1.1 General Investment Encouragement Program (GIEP)

Eligible investment projects under the General Investment Encouragement Program (GIEP) can benefit from the following measures: imports of machinery and equipment to be used for the investment project shall be subject to customs duty exemption, if such imports have been approved by the Undersecretariat of Treasury; imports and domestic purchases of machinery and equipment within the scope of approved machinery and equipment lists attached to the investment encouragement certificate are exempted from the value added tax; investment credits and operating credits, which differ from industry to industry and from region to region, can be allocated in order to guide and encourage the investments aiming at regional development, research and development (R&D) investments, environmental protection investments, investments in priority technology areas, investments to be moved to priority development regions from developed regions, and manufacturing, agro-industry and mining investments in the priority development regions in compliance with the legislation on State Encouragements to Investments.

2.3.1.2 Aids granted to Small and Medium Sized Enterprises' (SMEs) investments

According to the relevant Turkish laws, small and medium sized enterprises (SMEs) refer to companies which are holding assets not exceeding 950 billion Turkish Liras (TL) and operating in the manufacturing, agro-industry, tourism, education and health, mining, and software industries. Companies employing 1 to 9 workers are defined as micro size, 10 to 49 workers defined as small size, and 50 to 250 workers defined as medium size. The investment of SMEs benefit from the following encouragement elements: exemption from customs duties, value added tax exemption for imported and domestically purchased machinery and equipment, and credit allocation from the budget.

2.3.2 Restricted investment sectors

Turkey currently restricts investment in such sectors as broadcasting, television, civil aviation, maritime transportation, port services, fishery processing, electricity distribution sector, and privately operated marinas.

2.3.3 Other investment policies

To further improve the investment environment in Turkey, the Undersecretariat of Treasury established on 15 March 2004 an Investment Advisory Council, which consists of both policy makers and investors. Working together with the Coordinated Committee for the Improvement of the Investment Environment (CCIIE), which was established a few years earlier, the Investment Advisory Council publishes on an irregular basis its Progress Report on investment and policy recommendations.

2.4 Competent 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 to the legislature proposals for deliberation.

The General Directorate of the Customs is mainly responsible for formulating customs policies, taking part in setting tariff rates, levying customs duties and other taxes, fees and charges, controlling and inspecting cargo and vehicles, compiling customs statistics, and cracking down on smuggling.

The Ministry of Industry and Trade (MIT) is chiefly 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 primarily responsible for setting out the economic development objectives and the priorities for public investment programs, preparing the national five-year development plan, and implementing incentive schemes and support mechanisms for regional development.

The General Directorate of Foreign Investments (GDFI) operates as a one-stop agency within the Undersecretariat of Treasury to assist 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 on imports currently stands at 10% in Turkey. However, Turkey imposes a much higher tariff rates on certain imports, thus forming a 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 tariff escalation to protect specific domestic industries. The average tariff rate for semi-finished goods is 6.4%, while the average tariff rate for fully processed products has risen to 13.6%. Tariff escalation is most obvious in the case of bulk commodities such as wood products, paper and paper products, petroleum, coal, rubber and plastics.

3.2 Barriers to customs procedures

According to Turkey's customs regulations, goods imported into Turkey shall not, without the agreement of the importer, be sold to any third parties or sent back to the exporter, and if the importer fails to take delivery of the goods within 45 days after the arrival, the customs shall be entitled to sell the goods by auction and the original importer shall have priority in purchasing them. Some importers in Turkey do not pick up the imports under various pretexts for the purpose of buying them at a considerably lower price as the legitimate preferential purchaser when the customs put the imported goods on auction. Such a regulation has, so far, given rise to many trade disputes, incurring heavy losses to Chinese exporters. The Chinese government has taken up the matter with Turkey's customs authorities on a number of occasions, but no satisfactory results have been produced. The Chinese side believes that in international trade only those who possess the title of ownership of the goods, such as a bill of lading, can claim the goods in question. However, Turkey's customs regulations totally disregard whether the importer has actually obtained the title of ownership, unilaterally accord the importer the right to dispose the imports, run counter to normal international trade rules and practices, and put Chinese exporters in an extremely disadvantaged position. The Turkish government should eliminate such a regulation the soonest possible so as to maintain the development of normal trade.

In 2005, Turkey placed 15 more categories of imports under customs clearance restriction by means of import surveillance. According to the pertinent Turkish regulations, the decision to impose import surveillance over a particular imported product is made by the Directorate General of Imports of the Undersecretariat of the Prime Ministry for Foreign Trade, but the decision is rather arbitrary because of the absence of detailed rules of evaluation. China's exports of the above 15 categories of products to Turkey valued approximately US$ 90 million in 2005.

In addition, Turkey also implements its surveillance over imports by setting quantitative restrictions. For example, quantitative import restrictions were placed on such products as loud speakers, juicers, toys and combs in 2004. The Chinese side believes that the import surveillance measures have constituted a restriction on relevant Chinese exports and hopes that the Turkish authorities will take measures to make their import surveillance process transparent and fair.

3.3 Technical barriers to trade

In 2004, Turkey made CE marking obligatory for imported toys, medical devices, active implantable medical devices, machinery, low-voltage equipment, and a variety of other products. However, the documents and inspections required under the CE marking system introduced by Turkey differed from those stipulated by the EU, and utter chaos that accompanied the start of this system brought customs clearance to a complete halt. Turkey abolished in 2005 the CE marking requirement for the imports of toy products, but stipulated that certain toys should meet the Law Concerning the Formulation and Implementation of Technical Standards of Imports as issued in the Government Notice dated 11 July 2001 (No. 24459) and the Legislative Regulation on Imported Toys as issued in the Government Notice dated 17 May 2002 (No. 24758) by the Undersecretariat of the Prime Ministry for Foreign Trade. As China is the major exporter of the aforesaid products to Turkey, the frequent changes in Turkey' s technical regulations have created business uncertainty and export risks to Chinese exporters, over which the Chinese side expresses its grave concern.

3.4 Sanitary and phytosanitary measures

The Turkish government has a poor track record of notifying other WTO members of proposed technical regulations and phytosanitary measures in accordance with the Agreement on Technical Barriers to Trade, and implementation appears to be arbitrary. Importers report increasing difficulty in obtaining information on sanitary and phytosanitory certifications. The Turkish government often requires laboratory testing on items of imported foods, medicines for people and for animals, allegedly without any scientific basis.

3.5 Trade remedies

By the end of 2005, Turkey has launched altogether 51 trade remedy investigations against China , including 36 anti-dumping investigations, 11 safeguard measure investigations and 4 special safeguard measure investigations, which makes Turkey the fourth largest user of trade remedy investigations against China. The Chinese products involved in the investigations include light industrial products, machinery, metallurgical products, medical products, chemical products and textile products. Turkey still maintains its trade remedy measures on 72% of the involved Chinese products.

3.5.1 Anti-dumping

In 2005, Turkey initiated 4 anti-dumping investigations against China, involving pentaerythritol, air-conditioner, motor, and composite wood flooring. In the same year, Turkey issued its final determinations on 6 anti-dumping investigations against Chinese exports of impregnated textile products, zip fasteners, skid chains, tires, color television sets, and pentaerythritol, and imposed anti-dumping duties on the above mentioned Chinese exports to Turkey. For example, according to its final determination, an anti-dumping duty of 50% was levied on color television sets, and an anti-dumping duty of 60% and 87% was respectively levied on different categories of tires involved.

Turkey has pledged in bilateral talks to accord Chinese enterprises the market economy status on a case-by-case basis. However, the Turkish authorities have, up to the present, granted no Chinese enterprises responding to anti-dumping charges the market economy status, including private enterprises run according to the market mechanism and multinational corporations such as TCL, although the Chinese government has taken up the matter with Turkey for many times. In addition, Turkey has never given separate tariff rates to Chinese enterprises that have responded to anti-dumping investigations.

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.

3.5.2 Safeguard measures

Turkey promulgated in 2004 the amended Decree on Safeguard Measures Against Imports and the Implementation Regulation on Safeguard Measures Against Imports, which serve as its legislative base 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) Expanding the means of trade remedies in provisional safeguard measures. Turkey's decree and regulation on safeguard measures provide that provisional 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 provisional 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 the 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 fully comply with the relevant stipulations of the relevant WTO agreements to increase transparency of its related laws and regulations, and is greatly concerned with potential problems that may arise in the implementation process of its safeguard measures owing to the inadequacies of its pertinent laws and regulations.

3.5.3 Product-specific transitional safeguard measures

In May 2002, Turkey's President signed and promulgated the Decree on Implementing Surveillance and Safeguard Measures Against Imports from the People's Republic of China, which specifically targets products imported from China. Based on Article 16 in the Protocol on China's Accession to the WTO, Turkey promulgated in June 2003 the Regulation on Surveillance and Safeguard Measures Against Imports from the People's Republic of China, later renamed the Regulation on Safeguard Measures Against Imports from the People's Republic of China, which provides a legal basis for product-specific transitional safeguard measures (hereinafter referred to as "special safeguard investigations") against products of Chinese origin.

Without briefing the Chinese side and seeking consultations, Turkey decided on 20 August 2005 to start special safeguard investigations against imports of float glass from China. Although China had taken up the matter with Turkey several times through bilateral channels, Turkey made its final ruling on 23 December in the same year, recommending the adoption of special safeguard measures against Chinese float glass, and launched the consultation process as from the date of the final ruling. If no satisfactory settlement can be reached through consultations between the two sides within 60 days, Turkey would formally adopt special safeguard measures.

China is deeply concerned over the matter and hopes that Turkey will excise restraint in adopting discriminatory safeguard measures so as not to create obstacles to the healthy development of trade between the two countries.

3.5.4 Interim textile special safeguard measures

On 31 December 2004, immediately after promulgating the Regulation on Surveillance and Safeguard Measures Against Textile-Specific Imports, Turkey announced that in accordance with Article 12 in the above regulation, 42 categories of textile products of Chinese origin were placed under import quota restrictions. In December 2005, Turkey circulated a notice, launching again special safeguard measures on textile products. A total of 44 categories of textile products imported from China are to be placed under quota restrictions in 2006, adding 2 new categories to the previous 42 categories. According to Paragraph 242 as contained in the Report of the Working Party on the Accession of China, 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 Report of the Working Party on the Accession of China as well as relevant WTO rules 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 allocation and management of quotas. As the Istanbul Union could be the applicant to the Turkish government for safeguard measures against Chinese textile products, China is extremely concerned with the fairness of the Istanbul Union in its administration of quotas.

3.6 Barriers to trade in services

Turkey abolished in 2003 legal restrictions on the entry of foreigners into professional services, but restrictions on foreigners practicing medicine and law in Turkey still remain.

Chinese-invested companies in Turkey report that Turkey applies very strict standards to the issuance of working visas to Chinese business people and that it is sometimes difficult even for a Chinese trader who has been living in Turkey for a long time to get a work permit. In recent years, it has become increasingly difficult for the Chinese business people to be granted a work permit, which has caused much inconvenience to Chinese enterprises in Turkey. Chinese is deeply concerned over the matter.

