

South Africa

【Risk Warning】

In 2009, South Africa issued a number of regulations on technical standards and product safety, including the *Coffee Regulation Draft*, *the Proposal for Peremptory Norms of Single-ended Fluorescent Lights*, *Draft Amendment to Regulations Related to Bottled Water*, and *Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES)*. Relevant Chinese exporters should stay informed of the latest changes in its regulations and bring their technologies of production up to dated.

In addition, the South African government has launched the compulsory scoring regulations known as “Balanced Scoring Card” to encourage black people’s involvement in economy. However, the complexity of the regulation leads to the uncertainty of its interpretation in enforcement. What’s more, the South African government refers to this act as well when making economic decisions, putting low-scored enterprises at a disadvantage in certain economic activities, particularly in government procurement. Chinese investors should be aware of their disadvantaged status and make positive changes in their investment plans.

1 An Overview of Bilateral Trade and Investment

South Africa is China's largest trading partner in Africa. According to Chinese Customs statistics, the volume of bilateral trade between two countries totaled U.S.\$ 16.06 billion in 2009, down by 10% over the previous year, among which China’s export to South Africa reached U.S.\$ 7.37 billion, a decrease of 14.5%, whereas China’s imports from South Africa decreased 5.9% to U.S. \$ 8.69 billion. China ran a deficit of U.S. \$ 1.32 billion with South Africa. China mainly exported to South Africa electro mechanic products, machinery, knitted and crocheted clothing and accessories, non-knitted and non-crocheted clothing and accessories, footwear, furniture, beddings, iron and steel products, organic chemicals, automobiles, and plastic products.

According to the figures of China’s Ministry of Commerce (MOFCOM), in 2009, the accomplished revenue through contracted projects by Chinese companies in South Africa amounted to U.S.\$ 120 million, and the volume of the completed service contracts arrived at U.S.\$ 2.75 million.

According to figures of MOFCOM, approved by or registered with MOFCOM in 2009, non-financial direct investment by China reached U.S. \$ 48.2 million. South Africa firms invested

in 24 projects in China with an actual utilization of U.S. \$ 41.2 million.

2 An Overview of Trade and Investment Regime

2.1 Trade Administration Regime and its development

There were no significant changes in South Africa's trade administration regime in 2009. South Africa practices import and export administration, based on the *2002 International Trade Administration Act*. The other related laws include the *1964 Customs and Excise Act*, the *Consumer Code* and *Sales and Service Code*. On October 21, 2002, with the four countries including Botswana, Lesotho, Namibia and Swaziland, South Africa signed the *Southern Africa Customs Union Agreement of 2002 (SACU)*, which came into force on July 15, 2004. Under the agreement, the policies of the free interchange of goods between member countries and a common external tariff to non-member countries are put into place. South Africa is responsible for the administration of the Customs Union. In addition, bilateral trade agreements were signed between South Africa, Malawi, Zimbabwe, Hungary, Mozambique, Poland, and Turkey to provide reciprocal trade arrangements. The Department of Trade and Industry of South Africa primarily takes responsibility for its foreign trade affairs.

2.1.1 Tariff Regime

2.1.1.1 Tariff Administration

The basic legislation concerning the tariff regime in South Africa is constituted by *1964 Tariff and Internal Duty Act* amended in 2005 and *1986 Board on Tariff and Trade Act* amended in 1997. The International Trade Administration Commission (ITAC) is responsible for researches and suggestions on tariff standard adjustment in the SACU region. ITAC administers various plans concerning tariff, including Motor Industry Development Project (MIDP) and Duty Credit Certificate System (DCCS). In the meantime, it is also entitled to conduct evaluation to related tariff upon the application of import and export businesses to decide whether to lower or raise the tariff rate. South African Revenue Service is in charge of collecting customs duties.

SACU has two types of tariffs, the MFN tariff and the ordinary tariff. The MFN tariff is mainly applied to member countries of WTO, while products transshipped from other countries are applicable to the ordinary tariff. When products enter South Africa through another country, tariff

is collected with regard to the tariff standard of that country. In 2009, South Africa's tariff schedule contains 6695 eight-digit tariff lines, a decrease of 1214 tariff lines compared with 2002. The products under 96.8% of tariff lines are applicable to ad valorem duty, whereas those under the remaining 2% of tariff lines are to specific customs duty, built-in duty and additional duty respectively in different cases. The specific customs duty is mainly applied to agricultural products, coal, and some textiles.

2.1.1.2 Tariff Rates and Adjustment

According to the statistics of WTO, South Africa's simple average MFN tariff rate stood at 8.1% in 2009, the same with that of 2008, with a simple average MFN tariff rate of 10.1% and 7.8% for agricultural products and non-agricultural products respectively. Compared with the corresponding levels of 10.1% and 7.9% in 2008, the former remained unchanged, while the latter declined slightly.

