The European Union

【Risk Warning】

Codification of the EU regulations in 2009 has led to various changes in many laws governing different fields. The introduction of technical standards on energy related products and product safety has the greatest impact on the bilateral trade, as these technical standards, which cover a number of Chinese key exports to the EU, involve the regulation implementing the directive on eco-design requirements for energy using products, the directive on toy safety, the regulation on registration, evaluation, authorization and restriction on chemicals (REACH), the regulation on timber and timber products.

The new regulation on timber and timber products is stricter than earlier legislations, particularly the certification of legal sourcing of timber. Relevant manufacturers and exporters of wood products in China should make due preparations in advance.

The REACH Regulation has entered into its registration phase. The most affected will be upstream enterprises in the chemical industry, whose export to the EU will be interrupted if they fail to register. However, as REACH is being further implemented, the use of substances harmful to human health and the environment will be restricted or prohibited, which will affect an increasing number of downstream enterprises. Therefore, downstream enterprises are advised to acquaint themselves with up-to-date information on REACH and replace, whenever possible, dangerous substances in their articles with less dangerous ones.

As the scope of application of the directive on eco-design requirements for energy using products has become increasingly wider, Chinese businesses should note whether their products have come under the directive.

The directive on toy safety has greatly increased the product liability of manufacturers. Chinese toy manufacturers should make all the necessary preparations by July 2013, when the two-year transitional period ends.

It is very important for the relevant Chinese manufacturers to note that the restriction on melamine has been extended from soya and milk products to textile products.

1 Bilateral Trade and Investment

In 2009, the European Union (EU) retained its position as China's top trading partner and was also the fourth largest investor in China. According to China Customs, the volume of bilateral trade between China and the EU in 2009 topped US$ 364.09 billion, down 14.5% over the preceding year, among which China's exports to the EU declined by 19.4% to arrive at US$ 236.28 billion, whereas China's imports from the EU totaled US$ 127.80 billion, a decrease of 3.6% year on year. China ran a trade surplus of US$ 108.48 billion with the EU. China mainly exported to the EU automatic data processing equipments and parts, clothing and accessories, telephone sets, steels, textile yarns, knitwear, furniture, footwear, vessels, diodes and similar semiconductor apparatus. China's imports from the EU included, among others, machinery, electrical appliances, electronic products, aircraft, automobiles and auto parts, plastics, organic chemicals, iron and steel products, copper and copper products, and leather products.

According to the figures released by China's Ministry of Commerce (MOFCOM), the accumulative turnover of engineering contracts and labor service cooperation contracts completed by Chinese firms in the EU in 2009 stood at US$ 1,783 million and US$ 110 million respectively.

Upon the approval or on the record of MOFCOM, China's non-financial direct investment in the EU hit US$ 470 million in 2009. The EU invested in a total of 1,510 projects in China in 2009, with an actual utilization of US$ 5.12 billion.

2 EU's Trade and Investment Regime

The process of economic integration in the European Community (EC) began in the 1950s. On 1 July 1968, a customs union was established among the EC member countries. Their move towards a Single European Common Market was basically completed in 1993. Euro (EUR), Europe's single common currency, was officially launched on 1 January 1999, marking the establishment of the European Economic and Monetary Union among the Member States of the EU. On 1 May 2004, the EU was expanded to comprise 25 members, with full membership extended to 10 countries, namely, Cyprus, Czech, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. On 1 January 2007, Bulgaria and Romania acceded to the EU, increasing its membership to 27 countries.

At present, Croatia, Macedonia and Turkey are the three candidate countries for possible accession to the EU. Croatia began its talks with the EU on its membership on 3 October 2005. Because of border disputes, Slovenia blocked Croatia's accession negotiations with the EU in December 2008. The agreement reached between the two countries on their border disputes in October 2009 has removed Croatia's barrier to the EU membership, and Croatia is expected to complete its accession negotiations with the EU as early as 2010 or 2011. Macedonia applied for the EU membership in 2004, but the Macedonia naming disputes poses an obstacle to its accession. Progress with Turkey is slow and no timetable has been set for its accession. In 2009, Albania and Iceland applied for joining the EU.

The EU has gradually developed and improved a wide range of common policies during the process of integration over the past five decades. Article 133 of the *Treaty establishing the European Community* has laid the foundations for the EU common trade policy. The *Treaty of Nice*, effective as from 1 February 2003, enlarged coverage of the common trade policy to services,

intellectual property rights (IPRs) and investment. On 31 December 2007, 27 EU Member States signed the *Treaty of Lisbon* amending the *Treaty on European Community*, to simplify EU decision-making procedures, expand management reach and enhance judicial cooperation. According to the Treaty, the EU will appoint a President of the European Council for a two-and-a-half year term, with the possibility of renewal once, to replace the semiannually rotating Presidency of the Council of the European Union. The High Representative of the Common Foreign and Security Policy and the European Commissioner for External Relations will be merged to create a High Representative of the Union for Foreign Affairs and Security Policy, who will be the main co-coordinator and representative of the common foreign and security policy (CFSP) within the EU. At the summit attended by the 27 EU leaders in Brussels on 19 November 2009, the Belgian Prime Minister Herman Van Rompuy was chosen to be appointed as the first President of the European Council, and the European Commissioner for Trade Catherine Ashton from Britain was named the first High Representative of the Union for Foreign Affairs and Security Policy. The Treaty also extends more policy areas to "qualified majority voting" (QMV) with a view to streamlining decision-making process. Policies in some sensitive areas concerning judiciary and internal affairs will be decided by QMV, and no single EU Member State has the power to veto. However, legislations involving sovereignty of EU Member States such as taxation, social security, foreign affairs and national defense still require unanimity among all the Member States. QMV will remain in place until 2014, and between 2014 and 2017 a transitional phase is to take place where "double majority" rules apply, which requires that any legislation shall be backed by at least 55% of the Member States and 65% of the population in the EU. The Treaty also initiates a number of new policies; for example, an envisioned common energy and climate change policy for the EU and the guarantee of normal market functioning through fair competition in the EU. The Treaty also introduces an exit clause for members wishing to withdraw from the EU. A Member State must enter into negotiations with other members on the terms of withdrawal before it can terminate its membership. Two years after it was signed, the Treaty was ratified by all EU Member States (through parliament approval or national referendum) in November 2009 and took effect on 1 December 2009. On the day of entry into force of the Treaty, the WTO started to use "the European Union (EU)" to replace "the European Community", which it had used in the past.

The EU common trade policies mainly contain import policy and export policy. The legal documents take the forms of regulations, directives and decisions. Major constituents of EU management organization are the European Parliament (EP), the Council of the European Union, the European Commission, the European Court of Justice (ECJ) and the European Court of Auditors. At present, in establishing EU common trade policy (international treaty negotiations included), proposals are first submitted by the European Commission and after consultations with the Article 133 Committee, the final decision is made by the Council of the European Union (sometimes together with the EP). Under the *Treaty of Lisbon*, the EP and the Council of the European Union enjoy almost equal authority in this process to amend and veto acts.

The European Commission's Directorate General for Trade is in charge of the implementation and administration of the EU common trade policy. After a large-scale restructuring in 2007 and a minor reorganization in 2009, the Directorate General for Trade now has 8 Sections and 27 Departments. The former Unit of Trade Relations with America under Directorate B (Services and Investment, Bilateral Relations) has been split into the Unit of Trade Relations with North

America (Unit B3) and the Unit of Trade Relations with Latin America (Unit B4).

2.1 Trade Administration Regime and Its Recent Developments

2.1.1 Tariff Regime

2.1.1.1 Tariff Administration

The EU adopts a common customs tariff policy. Each Member State implements uniform tariff rates and tariff administration. In 1987, *Council Regulation (EEC) No 2658/87* on the tariff and statistical nomenclature and on the Common Customs Tariff was published. It lies at the foundation of the EU tariff administration. In 1992, the EU promulgated *Council Regulation (EEC) No 2913/92* on establishing Community Customs Code (hereinafter referred to as Community Customs Code) to standardize regulations on common customs tariff, place of origin and customs valuation. In 1993, the EU released *Commission Regulation (EEC) No 2454/93* on implementing Community Customs Code (hereinafter referred to as *Implementing Provisions*) laying down provisions for the implementation of Community Customs Code. On 23 April 2008, the EU promulgated *Regulation (EC) No 450/2008* of the European Parliament and of the Council laying down the Community Customs Code, which has made comprehensive amendments to Community Customs Code. The Modernized Community Customs Code (MCCC) has streamlined customs procedures, adopted electronic customs clearance to help importers and exporters keep track of goods, and provided the basis for a "One Contact Point" so that documents for different purposes (such as customs, sanitary and phytosanitary inspection) may be handled at the same time and at the same location.

To pave the way for a smooth implementation of MCCC, the EU released on 23 May 2007 *Decision No 624/2007/EC* of the European Parliament and of the Council, establishing an action program for customs in the EU known as Customs 2013 (2000 – 2012) for the eventual creation of a pan-European electronic customs environment.

On 2 April 2009, the EU published *Commission Regulation (EC) No 273/2009* laying down provisions for the implementation of *Council Regulation (EEC) No 2913/92* establishing the Community Customs Code, derogating from certain provisions of *Commission Regulation (EEC) No 2454/93*, which postpones the date of enforcement of *Commission Regulation (EC) No 1875/2006* amending *Regulation (EEC) No 2454/93* laying down provisions for the implementation of *Council Regulation (EEC) No 2913/92* establishing the Community Customs Code. According to *Commission Regulation (EC) No 1875/2006*, entry and exit summary declaration by electronic means to the customs authorities for goods entering or leaving the EU shall begin on 1 July 2009. Importers should lodge electronic entry summary declaration to the customs authorities within the prescribed time limits before the goods are brought into the EU in order to enable the customs authorities to carry out computerized risk analysis for safety and security purposes. The results of risk analysis will be shared by the Member States and the European Commission. Regardless of the final destination of goods, shipping companies will also have to submit entry summary declaration to the customs for any goods entering the EU. Due to the complexity of the processes of introducing electronic entry and exit declarations, during the transitional period between 1 July 2009 and 31 December 2010, economic operators can lodge

electronic entry summary declarations on a voluntary basis. When the electronic entry summary declaration is not lodged, the customs authorities will conduct risk analysis upon presentation of the goods at arrival. On 21 May 2009, the European Commission published *Commission Regulation (EC) No 414/2009*, specifying the situations where electronic customs declarations cannot be made. As from 1 July 2009, if the computerized system of the customs authorities or the electronic application of the person lodging the declaration is not functioning, an alternative paper procedure can be used.

To promote electronic customs environment, the EU published in April 2009 *Commission Regulation (EC) No 312/2009* and *Commission Regulation (EC) No 414/2009*, which amended *Regulation (EEC) 2454/93* laying down provisions for the implementation of *Council Regulation (EEC) No 2913/92* establishing the Community Customs Code. The two Commission Regulations revised or clarified electronic customs procedures, documents needed and the related list items.

Chinese importers and exporters are advised to keep close watch over EU's process of introducing electronic entry and exit summary declarations and acquaint themselves with the new customs clearance procedures in the EU in order to avoid unanticipated delays in customs formalities.

According to data released by the WTO, there were 9,699 eight-digit lines under the EU customs schedule in 2008, among which 89.9% were ad valorem duties, 6.5% were specific duties, 2.9% were compound (or mixed) duties, 0.8% were variable duties. Seasonal duties and non-ad-valorem duties apply mostly to agricultural products. Currently, 4.8% of 8-digit lines (about 90) are subject to quota restrictions, covering 38% of agricultural products in the EU, including grains and grain products, rice, sugar, grease, dairy, beef and veal, lamb and mutton, fresh fruits and vegetables, and processed fruits and vegetables. The EU allocates the quotas through licensing.

2.1.1.2 Tariff Rates and Adjustments

Every year, the EU publishes in the form of a Commission Regulation an amended tariff rates schedule. According to the WTO figures, the 2008 simple average tariff rate of the EU was 6.7%, averaging 17.9% for agricultural products, 4.1% for non-agricultural goods, 9.3% for agricultural, forestry, livestock and fishery products, 0.2% for extractive industry products, and 6.7% for manufactured products.

The EU published between January and November in 2009 some 20 Commission Regulations, such as *Commission Regulations (EC) No 1051/2009, (EC) No 948/2009, (EC) No 895/2009, (EC) No 872/2009, (EC) No 718/2009, (EC) No 717/2009, (EC) No 674/2009, (EC) No 609/2009, (EC) No 594/2009, (EC) No 549/2009, (EC) No 477/2009, (EC) No 476/2009, (EC) No 475/2009, (EC) No 447/2009, (EC) No 446/2009, (EC) No 349/2009, (EC) No 299/2009, (EC) No 295/2009, (EC) No 215/2009, (EC) No 198/2009, (EC) No 132/2009, (EC) No 56/2009*, and *(EC) No 51/2009*, amending the classification of certain goods in the Combined Nomenclature (CN Code), and the goods thus affected include automobiles, vessels, aeroplanes, long boots, sandals, four-wheel electric cars, three-wheel electric cars, electronic instruments, plastic statue cases, animal feeds, chemicals, milk powder, semi-tempered glass, underwater operating system, plastic bearings, inverted sugar syrup, peanuts, vitamin powder, toy packaging boxes, retail sound systems, radio tuner modules, plant materials, wheat, nonwoven bags, and bed sheets. On 18 December 2008, the

EU published *Council Regulation (EC) No 1/2009* amending *Regulation (EC) No 1255/96* temporarily suspending the autonomous common customs tariff duties on certain industrial, agricultural and fishery products. Pursuant to the relevant regulations, products whose demand exceeds supply may be imported into the EU temporarily at zero or lower tariff rates. Taking into account technological advances and market trends in the EU, the European Council in 2009 added 88 industrial, agricultural and aquatic products to the product list which may be imported temporarily at zero or lower tariff duties, and removed 610 products from the list. The amendments ran into force as from January 2009. On 25 June 2009, the European Council published *Council Regulation (EC) No 564/2009*, revising once again the list of imported products on which all or part of tariff duties are temporarily suspended. The amendments are applicable as from 1 July 2009 and are expected to remain in force until 31 December 2013.

On 13 February 2009, the EU published *Commission Regulation (EC) No 132/2009* fixing the import duties in the cereals sector. Pursuant to the price intervention regime designed to support the market prices of the EU agricultural products, the EU determined, on the basis of intervention prices and import prices, the import duties on certain cereal products such as wheat, oats and maize.

On 31 October 2009, the EU issued *Commission Regulation (EC) 948/2009* amending Annex I to *Council Regulation (EEC) No 2658/87* on the tariff and statistical nomenclature and on the Common Customs Tariff, which released the customs code for 2010 effective as from 1 January 2010.

2.1.1.3 Rules of Origin

EU's rules of origin fall into three kinds, namely, non-preferential rules of origin, preferential rules of origin, and GSP rules of origin. The legal basis for the non-preferential rules of origin is Articles 22-26 of *Council Regulation No 2913/92* (CC), Articles 35-65 and Annexes 9 to 11 of *Commission Regulation No 2454/93* (IPC). Preferential origin is conferred on goods from particular countries, which have fulfilled certain criteria allowing preferential rates of duty to be claimed. GSP origin is granted unilaterally to certain developing countries.

Currently, the Customs Code Committee is working on a draft Commission Regulation to amend the GSP rules of origin. The draft proposal substantially modifies the GSP rules of origin, particularly the notions of "sufficient processing threshold" and "regional cumulation". It also changes previous enforcement procedures, introducing a new system for registered exporters to directly declare the origin of products. These amendments are designed to simplify the GSP rules of origin so as to enable beneficiary countries, particularly the least developed countries (LDCs), to enjoy greater GSP benefits. The draft regulation is still under deliberation, and if enacted, the new substantitave policy will come into force as from 2010 and the new procedural rules will be

applicable as from 2013. Moreover, the new rules of origin are expected to be incorporated into other preferential arrangements on the basis of case-by-case negotiations.