New Zealand

1 Bilateral trade relations

According to China's Customs, the bilateral trade volume between China and New Zealand in 2005 reached US$2.68 billion, up by 7.6%, among which China's export to New Zealand was US$1.35 billion, up by 25.6%, while China's import from New Zealand was US$1.33 billion, down by 6.1%. China had a surplus of US$20 million. China mainly exported knitted or crocheted garments and accessories, non-knitted or non-crocheted garments and accessories, electromechanical products, electric products, furniture, bedclothing, lightings, and mobile communication base stations. Major imported products to China from New Zealand included milk, honey, meat and edible offal, animal hair and skin such as wool and sheep skin, wood and articles of wood, wood pulp, paper and paper board, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of engineering contracts completed by the Chinese companies in New Zealand reached US$ 2.06 million in 2005, and the volume of the newly signed contracts was US$ 0.8 million. The volume of completed labor service cooperation contracts was US$4.18 million, and that of the newly signed labor service cooperation contracts was US$3.52 million.

Approved by or registered with the MOFCOM, 6 Chinese-funded non-financial enterprises were set up in New Zealand in 2005, with a total contractual investment of US$5.95 million by Chinese investors. Up to the end of 2005, there were altogether 39 Chinese-funded enterprises in New Zealand, with an aggregate contractual investment of US$58.37 million.

According to MOFCOM, New Zealand investors invested in 141 projects in China in 2005, with a contractual volume of US$320 million and an actual utilization of US$130 million. Up to the end of 2005, New Zealand investors invested in a total of 1,026 FDI projects in China with a total contractual investment of US$1.3 billion and paid-up capital of US$580 million.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

2.1.1 Legislation on trade administration

Major trade-related laws in New Zealand consist of Commerce Act, Customs and Excise Act, Tariff Act, Imports and Exports (Restrictions) Act, Goods and Services Tax Act, and Standards Act. These laws prescribe in detail the Customs regulations, the levy of tariff, Customs valuation, refund of Customs duties, rules of origin for preferential tariff, import and export restrictions and licensing, and standards on calculation.

Legislation affecting trade remedies consists of Dumping and Countervailing Duties Act 1988, Temporary Safeguard Authorities Act.

Major legislation affecting inspection and quarantine includes Biosecurity Act, Agricultural Compounds and Veterinary Medicines Act, Animal Products Act, Food Act, and Wine Act. Besides, Trade in Endangered Species Act and Plant Variety Rights Act provide for the import and export administration over certain species.

Apart from the above mentioned legislation, there are other laws affecting trade, such as Patents Act, Trade Marks Act, Designs Act, Geographical Indications Act, Copyright Act, and Fair Trading act.

2.1.2 Legislation on investment administration

Major legislation related to investment consists of Overseas Investment Act and Overseas Investment Regulations, which were amended in 2005. These laws lay down general rules governing overseas investment. Detailed rules governing overseas investment in specific areas are to be found in Reserve Bank of New Zealand Act, Fisheries Act, Fisheries (Quota Operations Validation) Act, and Health Practitioners Competence Assurance Act.

2.2 Trade administration

2.2.1 Tariff system

2.2.1.1 Import Tariff

In New Zealand, the Harmonized Tariff System is adopted. The current tariff system is composed of two sections. Section One deals with standard tariff under which there are normal tariff and preferential tariff. As far as normal tariff is concerned, most of the products subject to normal tariff in New Zealand enjoy Zero Tariff Rate. For those which do not enjoy Zero Tariff Rate, tariff rates are classified into three levels: Low tariff rates, those between 5% and 7%; Intermediate tariff rates, those between 10% and 12.5%; High tariff rates, those between 17% and 19%. Preferential tariff refers to a quite low tariff levied on most of the products from specified countries or country groups which are members of multilateral or bilateral, or regional trade agreements, or from the least developed countries. As China is classified as the less developed country, some products may enjoy the preferential tariff. Section Two deals with concession. Pursuant to Reference 99 Tariff Concessions, the importer may submit an application to the New Zealand Economic Development Department for a tariff concession on commodities that were not produced in New Zealand. The department publicizes in a timely manner the result of the application.

According to the Post-2005 Tariff Review released by the New Zealand Government in 2003, New Zealand decided to freeze the unilateral tariff reduction process which was to make across-the-board reductions of tariffs starting from 2006. Current tariff levels will remain until 1 July 2006 when gradual across-the-board reductions will begin. According to the plan, low and intermediate tariff rates, those between 5% and 7% and between 10% and 12.5% respectively, will be gradually reduced to 5 per cent in 2008.

High tariff rates, those between 17 and 19 per cent, will be gradually reduced to 10 percent by July 2009. And there will an across-the-board removal of tariffs by 2010. The plan also includes the immediate removal of alternative specific tariffs on 1 July 2005 and the decision that all clothing imports will consequently pay duty by way of the applicable ad valorem tariff only.

2.2.1.2 Import linkage tax

Apart from import duties, the New Zealand Government also imposes on imported goods a 12.5% of GST, to which domestic goods of the same kind are subject. The importer may ask for a refund of the GST if the imported goods are to be exported.

2.2.2 Import and export administration

2.2.2.1 Import

Despite a comparatively low tariff level and no licensing and quota requirements for imports, New Zealand exercises a strict control over the importation of products from other countries. Pursuant to the provisions of Customs and Excise Act, Biosecurity Act, Goods and Services Tax Act, Chemical Weapons (Prohibition) Act, and Smoke-free Environments Act, the importation of certain goods such as some animals and plants, tobacco and weapons is prohibited.

2.2.2.2 Export

The New Zealand Government imposes restrictions and prohibitions on the exportation of many goods by such laws and regulations as Imports and Exports Restrictions Act and Trade in Endangered Species Act. For instance, to provide quality guarantee, exporters must file with the competent supervising agency before the exportation of diary products and kiwifruits; to protect animal and plant species, specific standards have to be met when exporting certain products of animal and plant origin. Besides, prohibited medicines and weapons are also subject to export restriction.

2.3 Investment administration

The New Zealand Government welcomes and encourages foreign investment. There is no control on foreign exchange nor the inflow and outflow of capital. Specific data are kept by the Statistics New Zealand at regular intervals for the purpose of publication and research.
Foreign investors are allowed to acquire interests in sectors other than nuclear and genetic engineering technologies. The New Zealand Government provides investment incentives such as preferential tax treatment to foreign investors investing in sectors including information and communication technologies, biotechnologies, film industry, special manufacturing, wood processing, food and beverages, etc.

Companies Act provides for detailed procedure governing the establishment of foreign-funded businesses. While there are no restrictions regarding the scope of business or registered capital, approval will have to be obtained from the New Zealand Overseas Investment Office if the foreign investor wishes to acquire an interest of 25% or more of an existing business of New Zealand, or the investment volume exceeds NZ$50 million, or the investment involves land or fishing quota, etc. Foreign investment involving land, fishery, spectacles making, banking, and some monopolized sectors either requires a review by competent authorities or is subject to restrictions.

2.4 Competent authorities

Competent authorities mainly include the New Zealand Ministry of Foreign Affairs and Trade, New Zealand Trade and Enterprise, the Ministry of Economic Development of New Zealand and the Customs. While the former two bodies are responsible for dealing with macroeconomic aspects such as economic analysis, policy-making, and negotiating with foreign counterparts, the Ministry of Economic Development of New Zealand is in charge of making and implementing industrial and energy policies as well as administering international trade and investment.

The New Zealand Customs monitors the inflow and outflow of goods and travelers and related matters, imposes restrictions on import and export according to national policies, and makes sure that traveling and international trade is conducted in a normal way. Besides, the Customs is also responsible for collecting tariffs, goods and services tax as well as import and export data.

The National Bureau of Standards, representing New Zealand in the International Organization for Standardization (ISO), provides over 3000 kinds of certification involving building, health, environment, business administration, etc. Certain types of certificates are deemed necessary for international trade and investment activities.

The major functions of the Ministry of Agriculture and Forestry are to ensure quality and safety of food and agricultural and forestry exports from New Zealand and protect the agriculture and forestry as well as wild species from the threat of pests and diseases as a result of import. The Biosecurity New Zealand is the agency under the Ministry of Agriculture and Forestry, responsible for inspection and quarantine.

In 2002, the New Zealand Food Safety Authority was co-established by the Food Authority under the Ministry of Agriculture and Forestry and the agency under the Ministry of Health in charge of food administration. The Bureau is responsible for examining the importation and exportation of food and food-related products.

In 2005, the former Overseas Investment Committee was renamed as Overseas Investment Office, which was put under the Ministry of Land and Information, mainly in charge of reviewing proposals of foreign individuals for investing in key projects in New Zealand.

The Reserve Bank of New Zealand functions as a central bank as well as an agency in charge of examining, filing, and handling proposals for the establishment of foreign banks in New Zealand.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff Peak

The overall tariff level in New Zealand is fairly low, with an average tariff rate around 2.6%. While Zero Tariff Rate is applied to about 95% of the imports, tariff peaks still exist in areas such as textiles, garments and accessories (made of leather, plastics, and man-made fiber), footwear and headwear, bedclothing, glass, mechanical and automotive vehicles, which are subject to high tariff rates between 12% and 19%. Footwear and articles of plastics (for garments and accessories) are subject to the highest tariff rate of 19%. As China mainly exports textiles, garments and accessories (made of leather, plastics and man-made fiber), footwear and headwear, and bedclothing, the high tariff rates have impeded the exportation of these goods to New Zealand.

3.1.2 Tariff Escalation

There is a tendency of tariff escalation in New Zealand. It is especially prominent in such areas as textiles and clothing, footwear where China enjoys an export advantage. Though raw materials of textiles including silk, cotton, hemp, and chemical fiber enjoy the Zero Tariff Rate, the average tariff for most of the fully processed textiles is maintained at the level between 7.5% and 12.5%. High tariff rates between 17.5% and 19% are imposed on some clothing, carpet, bedclothing, and footwear and headwear. Therefore, the Chinese side expresses concern over the high tariff rates for these products.

3.2 Technical barriers to trade

3.2.1 Issues regarding technical standards

Up till July 2005, New Zealand has adopted a total of 2,808 technical standards, among which 1133 are international standards and the rest are domestic standards. These domestic standards, great in both variety and number, have created an unnecessary obstacle to related exports to New Zealand.

Besides, notifications of changes made to these technical standards either lacked adequate information or didn't to come out in a timely manner. The WTO has only been notified of only a small number of new technical standards and regulations, which could hardly keep other countries informed. Furthermore, a review period of 45 to 60 days provided by the New Zealand Government is not enough for making a reasonable comment on a newly proposed standard.

3.2.2 Product safety standard regarding children's toys

In September 2005, the New Zealand Government put in place a new product safety standard regarding toys suitable for children under the age of three. The Standard stipulates that these toys can only be sold after passing the potential injury risk identification test and getting the relevant certification. The Standard came into force in September 2005 and would officially replace the 1992 regulation in September 2006. Compared with the old regulation, the new standard doesn't contain a prescriptive list of different types of toys. Instead, all toys are subject to the standard. Such practice has not only expanded the number of toys subject to examination as well as the responsibility of toy producers, distributors, and importers. Besides, whether the toy is suitable for children under 36 month age group is not at the discretion of the producer. Even though the producer deems the toy unsuitable for children under 36 month age group and claims so clearly on the tag of the toy, the producer cannot get away from potential responsibility. This has brought potential risks to toy producers, distributors, and importers, caused an unjustifiable expansion of their range of responsibilities, thereby exerting an extra burden on exporters. Up to now, the New Zealand Government hasn't announced the implementation guidelines, nor has it notified the WTO of the same, which has made it difficult for the Chinese toy exporters to gain further information about the new standard and to respond timely to the standard. As children's toys is one of the major exports of China to New Zealand, the Chinese side expresses concern over the matter.