In August 2009, with an aim to promote economic growth, increase employment and accelerate the achievement of South Africa's Critical Infrastructure Programme, the South African government planned to cut the import tariff for the domestic electric appliances, machinery, capital equipment and chemical products under about 1200 tariff lines, thereby reducing the cost of manufacturers and the expenditure of consumers. The import rate, however, remained unchanged for auto parts.

2.1.2 Import Administration

The basic legislation concerning import administration in South Africa includes the *International Trade Administration Act* issued in 2002, the *Import and Export Control Act* amended in 1990 and the *Standards Act* amended in 2008. The Minister of DTI is responsible for the formulation of list of restricted imports and exports and implementation of import and export restrictions on related products. Those products mainly include the following four categories: (1) Second-hand goods. Under the provision of the ITAC to prevent the harm caused by imported second-hand goods to production and development of manufacturers in SACU region, importers are only allowed to import second-hand goods originally produced in South Africa. (2) Waste materials and residues, etc. (3) Toxic and harmful substances. (4) Products of special quality requirements.

South Africa provides that importers be not allowed to import restricted products until they obtain licensing. The import licenses for these products remain valid from the issuing date to the end of the year. Importers must register at the Import and Export Control Bureau of DTI before obtaining

an import license, and then different products should obtain licenses from different management departments respectively. Among Chinese exports to South Africa, only gold ornaments, teas and carps are supposed to be granted import licenses issued by the South Africa Reserve Bank and the Department of Agriculture respectively.

A value-added duty is collected at 14% on all imported goods, except foods like rice, vegetables, fruits, milk, brown wheat powder, eggs and beans, meat, fishes, white bread, etc. In addition, the luxurious goods such as alcoholic drinks and nonalcoholic drinks, tobacco products, mineral water, some petrochemical products, automobiles, home products, electric bikes, office equipments, films and cosmetics need to pay excise duties.

In January 2009, South Africa's Department of Trade and Industry announced that the country will not implement any new textile quota restriction on China as from 2009. At the request of the South African Textile and Apparel Workers Union to impose quota restriction on Chinese textile products, South African government implemented the quota restriction in 2007, which expired at the end of 2008.

2.1.3 Export Administration

Legislation concerning export administration in South Africa mainly includes the *Import and Export Control Act* amended in 1990 and *International Trade Administration Act* issued in 2002. The ITAC is responsible for export administration and license management. The Import and Export Bureau subordinate to the Ministry of Trade and Industry is in charge of releasing export licenses.

In accordance with the *International Trade Administration Act*, it is required that all South African exporters be registered in the South Africa Revenue Service. They also must register with the Ministry of Trade and Industry to get export incentives. And 177 products, with quarter-digit encoding in the tariff schedule, included on the restricted exports list are required to apply for export licenses. These products are mainly strategic products, non-renewable resources, scrap metals, automobiles and so on.

In addition, according to South Africa's *Liquor Products Act of 2003*, apart from beer, sorghum beer and drugs, any alcoholic drink with over 1% of alcohol must apply for export licenses.

2.1.4 Trade Remedies

South Africa's trade remedy regime mainly consists of the *International Trade Administration Act* issued in 2002, *1964 Tariff and Internal Duty Act* amended in 2005, *Anti-dumping Regulations of 2003*, as well as *Countervailing Regulations of 2005* and *Normal Safeguard Regulations* both issued in 2005. The ITAC is the major administration body of South African trade remedy. Besides, the Customs Commission and Minister Council subordinated to SACU also take charge of the anti-dumping affairs. The Customs Commission is responsible for acceptance and review of the results of anti-dumping investigation and proposed measures submitted by the ITAC and then gives advice to the Minister Council, while it is up to the Council to decide the final anti-dumping measures. South Africa's trade remedy regime did not undergo any change in 2009.

2.1.5 Inspection and Quarantine Regime

According to the new *Standards Act* (Act No. 8 in 2008) enacted by South Africa in 2008, South African Bureau of Standards continues to serve as a national standardizing body subordinated to the Department of Trade and Industry to develop and publish standards, provide services of testing, certificating and training, as well as implement the agreements of WTO/TBT. Furthermore, it is also engaged in making standards for the Southern African Development Community (SADC), and undertaking the work of the Secretariat of *Legal Metrology Cooperation Organization* in the SADC.

On the basis of the *National Regulator for Compulsory Specifications Act (NRCS ACT)* issued in 2008 by South African government, a National Regulatory Authority on mandatory technical specifications was established to take charge of the supervision and administration of the implementation of mandatory technical specifications.