2.1.1.4 Cooperation with China Customs

The Agreement between the European Community and the Government of the People's Republic of China on Cooperation and Mutual Administrative Assistance in Customs Matters (hereinafter referred to as *the EC-China Customs Cooperation Agreement*) ran into effect on 1 April 2005. According to *the EC-China Customs Cooperation Agreement*, China's General Administration of Customs and the EU Customs Authorities established the Joint China-EU Customs Cooperation Committee (JCCC). In 2006, the EU and China launched a pilot project on intelligent safe trade lanes with the aim at facilitating China-EU trade and improving trade safety. At present, the pilot project involves the Customs Administration of Rotterdam in the Netherlands, of Felixstowe in Britain and of Shenzhen in China. Their cooperation is based on the exchange of customs data, accredited economic operators (AEO), mutual recognition of surveillance, mutual risk principle, the use of e-magazines and smart containers to share information and ensure trade security. The EU and China on 30 January 2009 signed agreements to strengthen cooperation on protecting intellectual property rights (IPRs) and on preventing illicit imports of chemical substances used for synthetic drug production. During the 4th Session of the JCCC held in May 2009, the EU and Chinese customs representatives discussed a wide range of topics, including future plans for customs cooperation, the promotion of bilateral trade, IPR protection, trade security and facilitation, mutual administrative assistance and trade statistics collaboration, and reached a broad consensus. In the Joint Statement of the 12th EU-China Summit issued in November 2009, leaders from both sides pledged to deepen customs cooperation, with a view to promoting and facilitating bilateral trade in the face of the current economic crisis and slowdown of international trade, to seek steady progress in implementing the action plan on IPR customs enforcement, to seek agreement by the JCCC in the second phase of the pilot project on Smart and Secure Trade Lane, and to strengthen the cooperation on the mutual recognition of AEO.

2.1.2 Import Administration

The EU import administration regime mainly involves common rules for imports, common rules for imports from certain third countries, community procedures for administering quantitative quotas, the Generalized System of Preferences (GSP) and other administrative measures.

2.1.2.1 Common Rules for Imports

In 1994, the EU issued *Council Regulation (EC) No 3285/94* on the common rules for imports to

regulate imports from a third country of products other than textiles.

2.1.2.2 Common Rules for Imports from Certain Third Countries

Council Regulation (EC) No 519/94 on common rules for imports from certain third countries was published in 1994 to regulate products except textiles imported from 17 state-trading countries including China and to authorize the EU to take necessary surveillance and safeguard procedures. EU's fifth and latest amendment to this regulation was *Council Regulation (EC) No 427/2003* of 3 March 2003 on a transitional product-specific safeguard mechanism for imports originating in the People's Republic of China and amending *Council Regulation (EC) No 519/94* on common rules for imports from certain third countries. It placed specific rules on detection and investigation of market disturbance and major trade diversion caused by Chinese products, consultation mechanism, and safeguard measures on specific products. On 5 February 2009, the EU published *Commission Regulation (EC) No 110/2009* amending the list of countries mentioned in Annex I to *Council Regulation (EC) No 519/94*, which announced with immediate effect that Ukraine is removed from the scope of *Council Regulation (EC) No 519/94*.

2.1.2.3 Community Procedures for Administering Quantitative Quotas

Council Regulation (EC) No 520/94 of 7 March 1994 establishing a Community procedure for administering quantitative quotas 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* provide a legal basis for the uniform import quota regime in the EU, including the distribution of import quotas, principles of import licensing, and procedures for administrative decisions.

When allocating import tariff quotas, the EU classifies importers into traditional ones and new ones. Import quotas may be allocated mainly according to the priority of traditional importers, the chronological order of license applications or a specified percentage between traditional and new importers. The EU may choose any or all of the above three methods, depending upon particular circumstances. In case none of the above three methods is applicable, the EU may adopt special quota administration schemes according to due process.

In accordance with the EU quota administration scheme, the European Council may grant tariff quotas for those products whose EU supply is practically nonexistent or simply insufficient to meet EU demand, and allow them to be imported at zero or favorable rate of duty. When the import quotas of the products have been filled or when the validity of the tariff quotas expires, the normal rate of duty shall apply. The EU published *Council Regulation (EC) No 1362/2008* on 18

December 2008 and *Council Regulation (EC) No 563/2009* on 25 June 2009 amending *Regulation (EC) No 2505/96* opening and providing for the administration of autonomous Community tariff quotas for certain agricultural and industrial products. The above Council Regulations revised the product list under the tariff quotas and access to the quotas with effect from January and July 2009 respectively. On 26 October 2009, the EU published *Council Regulation (EC) No 1062/2009* opening and providing for the management of autonomous Community tariff quotas for certain fishery products for the period 2010 to 2012. According to the above Regulation, autonomous tariff quotas are opened to certain sensitive fishery products in order to meet the demand in the EU.

2.1.2.4 Generalized System of Preferences

The Generalized System of Preferences (GSP) of the EU is rectified by means of Council Regulations following cycles of ten years. On 27 June 2005, the EU published *Council Regulation (EC) No 980/2005* specifying new GSP schedule, which went into effect on 1 January 2006 and expired on 31 December 2008. On 22 July 2008, the EU published *Council Regulation (EC) No 732/2008* applying a scheme of generalized tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending *Regulations (EC) No 552/97*, *(EC) No 1933/2006* and *Commission Regulations (EC) No 1100/2006* and *(EC) No 964/2007*, which adjusts "graduation" products as listed under Annex I to *Council Regulation (EC) No 980/2005* applying a scheme of generalized tariff preferences. The new scheme reduces the number of GSP arrangement categories from five to three. They are the standard arrangement, the special incentive arrangement (also known as "GSP plus" or "GSP +" incentive), and the "Everything But Arms" (EBA) initiative.

Under the standard GSP arrangement, which provides preferences to 176 developing countries and territories on over 6,200 tariff lines, about 3,200 sensitive products benefit from a tariff reduction of 3.5 percentage points on the most favored nation (MFN) rates, while non-sensitive products enjoy duty-free access to the EU market. The "GSP plus" incentive arrangement waivers all import duties on goods originating in the beneficiary countries. However, to be eligible for "GSP plus" arrangement, the beneficiary should, among many other conditions, be an especially vulnerable low-income country highly dependent on foreign trade with limited diversification of exports. In 2009, "GSP plus" arrangement covered 6,336 products. The EBA arrangement grants duty-free, quota-free access to imports of all products from the world's 49 least developed countries (LDCs), except arms and munitions. In 2009, the EBA initiative covered 7,140 products.

The new scheme provides a simpler mechanism for "graduation" (exclusion from the GSP): Relevant products in a third country could graduate from the GSP, once the market share of textile and clothing imported from this country reached 12.5%, with 15% for other products. The list of "graduated" products is worked out based on trade data over a 3-year period.

According to the new GSP scheme, from 1 January 2009 to 31 December 2011, Chinese agricultural products, mineral products, wood pulp, paper and paper products are placed in the GSP arrangement, most of the industrial products still being excluded. Of the total 19 product categories covered by the GSP, only 6 product categories from China are placed in the GSP arrangement, while the other 13 product categories have been considered "graduated".

2.1.2.5 Other Import Administration Measures

Import administration of textile products from third countries comes under (1) *Council Regulation (EEC) No 3030/93* of 12 October 1993 on common rules for imports of certain textile products from third countries, (2) *Council Regulation (EC) No 517/94* of 7 March 1994 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules, and (3) bilateral agreements, protocols or other arrangements. On 24 November 2008, the EU published with effect from 1 January 2009 *Commission Regulation (EC) No 1164/2008* laying down rules for the management and distribution of textile quotas established for the year 2009 under *Council Regulation (EC) No 517/94*.

Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organization of the markets in processed fruit and vegetable products lays the groundwork for the import administration of agricultural products.

The EU published on 16 December 2009 *Commission Regulation (EU) No 1241/2009* continuing and updating the scope of prior surveillance of imports of certain iron and steel products originating in certain third countries. The Regulation extends prior steel import monitoring system from 31 December 2009 to 31 December 2012, and extends the scope of the prior surveillance to flat stainless steel products and large welded tubes.

The EU published on the *Official Journal of the European Union* on 30 November 2009 *Council Directive 2009/158/EC* on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs. A third country or parts of thereof can

be allowed to export poultry and hatching eggs to the EU, only if it is included on the authorization list and the products have satisfied certain animal health conditions. The Directive shall apply from 1 January 2010. Under *Commission Decision 2007/777/EC* of 29 November 2007 laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries and repealing *Decision 2005/432/EC*, China is only authorized to export to the Community heat treated poultrymeat products treated in a hermetically sealed container to an Fo value of three or more in accordance with Part 4 of Annex II to that Decision. *Commission Decision 2008/638/EC* of 30 July 2008 amending *Decision 2007/777/EC* concerning the authorization of China for the importation of heat treated poultrymeat products authorizes the importation into the EU of poultrymeat products from the Province of Shandong in China which have been subjected to heat treatment to a minimum temperature of 70°C.

On 16 September 2009, the EU published *Regulation (EC) No 1007/2009* of the European Parliament and of the Council on trade in seal products. Considering that seal hunting for commercial purposes is cruel and inhuman, the Regulation places an import ban on seal products, including seal skins, meat and oil. While it allows the placing on the market of seal products which result from hunts traditionally conducted by Inuit and other indigenous communities, the Regulation prohibits EU Member States from trading in seal products with these communities in large quantities. In addition, the Regulation permits the hunting of seals for the sole purpose of sustainable management of marine resources, but seal products resulting from such hunts are banned from importing into the EU internal market. The Regulation took effect in October 2009, but the entry into force in EU Member States will be August 2010.

2.1.3 Export Administration

The EU export administration regime covers common rules for exports, export credit insurance, exports of dual-use items and technology, exports of cultural goods, trade in instruments of torture, and other administration systems.

2.1.3.1 Common Rules for Exports

Council Regulation (EC) No 2603/69 of 20 December 1969 establishing common rules for exports lays down legal provisions for the EU to administer exports and to adopt necessary procedures of surveillance and protection. The Regulation is applicable to all industrial and agricultural products covered in the *Treaty on European Community* and functions as supplementary guidelines for establishing a common market for agricultural products and for administering goods processed

from agricultural products.

On 19 October 2009, the EU published *Council Regulation (EC) No 1061/2009* establishing common rules for exports, which codifies *Council Regulation (EC) No 2603/69* of 20 December 1969 and its amendments over the years, thus raising transparency, clarity and certainty of the EU common rules for exports.

2.1.3.2 Export Insurance Credit

Council Directive 98/29/EC of 7 May 1998 on harmonization of the main provisions concerning exports credit insurance for transactions with medium and long-term cover forms a uniform regulation with regard to the main constituents of cover, insurance premiums and cover policy. The most recent amendments to *Council Directive 98/29/EC* are contained in *Council Regulation (EC) 806/2003* of 14 April 2003 adapting to *Decision 1999/468/EC* the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority).

2.1.3.3 Exports of Dual-Use Items and Technology

Council Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology published on 22 June 2000 strengthens export controls over intangible products such as software, technology, the transmission of software and technology by means of electronic media, fax and telephone.

In order to safeguard public security, the EU published on 5 May 2009 *Council Regulation (EC) No 428/2009* setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. The new regime clarifies the concepts such as “dual-use items”, “export” and “brokering services” and the requirements to update the common list of dual-use items subject to export controls in the Annex to the Regulation. In addition, it provides specific measures for the management of the export, brokering and customs procedures of dual-use items and administrative cooperation between Member States. The Regulation entered into force in August 2009.

2.1.3.4 Export of Cultural Goods

Council Regulation (EEC) No 3911/92 of 9 December 1992 on the exports of cultural goods assures the uniform inspection and implements a mandatory license system for the export of cultural goods to countries not belonging to the EU. The most recent revision to this Regulation was made in April 2004. As part of the efforts to codify EU import and export rules, *Council*

Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods consolidates all the amendments made since 1992 and integrates the practices of EU Member States in regulating the export of cultural goods.

2.1.3.5 Prohibiting Trade in Instruments of Torture

The EU published on 27 June 2005 *Council Regulation (EC) No 1236/2005* concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, which prohibits the export and import of instruments of torture. Authorized exports and imports of such goods and technological aid must be approved by the competent authorities in Member States designated by the EU. *Commission Regulation (EC) No 675/2008* of 16 July 2008 amending *Council Regulation (EC) No 1236/2005* concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment amends the information of the competent authorities in certain Member States.

2.1.3.6 Other Export Administration Measures

Regulation (EC) No 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury will prohibit the export of metallic mercury as from March 2011 in order to reduce the risk of exposure to mercury for humans and the environment. In addition to banning the export of metallic mercury, the new Regulation also requires the safe storage by the relevant industrial sectors of metallic mercury that is considered waste. Although the EU stopped the exploitation of mercury in 2001, it is still the world's biggest exporter of mercury, accounting for one quarter of the global market share.

2.1.4 Trade Remedy Regime

Major legislations in the EU governing trade remedy measures mainly include:

2.1.4.1 Anti-dumping

On 22 December 1996, the EU published *Council Regulation (EC) No 384/96* on protection against dumped imports from nonmembers of the EU.

In 2009, the European Commission drew up a reform proposal titled "Enhanced Transparency in Trade Defense Investigations". The planned soft reforms, which essentially focus on improving transparency in EU's trade remedy investigations, cover the following areas:

(1) Improved access to the files for inspection by interested parties: The European Commission envisages that better presentation of data in the files for inspection should be in place from 1 July 2009. The files will be indexed in date order and will record the submission and use of files where a summary is not possible. There will also be an improvement in the contents of such files, including matters such as a record of hearings and on-the-spot verifications. The European Commission will also provide guidelines to explain what can constitute limited (i.e., confidential) information and how such information can be submitted in a version for inspection by interested parties. It is also considering, at a later stage, the introduction of the files for inspection by interested parties in an electronic format.

(2) Improved disclosure and timeframe to react: The reform plans to improve the quality of the disclosure of the findings at the provisional and definitive stage of the investigation. Disclosure comprises the details underlying the essential facts and considerations upon which provisional measures have been, and definitive measures will be, based. They thus provide an opportunity for interested parties to comment on the findings made at key stages of the investigation and thus exercise their rights of defense. The plan by the end of the year is that disclosures by the European Commission should address all issues raised by parties with a well-reasoned explanation given for each decision taken. Efforts also need to be made in order to grant interested parties more time to react to disclosure at the definitive stage of the investigation, rather than merely resorting to the 10-day minimum period.

(3) Hearing Officer: Since its inception in the Directorate General for Trade in April 2007, the Hearing Officer has played a key role in enhancing transparency of trade proceedings and ensuring the full excise of rights of interested parties. According to “Report from the Commission to the European Parliament: 27th Annual Report on the Community’s Anti-dumping, Anti-subsidy and Safeguard Activities”, in 2008 the Hearing Officer received 19 requests for hearings and held 16 hearings. The reason for interested parties to refer to the Hearing Officer included mostly the quality of the non-confidential files, product scope, non-cooperation, market economy treatment and individual tariff (MET/IT), conclusions and arguments concerning injury and Community interest. At present, the determination of the scope of dumping lies outside the authority of the Hearing Officer. The European Commission envisages that the role and status of the Hearing Officer will have a formal mandate in 2010.

(4) User-friendly website: An overhaul of the current Trade Defense Instruments website is

planned to occur before September 2009. The idea is to make the website more user-friendly by including alert notifications of the initiation of investigations, case timetables, and lists of up-to-date measures in force and expired measures. Interested parties will be able to follow cases online and find relevant information on the rights and obligations of parties to the investigation. A novel plan is to include a restricted area whereby interested parties with authorization from the European Commission can have access to the anti-dumping questionnaires for each case as well as updated information on documents added to the files for inspection by interested parties.