3.2.3 Product safety standard regarding lighters

Based on the U.S. safety standard on lighters, New Zealand made its own safety standard in 1998. The standard requires all lighters valued under NZ$3.5 by the Customs be certified to have child-resistant measures before they are imported or sold. Associating product safety with price lacks credible scientific evidence. Besides, the practice does not conform to the relevant provisions of the TBT Agreement of the WTO, posing a distortion to trade. Therefore, the Chinese side hopes that the New Zealand Government will make reasonable amendments to the standard so as to comply with the Agreement on Technical Barriers to Trade .

3.3 Sanitary and phytosanitary measures

3.3.1 Wood packaging

In 2003 New Zealand announced the import phytosanitary standards on wood packaging, which were composed of the International Standard on Packaging Materials (ISPM15) and domestic quarantine requirements. Wood packaging from countries where ISPM15 hasn't been adopted is required to comply with the domestic standards of New Zealand by going through such processes as fumigation and chemical pressure impregnation (CPI) and obtaining the relevant certificates.

3.3.2 Pesticide Residue

In 2005, the New Zealand Government promulgated on a number of new standards on the maximum residue limits of agricultural compounds, affecting many categories of goods including food and fruits. The new standards provide for the maximum residue limits of 9 additional agricultural compounds. For instance, the maximum permitted residue level of Azoxystrobin in Sweetcorn is 10ì g/kg, while it is 15ì g/kg according to CAC standards. Besides, another 30 kinds of agricultural compounds have been added to the list in the domestic standards on maximum residue limits. These provisions have raised the limits of residue, posing an obstacle to China's agricultural export to New Zealand.

3.3.3 Fumigation on garlic

To ensure that imported garlic is free from pests, the New Zealand Government released a new draft standard in September 2005 regarding the importation of garlic from China. The draft standard stipulates that garlic from China can only be imported after going through Methyl Bromide (MB) treatment. Although MB treatment is an effective way of preventing the spread of pests and diseases, the requirement made by the New Zealand side not only creates difficulty in conducting the treatment but also increases the cost of the treatment. The ordinary MB treatment takes place in an environment where temperature is between 5 and 10 degrees Celsius, as it takes 3.8 degrees to have MB gasified. However, according to the new standard, garlic must go through a 3-hour MB treatment above the temperature of 10 degrees Celsius. Therefore, the standard has a direct adverse effect on China's exportation of garlic, especially garlic from Northern China where temperature in winter is below 10 degree Celsius. According to the New Zealand standard, chilled garlic can not go through the MB treatment. Therefore, the exportation of garlic from Northern China is restricted to a large extent. The Draft Standard came into effect in February 2006. The Chinese side hopes that New Zealand will come up with a more reasonable requirement regarding the fumigation of garlic based on the practical situation.

3.4 Discriminatory taxed and fees on imported goods

According to the Heavy Engineering Research Levy Act 1978, the Customs New Zealand imposes a fixed tax on heavy engineering machines and adopted a new rate effective as of 1 July 2005. However, no such tax is imposed on local products of the same kind. As machinery is one of the major exports from China to New Zealand, the tax, of the discriminatory nature, has weakened the competitiveness of Chinese products in the market of New Zealand. Therefore, the Chinese Government expresses close concern over the matter.

3.5 Barrier to Trade in Services

3.5.1 Telecommunications

According to relevant laws and regulations, aggregate foreign investment in a New Zealand business in the telecommunications sector is limited to 49.5% of the total shares of the said business.

3.5.2 Aviation

Foreign ownership of a New Zealand airline is limited to 49%.

3.6 Other Barriers

The New Zealand Government exercises strict control over the importation of labor. According to the Immigration Act of New Zealand, foreigners are not to be employed unless no substitutes can be found in New Zealand. Imported labor mainly consists of a few foreign experts and skilled workers that are in short supply, such as chefs for Chinese restaurants. There are rare chances for the importation of a large number of labor services. Such restrictive measures have made it difficult for foreign-invested enterprises to find an adequate number of skilled workers and labor within a short period of time, and at the same time created a barrier to the relevant Chinese personnel who want to work in New Zealand.

4 Barriers to investment

Foreign investment is considered a key factor for boosting the domestic economy, the New Zealand Government encourages foreign investment. However, there are some policy or de facto restrictions on foreign investment in certain areas according to the relevant investment measures of New Zealand. The restricted areas are mainly as follows:

4.1 Investment involving land

Pursuant to Overseas Investment Act 2005 and Overseas Investment Regulations 2005, stringent restrictions are imposed on foreign interests to acquire land or relevant assets that are deemed sensitive, such as farms, beaches, sea beds, river beds, lake beds, and relevant warrants). According to the above laws and regulations, the Overseas Investment Office shall enhance supervision on the approval of foreign access to the sensitive areas. The more land the foreign investor wishes to acquire in New Zealand, the more difficult to get the proposal approved. Prior to the acquisition, the foreign investor is required to submit detailed land administration plan to the Government which enjoys priority in purchasing beaches, sea beds, river beds, and lake beds, and has the right to deny foreign access to the above land. After the acquisition of the land, the investor is subject to further supervision and required to report at regular intervals how the agreement is implemented.

4.2 Restrictions by sector

In New Zealand, it is difficult for foreign investors to gain access to such monopolized sectors as fishery, spectacles making, energy development and supply, and printing. Take fishery for example, a foreign person is not allowed to have interests of more than 24.9% in a commercial fishing company. Besides, any foreign investor is required to apply to the competent authority to obtain the fishing quota. This has limited foreign access to these sectors.

Although the New Zealand Government removed part of agencies monopolizing these sectors at the end of 2001, such as the Apples and Pears Authority, vertical management is conducted by State-owned Enterprises over the distribution of agricultural and farming products such as diary products and kiwifruits. These SOEs control the purchase, marketing, processing, transportation, and storage of these products and have the decision-making power. Though there are no explicit restrictions on foreign investment in these sectors, foreign investors can hardly gain access to the highly monopolized market.

4.3 Resource management

The Resource Management Act of 1991 created a three-layer regulatory system involving national, regional and local authorities that requires businesses to acquire a resource content, or permit, for most types of business activity, including gas and water discharge, and waste disposal. However, it is an inconsistent system in which each of the country's different local authorities interprets the law in its own way. Issues regarding environmental protection are made complicated by the system and a process can take as much as two years. The system has created an unnecessary burden to related enterprises by increasing the operating cost of these enterprises.

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 2005 reached US$18.69 billion, up by 37.4%, among which China's export to India was US$8.93 billion, up by 50.5%, while China's import from India was US$9.76 billion, up by 27.2%. China had a deficit of US$830 million. China mainly exported to India electric motors, organic chemicals, mineral fuel and products, mulberry raw silk, special woven fabric, etc. The major imported products of China from India included ore, steel, iron, organic chemicals, plastics and plastic products, jewellery, cotton, 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$ 400 million in 2005, and the volume of the newly signed contracts was US$ 1.72 billion. The volume of completed labor service cooperation contracts was US$1.58 million, and that of the newly signed labor service cooperation contracts was US$4.75 million. The turnover of completed design consultancy contracts was US$10.32 million, and the volume of the newly signed contracts was US$ 81.45 million.

According to MOFCOM, 10 Chinese-funded non-financial enterprises were set up in India in 2005, with a contractual investment amount of US$23.12 million. By the end of 2005, there were accumulatively 27 Chinese-funded non-financial enterprises set up in India with a total contractual investment of US$45.95 million by Chinese investors.

According to MOFCOM, India investors invested in 58 projects in China in 2005, up by 56.8%, with a contractual volume of US$120 million, up by 96.5% and an actual utilization of US$21.40 million, up by 9.9%.

2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

2.1.1 Legislation on trade administration

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

The basic trade law of India is Foreign Trade (Development and Regulation) Act,

1992. Relevant laws include the Foreign Trade (Regulation) Rules, 1993.

The Customs Tariff Act, 1975 has been amended to include various provisions on safeguard measures. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 and Customs Tariff (Transitional Products Specific Safeguard Duty) Rules, 2002 govern the procedural aspects of safeguards. Section 9, 9A and 9B of the Customs Tariff Act, 1975 as well as the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 constitute the legal basis for anti-dumping investigations and the imposition of anti-dumping duties.

2.1.2 Legislation on investment administration

Directive laws on foreign investment in India include the Reserve Bank of India Act, 1934, Industrial Policy, 1991, Foreign Exchange Management Act, 1999, Companies Act, 1956, and Income Tax Act, 1961. In addition, India has promulgated many regulations governing specific aspects of foreign exchange management, such as the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000, and Foreign Exchange Management (Insurance) Regulations, 2000.

2.2 Trade administration

2.2.1 Tariff system

Tariff in India is exclusively collected by the central government with the major part being ad valorem duty. The Ministry of Finance of India adjusts the tariff rates every year in its annual budgeting. In the Budget 2005-06, the import duties on a series of goods are reduced. Duty on polyester and nylon chips, textile fibres, yarns and intermediates, fabrics, and garments is reduced from 20% to 15 %. Duty on primary and secondary metals is reduced from 15% to 10%. Industrial raw materials such as catalysts, refractory raw materials, basic plastic materials, molasses and industrial ethyl alcohol are now liable to a reduced customs duty rate of 10%; duty on lead is reduced from 15% to 5%. Duty on nine specified machinery used in pharmaceutical and biotech sectors is reduced to 5%. Duty on seven specified machinery used in leather and footwear industry is reduced from 20% to 5%; Duty on textile machinery and materials and parts of textile machinery is reduced from 20% to 10%. Duty on printing equipment components is reduced from 20% to 10%. From January 1st, 2005, India started to offer zero tariff to 115 products including computer, telecommunication equipment, semiconductors, and scientific instruments.

According to Customs Tariff Act, 1975, India's tariff mainly consists of the following categories:

(1) Basic duty

This is the basic duty levied under the Customs Act. On general occasions, ordinary import duty is imposed on imports, but lower rates are offered to countries and regions with which India has signed trade agreements. At present, the average tariff rate is around 30%.

(2) Additional Duty

Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India (means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India, or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty) and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

(3) Export Duty

At present very few articles such as skins and leather are subject to export duty.

2.2.2 Import Administration

India has complicated regulations and restrictions on import, which can be roughly classified into the following four categories:

(1) Open general license items

At present, India allows the majority of imports into the Country without any restrictions. The importer only needs to fill in an open general license to import these items.

(2) Prohibited items

The list of prohibited items covers wild animal products, ivory, animal stomach inner membrane and animal fat.

(3) Restricted items

Special licenses need to be obtained from the Directorate General of Foreign Trade of India to import restricted items. The list covers some consumer goods, precious stones, animal and plants, seeds, some pesticide, medicine and chemicals, electronic products, safety-related products, and products reserved for the production of small enterprises.

(4) Canalized items

Some canalized items can be imported only by specified public-sector agencies. These include petroleum products (to be imported only by the Indian Oil Corporation); nitrogenous phosphates, potassic and complex chemical fertilizers (by the Minerals and Metals Trading Corporation); vitamin- A drugs (by the State Trading Corporation); oils and seeds (by the State Trading Corporation and Hindustan Vegetable Oils); and cereals (by the Food Corporation of India). However, import restrictions on these items may be phased out gradually.

In addition to the aforesaid restrictions, primary animal and plant products, food, tea waste, meat, poultry, and used cars to be imported into India are also subject to relevant laws and regulations of India.