2.2 Investment Administration Regime and Its Developments

There are no separate investment laws in South Africa. Investment affairs are administered by legislating separately in each department. Laws related to the investment administration mainly include the *Corporation Act* amended in 2008, the *Tax Act* (Taxation Laws Second Amendment Act 18 of 2009) amended in 2009, the *Labor Relations Act* amended in 2002 and the *Competition Act* issued in 1998. The Department of Trade and Industry (DTI) is the main governmental department responsible for investment administration. Other departments involved in investment administration include the South African Revenue Service, the South African National Economic Development and Labor Council and the Board for Regional Industrial Development.

A large number of investment programs in South Africa have become one of the main factors to inspire investors to invest in South Africa. South Africa has been committed to encouraging foreign citizens and enterprises to invest in the country, by making the national treatment available to all investing foreign businesses and foreign-funded enterprises, which allows them to directly repatriate profits after paying duties. Except the financial institutions, any foreign company can set up branches in South Africa. In the establishment of branches, it is required that they be registered as “external company” and set up in 21 days after the registration. If a branch deals with import and export trade, it needs to obtain additional approval.

South Africa has currently adopted such policies for promoting industrial investment as follows:

2.2.1 Enterprise Investment Programme

On August 5, 2009, the Minister of the Department of Trade and Industry approved the Enterprise Investment Programme and its sub-programs, namely the revised guidelines of Manufacturing Investment Programme and Tourism Support Programme. The revised guidelines entered into force on October 5, 2009. Requirement about application time and requirement about project sites were added to Paragraph 3.5 and Paragraph 3.8 of Manufacturing Investment Programme and Tourism Support Programme respectively. In addition, Table A1 Development Impacting Standard and Table A2 Economic Efficiency Standard of Manufacturing Investment Programme were revised. Details are as follows:

2.2.1.1 The Manufacturing Investment Programme

After being examined and verified, any investment projects that comply with the Manufacturing Investment Programme can get a maximum amount of investment grants that amounts to 30% of the total amount of investment to purchase and use mechanic equipments, or purchase and lease plants and so on. The investment projects include newly set-up productive investment, the expanding of production equipment, and the upgrading and reformation with the prior clothing and textile equipments. The amount and the way of rewarding vary with the investment amounts. If the investment amount is within R 5,000,000, after the approval, the project can get the investment grant that amounts to 30% of its total investment in the following three years. If the investment amount is more than R 5,000,000, after the approval, the project can get the investment grant that amounts to 15%—30% of its total investment in the following two years, with a maximum investment grant of R 30,000,000. If foreign investors transport their advanced mechanic equipments to South Africa, they can enjoy the additional subsidy besides the above the

investment grants. The additional subsidy amounts to the less one of either 15% of the value of the mechanic equipments or the transportation charges, with a maximum amount of R 100,000.

The main content of Paragraph 3.5 newly added in 2009 is, the project applying for the investment grant must apply before it is put into commercial production and obtain the approval of the Department of Trade and Industry, otherwise it will be regarded unqualified. The application must be submitted at least three months before the intended start-up date; the earliest time for the application is less than twelve months before the intended start-up date.

Table A1 Development Impacting Standard and Table A2 Economic Efficiency Standard in Manufacturing Investment Programme constitute the main criteria to measure the eligibility of enterprises to obtain investment grants. In this amendment, the scoring standards in Table A1 were modified in the following three aspects, including the contribution to *2003 Broad-based Black Economic Empowerment Act*, the investment projects in priority sectors or textile and clothing sectors, as well as the number of jobs created by each investment of R 100,000. In Table A2, the scoring standards were revised in the following four aspects, including the investment projects in priority sectors, the expanding or upgrading projects in textile and clothing sectors, the number of jobs created by each investment of R 100,000 and satiations in line with the requirements of *2003 Broad-based Black Economic Empowerment Act*.

2.2.1.2 Tourism Support Programme

The main content of the Tourism Support Programme is, after being examined and verified, any investment programme that complies with the Tourism Support Programme can get a maximum amount of investment grants that amounts to 30% of the total investment in building new or extending old tourism facilities. Given the fact that in such big cities as Johannesburg, Cape Town and Durban, the tourism facilities have already been very advanced, the investment projects in these cities do not get the support of the programme. The amount and the way of rewarding vary with the investment amounts. If the investment amount is within R 5,000,000, after being examined and approved, the project can get the investment grants that amount to 30% of its total investment in the following three years. If the investment amount is between R5, 000,000 and R200, 000,000, after being examined and approved, the project can get the investment grants that amount to 15%---30% of its total investment in the following two years, with a maximum investment grant of R30, 000,000. If the investment is more than R 200,000,000, the part over R 200, 000,000 will not get the investment grants.