(5) Shorter questionnaires: The European Commission is planning to reduce the length and complexity of anti-dumping questionnaires. This is primarily to encourage the participation of importers, retailers and consumer groups in investigations.

(6) Interests of small and medium-sized enterprises: Small and medium-sized enterprises (SMEs) are also a priority of the new reforms. The European Commission is planning to introduce measures such as a dedicated helpdesk, simplified questionnaires, and special assistance in filing complaints in order to facilitate the full participation by SMEs in trade defense investigations.

Of course, it remains to be seen how these reforms will eventually work in practice, and whether all interested parties will benefit in an equal and non-discriminatory fashion from such reforms. As the proposed reforms do not impact on the tight deadlines and ever-detailed information required in respect of MET investigations, exporting producers are often subject to a dual MET/anti-dumping questionnaire response verification.

2.1.4.2 Anti-subsidy

On 11 June 2009, the EU published *Council Regulation (EC) No 597/2009* on protection against subsidized imports from countries not members of the European Community. Based on *Council Regulation (EC) No 2026/97* of 6 October 1997 on protection against subsidized imports from countries not members of the European Community and its amendments in 2002 and 2004, *Council Regulation (EC) No 597/2009* clarifies several key concepts in determining the existence of a subsidy, and sets out detailed provisions for complaint procedures, the determination of a subsidy and the enforcement of anti-subsidy measures. This is to codify relevant anti-subsidy laws in the EU and to reach greater transparency and effectiveness of anti-subsidy legislations.

2.1.4.3 Safeguard Measures

On 26 February 2009, the EU published *Council Regulation (EC) No 260/2009* on the common rules for imports. Based on *Council Regulation (EC) No 3285/94* of 22 December 1994 on the common rules for imports and repealing *Regulation (EC) No 518/94* and its subsequent amendments, *Council Regulation (EC) No 260/2009* clarifies substantative concepts such as "serious injury" and "threat of serious injury" and procedural matters such as the initiation of safeguard measures. The Regulation is enacted to codify relevant safeguard laws and provide greater transparency and effectiveness of safeguard legislations.

2.1.4.4 Responding to Trade Barriers

On 22 December 1994, the EU published *Council Regulation (EC) No 3286/94* laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the WTO. The Regulation introduces a mechanism aiming to enable EU enterprises and Member States to request that the EU institutions react to obstacles to trade adopted or maintained by third countries which cause injury or otherwise adverse trade effects. On 12 February 2008, the EU published *Council Regulation (EC) No 125/2008* amending *Regulation (EC) No 3286/94*. According to the Amendments, a complaint by EU enterprises and Member States alleging trade obstacles adopted or maintained by third countries do not need to refer to violations of multilateral or plurilateral rules in order to be admissible.

2.1.4.5 Special Mechanism for Chinese Textiles

According to Paragraph 242 of the "Report of the Working Party on the Accession of China", *Council Regulation (EC) No 138/2003* of 21 January 2003 amending *Regulation (EEC) No 3030/93* on common rules for imports of certain textile products from third countries stipulates special safeguard measures which apply to imports of textile and clothing products from China. The EU and China signed in 2005 a memorandum of understanding on Sino-EU trade in textile and clothing products. According to the memorandum, the EU would abolish restrictive quantitative control on textile imports from China from 1 January 2008 and incorporate them into the bilateral surveillance system. As the special safeguard measures on the Chinese textile products expired on 31 December 2008, the EU published *Commission Regulation (EC) No 1328/2008* of 22 December 2008 amending Annexes I, II, III, V, VII and VIII to *Council Regulation (EEC) No 3030/93* on common rules for imports of certain textile products from third countries, announcing that the double-check surveillance system with China would come to an end on 31 December 2009.

2.1.4.6 Product-Specific Safeguard Mechanism for Chinese Imports

According to Article 16 of the *Protocol on the Accession of the People's Republic of China*, the EU published *Council Regulation (EC) No 427/2003* of March 2003 on a transitional product-specific safeguard mechanism for imports originated in China and amending *Regulation (EC) No 519/94* on common rules for imports from certain third countries, which establishes a transitional product-specific safeguard mechanism for imports originated in China. The mechanism shall be terminated on 11 December 2013.

2.2 Investment Administration Regime and Its Recent Developments

The *Treaty establishing the European Community* provides that policy decisions on investment be kept within the competence of each of the Member States and that the Member States may enact their own investment legislations consistent with relevant treaties and EU laws.

The *Treaty establishing a Constitution for Europe* signed by the leaders of the 25 Member States in Rome in October 2004 made amendments to investment policies, integrating the administration of foreign direct investment (FDI), currently under the discretion of EU Member States, into the EU common commercial policy, transferring foreign investment regulation from the Member States to the EU, and enabling the latter to formulate uniform legislations and to sign international agreements on foreign investment. However, the Treaty has not been brought into force up to now.

On 12 December 2007, the EU signed the *Treaty of Lisbon*, which adjusts the FDI policies of the Member States and incorporates FDI into the EU common trade policy. For a long time, policy decisions on investment are kept within the competence of Member States, which all operate a complex network of bilateral investment treaties. The EU's involvement has been limited to participation in the *Energy Charter Treaty* and in *General Agreement on Trade in Services* (GATS). The expansion of EU common commercial policy in the *Treaty of Lisbon* to include FDI is a momentous development, strengthening and consolidating the pan-European management of FDI. However, it is at this stage unclear how the EU institutions intend to proceed in this area. Of course, the many bilateral treaties cannot be immediately replaced by Europe-wide agreements. Therefore, although the *Treaty of Lisbon* has been ratified, it still remains to be seen what the EU's external competences and its status in international investment law will become. But beyond that, there is at present no discernible policy direction.

2.3 Trade and Investment Related Administration and Its Recent Developments

2.3.1 Common Agricultural Policy

The common agricultural policy (CAP), first proposed in the *Treaty establishing the European Community*, is the earliest of all the common policies adopted by the EU. The European Commission formally proposed a scheme for setting up a CAP on 30 June 1960, which has been implemented since 1962. Major legislations on CAP include:

Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy sets up a uniform legal framework for financing the CAP. It was put into effect on 1 January 2007.

On 27 March 2007, the EU published *Council Regulation (EC) No 378/2007* laying down rules for voluntary modulation of direct payment provided for in *Regulation (EC) No 1782/2003* establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers. Certain Member States are facing particular difficulties in financing their rural development programs pursuant to *Council Regulation (EC) No 1698/2005* of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD). With a view to strengthening their rural development policy, these Member States should be given the possibility to apply a system of voluntary modulation of direct payment.

Since its adoption, CAP has undergone three major reforms and adjustments.

(1) In 1992, to coordinate its stance in the Uruguay Round of multilateral trade negotiations, the EU started to reform its CAP systematically. The focus of the reform was to transform its previous price support mechanism to a mechanism based on price support and direct subsidy. To this end, three measures were taken: (a) reduction of the level of price support and control of production; (b) subsidy to farmers who keep their arable land fallow; and (c) restructuring agriculture, environmental protection, and rural development support in mountainous and underdeveloped areas. This reform produced favorable effects in solving the oversupply of agricultural products and the financial burden.

(2) In 1999, to respond to trade talks on agriculture under the WTO, the EU introduced more drastic reform of its CAP. The reform highlighted the multifunctionality and sustainability of agriculture, two pillars of its CAP, to ensure future development of its agriculture. The EU tried to limit its agricultural subsidies for the period from 2000 to 2006 to EUR 405 million every year,

while gradually cutting its price support to major agricultural products. At the same time, regional development fund was devoted to areas of relative poverty with poor infrastructure and low productive skills. Grants were made available to ecologically fragile areas in order to reduce the use of harmful fertilizers and pesticides and to increase forestation.

(3) In 2009, the EU adjusted its CAP for the third time. On 19 January 2009, the EU published three Council Regulations and one Council Decision. Specifically, they are *Council Regulation (EC) No 72/2009* on modifications to the Common Agricultural Policy by amending *Regulations (EC) No 247/2006, (EC) No 320/2006, (EC) No 1405/2006, (EC) No 1234/2007, (EC) No 3/2008* and *(EC) No 479/2008* and repealing Regulations *(EEC) No 1883/78, (EEC) No 1254/89, (EEC) No 2247/89, (EEC) No 2055/93, (EC) No 1868/94, (EC) No 2596/97, (EC) No 1182/2005* and *(EC) No 315/2007*; *Council Regulation (EC) No 73/2009* establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending *Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007* and repealing *Regulation (EC) No 1782/2003*; *Council Regulation (EC) No 74/2009* amending *Regulation (EC) No 1698/2005* on support for rural development by the European Agricultural Fund for Rural Development (EAFRD); and *Council Decision 2009/61/EC* amending *Decision 2006/144/EC* on the Community strategic guidelines for rural development (programming period 2007 to 2013). With the adoption of a series of regulations, the EU will keep increasing its milk quotas by 1% annually starting 2009 before phasing out milk quotas by 2015. The focus of the CAP reform is to adjust its subsidy scheme so as to better regulate agricultural production by market forces. Except for special cases, the EU will further decouple subsidies from agricultural production: That is, the EU annual subsidies will no longer be paid as per production volume. Instead, single payment scheme (SPS) and single area payment scheme (SAPS) will be established, direct support schemes will be revised, the principle of “cross-compliance” relating to environmental protection, animal welfare and food safety will be introduced, and an Agricultural Risk Management Fund will be established to support rural development programs in poverty-stricken areas and prevention of natural hazards and animal and plant diseases.

2.3.2 Common Fisheries Policy

Articles 32 to 38 in the *Treaty establishing the European Community* serve as the legal basis for the common fisheries policy (CFP) of the EU. According to the CFP, the EU decided to extend, as from 1977, its common fishing waters to 200 miles from their coasts in the North Atlantic and the North Sea, which are subject to the unified administration of the EU. The EU Member States authorize the European Commission to negotiate fishing agreements with third parties. The CFP of

the EU essentially took shape in 1983, regulating the distribution of fishing quotas among the EU Member States, the conservation of fishery resources and the marketing of aquaculture products. The EU published on 26 April 2005 *Council Regulation (EC) No 768/2005* establishing a Community Fisheries Control Agency (CFCA). According to the Regulation, the CFCA is designed to coordinate fishing control and inspection among the Member States.

On 27 July 2006, the EU released *Council Regulation (EC) No 1198/2006* on the European Fisheries Fund. According to the Regulation, the EU will set up a European Fisheries Fund (EFF) with a budget of EUR € 3.8 billion for the next 6 years (2007-2013). The new fishing support program will help to modernize and restructure the EU fishing and aquaculture industry, increase the value that the sector adds to its products through investments in processing and bringing fish to the market, and encourage coastal regions to pursue fish farming and other activities to substitute for fishing. On 26 March 2007, the EU published *Commission Regulation (EC) No 498/2007* laying down detailed rules for the implementation of *Council Regulation (EC) No 1198/2006* on the European Fisheries Fund. Its provisions define the structure and transmission of operational programs; fisheries measures; the evaluation of operational programs; information and publicity; management, monitoring and control; irregularities; electronic exchange of data; and personal data.

On 22 April 2009, the European Commission adopted a Green Paper on CFP Reform to analyze the shortcomings of the current policy, to trigger public debate and to elicit views on the future CFP. The Green Paper emphasizes the importance of ecological sustainability, the economic viability of the European fleets, and the conservation of fish stocks. Only with a sound fish stock and a sound fleet policy can there be a sound fishery industry. The main focus of the CFP reform would be resource conservation and fleet policy. The debate would involve a broad-based consultation with the fisheries sector, other stakeholders and the wider public. The European Commission points out five main structural failings of the current policy: a deep-rooted problem of fleet overcapacity; imprecise policy objectives resulting in insufficient guidance for decisions and implementation; a decision-making system that encourages a short-term focus; a framework that does not give sufficient responsibility to the industry; lack of political will to ensure compliance and poor compliance by the industry. After public debate with stakeholders and interested parties from the EU and third countries, the European Commission will publish a summary of the results of consultation in early 2010 and develop a proposal with a view to adoption for a reform to be in effect from 2012. The Chinese government, intermediary agencies and fishing enterprises should take an active part in EU’s review of its CFP and express their

views on it.

2.3.3. Common Consumer Protection Policy

Article 153 of the *Treaty establishing the European Community* serves as the legal basis for the EU common consumer protection policy, which states, "In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, training and to organizing themselves in order to safeguard their interests." It also provides that consumer protection requirements be taken into account in defining and implementing other EU policies. Apart from implementing the common consumer policy, the EU Member States may introduce more stringent protective measures on condition that such measures are compatible with the *Treaty establishing the European Community* and the European Commission is notified of them.

The EU published *Council Resolution 2007/C 166/01* of 31 May 2007 on the consumer policy strategy of the EU (2007–2013), which is mainly designed to increase consumer confidence in the EU internal market and promote cross-border consumption, particularly the development of new mode of online cross-border consumption in the EU region; reinforce law enforcement and improve consumer assistance system; and ensure product safety. The overall objective of the Resolution is to ensure that consumer concerns are taken into account in all EU policies and that the priority of any EU policy is to enhance consumer welfare, particularly in areas such as health, environment and transport.

2.3.4 Intellectual Property Rights Protection

Legal framework for the protection of intellectual property rights (IPRs) varies in the EU Member States. Currently, major legislations of the EU protecting and defending IPRs related to international trade are *Council Regulation (EC) No 1383/2003* of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights and *Commission Regulation (EC) No 1891/2004* of 21 October 2004 laying down provisions for the implementation of *Council Regulation (EC) No 1383/2003* of 22 July 2003. These two Regulations lay down specific provisions regarding customs interventions against imports and exports suspected of violating IPRs. According to the Regulations, customs protection of IPRs covers trademarks, copyrights, patents, plant variety rights, designations of origin and geographic indications. IPR holders, authorized users, and representatives of right holders or authorized users

are all entitled to lodge an application with the customs authorities for actions and measures against goods suspected of IPR offenses.

On 22 October 2008, the EU released *Directive 2008/95/EC* of the European Parliament and of the Council to approximate the laws of the Member States relating to trademarks, which is designed to remove disparities of the trademark laws in the Member States that may have impeded the free movement of goods and freedom to provide services within the EU common market. According to the Directive, the EU will continue to improve the Community trademark system in order to ensure the proper functioning of the pan-European market. However, approximation is limited to those national provisions of law which most directly affect the functioning of the EU internal market. The Directive does not deprive the Member States of the right to continue to protect trademarks acquired through use, but the Member States should take them into account only in regard to the relationship between them and trademarks acquired by registration. The Member States also remain free to fix the provisions of procedure concerning the registration, the revocation and the invalidity of trademarks acquired by registration. The Directive also provides for signs of which a trademark may consist, grounds for refusal or invalidity, rights conferred by a trademark and their remedies.

In 2009, the EU stepped up its fight against counterfeiting and piracy. The European Commission launched a number of awareness-raising activities in order to inform consumers of the dangers of counterfeiting and piracy. These included operational guides and events to mark the European awareness day related to counterfeiting and piracy. The European Council also called upon the European Commission and Member States to take action to crack down counterfeiting and piracy more effectively. On 16 March 2009, the European Council published a *Customs Action Program Against Counterfeiting and Piracy* for the period 2009–2012, aiming at enhancing the existing legal framework of IPR protection, strengthening the collaboration between the border authorities and the IPR holders, and promoting information sharing via electronic means. According to the action plan, the EU is considering reviewing *Council Regulation (EC) No 1383/2003* of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights and *Commission Regulation (EC) No 1891/2004* of 21 October 2004 laying down provisions for the implementation of *Council Regulation (EC) No 1383/2003*. In the future, priority will be given to revise the scope of piracy crackdown, the treatment of small quantities of pirated goods carried by passengers crossing borders, application of simplified procedures, and overlapping with other laws.