2.2.3 Export administration

Since 1991, India has formulated schemes for different industries and has constantly issued various incentive measures. Tax reduction and exemption is offered to export enterprises, enterprises in special economic zones or export processing zones for the purpose of promoting export. In addition, the Foreign Trade Policy 2004-09 that took effect in September 2004 stipulates a series of new 5-year import and export incentive measures. The new policy mainly involves agriculture, handicraft industry, handloom, jade, jewellery, leather and shoe making sectors, exempting import duty for agricultural production materials, service tax for goods and services to be exported, service tax for export-oriented companies and enterprises, and bank securities for importers and exporters whose business volume reaches Rs. 5 crores.

2.2.4 Other trade-related tariff systems

With a view to protecting the interests of its domestic enterprises, the central government of India levies protective tariff through government announcement. Besides, it also has the power to increase the import and export tariff as an emergency measure and to levy safeguard duty, anti-dumping duty and countervailing duty. A particularly noteworthy fact is that the Customs Duty Act, 1975 particularly provides that the central government of India is entitled to impose transitional products special safeguard duty on imports from China.

2.3 Investment administration

The foreign investment policy of India is showing signs of loosened control. In 2005, India expanded the proportion of foreign investment allowed in private banking and telecommunication sectors. In February 2005, India raised the maximum limit of foreign ownership in private banks from 49% to 74%. In August 2005, The India cabinet abolished the restrictions that foreign investors are only allowed 10% votes in private banks. In February 2005, India raised the investment ceiling of FDI allowed in basic telecommunications services from 49% to 74%, but such investment is subject to Government approval.

At present, there exist two kinds of approval procedures for FDI. One is automatic approval procedure and the other is government approval procedure. Foreign investors are allowed to invest in all sectors (including the service sector) freely provided that the investment proportion is in compliance with that allowed in the foreign investment policy applicable to that particular industry. The government of India authorizes the Reserve Bank of India (RBI) to handle approval and examination in accordance with the automatic procedures. With regard to other foreign investments, approval must be obtained with the relevant government authorities, namely, to be approved by the Indian government with the recommendation of Foreign Investment Promotion Board (FIPB) of India.

2.3.1 Foreign direct investment under automatic route

FDI up to 100 % is allowed under the automatic route from foreign/NRI (Non-residents in India) investors without prior approval in most of the sectors. FDI in sectors/activities under automatic route does not require any prior approval either by the Government or RBI, but the investors are required to notify the regional office concerned of RBI within 30 days of receipt of inward remittances.

In the event of any change in the industrial policy or the maximal limit for foreign investment, the Department of Industrial Policy & Promotion and the Secretariat for Industrial Assistance (SIA) under it will issue foreign investment announcements promptly. After that, RBI will announce the policy issued by the Secretariat for Industrial Assistance in the Foreign Exchange Management Act.

2.3.2 Foreign direct investment subject to government approval

Except for FDI under the automatic route mentioned above, all the other FDI requires government approval, particularly the following:

• Activities/items that require an Industrial License (including sectors retained for small enterprises, sectors that require compulsory license, and sectors subject to regional restrictions);

• Proposals in which the foreign collaborator has an existing venture/tie up in India in the same field;

• Proposals for acquisition of shares in an existing Indian company in the Financial services sector and where Foreign Exchange Management Rules, 1997 is attracted; and

• All proposals falling outside notified industrial policy or under sectors in which FDI is not permitted.

FDI applications with NRI (Non-residents in India) Investments and 100% export-oriented unit (EOU) should be submitted to the Public Relation & Complaint Section (PR&C) of Secretariat of Industrial Assistance (SIA), and the other FDI applications should be made in FC-IL forms and submitted to the Department of

Economic Affairs under the Ministry of Finance.

The Government usually makes decisions on whether to approve investment applications within 30 days.

2.3.3 Sectors forbidding FDI

The extant foreign investment policy does not permit FDI in the following cases: gambling and betting, lottery business, business of chit fund, housing and real estate business (except for the development of townships, housing, built-up infrastructure and buildings notified in Investment Press Note 2 (2005 series)), trading in transferable development rights (TDRs), retail trading; atomic energy; agricultural or plantation activities (excluding floriculture, horticulture, development of seeds, animal husbandry, pisiculture and cultivation of vegetables, mushrooms etc. under controlled conditions and services related to agriculture and allied sectors) and Plantations(other than tea plantations).

2.4 Competent 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 and consists of Directorate General of Foreign Trade and Directorate General of Supplies & Disposals (DGS&D).

The Central Board of Excise and Customs under the Ministry of Finance is responsible for setting tariff rates, levying tariff duties, monitoring the customs and fighting against smuggling.

The Reserve Bank of India (RBI) is the competent authority of foreign exchange management. It is responsible for formulating, implementing and monitoring monetary policy, regulating and monitoring the operation of banks and the financial system, managing and controlling foreign exchange as well as issuing currency.

The Foreign Direct Investment Promotion Board of India is the authority responsible for examining and approving FDI that falls beyond the automatic approval route. India Foreign Investment Implementation Authority (FIIA) has been established to facilitate quick implementation of FDI approvals and assist foreign investors in getting necessary approvals.

The Indian Investment Centre is the official investment management organization of India. It is the first contact point and is the single window agency for authentic information or any assistance that may be required for investments, technical collaborations and joint ventures. Its services are free of charge.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak

Although the tariff of India has been reduced several times in recent years, it is still at a fairly high level. Since March 1st, 2005, the import tariff peak rate for non agricultural products has been reduced to 15% except for a few products under special regulations. On February 15, 2005, the import tariff rate for palm oil series products was increased and the assessable value was reduced at the same time, which caused an increase in the actual import duty on these products. The tariff rate for used cars and motorcycles was reduced from 105% to 100%, which remained high. The tariff rate for passenger motor vehicles is 100%. In the agricultural sector, the tariff rate for fresh cut flowers (including orchid) was increased from 30% to 60%.

In 2005, India continued to impose high tariff on some products, particularly in agricultural products. For instance, a 100% import tariff rate is imposed on coffee, tea, wheat and mixed wheat, sunflower seed oil and coconut oil; 80% on rice and sorghum; 70% on pepper, dried chili and chili powder; 70% for some spices. Besides, India imposes generally high tariff on alcoholic beverage too. For example, the tariff rate for malt-brewed beer is 100% and the rate for undernatured ethyl alcohol such as rum, whisky and gin is as high as 182%. The tariff peak has impeded the entry of such Chinese products into the Indian market.

3.1.2 Tariff escalation

Tariff escalation in India is prominent on some products. The import duty is 5% on lead, whilst the duty on lead products is 10%. The tariff rate on fresh grapes is 40%, whilst the rate on raisin is 105%, and 100% on wines brewed with grapes (including alcoholic grape juice whose customs code is not 20.09). The tariff rates on fresh apples and pear are respectively 50% and 35%, whist the rate on cider and perry is 100%. The tariff rate on motorcycle components is 15%, whilst it is 100% on complete motorcycles. The tariff escalation has impeded the entry of relevant Chinese products into the India.

3.2. Import restrictions

Although import license for most products has been abolished in India, strict import restrictions are still imposed on second-hand products and motor vehicles of various models. Refurbished computer spare parts can only be imported if an Indian Chartered Engineer certifies that the equipment retains at least 80 percent of its residual life.

The Indian government stipulated restrictive conditions such as life cycle and entry from specify ports for the importation of new vehicles and used vehicles. Besides, importers of vehicles of any type also face restrictive and trade-distorting import practices. For example, the government of India requires special licenses for importing motorcycles that are virtually impossible to obtain. Import licenses for motorcycles are granted only to foreign nationals: (1) permanently residing in India; (2) working in India for foreign firms that hold greater than 30 percent equity; or (3) working at embassies located in India. The application procedure is unduly complicated and lacking in transparency. In fact, there is no Chinese enterprise that has been granted such licenses.

3.3 Barriers to customs procedures

The government of India appears to apply discretionary customs valuation criteria to import transactions. Valuation procedures issued in 2001 allow Customs to reject the declared transaction value of an import because a particular sale was not undertaken "in the ordinary course of trade under fully competitive conditions;" or involved a "reduction from the ordinary competitive price." Some exporters have reported that India's customs valuation methodologies do not reflect actual transaction values, and that they, in fact, increase tariff rates and become a means of controlling import trade. Moreover, Indian Customs have some unreasonable stipulations. For instance, the Indian customs authorities require the exporter who applies for withdrawal of cargos that have already arrived in India to present "no-objection certificate or letter" signed by the intended importer. This causes great trouble to exporters in the disposal of goods.

In addition, Indian Customs requires extensive documentation, which leads to frequent processing delays and inhibits the normal operation of trade.

3.4 Technical barriers to trade

3.4.1 Compulsory import certification system

The government of India stipulates that to import any of the 109 products that require compulsory import certification of the Bureau of Indian Standards (BIS), foreign manufacturers or Indian importers should apply in advance to the BIS for product quality certification. Only with the certification will the Customs allow such products into India. Among the 109 products, there are food preservatives and additives, milk powder, infant dairy products, cement of certain types, household electric appliances, high-pressure gas cylinders and multi-function dry batteries. Foreign manufacturers need to pay the application fee, all the travel expenses for the inspection panel, $300 inspection fee, certification fee of a certain amount, and an annual fee of no less than $2000 to use the certification marking. The certificate is valid for one year and may be extended upon expiration with the application of the manufacturer.

The product application procedures under the compulsory import certification system are very complicated, costly and time-consuming, and have caused undue burdens to foreign manufacturers.

3.4.2 Regulations on labeling

The G.S.R.389 notification issued by the Ministry of Health of India on May 27, 2005 stipulates that no container or label of infant milk substitute or infant food shall have a picture of infant or women or both. The terms “humanised” or “maternalised”, or any other similar words shall not be used. The package and /or any other label of milk substitute or infant food shall not exhibit such words as “Full Protein Food”, “Energy Food” or “Health Food” or any other similar expressions.

3.5 Sanitary and phytosanitary measures

The government of India revised the Prevention of Food Adulteration Rules in July 2005 with the revised Rules being titled Prevention of Food Adulteration (Amendment) Rules, 2005. The new version principally governs food (including processed food). It expands the list of food additives in certain food and stipulates the maximal residue limit of such additives in food. For instance, it sets standard parameters for tea, palm oil series, imported safflower seed oil and safflower oil, and stipulates label requirements for ordinary salt, iodized salt or ordinary iron-intensified salt. Besides, the new Rules set micro-organism parameters in accordance with the World Food Sanitation Law, and meanwhile, adjust the standards for different dairy products and the use of food additives. In short, the revised Rules are more stringent in food administration. The Chinese side will monitor closely the potential negative influence of the revision on export enterprises of relevant products.

In August, 2005, India issued the Notification on Emergency Measures to Prevent Bird Flu from Entering India. The Notification listed nine poultry products temporarily forbidden to enter India. The Chinese side expressed the hope that the Indian government would re-assess the safety status of relevant Chinese products in accordance with the actual inspection results and resume the importation of such Chinese products.