The main content of Paragraph 3.8 newly added in 2009 is that the investment projects in the big cities such as Johannesburg, Cape Town and Durban will not get the support of the programme generally. The projects located in the surrounding areas of the above three big cities can obtain eligibility of application upon the decision of the Department of Trade and Industry. In exceptional cases, as for the project which can create new markets, it is for Adjudication Committee to decide whether it complies with application standards.

2.2.2.3 Black Business Supplier Development Programme

On June 12, 2009, the Minister of the Department of Trade and Industry approved the Revised Guidelines of the Black Business Supplier Development Programme in order to further strengthen the competitiveness of small and medium-sized enterprises (SMEs) run by the local black people, and to provide goods and services for the target enterprises in line with *2003 Broad-based Black Economic Empowerment Act*. In the programme, the Department of Trade and Industry gives financial support to the enterprises in the ratio of nine to one, to improve the core management capabilities, management level of companies owned by the black people and make them more competitive in the process of restructuring. The Revised Guidelines will come into force on April 1, 2010.

2.2.2.3 Critical Infrastructure Programme

The South Africa government will provide the local government or the investor of the critical infrastructure programme with a maximum of the construction grants that amounts to 50% of the construction cost, on condition that the programme complies with one of the following requirements, and can play a critical role and have strategic significance to the invested project after having the approval of the competent administrative authority: (1) the level of environmental protection of the project will be raised; (2) it is in compliance with the policies of the national, regional and local economic development and plans of land utilization of South Africa; (3) the project will create more direct and indirect employment opportunities; (4) the link between the producer and the consumer will be enhanced; (5) it will create more opportunities for SMEs.

2.2.2.4 Business Process Outsourcing and Offshoring

The Business Process Outsourcing and Offshoring Programme includes awarding each project the investment grants ranging from R6,000 to R37,000 and the training aids funding with a maximum amount of R12,000 for each agent. The beneficiaries of this incentive programme are mainly local and foreign investors who are off-shore customers service-oriented. It is designed to attract investment in South Africa's offshore outsourcing so as to promote employment in the country. The

duration of its implementation is from December 6, 2006 to March 31, 2011.

2.2.2.5 Sector Specific Assistance Scheme

The Sector Specific Assistance Scheme is a programme for the cost compensation and allocation apportion. The Department of Trade and Industry provides financial assistance for nonprofit business organizations. The sectors accessible to the assistance include the agro-processing sector, chemical and related industries, electronics industry, textiles and clothing sector, metals and related industrial sectors, electronic machinery and related industrial sectors, automotive parts and components sector, creative industrial sector as well as information and communication technology sector.

2.2.2.6 Co-Operative Incentive Scheme

The Co-Operative Incentive Scheme is an investment incentive programme to provide the cooperative enterprises with capital in the ratio of nine to one. Under the scheme, every cooperative enterprise can get the capital grants within R300, 000. The programme is formulated to help the cooperative enterprises to enhance their competitiveness.

2.2.2.7 Preferential Tax Rebate

At the end of 2008, South Africa's Department of Finance issued a five-year programme to encourage investment, with a total amount of R 6,300,000,000. According to this scheme, the government will provide the tax rebate that amounts to R5, 600,000,000 for the projects that meet the requirements. Government financial supporting becomes the highlight to attract more investment. In the meantime, the government will provide R7, 200,000,000 for manufacturing and tourism in the following three years, to give a financial support for Enterprise Investment Programme issued by the South Africa's Department of Trade and Investment.

In March 2009, South Africa's Department of Finance issued a draft tax incentive regulation. In addition to the prerequisites for enterprises or projects to get tax incentives, the draft also provides the relevant stipulations for the integration system of Brownfield projects (re-expanding projects) and Greenfield projects (new projects). The prerequisites include the requirements for corporate energy efficiency, technology development and investment scale. It regulates also that the tax concessions are not available to the enterprises that have obtained other investment incentive concessions.

According to the provisions of the integration system, the ratings of Brownfield projects are

implemented in six aspects, including the innovation process, improvement of energy efficiency, business contacts, purchase from SMEs, direct creation of employment opportunities and technology development. Besides the above six aspects, Greenfield projects should be rated in one more aspect, namely whether the project is located in industrial development zone. To apply for the tax concessions, a project that gets at least 5 points (total score of 10 points) will meet the qualifying status, and a project that gets 8 points (total score of 10 points) will meet the preferred status. For the project that meets the qualifying status, 35% of its total production cost can be deducted from its tax payable, with the maximum of R 550, 000,000. For the project meeting the preferred status, 55% of its total production cost can be deducted from its tax payable, with the maximum of R900, 000,000. In addition, South Africa's Department of Finance also provides the training grants standing at R36, 000 for each employee. Each project that meets the qualifying status can get total training grants of R20, 000,000 and each project meeting the preferred status can get total training grants of R30, 000,000. The amount will be deducted from the income tax payable.