2.3.5 Opening-up the Intra-EU Energy Market

The EU energy market has been liberalized since 1 July 2007. EU consumers are now free to choose companies of electricity and gas, breaking monopoly in the energy market by state-run companies in their own respective countries. To further open up the internal EU energy market, the EU released *Directive 2008/92/EC* of the European Parliament and of the Council of 22 October 2008 concerning a Community procedure to improve transparency of gas and electricity prices charged to industrial end-users, which aims to establish relevant procedures and supervisory system and ensure transparency of energy prices charged to industrial end-users.

2.3.6 Reduced Rate of Value Added Tax

On 5 May 2009, the EU published *Council Directive 2009/47/EC* amending *Directive 2006/112/EC* as regards reduced rates of value added tax (VAT). *Council Directive 2006/112/EC* of 28 November 2006 on the common system of VAT authorizes Member States to apply one or two reduced rates which may not be lower than 5% and are applicable only to a restrictive list of supplies of goods and services. *Council Directive 2009/47/EC* allows Member States to apply reduced VAT rates to the labor-intensive services as well as to restaurant and catering services for health or social reasons. The amendments contained in the Directive also include reduced VAT for specific Member States, such as the supply of liquid petroleum gas (LPG) in cylinders in Cyprus, the tolls on bridges in Portugal's Lisbon area, and the supply of foodstuffs for human consumption and pharmaceuticals in Malta. The Directive entered into force in May 2009.

2.3.7 Public Procurement

The legislative package in the EU concerning public procurement includes *Directive 2004/18/EC* of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, *Directive 2004/17/EC* of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, and *Commission Decision 2005/15/EC* of 7 January 2005 on the detailed rules for the application of the procedure provided for in Article 30 of *Directive 2004/17/EC* of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. *Directive 2004/18/EC* governs award criteria of contracting authorities and regulates procedures for the award of public works contracts, public supply contracts and public service contracts. *Directive 2004/17/EC* regulates the procurement procedures of entities operating in the water, energy, transport and postal services

sectors, because procurement from these public sectors is often large in scale and high in value involving a complicated structure of economic operators. However, the Directive provides a number of exclusions: Apart from standard exclusions for procurement contracts involving defense, security and confidentiality, exclusions also apply to procurement in the supply of gas, heat, water and transport. *Commission Decision 2005/15/EC* lays down detailed rules for the application of the procedure set out in Article 30 of *Directive 2004/17/EC* of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. All the above legislations apply to public procurement above threshold amounts for public contracts, although public works contracts, public supply contracts, public service contracts and public sector contracts have different thresholds which are, where necessary, subject to modification every two years. Public procurement below thresholds, although subject to the administration of each of the Member State, must comply with the basic EU public procurement principle of transparency, openness, full competition, national treatment, and non-discrimination. Public procurement procedures in the EU fall into four categories, namely, open, restricted, negotiated, and competitive dialogue procedures. *Directive 2004/18/EC* provides no special provisions regarding the use of the open or restricted procedure. As to the negotiated procedure, *Directive 2004/18/EC* clarifies cases justifying use of the negotiated procedure with prior publication of a contract notice and cases justifying use of the negotiated procedure without publication of a contract notice. The competitive dialogue applies to the case of particularly complex contracts where contracting authorities consider that the use of the open or restricted procedure will not allow the award of the contracts. According to the WTO statistics, the use of the open procedure accounted for 73%, the use of the negotiated procedure accounted for 16%, and the use of the restricted procedure accounted for 11% of the EU public procurement in 2007.

2.4 Trade-Related Technical Measures in 2009

According to WTO statistics, the EU notified 84 trade-related technical measures to the WTO in 2009, among which 60 are technical regulations and standards, while 19 are sanitary and phytosanitary measures. Most of them have been formally released or implemented during the same year. A brief account of the major trade-related technical measures that have been officially published or enforced is given below:

2.4.1 Technical Regulations

2.4.1.1 Restrictions on the Marketing and Use of Certain Dangerous Substances and

Preparations

On 15 January 2009, the EU published *Commission Directive 2009/2/EC* amending, for the purpose of its adaptation to technical progress, for the 31st time, *Council Directive 67/548/EEC* on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labeling of dangerous substances. The Directive sets out the criteria and the procedure to be followed to harmonize the classification and labeling of more than 600 substances, defining over 200 chemical substances as CMR, that is, carcinogenic, mutagenic or reproductive toxic chemical. If a substance is identified as CMR, it does not mean that it would be banned from being placed on the market. Rather, it indicates the obligation to protect workers, other people and the environment from its harmful effects, including the way it is packaged, labeled or used. The Directive went into effect in February 2009.

2.4.1.2 Eco-Design Requirements on Energy Using Products

Pursuant to *Directive 2005/32/EC* of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of eco-design requirements for energy using products (EuPs) and amending *Council Directive 92/42/EEC* and *Directives 96/57/EC* and *2000/55/EC* of the European Parliament and of the Council, the European Commission introduced in 2009 product-specific implementing measures for *Directive 2005/32/EC*, setting eco-design rules for specified products such as household and office electronic and electrical equipment, ultraviolet (UV) external power supplies, simple set-top boxes, and image devices like photocopiers, printers and projectors.

On 4 February 2009, the EU published *Commission Regulation (EC) No 107/2009* implementing *Directive 2005/32/EC* of the European Parliament and of the Council with regard to eco-design requirements for simple set-top boxes. The Regulation set out detailed and specific eco-design rules, verification procedures and indicative benchmarks for simple set-top boxes. It ran into effect in February 2009.

On 18 March 2009, the EU published *Commission Regulation (EC) No 244/2009* implementing *Directive 2005/32/EC* of the European Parliament and of the Council with regard to eco-design requirements for non-directional household lamps. The Regulation establishes eco-design rules, conformity assessment and verification procedures for non-directional household lamps. The eco-design requirements shall apply in six stages between 1 September 2009 and 1 September 2016. In addition, the Regulation requires that starting from 1 September 2009, for special purpose lamps, the following information shall be clearly and prominently indicated on their packaging

and in all forms of product information accompanying the lamp when it is placed on the market: their intended purpose; and that they are not suitable for household room illumination.

On 18 March 2009, the EU published *Commission Regulation (EC) No 245/2009* implementing *Directive 2005/32/EC* of the European Parliament and of the Council with regard to eco-design requirements for fluorescent lamps without integrated ballast, for high intensity discharge lamps, and for ballasts and luminaires able to operate such lamps, and repealing *Directive 2000/55/EC* of the European Parliament and of the Council. The Regulation establishes eco-design rules, conformity assessment and verification procedures for fluorescent lamps without integrated ballast, high intensity discharge lamps, and ballasts and luminaires able to operate such lamps (even when they are integrated into other energy using products). *Directive 2000/55/EC* of the European Parliament and of the Council of 18 September 2000 on energy efficiency requirements for ballasts for fluorescent lighting shall be repealed on 13 April 2010 after the entry into force of this Regulation.

On 6 April 2009, the EU published *Commission Regulation (EC) No 278/2009* implementing *Directive 2005/32/EC* of the European Parliament and of the Council with regard to eco-design requirements for no-load condition electric power consumption and average active efficiency of external power supplies. According to the Regulation, external power supply means a device which meets all of the following criteria: (a) it is designed to convert alternating current (AC) power input from the mains power source input into lower voltage direct current (DC) or AC output; (b) it is able to convert to only one DC or AC output voltage at a time; (c) it is intended to be used with a separate device that constitutes the primary load; (d) it is contained in a physical enclosure separate from the device that constitutes the primary load; (e) it is connected to the device that constitutes the primary load via a removable or hard-wired male/female electrical connection, cable, cord or other wiring; (f) it has nameplate output power not exceeding 250 Watts; and (g) it is intended for use with electrical and electronic household and office equipment. The Regulation shall not apply to: voltage converters; uninterruptible power supplies; battery chargers; halogen lighting converters; and external power supplies for medical devices. The Regulation sets out eco-design requirements, conformity assessment, and verification procedure for no-load condition (i.e., the condition in which the input of an external power supply is connected to the mains power source, but the output is not connected to any primary load) electric power consumption and average active efficiency (i.e., the average of the active mode efficiencies at 25%, 50%, 75% and 100% of the nameplate output power) of external power supplies. The eco-design requirements shall apply in two stages from 27 April 2010 and 27 April 2011.

On 22 July 2009, the EU published *Commission Regulation (EC) No 640/2009* implementing *Directive 2005/32/EC* of the European Parliament and of the Council with regard to eco-design requirements for electric motors. The Regulation sets out eco-design rules, conformity assessment and verification procedure for electric motors, including where integrated in other products. According to the Regulation, "motor" means an electric single speed, three-phase 50 Hz or 50/60 Hz, squirrel cage induction motor. The Regulation shall not apply to such motors as brake motors or motors designed to operate wholly immersed in a liquid. Eco-design requirements on motors shall apply in three phases in accordance with the following timetable: (a) From 16 June 2011, motors shall not be less efficient than the IE2 efficiency level, as defined in Annex I, point 1; (b) From 1 January 2015, motors with a rated output of 7.5–375 kW shall not be less efficient than the IE3 efficiency level, as defined in Annex I, point 1, or meet the IE2 efficiency level, as defined in Annex I, point 1, and be equipped with a variable speed drive; and (c) From 1 January 2017, all motors with a rated output of 0.75–375 kW shall not be less efficient than the IE3 efficiency level, as defined in Annex I, point 1, or meet the IE2 efficiency level, as defined in Annex I, point 1, and be equipped with a variable speed drive.

On 22 July 2009, the EU published *Commission Regulation (EC) No 641/2009* implementing *Directive 2005/32/EC* of the European Parliament and of the Council with regard to eco-design requirements for glandless standalone circulators and glandless circulators integrated in products. The Commission Regulation establishes eco-design requirements, including energy efficiency requirements and product information requirements, for the placing on the market of glandless standalone circulators and glandless circulators integrated in products. Product information requirements shall apply from 1 January 2013, while energy efficiency requirements shall apply in accordance with the following timetable: (a) from 1 January 2013, glandless standalone circulators, with the exception of those specifically designed for primary circuits of thermal solar systems and of heat pumps, shall have an energy efficiency index (EEI) of not more than 0.27; and (b) from 1 August 2015, glandless standalone circulators and glandless circulators integrated in products shall have an energy efficiency index (EEI) of not more than 0.23.

On 22 July 2009, the EU published *Commission Regulation (EC) No 642/2009* implementing *Directive 2005/32/EC* of the European Parliament and of the Council with regard to eco-design requirements for televisions. The Regulation sets out eco-design rules, conformity assessment and verification procedure for televisions. Under the Regulation, "television set" means a product designed primarily for the display and reception of audiovisual signals which is placed on the

market under one model or system designation, and which consists of: a display; one or more tuner(s)/receiver(s) and optional additional functions for data storage and/or display such as digital versatile disc (DVD), hard disk drive (HDD) or videocassette recorder (VCR), either in a single unit combined with the display, or in one or more separate units. According to the Regulation, "television monitor" means a product designed to display on an integrated screen a video signal from a variety of sources, including television broadcast signals, which optionally controls and reproduces audio signals from an external source device, which is linked through standardized video signal paths including cinch (component, composite), SCART, HDMI, and future wireless standards (but excluding non-standardized video signal paths like DVI and SDI), but cannot receive and process broadcast signals. Eco-design requirements on televisions include on-mode power consumption, standby/off mode power consumption, and home-mode for televisions which are delivered with a forced menu, peak luminance ratio, and information to be provided by manufacturers. These requirements shall apply in several stages between 7 January 2010 and 1 April 2012.

On 22 July 2009, the EU published *Commission Regulation (EC) No 643/2009* implementing *Directive 2005/32/EC* of the European Parliament and of the Council with regard to eco-design requirements for household refrigerating appliances. The Regulation establishes eco-design requirements, conformity assessment and verification procedure for electric mains-operated household refrigerating appliances with a storage volume up to 1,500 liters. The Regulation shall not apply to: (a) refrigerating appliances that are primarily powered by energy sources other than electricity, such as liquefied petroleum gas (LPG), kerosene and bio-diesel fuels; (b) battery-operated refrigerating appliances that can be connected to the mains through an AC/DC converter, purchased separately; (c) custom-made refrigerating appliances, made on a one-off basis and not equivalent to other refrigerating appliance models; (d) refrigerating appliances for tertiary sector application where the removal of refrigerated foodstuffs is electronically sensed and that information can be automatically transmitted through a network connection to a remote control system for accounting; and (e) appliances where the primary function is not the storage of foodstuffs through refrigeration, such as stand-alone ice-makers or chilled drinks dispensers. Eco-design requirements include energy efficiency, information to be provided by manufacturers, and general eco-design requirements on the functionalities of household refrigerating appliances. These requirements shall apply in several stages between 1 July 2010 and 1 July 2015.

On 21 October 2009, the EU published *Directive 2009/125/EC* of the European Parliament and of the Council establishing a framework for the setting of eco-design requirements for energy-related

products. Extending the scope of application of the EuP Directive (2005/32/EC) to include, in principle, all energy-related products, the new Directive seeks to improve the energy and resource efficiency of energy-related products, to reduce the demand on natural resources, and to achieve greenhouse gas emission targets in the EU. *Directive 2005/32/EC* covers EuPs only, and the EU has gradually introduced implementing measures on eco-design requirements on products such as televisions, lighting fixtures, electric and electronic equipment, and electric motors. However, according to *Directive 2009/125/EC*, other energy-related products, including products used in construction such as windows, insulation materials, or some water-using products such as shower heads or taps, could also fall under this new Directive, because eco-designs of energy-related products such as bathroom installations contribute to the reduction of water, thus leading to less energy to heat the water. The new Directive does not provide a list of energy-related products, because the EU thinks that the list should come after a clear definition of product categories under the implementing measures to be envisaged in the future. According to the new Directive, "energy-related product" means any good that has an impact on energy consumption during use which is placed on the market and/or put into service, and includes parts intended to be incorporated into energy-related products covered by this Directive which are placed on the market and/or put into service as individual parts for end-users and of which the environmental performance can be assessed independently. Measures implementing the new Directive have not yet been adopted. The European Commission will establish a working committee to analyze eco-design requirements on different product categories, and after consulting the Eco-design Consultation Forum, submit draft implementing measures to the European Parliament for ratification. The new Directive entered into force in November 2009.

2.4.1.3 Directive on Textile Names

On 23 January 2009, the EU published *Directive 2008/121/EC* of the European Parliament and of the Council of 14 January 2009 on textile names. Amending *Directive 96/74/EC* of the European Parliament and of the Council of 16 December 1996 on textile names, this Directive harmonizes the names of textile fibers and the particulars appearing on labels, markings and documents which accompany textile products. *Directive 96/74/EC* provides general rules, requiring that textile products may be marketed in the EU only if such products comply with the Directive on matters such as the labeling of textile fiber contents and that surveillance checks be carried out to assess the conformity of textile fiber contents according to the technical documentation provided. The new Directive seeks to provide uniform rules with regard to the names, composition and labeling of textile products placed on the EU market.

Products containing at least 80% by weight of textile fibers, which include any raw, semi-worked, worked, semi-manufactured, manufactured, semi-madeup or madeup products, shall be subject to the new Directive. Textile products within the meaning of this Directive shall be labeled or marked whenever they are put on the EU market. However, this Directive shall not apply to textile products which: (a) are intended for export to third countries; (b) enter Member States, under customs control, for transit purposes; and (c) are imported from third countries for inward processing.

Pursuant to Article 4(1) of the new Directive, no textile product may be described as “100%”, “pure”, “all” or similar term unless it is exclusively composed of the same fiber. According to Article (4)2, a textile product may contain up to 2% by weight of other fibers, provided this quantity is justified on technical grounds and is not added as a matter of routine. This tolerance shall be increased to 5% in the case of textile products which have undergone a carding process. In accordance with Article 6(1), a textile product composed of two or more fibers, one of which accounts for at least 85% of the total weight, shall be designated by one of the following: (a) by the name of the latter fiber followed by its percentage by weight; (b) by the name of the latter fiber followed by the words “85% minimum”; or (c) by the full percentage composition of the product. Article 6(2) provides that a textile product composed of two or more fibers, none of which accounts for as much as 85% of the total weight, shall be designated by the name and percentage by weight of at least the two main fibers, followed by the names of the other constituent fibers in descending order of weight, with or without an indication of their percentage by weight.