3.6 Trade remedies

3.6.1 Information on investigations for trade remedy measures

India is among the countries that most frequently resort to trade remedy measures on Chinese exports. By the end of 2005, India had initiated 91 trade remedy investigations against Chinese products, 2 safeguard measure investigations and 1 product-specific safeguard investigation involving Chinese products. Among the 69 cases ruled, 63 involved final measures. In 2005, India initiated 10 anti-dumping investigations against China involving a total amount of US$281 million, which is 10 times higher than that of 2004. The products involved are mainly textile products and chemical products that pose strong competition to its domestic products, including pentaerythritol, viscose yarn, Ethylene-Propylene-non-conjugated Diene Rubber (PEDM), silk fabrics, nylon filament yarn, and bias tyres for passenger cars and trucks. The investigation on silk fabrics of 20-100 gram/meter of Chinese origin in May 2005 involved an amount as high as $181 million, the biggest anti-dumping case initiated by India against China, and also the biggest like case initiated by a developing member country after the textile trade integration. The Chinese side expresses deep concern over the development of the case.

On January 16, 2006, the Directorate General of Anti-dumping and Allied Duties of Ministry of Commerce and Industry announced that it would launch anti-dumping investigations against penicillin industrial salt of Chinese origin. In recent years, India has frequently restricted the entry of Chinese penicillin industrial salt. As early as July 2004, India issued an import ban on Chinese penicillin industrial salt, dealing a heavy blow to the related Chinese exporters. This new anti-dumping case against Chinese penicillin industrial salt is likely to impede the export of related enterprises in China. The Chinese side will closely observe the development of the case.

3.6. 2 Unfair practices in trade remedy investigations against China

3.6.2.1 Market economy status

At present, in India's anti-dumping investigations, laws concerning market economy are unduly general. Relevant provisions can only be found in section 8 of Annex 1 of the Customs Tariff Act and the subsequent revisions. There exists no procedural provision on how enterprises involved can apply for market economy status, and related provisions are very ambiguous with some parts mixing the market economy status standards for countries and for companies. India hasn't formally recognized China as a market economy so far, and has not granted market economy status to any Chinese enterprises in its rulings in 2005. This is definitely at variance with the fact that Chinese enterprises operate in full market economy conditions, and severely affects the confidence of Chinese enterprises in defending India-initiated cases and in the Indian market.

3.6.2.2 Unclear product scope

The product scope in the anti-dumping case announcements of India tends to be excessively vague, which often makes it difficult for the responding enterprises to determine the products to be investigated. For instance, in the anti-dumping case of penicillin industrial salt initiated in January 2006, there was inconsistency between the product scope in the petition and that in the announcement, and there was no formula of the products to be investigated in the announcement. This greatly baffled the responding enterprises of China.

3.6.2.3 Lack of transparency in information revelation

The Ministry of Commerce and Industry is responsible for initiating anti-dumping investigations, but in the investigation process, the Indian authorities often fail to notify in time or reveal sufficient information to the responding enterprises. The enterprises involved cannot obtain information promptly and accurately to conduct due defense. In this sense, the Chinese enterprises are virtually deprived of the opportunity to defend themselves.

3.6.2.4 Arbitrariness in investigation

India's investigations into the anti-dumping cases and countervailing cases are rather arbitrary. For instance, in the viscose filament yarn case in 2005, the Indian investigation agency made an appointment with the Sichuan enterprise involved to conduct an on-site investigation in China on November 25. However, when the Chinese lawyer arrived at the site, the Chinese side received a notice to the effect that the investigation agency decided not to come due to force majeure events. No further reasonable explanations were given. The arbitrariness of India's investigation authorities caused inconvenience and increased responding cost to the Chinese enterprises.

3.7 Subsidies

3.7.1 Target Plus Scheme for export promotion

To encourage export, the government of India classifies domestic enterprises into star-rated export enterprises of different grades according to their year-on-year export performance. Star-rated quality enterprises are entitled to multiple special treatments, including simplified and swift customs clearance procedures, free bank guarantee and preferential policies covered in the Target Plus Scheme. Foreign trade enterprises achieving an annual increase of 20%, 25% and 100% in their business volume are respectively granted 5%, 10% and 15% tax reduction.

3.7.2 Other subsidies

The Ministry of Commerce and Industry announced in October 2005 that export-oriented enterprises and manufacturing enterprises in Special Economic Zones were entitled to import petroleum, high-quality gasoline, high-speed diesel, light diesel fuel and oil free of customs duties. This subsidy enhances the competitiveness of relevant enterprises of India.

3.8 Inadequate intellectual property right protection

India does not have laws protecting commercial secrets. Indian law does not provide for protection against unfair commercial use of test or other data that companies submit to the Government in order to obtain marketing approval for their pharmaceutical or agricultural chemical products. Due to insufficient protection of intellectual property rights, some companies in India are able to copy certain pharmaceutical products and seek immediate government approval for original ownership of the developer's data.

Piracy of copyrighted materials (particularly software, films, and best-selling books) remains a serious problem. India has not adopted an optical disc law to protect optical media. Although classification of copyright and trademark infringements has been expanded and the law also provides for minimum criminal penalties, the Indian government has not in effect taken adequate measures to combat intellectual property right infringement, and the laws enacted are rarely effectively implemented.

3.9 Barriers to Trade in Services

3.9.1 Wholesale and retail

Permits of Foreign Investment Promotion Board (FIPB) is required for investment in export-oriented wholesale business and wholesale business in which the foreign stake is 51% or greater. Investments in supermarkets, convenience stores and other retail sectors are for all practical purposes banned. In recent years, the government of India has intended to open the retailing sector to foreign companies, but no specific regulations have been issued so far. Up to the present, the Government has only allowed multinational companies to open specialty stores in the Country.

3.9.2 Insurance

The Insurance Regulatory and Development Authority (IRDA) Bill ended the government monopoly in 1999, and opened India's insurance market to private participation. However, foreign equity was limited to 26 % of paid-up capital and a license must first be obtained from the Insurance Regulatory and Development Authority for FDI. In July 2004, the government of India announced its intention to amend the IRDA law to increase that cap to 49%. Intense domestic political debate has delayed action. Up to the present, it has not yet been implemented.

3.9.3 Banking

Most Indian banks are government-owned, and entry of foreign banks remains strictly controlled, including the establishment of bank branches. State-owned banks control 80% of the banking system. The liberalization process of India's banking industry is very slow. FDI in state-owned banks remains capped at 20 %. The banking sector still needs further liberalization.

3.9.4 Accounting

According to the domestic regulations of India, only chartered accountants with domestic qualifications in India can set up CPA firms. Foreign accounting firms can practice in India if their home country provides reciprocity to Indian firms. Internationally recognized firm names may not be used, unless they are comprised of the names of proprietors or partners, or a name already in use in India.

3.9.5 Telecommunications

Although the government of India has taken a series of positive measures to liberalize its telecommunications sector, further opening is needed. Internet telephony became legal in India in 2002, but this liberalization came with several restrictions. Only Internet Service Providers (ISPs) are allowed to offer Internet telephony within their service areas, and telephone-to-telephone communications through the Internet remain illegal within India.

3.9.6 Media

The government of India takes a cautious position in allowing foreign investment in the media sector. With a view to ensuring the controlling decision-making power of the Indian side in media enterprises, the Indian government stipulates that FDI in newspapers and TV news channels shall not exceed 26% and that investment by foreign institutional investors is forbidden. Although there is no restriction on FDI in TV entertainment channels, foreign investment in cable network is not allowed to exceed 49%.

The government of India announced in July 2005 that FDI in privately owned FM radio sector was allowed. A public invitation for tender was held to seek for private investors for 330 FM radio stations in 90 cities. Foreign radio stations and participate in the bidding in conjunction with their Indian partners and are allowed to have a maximum of 20% ownership. This policy is slightly liberalized, but the government of India stipulates in the mean time that privately owned radio stations shall only broadcast entertainment programs and are not allowed to broadcast news. In addition, the Country will have 15% ownership in these FM radio stations, and each station is only allowed to have one channel.

3.10 Other barriers

Although the Memorandum of Understanding on Simplifying Visa Procedures between the Government of the Republic of India and the Government of the People's Republic of China was signed on June 23, 2003, the India embassy' s examination of visa applications from Chinese nationals remains bureaucratic, and India' s visa policy towards Chinese citizens lack certainty and transparency. Chinese business people traveling to India often complain that it is rather difficult and time-consuming to obtain a business visa or work visa. These practices by the Indian government exert a negative impact on the normal contacts between Chinese and Indian business people.

4 Barriers to Investment

The Indian law-making and revision procedures are rather complicated, which to a great extent impedes the issuance of policies concerning the rational use of foreign investment. India continues to apply policies that stringently restrict foreign investment in politically sensitive sectors. Foreign investors have not been granted national treatment identical to that enjoyed by local enterprises in many sectors.

4.1 Restrictions on investment sectors

4.1.1 Public utility sector

Foreign investment is restricted in social or public utility production sectors including rail transportation and atomic energy. For instance, Foreign Investment Promotion Board (FIPB) approval is required for all activities other than private sector oil-refining. The government of India also provides that all foreign exploration companies are only allowed to sell petroleum and natural gas found in India within the territory of India from August 4, 2005.

4.1.2 Textile sector

Despite the fact that foreign investment absorbed by India's textile sector is far from meeting the development goal of the textile industry set by the Indian government, the Indian Ministry of Textiles turns to the U.S., Japan and Turkey for foreign investment and does not welcome investment from China, citing the reason that China is the largest rival of India in this sector and that investment from China would greatly influence its decisions concerning the textile industry. Such a position taken by the government of India constitutes discrimination against textile investors of China.

4.2 Restrictions in Foreign Exchange Management

In the foreign exchange management regulations of India, there are the following two special restrictions against several specified countries including China.

(1) Article 4, Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000

This article stipulates that citizens of China must obtain prior permit from the Reserve Bank of India (RBI) to establish any branch, liaison office, project office or any other place of business.

The Reserve Bank of India (RBI) revised the above-mentioned regulation in July and October of 2003. The revised regulation is slightly more liberal, stipulating that Chinese citizens do not need prior permit from the Reserve Bank of India (RBI) to establish manufacturing enterprises or service enterprises in Special Economic Zones in India, but the project fund must be remitted from abroad and the foreign project offices must submit detailed project report to the local regional office of the RBI. Investment in Special Economic Zones must be in one of the sectors in which 100% foreign investment are allowed.

(2) Article 7, Foreign Management (Obtainment and Transfer of Real Estate in India) Rules, 2000

Article 7 stipulates that citizens of 8 countries including China are not allowed to obtain or transfer real estate or rent the real estate for over 5 years without the prior permit issued by RBI.

In practice, RBI usually transfers the application documents from citizens of the aforesaid countries to the Ministry of Home Affairs (MHA) responsible for safety issues. Only with the unanimous approval of both the RBI and MHA can the applicants be granted prior permit.

Indonesia

1 Bilateral trade relations

According to China's Customs, the bilateral trade volume between China and Indonesia in 2005 reached US$16.79 billion, up by 24.6%, among which China's export to Indonesia was US$8.35 billion, up by 33.5%, while China's import from Indonesia was US$8.44 billion, up by 16.9%. China had a deficit of US$90 million, compared with US$970 million in 2004. Major exports from China to Indonesia included petroleum oils and oils obtained from bituminous minerals other than crude, iron and steel, machinery, electromechanical products, electrical appliances, audiovisual equipment and components thereof, automobiles and spare parts, chemicals, textile materials such as woven fabrics of cotton and filaments, alliaceous vegetables, apples and pears, etc. The major imported products of China from Indonesia included petroleum oils and oils obtained from bituminous minerals, coal and other minerals, electronic equipment and auxiliaries, electromechanical products, electric and electronic products and components thereof, organic chemicals, rubber, wood and articles of wood, paper and paperboard, palm oil and its fractions, etc.