2. 3 Trade and Investment Related Administration Regime and its Development

2. 3.1 Immigration Act and Immigration Regulations

Legislation concerning immigration administration in South Africa consists of the *Immigration Act* amended in 2002 and the *Immigration Regulations* enacted according to the Act.

Immigration Act and *Immigration Regulations* relax the restriction on persons who come to South Africa for study. According to the new law, the study permits for studying in South Africa may extend to the whole duration of the course. The new law stipulates that a study permit holder may now undertake part time work within twenty hours per week. As for people who want to get permanent residence in South Africa, the regulations of *Immigration Act* amended in 2002 are stricter. But the Act appropriately relaxes restrictions on the quota. According to *Immigration Regulations*, the quota of permanent residence is 210,000 people per year. In addition, *Immigration Act* and *Immigration Regulations* stipulate that South Africa Home Office must reply the application of permanent residence in 30 days after its arrival, so the waiting time of the applicants will be shortened greatly. For the application for permanent residence, Home Office entrusts Department of Labor to check the related documents, so as to ensure that the welfare benefits of the applicants will be no less than that of the citizens of South Africa in the same industry.

2. 3. 2 Foreign Exchange Administration

In recent years, South Africa gradually liberalized exchange controls, including (1) offshore direct investments by companies: the percentage of shares that South African companies must hold in foreign enterprises (cooperative projects with foreign investors) has changed from over 50% to 25% at least; (2) customer foreign currency accounts: South African companies dealing with international trade can open customer foreign currency accounts that are applied simultaneously to trade in goods and trade in services, and that can also be applied to "authorized" transactions; (3) Rand currency futures market: Johannesburg Stock Exchange is allowed to establish Rand currency futures market, which enables South African investors to directly enter futures market through a transparent and orderly domestic channel.

2. 3. 3 South Africa's Automobile Industry Relief Measures

In August 2009, the South African government began to adopt the following four measures in order to help the South African automotive industry overcome the difficulties: providing financial support to the automobile enterprises short of capital by the Industrial Development Corporation owned by the South African government; stopping offsetting the period of the credit line because of the import delay and enabling automobile manufacturing enterprises to use the credit line they receive from the export of vehicles to import and export duty-free products of the same amount; making more efforts to invest in feasible studies; postponing to implement the tax revenue measure of replacing ad valorem duty with emission duty.

2. 4 Trade-related Technical Measures Adopted in 2009

Technical Regulations

(1) On January 27, 2009, South Africa's Department of Trade and Industry issued *The Proposal of Amendment to Peremptory Norms of the Vehicles of Category 01 and Category 02* (covered products including the caravan and light trailer with HS code of 8716) and *The Proposal of Amendment to Peremptory Norms of the Vehicles of Category 03 and Category 04* (covered products including the trailer and semi-trailer with HS code of 8716). The former stipulates requirements for the vehicles of Category 01 and Category 02, which can run on public roads at a speed of over 40kph after being designed or modified, including new automobiles and those that have not been registered or licensed in South Africa (vehicles of Category 01 refer to the single axle trailers with a gross weight of no more than 0.75 ton, the semi-trailers excluded; vehicles of

Category 02 refer to the trailers with a gross weight of no more than 3.5 tons, the trailers of Category 01 excluded). The latter provides the requirements for the vehicles of Category 03 and Category 04 including all vehicles of these two kinds which are designed for or suitable for cargo transportation and run on public roads including all vehicles of Category 03 and Category 04 that have not been registered in South Africa (vehicles of Category 03 refer to the trailers with a maximum weight of 3.5 tons to 10 tons; vehicles of Category 04 refer to the trailers with a maximum weight of over 10 tons). Designed and manufactured for transporting passengers, the new vehicles of Category 03 and Category 04, such as the semi-trailer buses, are also applicable to the requirements for vehicles of Category M2 and Category M3 (buses).

(2) On January 27, 2009, South Africa's Department of Trade and Industry issued *The Proposal of Amendment to Peremptory Norms of the Vehicles of Category M2 and Category M3* and *The Proposal of Amendment to Peremptory Norms of the Vehicles of Category N2 and Category N3*. The covered products include the vehicles with HS codes of 8702 and 8704. The stipulations are made for the technical norms of the mini-buses and the vehicles of Category M2 and Category M3, and the vehicles of Category N2 and Category N3 that have not been registered or licensed in South Africa and are designed or modified for running on public roads.

(3) On June 24, 2009, South Africa's Department of Health issued *Coffee Regulation Draft*. The draft is about the relevant standards of the decaffeinated ground coffee, decaffeinated instant coffee, mixed coffee or coffee mixture, coffee essence or coffee extracts and chicory essence, chicory and coffee, as well as milk.