The new Directive also provides textile manufacturers with a guide to labeling. For example, the names, descriptions and particulars as to textile fiber content shall be indicated in clear, legible and uniform print when textile products are offered for sale or sold to the consumer, and in particular in catalogs and trade literature, on packaging, on labels and on markings. EU Member States may require that when textile products are offered for sale or are sold to the end consumer in their territory, their national languages should also be used for the labeling and marking required by this Directive.

The new Directive entered into force on 12 February 2009.

2.4.1.4 Restrictive Measures on Chemicals in Cosmetics

In 2009, the EU published four restrictive measures on the use of chemical substances in cosmetics, three relating to the restrictive use and traces limit of several chemicals in hair dye

products and one as regards the use of fluorides in toothcare products.

On 5 February 2009, the EU published *Commission Directive 2009/6/EC* amending *Council Directive 76/768/EEC*, concerning cosmetic products, for the purpose of adapting Annexes II and III thereto to technical progress. Based on the opinion of the Scientific Committee on Consumer Products (SCCP), the Directive adds substances diethylene glycol (DEG) and phytonadione (vitamin K1) to Annex II to *Council Directive 76/768/EEC*, banning their use in hair dye and nail products, and fixes maximum authorized concentration in Annex III of toluene, diethylene glycol (DEG), diethylene glycol monobutyl ether (DEGBE) and ethylene glycol monobutyl ether (EGBE) in the finished cosmetic products, banning the use of DEGBE and EGBE in aerosol dispensers (sprays). The Directive shall apply from 5 November 2009, and provisions on toluene shall apply from 5 February 2010.

On 17 April 2009, the EU published *Commission Directive 2009/36/EC* amending *Council Directive 76/768/EEC*, concerning cosmetic products, for the purpose of adapting Annex III thereto to technical progress. Following final opinions of the SCCP, this Directive adds 17 hair dye substances to Annex III under *Council Directive 76/768/EEC*, setting maximum authorized concentration of these 17 hair coloring ingredients in hair dye products, and requiring conditions of use and warnings to be printed on the labels of products containing some of these 17 substances. In addition, the industry is required to submit files containing the scientific data on hair dye substances to be evaluated by the SCCP. The Directive shall enter into effect on 15 May 2010.

On 13 October 2009, the EU published *Commission Directive 2009/130/EC* amending *Council Directive 76/768/EEC*, concerning cosmetic products, for the purpose of adapting Annex III thereto to technical progress. As a precautionary measure to reduce the risk of allergies to hair dye products among consumers, the Directive decreases the maximum authorized concentrations of p-Phenylenediamine (PPD) and toluene-2, 5-diamine (PTD). According to the Directive, after mixing under oxidative conditions, the maximum concentration of PPD and PTD applied to hair must not exceed 2% calculated as free base. In addition, the Directive continues to ban the use of hydroquinone in oxidative hair dye products. The Directive shall come into force on 15 July 2010.

On 10 October 2009, the EU published *Commission Directive 2009/129/EC* amending *Council Directive 76/768/EEC* concerning cosmetic products for the purposes of adapting Annex III thereto to technical progress. Earlier labeling requirement in *Commission Directive 2007/53/EC* of 29 August 2007 refers to the content of fluoride instead of elemental fluorine; as a result, not all

fluorine containing compounds are covered by the introduced labeling requirement. To ensure legal certainty, the new Directive clarifies that the labeling requirement refers to all 20 compounds containing fluorine listed in Part 1 of Annex III to *Directive 76/768/EEC*, and not only to those containing fluoride. The new Directive provides that for any toothpaste with compounds containing fluorine, the following labeling is obligatory: "Children of 6 years and younger: use a pea-sized amount for supervised brushing to minimize swallowing. In case of intake of fluoride from other sources consult a dentist or doctor". The Directive shall apply from 15 October 2010.

2.4.1.5 Decision on Packaging and Packaging Waste

On 25 March 2009, the EU published *Commission Decision 2009/292/EC* establishing the conditions for a derogation for plastic crates and plastic pallets in relation to the heavy metal concentration levels established in *Directive 94/62/EC* of the European Parliament and of the Council on packaging and packaging waste. The Decision allows the sum of concentration levels of heavy metals in plastic crates and plastic pallets to exceed the applicable limit set out in *Directive 94/62/EC* on packaging and packaging waste. Article 11 of *Directive 94/62/EC* of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste expressly states that the sum of concentration levels of lead, cadmium, mercury and hexavalent chromium present in packaging or packaging components shall not exceed the following: 600 ppm by weight two years after the date of entry into force of the Directive, 250 ppm by weight three years after the date of entry into force of the Directive, and 100 ppm by weight five years after the date of entry into force of the Directive. Taking into account the reuse of packaging and the recycling of packaging waste, *Commission Decision 1999/177/EC* of 8 February 1999 establishes the conditions for a derogation for plastic crates and plastic pallets in relation to the heavy metal concentration levels established in *Directive 94/62/EC* on packaging and packaging waste, but the Decision expired on 9 February 2009 and with the best available techniques, there are currently no replacements for plastic crates and plastic pallets. As a result, the EU published on 25 March 2009 *Commission Decision 2009/292/EC* establishing the conditions for a derogation for plastic crates and plastic pallets in relation to the heavy metal concentration levels established in *Directive 94/62/EC* of the European Parliament and of the Council on packaging and packaging waste. This Decision provides that the sum of concentration levels of heavy metals in plastic crates and plastic pallets may exceed the applicable limit laid down in Article 11(1) of *Directive 94/62/EC* provided that those crates and pallets are introduced and kept in product loops which are in a closed and controlled chain under the conditions set out in Articles 3, 4 and 5. These conditions include that plastic crates and plastic pallets containing an excessive amount of heavy metals shall be identified in a permanent and visible way so that they may be returned to the manufacturer, the

packer or the filler or to an authorized representative for reuse, recycling or any other proper treatment. In addition, the Decision requires that Member States shall submit relevant information on plastic crates and plastic pallets containing an excessive amount of heavy metals. The Decision entered into force on 10 February 2010.

2.4.1.6 Decision Extending the Ban on Non-Child-Resistant Lighters and Novelty Lighters

On 27 March 2009, the EU published *Commission Decision 2009/298/EC* prolonging the validity of *Decision 2006/502/EC* requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters. The Decision extends the validity of application of *Commission Decision 2006/502/EC* for a further year until 11 May 2010. According to *Commission Decision 2006/502/EC* on child safety requirements which entered into effect in May 2006, cigarette lighters placed on the market shall be child-resistant and child-appealing novelty lighters can no longer be placed on the market. A child-resistant lighter means a lighter designed and manufactured in such a way that it cannot, under normal or reasonably foreseeable conditions of use, be operated by children younger than 51 months of age. Producers shall provide to the competent authorities a report of a child-resistance test issued by an accredited testing body, certifying the child-resistance of the model of lighters placed on the market. The competent authorities shall continuously monitor conformity of the lighters placed on the market to ensure child-resistance. However, the Decision shall not apply to refillable lighters which fulfill all of the following requirements: (a) the lighters are designed, manufactured and placed on the market such as to ensure a continual expected safe use over a lifetime of at least five years; (b) a written guarantee from the producer of at least two years for each lighter; (c) the practical possibility to be repaired and safely refilled over the entire lifetime; and (d) parts are accessible for replacement or repair by an authorized after-sales service center based in the EU. Member States shall take the necessary measures to comply with this Decision before 11 May 2009 and publish those measures.

2.4.1.7 Proposed Regulation on Timber and Timber Products

On 22 April 2009, the European Parliament adopted by a vote of vast majority a regulation on timber and timber products originating from third countries. The legislation enacted is stricter than the draft law tabled by the European Commission. A study by the World Wildlife Fund (WWF) indicates that an estimated 16% to 19% of EU wood imports in 2006 came from illegal logging or suspicious sourcing. The new EU regulation on timber and timber products will ensure that all the operators throughout the supply chain share legal responsibilities to minimize the risk of putting illegally harvested forest products on the EU market. Tough penalties will be imposed on the

offenders. The new regulation covers wooden furniture used in offices, kitchens, bedrooms, dining rooms or living rooms, woodcraft (including various decorative wood panels), wood boards, wooden frames for pictures, photographs or mirrors, and various wood cases (including boxes and crates). The European Parliament makes it retrospective that traders shall provide access to basic information about their wood products placed on the market such as the source of the products, their country and forest of origin as well as the names of suppliers and buyers through a traceability system. Operators shall either develop voluntarily a due diligence system on their own or rely on a recognized due diligence system developed by monitoring organizations. The European Parliament urges Member States to crack down harder on illegal logging of timber, suggesting that financial penalties should represent at least five times the value of illegally harvested timbers. Member States shall strictly regulate wood products and take immediate corrective measures, such as seizure of illegal logging and enforcing the cessation of commercial activity. Since the European Parliament has already adopted the Commission's legislative proposal, it will become a law once the European Council also approves it.

2.4.1.8 Decision on the Safety Requirements on Personal Music Players

The EU published on its *Official Journal* on 24 June 2009 *Commission Decision 2009/490/EC* on the safety requirements to be met by European standards for personal music players pursuant to *Directive 2001/95/EC* of the European Parliament and of the Council. The Decision provides for maximum sound limit for personal music players. The purpose of this Decision is to establish the safety requirements on the basis of which the European Commission shall request the relevant standardization bodies to establish standards for ensuring that, under normal usage conditions, exposure to sound from personal music players does not pose a risk to hearing. Under the Decision, a "personal music player" means a portable device, that is not covered by *Directive 1999/5/EC* or *Directive 2006/95/EC*, with headphones or earphones, used to listen to recorded, generated or broadcasted sound. Before the introduction of this Decision, depending on the type of personal music player, its safety is covered either by *Directive 2001/95/EC* of the European Parliament and of the Council of 3 December 2001 on general product safety, *Directive 1999/5/EC* of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, or *Directive 2006/95/EC* of the European Parliament and of the Council of 12 December 2006 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits. However, the above-mentioned Directives prescribe no maximum sound limit nor require any specific labeling in respect of noise emissions, but require that a statement be put in the instruction manual of audio, video and similar electronic apparatus to warn

of the adverse effects of exposure to excessive sound level.

The Decision takes into full account the opinion of the Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR), including the potential health risks posed by personal music players and mobile phones with a music playing function. According to the Decision, exposure to sound levels shall be time limited to avoid hearing damage. At 80 dB(A) exposure time shall be limited to 40 hours/week, whereas at 89 dB(A) exposure time shall be limited to 5 hours/week. For other exposure levels a linear intra- and extrapolation applies. Account shall be taken of the dynamic range of sound and the reasonably foreseeable use of the products. For better enforcement of the maximum sound limit, the European Commission recommends to relevant standardization bodies the inclusion of the sound limit in the European harmonized standard EN 60065. Given the ever more blurred borderline between consumer electronics and information technology equipment, this standard is intended to merge with EN 60950 into a new standard EN 62368. In addition, according to the Decision, personal music players shall provide adequate warnings on the risks involved in using the device and to the ways of avoiding them and information to users in cases where exposure poses a risk of hearing damage.

2.4.1.9 Regulation on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH)

According to *Regulation (EC) No 1907/2006* of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), pre-registration of chemical substances ended on 1 December 2008. The European Chemicals Agency (ECHA) indicates that 1.2 million pre-registration forms have been received during the pre-registration period. Chinese producers or exporters of substances who have failed to pre-register under the *REACH Regulation* will, in principle, not be allowed to produce in or export to the 27 EU Member States until their formal registration. On the other hand, Chinese producers and exporters who have pre-registered should prepare for formal registration. Formal registration procedures are very complicated and costly. Chinese manufacturers and exporters should make good use of the Substance Information Exchange Forum (SIEF) website and share data and information with other pre-registrants so as to save time and money. After pre-registration, REACH provides different formal registration deadlines for exporters or importers with different annual volumes of chemicals. Exporters with larger annual volumes will have to complete formal registration by 30 November 2010, while exporters with smaller annual volumes will have a longer transitional period and can complete formal registration on 31 May 2018 at the latest. Chinese manufacturers and exporters should pay attention to the deadline of

formal registration and note that pre-registration does not entail an obligation of formal registration. Chinese producers or exporters who have not pre-registered may still be able to do so, in light of the relevant REACH stipulations on new EU producers and importers. Producers or importers in the EU who have manufactured or imported a substance of 1 tonne or over for the first time after 1 December 2008 are still able to complete pre-registration: (a) within six months after the volume of production or import of the relevant substance exceeds 1 tonne; or (b) at least 12 months earlier than the applicable registration deadline.

Pursuant to the *REACH Regulation*, substances of very high concern (SVHC) may not be used or placed on the EU market without authorization. SVHC include substances which are: (a) carcinogenic, mutagenic or toxic to reproduction (CMR); and (b) persistent, bioaccumulative and toxic (PBT) or very persistent and very bioaccumulative (vPvB). At present, there are over 1,000 known possible SVHC, from which the European Commission and Member States may draw up a list of nominees for identification of SVHC (an Annex XV dossier). After public consultation, the European Chemicals Agency (ECHA) may work out a candidate list based on the nominations. After research, scientists may come up with a recommended list. After confirmation by the EU legislative body, the list will be included in Annex XIV to the *REACH Regulation* subject to authorization (authorization list). On 10 July 2008, the ECHA released its first Daft Recommendations for inclusion of 7 substances in the list subject to authorization. On 1 September 2009, the ECHA published its second Proposals for SVHC to be placed on the candidate list. Firms manufacturing or importing these substances need to take note of the proposals and recommendations for inclusion of substances in the authorization list.

Table 1: Second Candidate List of SVHC for Authorization

Serial No.	Substance Name	Use
1	anthracene oil	paints, wood, anti-corrosion oils, insecticides
2	anthracene oil, anthracene paste, anthracene fraction	
3	anthracene oil，anthracene paste, anthracene fraction	
4	anthracene oil, anthracene-low	
5	anthracene oil，anthracene paste	
6	dibutyl phthalate (DBP)	plasticizers
7	2,4-Dinitrotoluene	polyurethane foam, dyes and organic

		syntheses
8	pitch, coal tar, high temp.	paints, moisture-proof coatings, wood additives
9	tris(2-chloroethyl)phosphate	flame retardants and flame-retardant plasticizers
10	aluminosilicate Refractory Ceramic Fibers	industrial-use fillers for thermal insulation
11	zirconia Aluminosilicate Refractory Ceramic Fibers	
12	Lead sulfochromate yellow (C.I. Pigment Yellow 34)	paints and paint inks, colorants for rubber products
13	lead chromate molybdate sulphate red (C.I. Pigment Red 104)	
14	lead chromate	
15	acrylamide	synthetic fibers, resin modifiers, and papermaking catalyst

The EU published on its *Official Journal* on 22 June 2009 *Commission Regulation No 552/2009* amending *Regulation (EC) No 1907/2006* of the European Parliament and of the Council on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) as regards Annex XVII. According to this Regulation, the *REACH Regulation* shall repeal and replace with effect from 1 June 2009 *Council Directive 76/769/EEC* of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the restrictions on the marketing and use of dangerous substances and preparations. *Council Directive 76/769/EEC* established restrictions on marketing dangerous substances and toys, textiles and batteries containing dangerous substances such as phthalate and azo dyes. Article 67 of the *REACH Regulation* provides that substances, mixtures or articles may not be manufactured, placed on the market or used unless they comply with the conditions of any restrictions laid down in their regard in Annex XVII. *Commission Regulation No 552/2009* amends the *REACH Regulation* to incorporate in its Annex XVII restrictions recently adopted or modified, and clarifies those restrictions. For example, since mercury in batteries is regulated under *Directive 2006/66/E*C of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing *Directive 91/157/EEC*, the provisions on mercury in batteries contained in Annex XVII to the *REACH Regulation* are superfluous and

therefore deleted. Annex XVII designates many dangerous substances whose use is subject to restrictions, such as chloro-1-ethylene (monomer vinyl chloride) used in aerosol propellant; dangerous liquids used in ornamental objects, tricks, jokes and games; tris(aziridinyl)phosphinoxide, polybromobiphenyls and polybrominatedbiphenyls (PBB) used in textile articles, such as garments, undergarments and linen, intended to come into contact with the skin; benzene in toys or parts of toys where the concentration of benzene in the free state is in excess of 5 mg/kg of the weight of the toy or part of toy; soap bark powder (*Quillaja saponaria*) and its derivatives containing saponines in jokes and hoaxes or in objects intended to be used as such, for instance as a constituent of sneezing powder and stink bombs; azocolorants in clothing, bedding, towels, footwear, gloves, and textile or leather toys.