According to the Ministry of Commerce (MOFCOM), the turnover of engineering contracts completed by the Chinese companies in Indonesia reached US$520 million in 2005, and the volume of the newly signed contracts was US$800 million. The volume of completed labour service cooperation contracts was US$7.98 million, and that of the newly signed labour service cooperation contracts was US$2.83 million. The volume of the completed designing and consulting contracts was US$2.97million and that of the newly signed contracts US$11.39million.

Approved by or registered with the MOFCOM, 14 Chinese-funded non-financial enterprises were established in Indonesia in 2005, with a total contractual investment of US$30.43 million from the Chinese parties. By the end of 2005, total number of such kind of enterprises in Indonesia reached 89, with an accumulated contractual volume of US$230 million from the Chinese parties.

According to the MOFCOM, Indonesians invested in 128 projects in China in 2005, with a contractual investment of US$630 million, up by 224.2% over the same period last year, and an actual utilization of US$86.78 million, down by 17%

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2 Introduction to trade and investment regime

2.1 Legislation on trade and investment

There are 6 types of legislation in Indonesia, namely: the Constitution of 1945; Decisions passed by the People's Consultative Assembly; "Act of Parliament" or "Law" passed by legislature; Government Regulation; Presidential Decisions; Implementing regulations such as Ministerial Regulations.

Major legislation governing trade in Indonesia consists of the Trade Law of 1934, Law No 10 Year 1995 concerning Customs, Law No 7 Year 1994 regarding Authentication of Agreement Establishing the World Trade Organization, Law No 5 Year 1984 regarding Industrial Affairs. Other laws related to trade include Law No 1 Year 2004 concerning State Treasury, Law No 5 Year 1999 concerning Prohibition of Monopoly Practice and Unfair Trade Competition. Major investment-related legislation consists of the Foreign Capital Investment Law No 1 of 1967 and the Domestic Capital Investment Law No 6 of 1968.

2.2 Trade administration

2.2.1 Tariff system

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

There are two types of import duties in Indonesia, the MFN Tariff Rate and the Preferential Tariff Rate. According to the Framework Agreement on Comprehensive Economic Co-operation between the People's Republic of China and the Association of South East Asian Nations signed in November 2004, Indonesia is to lower tariffs on imports from China starting from 2005. Those MFN tariff rates, originally above 20%, dropped to 20% in 2005. The MFN rates of 15% and 10% were maintained in 2005, and are expected to drop to 8% in 2007. For MFN rate of 5%, no reduction is going to be made until 2009 when it is expected to be zero. Both China and Indonesia are going to reduce the import tariffs for most of the products to zero by 2010.

2.2.2 Import administration

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

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

2.2.3 Export administration

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

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

2.2.4 Other tariff administrative systems

On 31 December 2004, the Ministry of Finance issued a notice, amending the tariff rates imposed on luxury goods except automobiles. The amendment came into effect as of January 1, 2005. Luxury duties are 10%, 20%, 30%, 40%, 50% and 75%. Household electrical appliances, sport goods, air conditioners, audiovisual equipment and photographic facilities are subject to a luxury duty of 10%; a 20% luxury duty is imposed on other household appliances, houses and apartments, film and television equipment, such electromagnetic devices as dishdryer and microwave oven, and perfume; 30% on equipment for ships, products for such sports as golf, diving, and water skiing, etc.; 40% on alcoholic beverages, leather products, silk or woolen carpet, crystalware, products made of precious metals, motor vessels for leisure purposes, spaceship， pistol bullet, special shoes, expensive stationeries, porcelain products and exquisite products made of stone; 50% on blankets made of fine animal hair, other aircrafts, other sport goods including golf clubs, and pistols; 75% on alcoholic beverages other than the abovementioned, precious metals other than the abovementioned or products made of pearls, and luxury cruise ships.

2.3 Investment administration

Indonesia bans domestic and foreign investment in businesses in the following 11 industries: cultivation and processing of marijuana and the like; collection/utilization of sponge; industries producing harmful chemicals harmful to the environment; industries producing chemical weapons; industries producing weapons and related components; industries producing cyclamate and saccharine; industries producing alcoholic drinks; casino and gambling facilities; air traffic system providers, ship certification and classification inspections; management and operation of Radio

Frequency Spectrum and Satellite Orbit Monitoring Stations; and mining of radioactive minerals.

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

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

2.4 Competent authorities

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

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

Indonesia's Investment Coordinating Board (BKPM), directly responsible to the President of the Republic of Indonesia, is mainly in charge of assessing and formulating national investment policy, coordinating and promoting foreign investment. Besides, it reviews and monitors strategic investment programs that involve high risks and advanced technologies. According to the Presidential Decree No. 11 in March 2005, MIT is to provide policy coordination to the BKPM and assist the agency in determining which areas shall be open to investment, while the BKPM implements the relevant investment policies.

3 Barriers to trade

3.1 Import restrictions

3.1.1 Prohibition of the importation of shrimps/prawns China

At the end of 2004, the Indonesia Ministry of Marine and Fishery announced without prior notice that Indonesia would suspend the importation of shrimps/prawns originated from China, Brazil, Ecuador, India, Thailand, and Vietnam only on the ground that the above products from these countries were determined by the United States as dumped products. The Chinese side suggests that the Indonesian Government comply with WTO rules by providing sufficient reasons and give a prior notification to the WTO about possible trade-related measures before the actual implementation. Trade measures shall be adopted in such a manner that no unnecessary barriers will be created to normal trade activities. In response, the Indonesian side expressed that currently inspections were being made on shrimps/prawns that were deemed polluted by antibiotics and expected that the import ban on Chinese shrimp/prawn products would be lifted after the completion of the inspection by the end of 2005. However, according to Chinese enterprises, the above ban hasn' t been lifted yet.

3.1.2 Import licensing procedure involving motor vehicles and spare parts

According to Regulation No.6/M-DAG/Per/4/2005 promulgated by the Ministry of Industry and Trade on 18 April 2004, only approved importers can import the following products: 1.Spare parts for motor vehicles, including clutch assy, timing belt, bearing wheel, transmission assy and engine block; 2. Chassis engine buses; 3. Vehicle of Completely Knock Down (CKD); 4. The Completely Built Up (CBU) buses. The regulation further requires every implementation of importation of the goods mentioned above obtain a prior import approval from the MIT. The letter of application must contain the type and quantity of goods to be imported and the appropriation of imported goods. The Ministry reserves the right to refuse import approval. However, the regulation doesn' t lay down detailed reference for a possible refusal. At the same time, the Indonesian Government failed to notify the WTO whether the measure falls under the automatic import licensing or not. Therefore, the importing procedure regarding motor vehicles and spare parts thereof is considered lack of transparency.

3.1.3 Import permit regarding sugar products

In September 2004, the MIT promulgated two decrees regarding the importation of sugar. According to the relevant provisions, raw sugar and refined sugar can only be imported by company having recognition as Sugar Producer Importer (Sugar IP). Raw sugar and refined sugar imported by Sugar IP is only usable as raw material for production process and banned to be traded or handed over. Refined sugar industrial product possessed by Sugar IP whose raw material comes from imported raw sugar shall only be traded or distributed to sugar industry and banned from being traded on domestic market.

At the same time, the decrees stipulate that importation of plantation white sugar shall only be carried out by company having status as Sugar Register Importer. Plantation white sugar is not allowed to be imported one month before and two months after the milling season of sugar cane unless domestic production and/or supply of plantation white sugar is inadequate to the need. The decrees require the prices of imported plantation white sugar to be higher than 3410 Rupiah per kilo. However, the threshold is subject to change. Besides, the total amount of importable plantation white sugar is also subject to change according to the domestic demand. Furthermore, the specific time for the milling season of sugar cane is decided by the Minister of Agriculture. So far, the Indonesian Government hasn't notified the WTO whether the non-automatic importing procedure for sugar falls under quota control or not.

The above importing procedure is believed to be lack of stability and predictability, and has therefore increased the business risks of Chinese sugar importers.

3.1.4 Import restriction on optical disc and machineries and equipments used in the production of optical disc

In Aril 2005, the MIT issued two decrees restricting the importation of optical disc and machineries and equipments used in the production of optical disc. According to the provisions of the decrees, optical disc importers must obtain approval from competent authorities based on the recommendations of several Indonesian Government agencies. Every importation of optical disc or machineries and equipments used in the production of optical disc shall be subject to verification or technical traceability inspection in advance at the country of loading by a surveyor appointed by the Indonesian Government. This has increased the cost of Chinese exporters.

3.2 Discriminatory taxes and fees on imported goods

The Indonesian government announced that as of 1 January 2005, luxury duty on certain imports is removed, involving food, beverages(including diary products, fruit and vegetable juice, non-alcoholic drinks), cosmetics and certain carpets (excluding those containing coconut fiber, silk and wool). However, a 10% luxury duty is imposed on refrigeration devices, heating devices, TV sets, sport goods such as angling tools, air conditioning system, tape recorder or video-recorder, radio, camera and photographic devices; a 20% luxury duty is imposed on washing machine, dishwasher, clothes dryer, musical instrument, and perfume; 30% on motor vessels, other water transportation tools, wood boat, small boats (excluding those used for national or public transportation), certain sport goods; 40% on drinks with an alcohol content below 15%, leather and artificial leather goods, woolen carpet, crystalware, footwear, chinaware; 50% on blankets made of fine animal hair; 75% on drinks with alcohol content above 15%, gems or mixed products, yacht. As the abovementioned products occupy a large share of the market, the luxury duty is in fact targeted at imported products. As China exports nearly half of these products to Indonesia, the imposition of luxury duty on these products has adversely affected Chinese exports to Indonesia.

3.3 Technical barriers to trade

All the imported medicines must be registered with the Balai Pengawas Obat dan Makanan (BPOM) before they are processed or sold in Indonesia. There are two types of registration procedures: one for traditional medicine, the other is for chemical medicine. Different requirements are made with regard to different procedures.

The registration of chemical medicine should be made by the Indonesian sales agent or wholesaler appointed by the manufacturer of such medicine in the exporting country. If the medicine is to be produced in Indonesia, an application is to be submitted by an appointed Indonesian medicine manufacturer. Such measure deprives the manufacturer from the exporting country of the right to register the medicine and tends to hurt the interests of export enterprises.

3.4 Trade remedies

Up to 2005, Indonesia has initiated 4 antidumping and 2 safeguard investigations against Chinese products, mainly involving Ferro Silicon Magnesium, steel pipe, Calcium Carbonate, Paracetamol, wheat flour, porcelain and non-porcelain ceramic tableware. The investigations on Calcium Carbonate, Paracetamol, and wheat flour ended up with the imposition of antidumping measures by Indonesia. On 17 August 2005, Indonesia initiated a safeguard investigation involving lighters.

As of 11 November 2005, the Indonesian Government started to impose a definitive anti-dumping duty of 9.5% on wheat flour originated from China. The determination was made based on inadequate facts, which has hurt the Chinese enterprises involved. First of all, the applicant of the case, BOGASARI Flour Company owns 90% of the flour market in Indonesia while flour exported from China has less than 3% of the market share; secondly, the export of flour from China to Indonesia dropped by 20% in 2003 when the applicant enjoyed a substantial increase in output and selling price, resulting in an increase of 10% in net profit of the same year. Therefore, it is unlikely that the export of flour from China has caused injury or affected the flour industry of Indonesia. Besides, the Indonesia Anti-dumping Commission' ruling to take antidumping measures against Chinese flour is not justified as the Indonesian Government has already raised the import duty for flour from 5% to 30%.