(4) On August 18, 2009, South Africa's Department of Trade and Industry issued *The Proposal of Amendment to Peremptory Norms of the Vehicles of Category M1*, *The Proposal of Amendment to Peremptory Norms of the Vehicles of Category N1* and *The Proposal of Peremptory Norms of the Vehicles of Category L*. These proposals cover the requirements for the vehicles of Category M1 (with HS code of 8703), Category N1 (with HS code of 8704), Category L (with HS code of 8711) which have not been registered or licensed in South Africa, and the requirements for the vehicles which are assembled with new car frames and old components of the vehicles and designed or suitable for running on public roads.

(5) On August 18, 2009, *The Notice of Amendments to Peremptory Norms of Signal Controllers* was issued by South Africa's Department of Trade and Investment to revise the Provisions 2.8, 2.9, 4, 6.1, 6.2 of the Government *Official Gazette No 31844* (G / TBT / N / ZAF / 81) and add Provision 5.3.

(6) On August 18, 2009, Department of Trade and Industry of South Africa issued *Proposal for Peremptory Norms of Interchangeable Breaking Lining Assemblies of Road Vehicles*, which covers the requirements for interchangeable brake lining assemblies and drum brake linings of power-driven vehicles and trailers (with HS code of 6813). The norms are suitable for brake lining assemblies and drum brake lining assemblies of motor vehicles of Category M, Category N and Category O produced after January 1, 2000 and motor vehicles of Category L produced after January 1, 2013.

(7) On August 18, 2009, Department of Trade and Industry of South Africa issued *Proposal for Peremptory Norms of Single-ended Fluorescent Lights*, which covers the requirements for efficiency, safety, performance and interchangeability of single-ended tube-shaped fluorescent lights with built-in controlling starter and stable operation (Self-ballasted lamps) devices and other discharge lamps (with HS code of 8539). The lamps mentioned above are used for general illumination and must be in compliances with the following standards: ① their rated power must be less than 60W; ② their rated voltage must be between 100 and 250 V AC; ③ they must have thread mouths or bayonets of such types as 2G7, 2GX7, GR8, 2G10, G10q, GR10q, GX10q, GY10q, 2G11, G23, GX23, G24, GX24, and GX32.

(8) On August 18, 2009, Department of Trade and Industry of South Africa issued *Draft Amendment to Regulations Related to Bottled Water*, under which the definition of bottled water and the appendix on the permissible maximum content of elements will be revised.

(9) On September 8, 2009, South Africa's Department of Environmental Affairs and Department of Tourism issued the draft regulation *Convention on International Trade of Endangered Species of Wild Fauna and Flora* (CITES) to control the trade in endangered species of wild fauna and flora. The draft regulation involves regulatory agencies, research institutions, international trade conditions, registration and signs, exemptions and special procedures, as well as cases of violation and penalties.

(10) On November 25, 2009, Department of Trade and Industry of South Africa issued five proposals of amendment, including *Proposal of Amendment to Peremptory Norms on Cords of Electrical Products* (with HS code of 8536), *Proposal of Amendment to Peremptory Norms on Starters of Fluorescent Lamps* (with HS code of 8536.61.30), *Proposal of Amendment to Peremptory Norms on Couplers of Home and Similar Appliances* (with HS code of 8536), *Proposal of Amendment to Peremptory Norms on Manual Switches of Electrical Products* (with HS code of 8536) and *Proposal of Amendment to Peremptory Norms on Plugs, Sockets and Socket*

Adapters (with HS codes of 8536). They stipulate the standards of the related products respectively.

2. 4. 2. Sanitary and Phytosanitary Measures

(1) On March 2, 2009, Department of Health of South Africa issued a notification to stipulate the legal limits of melamine in food products are determined. The legal limit of melamine in food products for infants and special meals stands at 1mg/kg and in all other food products is 2.5mg/kg. The regulation has entered into force.

(2) On August 18, 2009, Department of Agriculture, Forestry and Fisheries of South Africa issued *Notice on Restriction on Use of Certain Pesticides*. The pesticides containing chlorpyrifos are restricted to be used as active agents for homes, gardens and livestock. The packaging of pesticides is also stipulated.

3 Trade Barriers

3.1 Tariff Barriers

3.1.1 Peak Tariffs

In spite of its continuous efforts to reform and adjust the tariff regime in recent years, South Africa still imposes relatively high import tariffs on some products to support the development of its domestic industries. South Africa's tariff peaks are concentrated on the textile products, dairy products, alcoholic beverages and cigarettes. According to WTO statistics, the tariffs that South Africa imposed on live animals and their products, dairy products, alcoholic beverages, textiles and clothing, and cigarettes in 2009 were respectively 15.3%, 21.9%, 17.1%, 21.2% and 33.6%.