However, Chinese producers and exporters should note that registration within REACH is not obligatory for non-EU companies and that failure to register does not mean a complete inability to export to the EU. The *REACH Regulation* is the internal legislation of the EU and binding upon EU producers and distributors only. Although Chinese enterprises are not under any obligation to register, they are encouraged to register, in case they wish to do so, in order to take the initiative into their own hands and not to be controlled by others in their export to the EU. Fully aware of this issue, the EU has put in place an "Only Representative for non-Community Manufacturer" system, through which Chinese enterprises can register within REACH.

Because manufacturers of different products carry different obligations under REACH, Chinese firms, particularly upstream and downstream enterprises, should take different strategies on the issue of registration. At the current stage, upstream enterprises in the chemical industry manufacturing pure chemical products covered by REACH under "substances" or "preparations", such as petrochemical materials and products, cosmetic ingredients, dyes, chemical additives, coatings and adhesives, and exporting those products to the EU, are advised to register within REACH. In contrast to upstream enterprises, downstream enterprises using chemicals as their raw materials face more complicated situations, because their products fall under the class of "articles" in the *REACH Regulation* and need to be subclassified. Two separate questions need to be asked and answered. First, does the article intentionally release a substance during use? Articles "with intentional release of a substance" should be considered for registration of the substance contained in the articles. Take furniture as an example, average plastic furniture is not considered an article "with intentional release of a substance", but wood furniture which gives off fragrance is deemed an article "with intentional release of a substance" and the substance need to be considered for registration. Second, does the article contain substances of very high concern (SVHC)? At present,

the EU has published a candidate list of SVHC twice. Any supplier of an article containing SVHC on the candidate list in a concentration above 0.1% weight by weight (w/w) should comply with the obligation of notification under REACH.

The *REACH Regulation* has entered into its registration process. The most affected will be upstream enterprises in the chemical industry, whose export to the EU will be interrupted if they fail to register. However, as REACH is being further implemented, the use of substances harmful to human health and the environment will be restricted or prohibited, which will affect an increasing number of downstream enterprises. Therefore, downstream enterprises are advised to acquaint themselves with up-to-date information on REACH and replace, whenever possible, dangerous substances in their articles with less dangerous ones.

2.4.1.10 Eco-Label Criteria for Footwear

On 9 July 2009, the EU published *Commission Decision 2009/563/EC* on establishing the ecological criteria for the award of the Community eco-label for footwear, which shall be valid for four years from the date of the adoption of this Decision. The Decision will replace *Commission Decision 2002/231/EC* of 18 March 2002 establishing revised ecological criteria for the award of the Community eco-label to footwear and amending *Decision 1999/179/EC,* which are valid until 31 March 2010.

The product group "footwear'' under *Decision 2009/563/EC* shall comprise all articles of clothing designed to protect or cover the foot, with a fixed outer sole which comes into contact with the ground. Footwear shall not contain any electric or electronic components. The new Decision provides stricter criteria for certain products to be awarded EU eco-label, for example, the limits to water consumption for the tanning of hide and skin, the content of chemical oxygen demand (COD) in the waste waters from leather tanning sites and from the textile industries, and the restrictions on the use of hazardous substances not specified in earlier Commission Decisions. The purpose of the new Decision is to limit the level of toxic residues and the emissions of volatile organic compounds (VOCs). For shoes made of leather, there shall be no chromium VI in the final product, and the applicant and/or his supplier(s) shall provide a test report, using test method EN ISO 17075 (detection limit 3 ppm). In addition, there shall be no arsenic, cadmium and lead in the materials used for the product assembly or in the final product, and a test report demonstrating such should be accompanied. The amount of free and hydrolysed formaldehyde of the components of the footwear shall not be detectable for textile and not exceed 150 ppm for leather. The new Decision also sets limits to water consumption for the tanning of hide and skin. Hazardous

substances – pentachlorophenol (PCP), tetrachlorophenol (TCP) and azo dyes – shall not be used. N-Nitrosamines shall not be detected in rubber. The new Decision also places specific requirements on the packaging of the final product. Where cardboard boxes are used for the final packaging of footwear, they shall be made of 100% recycled material. Where plastic bags are used for the final packaging of footwear, they shall be made of, at least, 75% recycled material or they shall be biodegradable or compostable. Information on the packaging should include user instructions on how to protect environment and information about the EU eco-label.

2.4.1.11 Directive on the Safety of Toys

Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys entered into force on 19 June 2009, repealing and replacing the 20-year-old *Council Directive 88/378/EEC* of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys. The new Directive introduces new and stricter safety requirements on toys in order to minimize toy risks, increase responsibilities of toy manufacturers, importers and distributors, and strengthen market surveillance of the supervisory authorities in the EU Member States. Major revisions include:

(1) The Directive gives a clearer definition of “toys”, namely, products designed or intended, whether or not exclusively, for use in play by children under 14 years of age, and provides a list of products which shall not be considered as toys within the meaning of this Directive. The Directive clarifies the definition of “pacing on the market”, meaning the first making available of a toy on the EU market. In addition, the Directive categorizes different “economic operators” to include manufacturers, authorized representatives, importers and distributors. Moreover, the Directive provides specific definitions of aquatic toys, functional toys, activity toys, chemical toys, and olfactory board games.

(2) The Directive stipulates that toys placed or made available on the EU market shall comply with the updated essential safety requirements. First, the ability of the users and, where appropriate, their supervisors shall be taken into account by the manufacturers (in particular, in the case of toys which are intended for use by children under 36 months of age). Second, Annex II to the Directive provides “particular safety requirements”, including physical and mechanical properties, flammability, chemical properties, and electrical properties. In addition, the Directive adopts more stringent requirements on eliminating risks of certain chemical substances, fragrances and noises emitted by toys. The Directive prohibits the use of dangerous substances, in particular substances that are classified as carcinogenic, mutagenic or toxic for reproduction (CMR).

Chemical substances in toy should comply with *Regulation (EC) No 1907/2006* of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency. Specific limit values for lead, arsenic and organic tin in toys have been reduced. Toys contained or co-mingled with food should be packaged separately from food and should be appropriately sized to prevent being swallowed or inhaled by children. In addition, the Directive provides a detailed conformity assessment procedure and specifies the responsibilities of accreditation bodies and supervisory authorities.

(3) The Directive complements and strengths requirements on warnings about the use of toys. The manufacturer shall mark the warnings in a clearly visible, easily legible and understandable and accurate manner. Warnings about the user limitations shall include at least the minimum or maximum age of the user and, where appropriate, the abilities of the user, the maximum or minimum weight of the user and the need to ensure that the toy is used only under adult supervision. If the toy is too large to be packaged, warnings should be attached to the toy. Warnings which determine the decision to purchase the toy, such as those specifying the minimum and maximum ages for users, shall appear on the consumer packaging or be otherwise clearly visible to the consumer before the purchase, including in cases where the purchase is made on-line. Annex V to the Directive provides specific warnings and indications of precaution to be taken when using certain categories of toys.

(4) According to the prevailing regulations on the sale of products in the EU, all economic operators shall ensure the compliance of toys placed on the market with the new Directive. The Directive provides a clear and proportionate distribution of obligations which correspond to the role of each operator in the supply and distribution process such as the manufacturer, the authorized representative, the importer and the distributor (for example, the manufacturer, having detailed knowledge of the design and production process, is best placed to carry out the complete conformity assessment procedure for toys).

(5) The Directive further tightens the market surveillance of toys, strengths the action to be taken by supervisory authorities, and introduces new procedures to support existing safeguard measures and to allow interested parties to be informed of measures adopted with regard to toys presenting a risk.

The EU Member States shall apply the new Directive within 18 months following its publication

on the *Official Journal of the European Union*, that is, by 20 January 2011 at the latest. However, in order to allow toy manufacturers and other economic operators sufficient time to adapt to the requirements laid down by this Directive, a transitional period of two years after the entry into force of the Directive (namely, before July 2013) is provided, during which toys which comply with *Directive 88/378/EEC* may be placed on the EU market.

2.4.1.12 Limit of Melamine in Textiles

On 15 September 2009, the EU published *Commission Directive 2009/121/EC* amending, for the purposes of their adaptation to technical progress, Annexes I and V to *Directive 2008/121/EC* of the European Parliament and of the Council on textile names. *Directive 2008/121/EC* lays down rules governing the labeling or marking of products as regards their textile fiber content, in order to ensure that consumer interests are thereby protected. In view of recent findings by a technical working group, the European Commission finds it necessary, for the purposes of adapting *Directive 2008/121/EC* to technical progress, to add the fiber melamine to the list of fibers set out in the Annexes I and V to that Directive. The new Directive restricts melamine in textiles, which shall enter into force by 15 September 2010.

On 15 September 2009, the EU published *Commission Directive 2009/122/EC* amending, for the purposes of its adaptation to technical progress, Annex II to *Directive 96/73/EC* of the European Parliament and of the Council on certain methods for quantitative analysis of binary textile fiber mixtures. *Directive 2008/121/EC* of the European Parliament and the Council of 14 January 2009 on textile names requires labeling to indicate the fiber composition of textile products, with checks being carried out by analysis on the conformity of these products with indications given on the label. Since *Directive 2008/121/EC* has recently been adapted to technical progress, by adding the fiber melamine to the list of fibers set out in Annexes I and V to that Directive, it is, in consequence, necessary to define uniform test methods for melamine. Accordingly, *Directive 2009/122/EC* amends *Directive 96/73/EC* on certain methods for quantitative analysis of binary textile fiber mixtures. The EU Member States shall bring into force the amendments by 15 September 2010 at the latest.

2.4.1.13 Regulation on Plastic Materials and Articles Intended for Food Contact

On 19 October 2009, the EU published *Commission Regulation (EC) No 975/2009* amending *Directive 2002/72/EC* relating to plastic materials and articles intended to come into contact with foodstuffs. The Regulation updates the Community list in *Directive 2002/72/EC* of monomers, other starting substances and additives, which may be used for the manufacture of plastic

materials and articles. In addition, the Community list of additives shall be changed from a negative list to a positive list from 1 January 2010. The Regulation entered into force in December 2009.

2.4.1.14 Pollutant Emission Limits for Vehicles

The EU began to enforce the Euro 5 emission standard for motor vehicles on 1 September 2009. Under the Euro 5 standard, emissions of nitrogen oxides (NOx) from diesel-powered vehicles should not exceed 180 mg/km, a 20% reduction of emissions in comparison to the Euro 4 standard; emissions of particulates from diesel vehicles should not exceed 5 mg/km, an 80% reduction compared with the Euro 4 standard. All diesel vehicles should be equipped with a diesel particulate filter (DPF). However, the application of the Euro 5 standard for diesel sports utility vehicle (SUV) has been postponed until September 2012.

Starting from September 2014, Euro 6 – an even stricter emission limit standard than Euro 5 – will be implemented. According to the Euro 6 standard, emissions of NOx from diesel vehicles will be capped at 80 mg/km, a 68% reduction in comparison to the current standard.

In addition, a delay of one year is allowed for diesel vans and passenger vehicles with fewer than seven seatings to comply with the Euro 5 and Euro 6 standards. From September 2010, the Euro 5 standard shall apply to vans and other light commercial vehicles (LCVs), and emissions of NOx shall not exceed 280 mg/km; from September 2015, the Euro 6 standard shall apply to vans and other LCVs, and emissions of NOx shall be capped at 125 mg/kg.

2.4.2 Sanitary and Phytosanitary Measures

2.4.2.1 Regulation on the Composition and Labeling of Foodstuffs Suitable for People Intolerant to Gluten

On 20 January 2009, the EU published *Commission Regulation (EC) No 41/2009* concerning the composition and labeling of foodstuffs suitable for people intolerant to gluten. The gluten present in grains such as wheat, rye and barley can cause adverse health effects to people with intolerance to gluten and therefore should be avoided by them. Therefore, the Regulation requires that foodstuffs for special dietary use for people intolerant to gluten shall not contain a level of gluten exceeding 100 mg/kg in the food as sold to the final consumer. The labeling, advertising and presentation of such products shall bear the term “very low gluten”. They may bear the term “gluten-free” if the gluten content does not exceed 20 mg/kg in the food as sold to the final

consumer. The Regulation shall apply from 1 January 2009.

2.4.2.2 Maximum Residue Levels for Coccidiostats and Histomonostats

On 11 February 2009, the EU published *Commission Regulation (EC) No 124/2009* setting maximum levels for the presence of coccidiostats or histomonostats in food resulting from the unavoidable carry-over of these substances in non-target feed, and *Commission Directive 2009/8/EC* amending Annex I to *Directive 2002/32/EC* of the European Parliament and of the Council as regards maximum levels of unavoidable carry-over of coccidiostats or histomonostats in non-target feed. "Non-target feed" refers to feed for which the use of coccidiostats or histomonostats is not authorized; "non-target animals" refer to animals for which the use of coccidiostats or histomonostats is not authorized or intended. The occurrence of unavoidable carry-over of coccidiostats and histomonostats in non-target feed may result in the presence of residues of these substances in food products of animal origin. Therefore, the above Regulation and Directive establish maximum tolerance levels for the presence of these substances in non-target feed and in food of animal origin originating from the non-target feed concerned. The provisions provided in Annex should be reviewed by 1 July 2011 at the latest to take account of developments in scientific and technical knowledge.

2.4.2.3 Directive on Foodstuffs Intended for Particular Nutritional Uses

On 6 May 2009, the EU published *Directive 2009/39/EC* of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses. A particular nutritional use shall fulfill the particular nutritional requirements: (a) of certain categories of persons whose digestive processes or metabolism are disturbed; or (b) of certain categories of persons who are in a special physiological condition and who are therefore able to obtain special benefit from controlled consumption of certain substances in foodstuffs; or (c) of infants or young children in good health. The Directive lays down provisions for foodstuffs suitable for particular nutritional uses, such as requirements on packaging, labeling, descriptions and advertising. The supervisory authorities should be empowered to adopt certain specific Directives regulating foods with specific nutritional purposes. The Directive entered into force on 26 May 2009.

2.4.2.4 Maximum Residue Limits of Pharmacologically Active Substances in Foodstuffs of Animal Origin

On 6 May 2009, the EU published *Regulation (EC) No 470/2009* of the European Parliament and of the Council laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin. According to the Regulation,

the European Commission shall classify the pharmacologically active substances allowed in foodstuffs of animal origin, including a list of pharmacologically active substances and the therapeutic classes to which they belong. The classification shall also establish, in relation to each such substance, and, where appropriate, specific foodstuffs or species, a maximum residue limit (MRL), a provisional MRL, the absence of the need to establish a MRL, or a prohibition on the administration of a substance. The Regulation also sets the level of a residue of a pharmacologically active substance established for control reasons in the case of certain substances for which an MRL has not been laid down in accordance with this Regulation (reference point for action). Only pharmacologically active substances which are permitted can be used in food of animal origin. Food of animal origin containing residues of a pharmacologically active substance exceeding the MRL or reference point for action, whichever applies, shall be prohibited from being placed on the EU market. The Regulation came into effect on 6 July 2009.