In January 2006, a final determination was made regarding the safeguard investigation against porcelain and non-porcelain ceramic tableware. As of 2006, the aforementioned imports are subject to safeguard for 3 years. China is the major exporting country of porcelain and non-porcelain ceramic tableware to Indonesia. The Chinese side believes the following problems existed in the investigation: 1. The applicant, PT Queen Porcelain Company, is not a qualified applicant because the company had only 10% of the domestic production capacity, closed down in November 2003, and ceased to produce the investigated products; 2. The safeguard measure covers two kinds of products which are not like products or directly competitive products. Therefore, the practice is inconsistent with the WTO Agreement on Safeguards; 3. There are problems regarding the determination of "unpredictable development".

Apart from that, some Chinese enterprises reported that as of January 1 2005, the

Indonesian Government raised the import duty for the investigated products from 5% to 30%. It took place at the same time when the trade remedy measures were adopted. Such unreasonable double protection of its domestic industry is not good for the normal development of bilateral trade relations. The Chinese side shows concern over the matter and expects the Indonesian Government to be prudent when imposing trade remedy measures.

3.5 Export restrictions

In June and July 2005, the Indonesian Government issued two regulations, putting in place a quantitative control on the export of domestic mixed rattan and semi-prepared rattan. According to the regulations, mixed rattan with a diameter of 4-16mm can be exported in a certain quantity; the companies that can export rattan shall be companies or individuals already obtaining recognition from the competent authority; exporters must submit applications on a three-month basis for the allocation of quantity and the submitted applications shall be completed with the planning of export and domestic selling for three months approaching; besides, every execution of the rattan export shall be subjected to verification or export technical surveillance to be done by experienced independent surveyors, with the cost arising therefrom to be borne by the exporters.

The above two regulations was adopted in order to guarantee Indonesia's domestic supply of rattan. However, they violate Article XI of GATT1994 for diminating general quantitative restrictions. As every year Chinese enterprises import a large number of rattan products from Indonesia, the above restrictions not only increase the import risk of these enterprises, but also increase the cost of import arising from frequent pre-shipment inspections. Therefore, the Chinese side expresses concern over the matter.

3.6 Inadequate intellectual property right protection

In Indonesia, there has been malicious trademark squatting of famous Chinese names such as "TONG REN TANG", "PIENTZEHUANG", "YUNNAN BAIYAO" "PHOENIX BICYCLE". After obtaining trademark ownership of the above names, the trademark squatters often filed lawsuits against the legitimate agents appointed by Chinese manufacturers for trademark infringement. The Indonesian police either made arbitrary arrests of these agents or impose fines on many occasions so that many famous and high-quality Chinese products were forced out of the Indonesian market. As a result, there are often fake Chinese products in the Indonesian market which were exported deliberately from those who specialize in making fake products in China.

It is also reported by some Chinese enterprises that corruption exists in the Indonesian judicial and law-enforcement bodies. When there was an IPR infringement case against the local people, even though there was sufficient evidence provided by the Chinese enterprise, it was difficult for the Chinese party to win the case. Even though the case was eventually won, the enforcement was so difficult and involved such high cost that often these Chinese enterprises were compelled to give up the judicial compensation. After consultation with the Chinese side, the Indonesian side has agreed to establish a work team dedicated to IPR enforcement and supervision so as to enhance and improve domestic IPR enforcement and relevant policy implementation. While welcoming the above gesture, the Chinese side suggests that the Indonesian Government put in place a sound system on the protection of IPR with an enforcement procedure that won't create an obstacle to legal trade activities.

4 Barriers to investment

Procedure for the establishment of a new business in Indonesia takes 151 days. Though President Susilo made the commitment to shorten the period to 30 days when he was sworn in, there has been very little improvement since.

Getting a property registered in Indonesia takes 42 days, slower than the previous 33days. Furthermore, the registration fee accounts for 10.9% of the covered property, the highest in South East Asia.

To enforce a contract through judicial means is a protracted process usually taking 570 days, the slowest in South East Asia except East Timore. Besides, payment for such procedure is very high, often as high as 126.5% of the payment involved in the enforced contract.

Besides, foreign investors often have to pay more than is due during their investment and business processes when dealing with the Indonesian Government agencies, which lack efficiency and the awareness and attitude to provide good services and facilitation to foreign investors. Besides, the legal system in Indonesia is confusing, manifested by a lack of regulations in many sectors and a lack of transparency in policy. Owing to the corruption in the judicial system, the chances of getting risks or disputes mitigated or settled through judicial compensation are small and the procedure takes time, energy and money.

Vietnam

1 Bilateral trade relations

According to customs statistics in China, the bilateral trade volume between China and Vietnam in 2005 climbed by 21.6% over the previous year to total US$ 8.19 billion, among which China's exports to Vietnam accounted for US$ 5.64 billion, up 32.5%, while China's imports from Vietnam registered a 2.8% growth to reach US$ 2.55 billion. China enjoyed a surplus of US$ 3.09 billion in trade with Vietnam. China mainly exported to Vietnam fossil fuels, mineral oils and their products, machinery and equipment, steel and related products, chemical fertilizers, cotton, textile products, garments and accessories, and motor vehicles. China's imports from Vietnam included, among others, minerals, mineral oils and their products, rubber and related products, electrical machinery and equipment, audio-video appliances and their spare parts, timber and timber-work, fruits, furnaces, mechanical devices and their spare parts.

According to China's Ministry of Commerce (MOFCOM), in 2005, the turnover of the completed engineering contracts by Chinese companies in Vietnam added up to US$ 280 million, with the volume of the newly signed engineering contracts running into US$ 1,140 million; the turnover of the completed labor service cooperation contracts by Chinese firms in Vietnam came out at US$ 15.77 million, with the volume of the newly signed labor contracts standing at US$ 10.93 million; the turnover of the completed designing and consulting contracts by Chinese companies in Vietnam amounted to US$ 8.16 million, with the volume of the newly signed such contracts reaching US$ 8.01 million. By the end of 2005, the accumulated turnover of the engineering contracts completed by Chinese businesses in Vietnam had arrived at US$ 1,100 million, with that of all the signed engineering contracts standing at US$ 2,550 million, and the accumulated volume of the completed labor service cooperation contracts reached US$ 176 million, with that of the total signed labor contracts running to US$ 210 million.

Upon the approval or on the record of MOFCOM, 37 Chinese-funded non-financial enterprises were established in Vietnam in 2005, with a contractual investment of US$ 55.22 million from the Chinese investors. By the end of 2005, a total number of 146 Chinese-invested non-financial companies had been set up in Vietnam, with a contractual investment of US$ 170 million.

According to the figures of MOFCOM, Vietnamese firms invested in 12 projects in China in 2005, with a contractual investment of US$ 3.29 million and an actual utilization of US$ 1.27 million.

2 Introduction to 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 Foreign Investment, the Law on Corporate Income Tax (Amended), the Law on Inland Waterway Transportation, the Law on Competition, the Law on Accounting, the Law on Statistics, the Law on Aquatic Products, the Ordinance Against Dumping of Imported Goods into Vietnam, the Ordinance on Measures Against Subsidized Goods Imported into Vietnam, the Ordinance on Food Safety and Hygiene, and the Ordinance on Protection of Domestically Developed New Plant Varieties.

In June 2005, the Vietnamese National Assembly promulgated the Commercial Law, the Amendment of Law on Customs, and the Law on Export and Import Duties, all of which took effect as of 1 January 2006.

To facilitate Vietnam's accession into the WTO and to align its legal framework of trade and investment to WTO's multilateral trade rules, the Vietnamese National Assembly deliberated and adopted the Law on Intellectual Property, the Law on Amendment of Law on Value Added Tax and Law on Special Sales, the Law on Investment, the Law on Enterprises, the Law on Tendering, and the Law on Electronic Transactions, all of which shall go into force as from 1 July 2006.

2.2 Trade administration

The foreign trade policy of the Vietnamese government aims at encouraging exports and discouraging imports. Goods imported into Vietnam are subject to import duties, value added tax, special consumption tax and customs service charges.

2.2.1 Tariff system

Currently, Vietnam administers four different categories of tariff rates: common tariff rate, the most-favored-nation rate of duty, ASEAN-specific preferential tariff rate, and the Early Harvest Program (EHP) tariff rate under the framework of China-ASEAN Free Trade Area. Common tariff rate, which is 70% higher than the most-favored-nation rate of duty, applies to those countries which have not established normal trade relationships with Vietnam. Products of Chinese origin enjoy the most-favored-nation rate of duty, except that EHP tariff rate applies to products listed under chapters 1 to 8 of Vietnam's tariff nomenclature.

The current Vietnamese tariff schedule lists 10,721 tariff lines of 8-digital harmonized commodity description. Divided into 16 classes, Vietnam's tariff averages 18.3%. The simple average tariff rate for agricultural products and for non-agricultural products stands at approximately 29.4% and 17.0% respectively.

2.2.2 Import and export administration

The Vietnamese government mainly uses import ban, tariff quota, import quantitative restriction, import licensing, and import and export trading right licensing in the administration of imports, and adopts export ban, export duties, and quantitative restrictions in the administration of exports.

According to the Decision on Management of Import and Export of Goods in 2001-2005 promulgated by the Vietnamese Ministry of Trade, Vietnam adopts a pigeonhole system in 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. On 7 December 2005, the Vietnamese government decided to extend the validity of the above-mentioned Decision to 30 April 2006.

Specifically, goods prohibited from import include weapons, ammunitions, explosive materials, and military technical equipment; drugs of addiction; toxic chemicals; anesthetics; certain types of children' s toys; pornographic or reactionary cultural items; firecrackers; cigarettes, cigars and other forms of tobacco finished products; second-hand consumer goods; right-hand-drive automobiles; second-hand materials and means of transport; second-hand internal-combustion engines under 30 horsepower; products containing asbestos of the group of amphibole; specialist coding machines and cipher software programs used in the sector of protection of State secrets.

Products prohibited from export include weapons, ammunitions, explosive materials, and military technical equipment; drugs of addiction; toxic chemicals; antiques; round timber and sawn timber from domestic natural forest; firewood and charcoal from timber or firewood, sourced from wood from domestic natural forest; wild animals, rare natural fauna and flora; coding machines and cipher software programs used in the sector of protection of State secrets.

To contain the spread of avian influenza (bird flu) from foreign countries into Vietnam, the Ministry of Agriculture and Rural Development decided on 28 October 2004 to suspend the import of all types of fowls and pet birds from 1 November 2005 to 31 March 2006.

2.3 Investment administration

Pursuant to the amended Implementation Rules for the Law on Foreign Investment in Vietnam, the Vietnamese government has further liberalized foreign investment in the country, replacing the investment licensing regime with an investment registration regime. Apart from according income tax reduction or exemption policy to foreign invested enterprises, the Implementation Rules provide preferential arrangements in terms of investment promotion policy and investment operational taxation policy.

Sectors that are restricted or prohibited from foreign investment are as follows:

2.3.1 Restricted investment sectors

(1) Sectors where foreign investment is only allowed by means of contractual cooperative operation: telecommunications services; domestic and international post delivery; journalism and publishing; radio and television networks.