On October 9, 2009, South African government decided that the import tariffs imposed on the majority of the apparel products (a total of 121 kinds) under Chapter 61 and Chapter 62 of South Africa's Tariff Schedule would be raised from 40% to 45%, the maximum tariff rate permitted by WTO. The raised tariff rate entered into force on October 12, 2009. At the same time, the import tariff on washing machines was raised to 30% in 2009, in order to protect local manufacturing enterprises.

3.1.2 Tariff Escalation

There is a phenomenon of tariff escalation in South Africa's rate structure. According to WTO

statistics, the average tariffs South Africa levied on raw materials, unfinished products and manufactured goods in 2009 were 3.6%, 6.0% and 10.2% respectively. South Africa imposed around 6.0% tariffs on raw materials of textiles, around 15.5% on unfinished textiles and 27% on finished textiles. It imposed 4% tariffs on unfinished wooden products and 15.5% tariffs on finished wooden products.

3.2 Technical Barriers to Trade

South Africa has about 5000 national standards, including about 60 mandatory standards mainly involving electrical and electronic equipments and components, motor vehicles and their spare parts as well as food. *Agricultural Produce Standards Act* amended in 1998 is South Africa's main legislation on standards for agricultural products. South Africa Customs and South Africa Bureau of Standards (SABS) have signed a cooperation agreement to impose a very strict control on its import and export, so Chinese exports to South Africa must pass their tests. The production and import of electrical and electronic equipments and components must obtain Letter of Authorization (LOA) and be tested by Bureau of Standards of South Africa. China and South Africa signed an agreement on the mutual recognition of testing results in 2004, but more efforts should be made to achieve the identical standards of both sides.

South Africa implements strict labeling requirements on clothing, footwear and textile industry. According to the requirements of Department of Trade and Industry of South Africa, before textile products, clothing and footwear are approved to be imported to and sold in South Africa, they must be labeled as follows: (1) giving a clear indication of country name, manufacturers' register numbers and/or importers register numbers as well as the degree of processing; (2) being in line with the indication standards for textiles and clothing (SANS 011) and the indication standards for artificial and natural fibers; (3) specifying the components of raw materials by weight or by quantity, and their respective proportions; (4) describing if the products have been reprocessed; (5) indicating the name and the weight or the proportion of components in the order of ranking or size, if the finished fiber products which are made through extrusion are made of two or more components that can be resolved by chemical methods; (6) indicating the proportions of the manual labor and raw materials. The Chinese government holds that the labeling requirements made by South Africa are over detailed, do not comply with current relevant international standards and result in unnecessary restrictions on trade. The Chinese government hopes that South Africa can fulfill its obligations under the *TBT Agreement* and will stop imposing too many restrictions on the imported goods.

South Africa makes specific regulations on food labeling and outside packaging by making a list of alleged “Non-basic Food”, demanding that the food on the list should not be fortified with vitamin or minerals and mark a fortified food statement. South Africa does not offer reasons and criterion for making this list. Chinese side hopes that South African government will abide by the *TBT Agreement* of WTO and reminds the enterprises to attach importance to what the list of “Non-basic Food” stipulates in order to avoid unnecessary losses.

3.3 Sanitary and Phytosanitary Measures

South Africa provides that imported meat must be licensed. The inspection and quarantine as well as the procedures of customs clearance for the imported meat vary with its origins. For the reason of “public interest”, inspection and quarantine personnel can suspend or revoke issued licenses, or add new conditions and requirements for application for licenses. Chinese meat exporters should understand the relevant procedures and requirements prior to export through the local authorities, so as to avoid unnecessary losses.

As is stipulated by the national drug control policies of South Africa, all drugs must be registered in South Africa before they are imported to or sold in South Africa, and all drugs must re-apply for licenses every 5 years.

South African government implements strict import administration on some controlled products and prohibits the import of radiation processed meat. Chinese side holds that radiation processing is a regular sterilization technique; many researches have shown that irradiated food is safe. South African government’s prohibition of radiation processed meat is not scientific and has impeded the ordinary trade.

In August 2008, South Africa introduced the *Complementary and Alternative Medicines Act*, which makes many functional foods subject to administration. The act stipulates detailed requirements for the packing, production and registration of functional foods, and demands that the right owners should disclose their formulas. Chinese side holds that these requirements will over-limit the production, marketing and operation of relevant enterprises in South Africa and furthermore let out the confidential information. Chinese side expresses concern about it.

3.4 Trade Remedies

Foreign Market Access Report 2010

By the end of December 2009, South Africa has initiated 44 trade remedy investigations on Chinese exports, 43 of which are anti-dumping investigations and one is anti-dumping and countervailing investigation. Textiles and metal products are key items in South Africa's anti-dumping investigations against Chinese products, and chemical products have become the new key items in recent years.