2.4.2.5 Regulation on Active and Intelligent Materials and Articles Intended for Food Contact

The EU published on its *Official Journal* on 30 May 2009 *Commission Regulation (EC) No 450/2009* on active and intelligent materials and articles intended to come into contact with food. "Active materials and articles" means materials and articles that are intended to extend the shelf-life or to maintain or improve the condition of packaged food; "intelligent materials and articles" means materials and articles which monitor the condition of packaged food or the environment surrounding the food. The purpose of this Regulation, which supplements *Regulation (EC) No 1935/2004* of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food, is to ensure the safe use of active and intelligent materials and articles in foodstuffs and to provide additional labeling requirements on the manufacturers. The Regulation also establishes the business operator's obligation of declaration of compliance, and the authorization procedure for the use of active and intelligent materials and articles. According to the Regulation, the European Food Safety Authority (EFSA), who is responsible for the assessment and authorization of active and intelligent materials and articles, shall work out a Community list of authorized substances that may be used in active and intelligent components. Manufacturers shall submit an application to the EFSA for safety assessment of relevant substances, and only substances which are included in the Community list of authorized substances may be used in components of active and intelligent materials and articles. The Regulation entered into force on 19 June 2009. Chinese food exporters to the EU are advised to monitor closely the Community list of authorized substances.

On 19 October 2009, the EU published *Commission Regulation (EC) No 975/2009* amending *Directive 2002/72/EC* relating to plastic materials and articles intended to come into contact with foodstuffs. The Regulation updates the Community list in *Directive 2002/72/EC* of monomers, other starting substances and additives, which may be used for the manufacture of plastic materials and articles. In addition, the Community list of additives shall be changed from a negative list to a positive list from 1 January 2010. The Regulation entered into force in December 2009.

2.4.2.6 Amendments to Maximum Levels for Undesirable Substances in Feed

On 23 July 2009, the EU published a *Draft Commission Directive* amending Annex I to *Directive 2002/32/EC* of the European Parliament and of the Council as regards maximum levels for arsenic, theobromine, Datura sp., Ricinus communis L., Croton tiglium L. and Abrus precatorius L. Based on the scientific opinions and risk assessment of the European Food Safety Authority (EFSA) as regards undesirable substances in animal feed, the *Draft Commission Directive* amends the maximum residue limits (MRLs) for arsenic in feedingstuffs obtained from the processing of fish and additives belonging to the functional group of compounds of trace elements, sets a lower MRL for theobromine, modifies the MRLs for Datura sp., Ricinus communis L. and Croton tiglium L., and adds a MRL for Abrus precatorius L.

On 4 August 2009, the EU published a *Draft Commission Directive* amending Annex I to *Directive 2002/32/EC* of the European Parliament and of the Council as regards maximum levels for mercury, gossypol, nitrites and Madhuca longifolia L. Based on the opinions and latest risk assessment of EFSA in respect of undesirable substances in animal feed, the *Draft Commission Directive* increases slightly the MRL for mercury in feed for fish, lowers the MRL for mercury in compound feed for dog, cat and fur animals, amends the MRL for nitrites in feed materials, and significantly cuts the MRL for gossypol in sheep, goats and lambs.

2.4.2.7 Increased Level of Official Controls on Imports of Certain Feed and Food of Non-Animal Origin

On 24 July 2009, the EU published *Commission Regulation (EC) No 669/2009* implementing *Regulation (EC) No 882/2004* of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending *Decision 2006/504/EC*. Based on data resulting from notifications received through the rapid alert system for food and feed (RASFF), the reports by the Food and Veterinary Office (FVO), and exchanges of information between third countries, Member States and the European

Food Safety Authority (EFSA), Annex I to the Regulation provides a list of feed and food of non-animal origin subject to an increased level of official controls at the designated point of entry into the EU, including maximum residue limits (MRLs) for pesticides in fruits and vegetables imported from certain designated countries. Trace elements in feed and food of non-animal origin exported from China are subject to an increased level of official controls, CN codes are 2817 00 00, 2820, 2821, 2825 50 00, 2833 25 00, 2833 29 20, 2833 29 80, 2836 99, the hazard is cadmium and lead, and the frequency of physical and identity checks is 50%. The Regulation requires that feed and food business operators or their representatives shall give adequate prior notification of the estimated date and time of physical arrival of the consignment at the designated point of entry and of the nature of the consignment. The competent authority at the designated point of entry shall carry out without undue delay: (a) documentary checks on all consignments within two working days from the time of arrival at the designated port of entry; and (b) identity and physical checks, including laboratory analysis. In addition, Member States shall submit quarterly by the end of the month following each quarter to the European Commission a report on consignments, for the purposes of a continuous assessment of the feed and food of non-animal origin listed in Annex I. The report shall include the size in terms of net weight of the consignment, the country of origin of each consignment, the number of consignments subjected to sampling for analysis, and the results of the checks. The Regulation seeks to establish an increased level of official controls on the introduction of food and feed from third countries. The list of feed and food of non-animal origin subject to an increased level of official controls at the designated point of entry shall be regularly reviewed and updated. The Regulation shall apply from 25 January 2010.

2.4.2.8 Health and Veterinary Certifications for Raw Milk and Dairy Products

On 29 July 2009, the EU published a *Draft Commission Regulation* laying down animal and public health and veterinary certifications conditions for introduction into the Community of raw milk and dairy products intended for human consumption. The *Draft Commission Regulation* sets out the public and animal health conditions and certification requirements for the introduction into the EU of consignments of raw milk and dairy products, and the list of third countries from which the introduction into the EU of such consignments is authorized. To avoid any disruption in trade, the use of health certificates issued in accordance with *Commission Decision 2004/438/EC* of 29 April 2004 laying down animal and public health and veterinary certifications conditions for introduction in the Community of heat-treated milk, milk-based products and raw milk intended for human consumption should be authorized during a transitional period until 31 July 2010.

2.4.2.9 Draft Regulations on Procedures for Certain Contaminants in Foodstuffs

On 3 August 2009, the EU published a *Draft Commission Regulation* amending *Regulation (EC) No 401/2006* laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs as regards groundnuts, other oilseeds, nuts, liquorice and vegetable oil. It is necessary to amend certain provisions for sampling aflatoxins in certain foodstuffs to take into account developments in Codex Alimentarius and establishment of maximum levels of mycotoxins for new categories of foodstuffs. To facilitate the enforcement of the maximum levels, it is appropriate to apply the sampling provisions as agreed for by Codex Alimentarius for peanuts, almonds, hazelnuts and pistachios to other tree nuts. In addition, the *Draft Commission Regulation* establishes specific sampling provisions for aflatoxins in oilseeds, mycotoxins in vegetable oils, and ochratoxin A in liquorice.

On 4 August 2008, the EU published two Draft Commission Regulations amending maximum levels for certain contaminants in foodstuffs. The first is *Draft Commission Regulation* amending *Commission Regulation (EC) No 1881/2006* of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs as regards aflatoxins. The European Food Safety Authority (EFSA) expressed on 25 January 2009 an opinion on the potential increase of consumer health risk by a possible increase of the existing maximum levels for aflatoxins in almonds, hazelnuts and pistachios and derived products. Based on that opinion of the EFSA as well as recent decisions of Codex Alimentarius, the *Draft Commission Regulation* proposes to bring the maximum levels for aflatoxins in almonds, hazelnuts and pistachios in line with those set by Codex Alimentarius, to set corresponding maximum levels for aflatoxin B1, to set a maximum level for oilseeds other than groundnuts, and to set a higher level of aflatoxins for rice to be subjected to sorting or other physical treatment before human consumption or use as an ingredient in foodstuffs. The second is *Draft Commission Regulation* amending *Regulation (EC) No 1881/2006* of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs as regards ochratoxin A. Based upon the opinion of the Scientific Panel on Contaminants in the Food Chain (CONTAM Panel) of the EFSA, this *Draft Commission Regulation* proposes to set a maximum level for ochratoxin in spices and liquorice.

2.4.2.10 Draft Regulation on the Imports of Certain Animals and Fresh Meat

On 18 September 2009, the EU published a *Draft Commission Regulation* laying down a list of third countries, territories or parts thereof authorized for the introduction into the Community of certain animals and fresh meat and the veterinary certification requirements. The *Draft Commission Regulation* sets out the veterinary certification requirements for the introduction into the EU of consignments containing the following live animals or fresh meat: bovine, ovine and

caprine animals, swine, and non-domesticated ruminant animals; domestic bovine, ovine, caprine and porcine meat, meat of equidae, and edible offal; minced meat of bovine, ovine and caprine animals; farmed suidae, wild suidae, other cloven-hoofed animals, and other animals of the order Artiodactyla (even-toed ungulates) and Perissodactyla (odd-toed ungulates); animals of the family Elephantidae; queen bees and queen bumble bees (*Apis mellifera* and *Bombus* spp.). The veterinary certification requirements include a list of third countries, territories or parts thereof from which Member States are to authorize the importation of certain live animals and fresh meat, models of veterinary certificates and conditions for the transport. Veterinary certification covers public health attestation, animal health attestation, animal welfare attestation and animal transport attestation. HS Code numbers for the products are included in the certificates. China is not on the list of third countries authorized for the import of live animals and fresh meat.

2.4.2.11 Draft Directive on Sweeteners in Foodstuffs

On 6 October 2009, the EU published a *Draft Commission Directive* amending *Directive 94/35/EC* of the European Parliament and of the Council on sweeteners for use in foodstuffs with regard to neotame. The European Food Safety Authority (EFSA) evaluated the safety of neotame as a sweetener and flavor enhancer and expressed its opinion on 27 September 2007. The EFSA concluded that neotame is not of safety concern with respect to the proposed uses as a sweetener and flavor enhancer and established an acceptable daily intake (ADI) of 0–2 mg/kg bw/day. It is, therefore, necessary to amend the Annex to *Directive 94/35/EC* to permit the use of neotame in the same food applications as the other currently permitted intense sweeteners. Neotame should be assigned a new E number, namely E 961.

2.4.2.12 Special Conditions Governing the Import of Milk or Milk Products and Soya or Soya Products from China

Following the publication in 2008 of *Commission Decision 2008/798/EC* of 14 October 2008 imposing special conditions governing the import of products containing milk or milk products originating in or consigned from China, and repealing *Commission Decision 2008/757/EC*, and *Commission Decision 2008/921/EC* of 9 December 2008 amending *Decision 2008/798/EC*, the EU published on 25 November 2009 *Commission Regulation (EC) No 1135/2009* imposing special conditions governing the import of certain products originating in or consigned from China, and repealing *Commission Decision 2008/798/EC*. According to the new Regulation, the EU maintains the prohibition on importation into the Community of products containing milk or milk products, soya or soya products originating in or consigned from China. Products subject to the Regulation include: products containing milk or milk products, soya or soya products that are

intended for the particular nutritional use of infants and young children; ammonium bicarbonate intended for food and feed; feed and food containing milk, milk products, soya or soya products. Identity and physical checks, including sampling and analysis to control the presence of melamine, shall be carried out on approximately 20% of such consignments. The presence of melamine in feed and food placed on the EU market shall not exceed 2.5 mg/kg. The prohibition measure was first taken after the European Commission was made aware in September 2008 that high levels of melamine were found in infant milk and other milk products in China, and will be extended indefinitely. However, compared with 2008, the intensity of physical checks were reduced in 2009, given the significant decrease in the number of rapid alert system for food and feed (RASFF) notifications as regards unacceptable levels of melamine in those food and feed products from China. The Regulation entered into force on 15 December 2009.

3 Barriers to Trade

3.1 Tariff and Tariff Administrative Measures

3.1.1 Tariff Peaks

According to WTO data, the average MFN tariff rate in the EU is 6.7% in 2008, a slight decrease as compared with 6.9% in 2006. As is indicated in the 2009 EU customs schedule, the lowest tariff rate is zero, while the highest rate is 604.3% (HS 1702 4010). At present, the EU still maintains a very high tariff on agricultural products, averaging 17.9%. Rates over 100% are all applied to agricultural goods, mainly involving meat, eggs, sugar and grains. The EU imposes a tariff rate of about 15% or a specific duty of EUR 200 per 100 kilograms on animal products, dairy products, fruits, vegetables, cereals, sugar and confectionery, tobacco, fish and fish products. China's dominant exports to the EU such as footwear, vegetables, fruits, fish, foodstuffs, tobacco and bicycles come under high tariff rates in the EU. The practice on the part of the EU to protect its own uncompetitive industries through the imposition of tariff peaks has not only obstructed fair competition of the relevant industries, but also affected the development of normal bilateral trade.

3.1.2 Tariff Escalation

Overall, EU's tariff exhibits a hybrid escalation. The average tariff duty is 8.1% for primary products, 5.0% for semi-processed products, and 7.3% for manufactured products. To be more specific, tariff escalation of a hybrid nature is most pronounced in foodstuffs, beverages, tobacco, wood products, chemical and plastic products, while a normal tariff escalation is found in textiles, garments, non-metallic minerals and fabricated metals. As textile and clothing are China's leading

exports to the EU, tariff escalation exerts an adverse effect on the exports of these products.

3.1.3 Seasonal Duties

The EU imposes seasonal tariffs on fruit and vegetable products. For the purpose of taxation, the EU divides a year into some 10 different periods and a particular fruit or vegetable product into 5 to 10 groups for each period in a year, depending upon their price ranges, which are subject to different tariff rates in different forms such as ad valorem duty, compound duty and mixed duty. Such a complicated approach to taxation results in the variability of tax rates so that Chinese fruit and vegetable exporters to the EU have to face a lot of uncertainty and unpredictability.

3.1.4 Additional Duties

In addition to an ad valorem duty, the EU levies an additional specific duty on sugar and flour products, depending on the contents of their composition, namely, anhydrous milk fat, milk protein, sucrose and starch. The EU publishes annually specific rules on the collection of additional duties and subjects sugar and flour products to additional duties based on their declaration of the four contents of composition. The practice of basing the imposition of customs tariff duties on agricultural contents of the products adds great uncertainties to exporters of products such as bread, biscuits and candies.

3.1.5 Tariff Quotas

According to *Commission Regulation (EC) No 341/2007* of 29 March 2007 opening and providing for the administration of tariff quotas and introducing a system of import licenses and certificates of origin for garlic and certain other agricultural products imported from third countries, starting from 1 April 2007, garlic imported into the EU under tariff quotas is subject to a 9.6% ad valorem tariff duty, whereas garlic imported outside tariff quotas is bound to a 9.6% ad valorem tariff rate and a specific duty of EUR 1,200 per tonne. In 2009, the EU continued to grant China the same volume of annual tariff quota for garlic and to distribute the quotas in the same way as before. The tariff quotas are allocated over four seasons in a year, distributed among traditional and new EU importers at different proportions for each season, and not allowed to be used across the seasons. As a result, the final quota given to each EU importer is very small indeed, only several tonnes for many importers for each season. If the importer uses the quota to import directly from China, it will greatly increase the unit cost of shipping to have several tons only per container.

Tariff quota restrictions by the EU have made Chinese garlic imports unmarketable in the EU market and resulted in the tariff quotas not being fully utilized. As China is a leading producer and

exporter of garlic in the world and the EU is a major Chinese export market, the EU should ensure that the administration of tariff quotas will not become a trade barrier to Chinese exports. The Chinese side hopes that the EU will, taking full account of the specific situations, increase tariff quotas for the relevant Chinese product, distribute them more reasonably and more fairly, and allow them to be accumulated and transferred to the ensuing sub-periods.