(2) Sectors where foreign investment is only allowed by means of contractual cooperative operation or joint venture: petroleum, mining and processing rare minerals; air freight, railroad transport and ocean carriage; bus transport; construction of seaports and airports (excluding investment projects such as BOT, BTO and BT); ocean shipping and air flight services; culture; forestation; production of industrial explosives; tourism; consulting services (excluding technical consulting services).

(3) Sectors where foreign investment in processing and development of raw materials is tied in: production and processing of dairy; production of plant oils and cane sugar; processing of timber (excluding investment projects involving imported timber).

(4) Import and export, domestic distribution, high sea fishing, and development investment projects are subject to the approval of the Prime Minister.

2.3.2 Prohibited investment sectors

(1) Projects threatening national security, national defense and public interests.

(2) Projects damaging Vietnamese historic relics, culture, traditions and customs.

(3) Projects damaging ecological environment.

(4) Projects for processing imported toxic wastes.

(5) Projects for producing toxic chemicals or using toxic substances banned by international conventions.

2.3.3 Foreign exchange control regime

In 2005, Vietnam's Ministry of Finance issued a circular on the remittance of investment returns by foreign investors in Vietnam. It is stipulated that foreign enterprises and individuals in Vietnam can remit their profits abroad once a year at the end of each fiscal year and after the presentation of the final annual taxation statement. If the foreign enterprise has already paid its corporate income tax, it may remit its profits abroad every 3 or 6 months. Enterprises that have ceased to operate may remit all their profits abroad. The foreign party to a joint venture or cooperative enterprise may remit its profits abroad every 3 or 6 months, if it has already reported the annual corporate income and paid the corporate income tax on a quarterly basis.

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 Construction, the Ministry of Industry, the Ministry of Natural Resources and Environment, the Ministry of Planning and Investment, the Ministry of Agriculture and Rural Development, the Ministry of Transportation and Communications, the Ministry of Culture and Information, the Ministry of Post and Telecommunications, the Ministry of Science and Technology, and the State Bank of Vietnam.

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 business, domestic market, fair competition, anti-monopoly and anti-dumping, representing the owner of state assets in state-owned enterprises, and determining the eligibility of enterprises for preferential treatment such as tax credit. Since 2005, the Vietnamese government has relegated some of its administrative functions to sub-national trade authorities. For example, the Ministry of Trade has delegated its administration of Chinese goods in transit of Vietnam to the Import and Export Department of Hanoi, Hong Gai, and Ho Chi Minh City.

The Ministry of Planning and Investment is the central authorities in attracting foreign investment and supervising Vietnamese investment abroad, and its Foreign Investment Bureau is specifically entrusted with the task along this line.

3 Barriers to trade

3.1 Tariff and tariff administrative measures

3.1.1 Tariff peak

As is indicated in the amended and supplemented commodity catalog in the preferential import tariff schedule published by the Vietnamese Ministry of Finance on 13 October 2005, Vietnam still maintains high import tariff for many goods, for example, 30% for certain ceramic tiles, 30% for paint, 50% for salt, 40% for educational equipment, 40% for office equipment, 65% for alcoholic beverages, 40% to 50% for some paper, 40% for cement, 50% for certain air conditioners, 40% for gloves, 40% for raincoats, 40% for leather belts, 40% for some garment accessories, 80% for tricycles with a carrying capacity of over 350 kilograms and trucks with a carrying capacity of less than 5 tons.

3.1.2 Tariff escalation

Tariff escalation is most prominent for food, tobacco, textile, and leather products in Vietnam. For example, the import 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%; cotton and cotton yarn 0 to 20%, cotton fabrics 40%; fiber flax and synthetic silk 0, linen and synthetic silk textiles 40%.

3.1.3 Tariff quotas

Import quotas applicable to cotton, condensed milk, non-condensed milk, and maize have been abolished in Vietnam as of 1 April 2005, but commodities including tobacco raw materials, salt, and eggs remain subject to import quotas.

3.2 Import restrictions

Currently, 7 key items – petrol, glass, iron, vegetable oil, sugar, motorbikes, and nine-seat motorized vehicles – remain on the mandatory import license list in Vietnam.

Vietnam still keeps some imports under quantitative restrictions: sugar, cement and clinker, tobacco, and in particular goods that can be domestically produced, such as 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.

3.3 Discriminatory taxes and fees on imported goods

In November 2005, the Vietnamese National Assembly passed an act, aiming at unifying excise taxes on domestic and foreign automobiles. According to the newly enacted bill, the Vietnamese government will levy the same excise tax on automobiles, be they domestically produced or imported: 50% for automobiles with fewer than 5 seats, 30% for automobiles with 6 to 15 seats, and 15% for automobiles with 16 to 24 seats.

However, Vietnam currently applies discriminatory excise taxes to automobiles: the excise taxes for imported automobiles are 80%, 50% and 25% respectively for the above three categories of automobiles, while the excise taxes for domestic automobiles stand at 40%, 25% and 12.5% respectively.

Vietnam also plans to unify excise taxes for domestic and foreign cigarettes and draft beer in the 2006-2007 fiscal year. The uniform excise tax for cigarettes will be 55% and is to be increased to 65% in 2008. The uniform excise tax for draft beer will be 30% and is to be raised to 40% in 2008.

The current excise taxes for homemade and imported cigarettes are 25% to 45% and 65% respectively. The current excise taxes for domestic and foreign draft beer are 30% and 75% respectively.

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 relevant 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 Vietnam's mandatory quality inspection system.

3.5 Export restrictions

On 25 January 2005, the General Customs Bureau of Vietnam's Financial Ministry issued a document, announcing that the processing of customs clearance for the export of primary minerals would be temporarily suspended. On 2 August 2005, the Vietnamese Ministry of Industry issued a circular, only allowing the export of processed ores up to a specified standard.

In addition, the Ministry of Trade demanded that all enterprises dealing in rice should register their export contracts of rice at the Vietnam Food Association.

3.6 Subsidies

In line with the strategy to develop the export market in 2004-2005, the Vietnamese government has reduced and limited its direct financial support and export incentives, and replaced the old policy with long-term credit for suppliers of raw materials and with export credit to importers of Vietnamese goods.

In 2005, the Vietnamese government provided financial support to exporters of 12 major items, because exporters suffered from a lack of funds and an unfavorable market. These items are aquatic products, rice, tea, coffee, black pepper, pork, processed fruits and vegetables, processed cashew nuts, timber (excluding timber-work), handicraft, rubber products, and plastic products.

3.7 Barriers to trade in services

3.7.1 Securities

Foreign investors may purchase shares of listed domestic shareholding companies in securities companies; however, foreign capital may not exceed 49% for a particular share, fund or bond. The cap on foreign shareholdings in securities companies and fund management companies is also 49%.

3.7.2 Law practices

Foreign law firms are now permitted to provide legal consultancy services and other legal services in Vietnam, but with some restrictions. For example, to provide consultancy on Vietnamese law, a foreign law practice must employ a Vietnamese lawyer or employ a foreign lawyer who has been issued with a certificate to practice in Vietnam, possesses a Vietnamese university law degree, and has been issued with a certificate of satisfaction of conditions for providing consultancy on Vietnamese law.

In addition, foreign lawyers and Vietnamese lawyers employed by foreign law firms cannot, it is prescribed, participate in Vietnamese court proceedings.

3.7.3 Construction

Vietnam has not agreed to provide market access for the cross-border supply of construction and related engineering services, and branches of foreign construction companies are not permitted to be set up in Vietnam.

According to the relevant Vietnamese regulations, foreign bidders can participate in the tender for a construction project in Vietnam only if they submit a joint bid with a Vietnamese partner or commit to 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.

3.7.4 Post and telecommunications

Foreign telecommunications companies are not allowed to provide network infrastructure services in Vietnam. Cross-border supply and foreign invested commercial presence for provision of basic telecom services is currently restricted to Business Cooperation Contracts (BCCs) with Vietnam' s gateway operators. Likewise, foreign investment in the provision of value added telecom services is currently restricted to BCCs with Vietnamese partners. In addition, Vietnam Post (VNP) retains its monopoly over the public post network throughout Vietnam, but other enterprises are permitted to engage in domestic and international post delivery. Foreign invested enterprises, however, are excluded from engaging in domestic post delivery.

3.7.5 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 cost for foreign importers. 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.

3.8 Inadequate intellectual property right protection

Enforcement of intellectual property rights (IPR) protection in Vietnam still remains rather weak. Trademark registration in Vietnam is relatively straightforward, and infringement is widespread. Although Vietnam's IPR Bureau is working with a number of foreign patent and trademark agencies to strengthen its IPR protection mechanism, obtaining expeditious adjudication and administrative enforcement of IPR violations remains difficult. In 2004, the trademark of China's Chongqing Longxing Motorcycle Company was viciously registered in Vietnam.

Infringement upon copyright is also no rare occurrence in Vietnam. The Vietnam Office of Literary and Artistic Copyright under the Ministry of Culture and Information administers copyright protection in the country. Vietnam has made significant progress in putting in place the legal framework required to protect copyrights, but there are many problems in enforcement. Piracy rates for PC software, music, and video CDs, VCDs and DVDs run high.

4 Barriers to investment

4.1 Barriers to investment access

Although Vietnam has switched its older 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.

The Implementing Regulations for the Law on Foreign Investment provides that the Vietnamese government encourages foreign investment in prospecting, exploiting and finely processing mineral resources, but restricts foreign investment in mining and processing petroleum and rare and precious minerals. The Ordinance (No.10/2005/CT-TTg) issued by the Vietnamese Prime Minister in April 2005 demands the relevant central ministries and local governments to review mining business in the country and to enforce a more stringent administration in granting a permit for mining. Foreign participation in some important and large-scale mining projects, for example, the projects of aluminum ore and iron ore exploitation currently under negotiation between China and Vietnam, is restricted to joint ventures with Vietnamese partners, in which the Vietnamese side shall have a controlling share. The Vietnamese government decided in October 2005 that joint ventures with foreign partners would be permitted for mining projects with an annual output of over 1 million tons of aluminum oxide and for aluminum metallurgical plant project to be established after 2010, with the condition that the Vietnamese side shall have a controlling share.

As to the automobile and motorcycle sectors, Vietnam issued a regulation in November 2003, prescribing that the ratification for new foreign invested automobile and motorcycle assembling projects be suspended unless all the products are for export. However, domestically invested enterprises are not subject to this restriction. In the first half of 2005, the Vietnamese Prime Minister granted a special investment permit of automobile assembling project respectively to Japan's Honda Company and Malaysia's JRD Company.

Vietnam only permits foreign investment in iron and steel, cement, and coal industries in the form of joint venture or cooperative enterprises.

There is a clearly defined time limit, which ranges from 5 to 30 workdays, for Vietnamese governments at various levels to process investment applications from foreign investors. However, foreign investors often complain that investment application procedures are very complicated and the examination and approval period is too lengthy. It sometimes takes up to several months, half a year or even longer, to have an investment application approved.

4.2 Barriers to investment operation

The productive capacity of an enterprise producing or assembling motorcycles in Vietnam was usually decided by the approval from the government. The General Office of the Vietnamese Central Government issued a circular (No. 1854/VPCP-HTQT) in April 2005, lifting the output restriction on motorcycle assembling enterprises and leaving the matter of output to the market forces and the enterprises themselves.

Nevertheless, the Vietnamese government still 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.

In addition, Vietnam continues to require foreign investors in the electronics, automobile, cane sugar, dairy, paper processing, and wood processing 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 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 foreign labor.