South Africa initiated 2 anti-dumping investigations against Chinese exports in 2009.

Table 1: Anti-dumping Investigations Newly Initiated on Chinese Exports in 2009

No.	Time of being placed on file	The products involved	Customs codes of the products involved	Progress of the case
1	January 23, 2009	Synthetic fibers, staple	55032000	Preliminary ruling on December 2, 2009: to impose a 0 or 12.47% anti-dumping duty on enterprises responding to charges and to impose a 122.97% anti-dumping duty on other uncooperative enterprises
2	July 3, 2009	Detonating cord and detonators	36030000	In process

In addition, in 2009, South Africa made the final determination of anti-dumping sunset review on Chinese steel twisted strands, ropes and cables, made the preliminary ruling of anti-dumping investigation on stainless steel sinks originated in China and Malaysia, initiated an anti-dumping interim review investigation on frozen garlic originated in China, and initiated an anti-dumping sunset review investigation on drawn glass and float glass originated in China and India.

In 2009, South Africa terminated its countervailing investigation on Chinese stainless steel sinks, and cancelled the anti-dumping tariffs on Chinese aluminum utensils and anti-dumping measures against Chinese acrylic fabrics.

3.5 Government Procurement

South Africa is not a member country of *Agreement on Government Procurement* of WTO.

The South Africa's *Preferential Procurement Policy Framework Act of 2000* and its enforcement regulations constitute the legal framework of South Africa's government procurement. In recent years, Department of Trade and Industry of South Africa has applied itself to the establishment of various rules and regulations to implement the *Framework Act* and make sure that the purposes of the *Framework Act* shall coincide with *Broad-based Black Economic Empowerment Act of 2003*. These rules and regulations grant priority to the bidders that meet the requirements of *Black Economic Empowerment Act*. Meanwhile, these rules and regulations also keep stipulations about bid qualifications in *Black Economic Empowerment Act*. When the bidding target of a company is less than R 1,000,000, when the bidding is assessed, the bidding price accounts 80% while the company's commitment to *Black Economic Empowerment Act* accounts 20%. When the target is over R1, 000,000, the bidding price accounts 90% while the company's commitment to *Black Economic Empowerment Act* accounts 10%.

South Africa launched the National Industrial Participation Program in 1996 and listed all the cargo, apparatus or services the government was allowed to purchase or lease. If the import value of the cargo, apparatus or services goes no less than U.S.\$ 10 million (or equivalent Rands), they must have certain domestic content, namely, this obligation requires the seller/supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of total goods purchased or leased under government tender.

Furthermore, the imported goods procured by South African government must be transported by the local shipping companies or approved shipping companies, unless this arrangement will lead to higher costs and too much delay.

3.6 Export Restrictions

In order to develop its economy and improve its employment rate, South Africa levies a 5% export tax on rough diamond. In the meantime, it also imposes export taxes on certain agricultural products. For instance, citrus is levied an export tax of R 0.0213 /K.

4 Barriers to Investment

The purpose of the *Broad-based Black Economic Empowerment Act of 2003* is to help persecuted blacks and disadvantaged races involve in the mainstream economy. According to this act, the South African government launched the compulsory scoring regulations known as "Balanced Scoring Card". The progress of companies' empowering blacks to participate in economic

activities is measured from the following four aspects: (1) direct empowerment through ownership and control of enterprises and assets; (2) empowerment through management at senior level; (3) authorization through human resources development and employment equity; (4) indirect empowerment through preferential procurement, enterprise development, and corporate social investment. Seven categories such as asset and equity, ownership property are included in the scoring standards and then the total score will be calculated. The higher the score is, the better it will reflect that the enterprise engages the black into economic activities. This act is applicable to the relevant behaviors of all national agencies and state-owned companies. Meanwhile, the South African government is required to refer to this act when making economic decisions. Therefore, the enterprises with lower scores will be in disadvantaged situation, particularly in government procurement.

In February 2007, Department of Trade and Industry of South Africa announced *Code of Good Practices* through government bulletin, specifying the new general scoring card system. Although many problems of uncertainty to which foreign investors paid close attention have been solved in the implementation of the code, many uncertainties still remain concerning its interpretation and enforcement because of the complexity of the regulations of the scoring card.

Although South Africa has been promoting investment liberalization, there remain two restrictions in the field of foreign investment: (1) the requirement of the local minimum capital is stipulated for investment banks and insurance companies; (2) restriction is imposed upon the enterprise which is not operated by or in which over 75% (including 75%) of shares are not held by South African citizens. In addition, the branches of foreign banks to be set up in South Africa are required to employ a certain proportion of local residents in order to obtain banks' business license. A foreign company must be registered in South Africa as a "foreign company" before being allowed to register its fixed assets under its name.