3.1.6 Other Taxes and Fees

The EU imposes a value added tax (VAT) on imports at the same rate as on the like products originating in the EU. However, there are no uniform rules at the EU level as to the VAT rate, tax rebate and collection procedures. In addition, the same problem exists for the consumption tax levied on the imports of liquor, tobacco and energy products. Although VAT and consumption tax do not fall under the category of customs tariff, they are collected at the process of customs clearance and bring considerable inconvenience to Chinese exporters in making offers and managing costs.

3.2 Import Restrictions

3.2.1 Iron and Steel Products

On 1 January 2002, the EU published *Commission Regulation (EC) No 76/2002* introducing prior Community surveillance of imports of certain iron and steel products originating in certain third countries. Later, the EU published *Commission Regulation (EC) No 2385/2002* of 30 December 2002 continuing and amending prior Community surveillance of imports of certain iron and steel products originating in certain third countries and *Commission Regulation (EC) No 469/2005* of 23 March 2005 continuing prior Community surveillance of imports of certain iron and steel products originating in certain third countries, which extended the surveillance from 31 December 2002 until 31 December 2006. Particularly in December 2006, the EU anticipated that the trend of decreasing imports and increasing exports in iron and steel products would continue in China, thereby releasing into the world market important increased quantities of steel products looking for a new market. As a result, the EU published on 21 December 2006 *Commission Regulation (EC) No 1915/2006* of 18 December 2006 continuing prior Community surveillance of imports of certain iron and steel products originating in certain third countries, which further extended the surveillance for a three-year period until 31 December 2009. The Chinese side hopes that the EU will notify China of its trade surveillance statistics in a timely way, not abuse surveillance statistics and not adopt trade restrictive measures on relevant Chinese iron and steel exports.

3.2.2 Poultry and Poultrymeat Products

Since 2002, the EU has maintained its import suspension of Chinese poultry and poultrymeat products, citing concerns of health and highly pathogenic avian influenza (bird flu). According to *Commission Decision 2005/692/EC* of 6 October 2005 concerning certain protection measures in relation to avian influenza in several third countries, the import suspension of Chinese poultry and poultry products was prolonged until 31 December 2008. *Commission Decision 2009/6/EC* of 17 December 2008 amending *Decisions 2005/692/EC*, *2005/731/EC*, *2005/734/EC* and *2007/25/EC* concerning avian influenza as regards their period of application extended the import suspension for another year until 31 December 2009. China has taken effective measures to ensure the health and safety of its poultry products and that there is little risk of avian influenza from importing heat treated poultrymeat products. However, under the pretext of avian influenza, the EU delays its approval of importing poultrymeat products from China, while it allocates a high proportion of quota quantities to other avian influenza-stricken countries such as Thailand. Such a practice constitutes an unreasonable discrimination against China but in favor of other WTO member countries in similar circumstances. Owing to years of efforts of the Chinese government and enterprises, the EU published *Commission Decision 2007/777/EC* of 29 November 2007 laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries and *Commission Decision 2008/638/EC* of 30 July 2008 amending *Decision 2007/777/EC* concerning the authorization of China for the importation of heat treated poultrymeat products. Accordingly, China's Shandong Province is authorized the importation into the EU of poultrymeat products which have been subjected to heat treatment to a minimum temperature of 70°C. China hopes that the EU, coming to see that China has established an effective regulatory system to deal with the animal health status of poultry in line with the EU standards, will remove its protection measures the soonest possible.

Pursuant to *Commission Regulation (EC) No 616/2007* of 4 June 2007 opening and providing for the administration of Community tariff quotas in the sector of poultrymeat originating in Brazil, Thailand and other third countries, poultrymeat formerly subject to tariff rate administration has been subjected to tariff quota administration. These quantities are allocated in large part (over 90%) to Brazil and Thailand, the remainder (less than 10%) being for other third countries. This means that even if the EU lifts its import ban on Chinese poultrymeat products, China can only use less than 10% of the tariff quotas just like countries other than Brazil and Thailand. Such a measure constitutes a discrimination against Chinese poultrymeat exports to the EU and runs counter to the relevant stipulations as contained in Articles 11, 23 and 28 of General Agreement on Tariff and

Trade (GATT) 1994.

3.2.3 Seal Products

On 16 September 2009, the EU published *Regulation (EC) No 1007/2009* of the European Parliament and of the Council on trade in seal products. Considering that seal hunting for commercial purposes is cruel and inhuman, the Regulation places an import ban on seal products, but it allows the placing on the market of seal products which result from hunts traditionally conducted by Inuit and other indigenous communities. While China approves of EU's introduction of import and export measures on the grounds of animal protection and welfare, China still hopes that the EU will undertake necessary impact assessment on the changes in present legislation before introducing any trade-restrictive measures and only adopt such measures as will least affect normal trade. At the same time, China hopes that the EU will take into full account different situations in different countries so as to avoid creating unnecessary barriers to trade.

3.3 Export Restrictions

The EU has placed strict restrictions on exporting to China such high-tech products as nuclear materials equipment, chemical products of composite materials, high-power DC supplies, current pulse generator, high-performance computers, sensors, lasers, vessels, avionics, spacecraft propulsion systems, which has exacerbated the imbalances in bilateral trade. China has repeatedly called on the EU to remove export restrictions on high-tech products and allow more exports of such products to China so as to meet the market demands of both sides and to reduce EU's trade deficit with China.

3.4 Barriers to Customs Clearance

Although the 27 EU Member States apply the same common tariff policy, Community Customs Code and its implementing measures, national customs authorities are still left with a great leeway in a number of key areas of customs administration. This gives rise to disparate and inconsistent customs administration in the EU Member States. First, there are differences not only in the customs classification and valuation of goods, but also in the procedures for such classification and valuation, including the provision of binding tariff information to importers. Second, customs clearance procedures for imports and exports vary significantly from one Member State to another, for example, the use of computerized customs process in some Member States but not in others, different requirements among Member States for certificates of origin, different criteria for physical checks of goods, different licensing requirements for the importation of foodstuffs, and different procedures for processing express delivery shipments. Third, variances also exist in the

procedures for reviewing entry statements after goods are released into the EU market. In addition, there are discrepancies in the penalties applicable in the case of failure to comply with the customs rules and in the procedures regarding the imposition of such penalties. Finally, record keeping requirements also differ to certain extent. The differing and incoherent administration of customs measures among the EU Member States adds unpredictability to Chinese exporting firms. China's export enterprises should pay due attention to the customs control system in the country of destination so as to guard against the risks of customs clearance.

3.5 Technical Barriers to Trade

The EU publishes a large number of technical regulations every year, 2009 being no exception. So far, the number of technical regulations at the EU level stands at over 15,000. These technical regulations are not only overwhelming in numbers but also complicated in contents, which poses an intimidating barrier to other countries exporting to the EU.

3.5.1 Harmonization of Technical Regulations

Technical regulations of the EU often appear in EU directives, which have to be transposed by Member States into national laws. Different interpretations and applications of these EU directives in different Member States have led to wide discrepancies in the enforcement of the same technical regulations. Moreover, conformity assessment bodies are designated not by the EU but by the Member States, which results in wide disparities in certification procedures. All this not only bewilders manufacturers of non-EU member countries, but also forces them to deal with technical requirements on a country-by-country basis, thereby giving rise to excessive costs.

The EU often introduces European Standards directly into its technical regulations, so that these European Standards are canonized by virtue of their inclusion in the EU technical regulations. Because of their voluntary nature, European Standards are not required to be notified to the WTO and their contents are not made readily available to the general public. Because those European Standards which have been transposed into the EU technical regulations tend to differ from international standards, this adds to technical uncertainties and costs to manufacturers and exporters. It is hardly possible for foreign producers to participate in and stay informed of the formulation and revision of European Standards. Moreover, the EU sometimes adopts European Standards in its technical regulations based on design rather than performance requirements. Such practices impair the interests of third-country producers and increase their costs.

3.5.2 Directives on Eco-design Requirements for Energy Using Products

Following the enforcement in 2007 of *Directive 2005/32/EC* of the European Parliament and of the Council establishing a framework for the setting of eco-design requirements for energy using products (EuP), the EU published in 2009 nine product-specific implementing measures of the framework directive, involving electrical and electronic household and office equipment, external power supplies, simple set-top boxes, non-directional household lamps, electric motors, televisions, household refrigerating appliances, fluorescent lamps without integrated ballast, high intensity discharge lamps, and ballasts and luminaires able to operate such lamp. There are two major flaws in the framework directive and its implementing measures. First, the EU has established its overall eco-design requirements for EuP in a framework directive, but product-specific implementing measures and technical details will have to be enacted separately in different phases, which is quite an arbitrary process and adds uncertainty to the market, as manufacturers in other countries cannot be sure when and how their products will be subject to EuP regulation. Second, EuP implementing measures are, to a certain extent, technically unreasonable, short in transitional period, and too costly for producers. Certain energy efficiency requirements will lead to no significant energy saving effects, but will greatly increase the costs of those products. In addition, because of the great disparities between the prevailing standards and the new requirements, a one-year transition period is too short for manufacturers who will have to modify their product designs and seek new accreditation. In eco-design requirements for non-directional home lights, for example, the EU requires that manufacturers shall make available on a free website relative information concerning their products, which would cause additional burdens to small manufacturers in non-English speaking countries. Besides, the regulation fails to provide any specific standards that the EU Member States would use to examine compliance of products. Member States are authorized to revise the list of “uniform standards” at any time, thus causing arbitrariness in setting the standards and affecting adversely manufacturers in a third country. Furthermore, as manufacturers in third countries cannot get involved in the running of European standardization organizations and keep informed of the latest developments, they will, as a result, be at a disadvantage when competing with EU manufacturers.

On 21 October 2009, the EU published *Directive 2009/125/EC* of the European Parliament and of the Council establishing a framework for the setting of eco-design requirements for energy-related products. The new Directive extends the scope of application of *Directive 2005/32/EC*, which covers EuP only, to include in principle all energy-related products, including windows, insulation materials, or some water-using products such as sprinklers or taps, because, it is claimed, eco-designs of energy-related products such as bathroom installations contribute to the reduction of water, thus leading to less energy to heat the water. The new Directive does not provide a list of

energy-related products, because the EU thinks that the list should come after a clear definition of product categories under the implementing measures to be envisaged in the future. According to the new Directive, energy-related products even include parts intended to be incorporated into energy-related products which are placed on the market and/or put into service as individual parts for end-users and of which the environmental performance can be assessed independently. Measures implementing the new Directive have not yet been adopted. The European Commission will establish a working committee to analyze eco-design requirements on different product categories, and after consulting the Eco-design Consultation Forum, will table draft implementing measures to the European Parliament and the Council for ratification. As the new Directive on eco-design requirements will have huge impact on the entry of Chinese products into the EU market, China will keep close watch over the Directive and its implementing measures.

3.5.3 Child Safety Requirements on Lighters

On 27 March 2009, the EU published *Commission Decision 2009/298/EC* prolonging the validity of *Decision 2006/502/EC* requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters. The Decision extends the validity of application of *Commission Decision 2006/502/EC* for another 12 months until 11 May 2010. According to *Commission Decision 2006/502/EC*, all cigarette lighters placed on the market shall be child-resistant and child-appealing novelty lighters can no longer be placed on the market. A child-resistant lighter means a lighter designed and manufactured in such a way that it cannot, under normal or reasonably foreseeable conditions of use, be operated by children younger than 51 months of age. As luxury lighters such as refillable ones are not subject to child safety requirements, those most affected are disposable, low-cost plastic lighters and metal lighters, which are China's leading exports of lighters to the EU. Child-resistance requirement should not be based on the price of lighters and placed on cheap lighters alone. Moreover, the Decision does not give a clear definition of "child-resistant lighters" and "child-appealing lighters", which would lead to conceptual confusion. Nor does it provide specific procedures categorizing lighters into child-resistant and child-appealing, which could probably cause manufacturers and distributors to make ill-advised decisions in the process of production and marketing, thus leading to a waste of resources, an increase in costs, and a barrier to trade. In addition, China hopes that the EU will, based on sound scientific evidence, further clarify safety testing measures, parameters and organizations of lighters. China also hopes to enter into consultations with the EU to settle technical details regarding accreditation procedures on lighters.

3.5.4 Toy Safety Requirements

Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys entered into force on 19 June 2009, repealing and replacing the 20-year-old *Council Directive 88/378/EEC* of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys. The new Directive introduces new and stricter safety requirements on toys in order to minimize toy risks, increase obligations of toy manufacturers, importers and distributors, and strengthen market surveillance of the supervisory authorities in the EU Member States. China is in favor of the EU taking necessary measures to protect child safety, but is concerned that the Directive may place unnecessary restrictions on trade in toys. The EN71 Toy Safety Standard and CE Marking System have already offered sufficient level of protection for child safety, and the Directive puts the responsibility of ensuring child safety almost entirely on manufacturers and ignores parents' due care of and attention to children's use of toys. The Directive's total disregard of special and differential treatment for developing countries makes it harder for exporters in those countries to retain their export to the EU. In particular, the extremely demanding requirements on chemical materials in toys as laid down in the Directive will significantly increase the costs of manufacturers in production and testing. Toy makers will have to carry out risk assessment in many aspects and look for substitute materials and substances, which will reduce their competitive edge and place excessive burdens on manufacturers, particularly small and medium-sized ones. In addition, changes in the requirements on new user groups and precautionary measures against being choked and suffocated by toys or parts of toys will affect purchasers and lead to reduction in the volume of trade.

The Directive applies to all the exporters, but China, as the largest exporter of toys to the EU, will be most affected by the trade barrier. To avoid any risks arising from the new toy safety requirements, the EU importers demand Chinese toy producers to subject their products to repeated examinations and certifications during the production and export process, thus creating heavy burdens on Chinese producers and reducing the competitive edge of Chinese products.

3.5.5 Emission Performance Standard for Vehicles

Starting from September 2014, the EU will bring into force the Euro 6 emission standard for on-road heavy-duty engines. The vehicle emission performance standard is too strict and not convincing, because the EU fails to cite any evidence and present any reason to explain the rationale for the setting of emission performance standard. Moreover, the EU does not provide any test data or analytical reports regarding the service life of emission-reducing devices in vehicles. Such a practice runs counter to Paragraph 5 of Article 2 in WTO *Agreement on Technical Barriers*

to Trade (*TBT Agreement*). In addition, many countries in the world use the mass of particulate matters (as expressed in mg) to ascertain the number of fine particles emitted by vehicles, but the EU adopts a different assessment method in its proposal without offering any proof to demonstrate any obvious defects in the measurement by the mass of particulate matters, which will add to the cost of vehicle manufacturers because of the purchase of new testing equipments.

3.5.6 Eco-Label Criteria for Footwear

On 9 July 2009, the EU published *Commission Decision 2009/563/EC* on establishing the ecological criteria for the award of the Community eco-label for footwear. The product group "footwear'' under *Decision 2009/563/EC* shall comprise all articles of clothing designed to protect or cover the foot, with a fixed outer sole which comes into contact with the ground. Footwear must comply with all the criteria in the Annex to the Decision before it can be awarded the EU eco-label. The new Decision provides stricter criteria for certain products to be awarded EU eco-label, for example, the limits to water consumption for the tanning of hide and skin, the content of chemical oxygen demand (COD) in the waste waters from leather tanning sites and from the textile industries, and the restrictions on the use of hazardous substances not specified in earlier Commission Decisions.

The eco-label award scheme, which is not obligatory, aims to promote products with a reduced environmental impact compared with other products in the same product group. As a result, environmental awareness will be raised among manufacturers of various consumer products, so that the whole life-cycle of a product from design, production, distribution, use to disposal will contribute significantly to improvements in relation to key environmental aspects. In addition, the scheme informs consumers that the eco-labeled product meets environmental requirements of the EU and is a "green product" recognized by the EU. The introduction of the new eco-label criteria for footwear makes the already fierce competition in the EU footwear market even fiercer. Although the eco-label is voluntary, EU importers often exert pressure on manufacturers to comply with the eco-label criteria and to apply for the eco-label. The demanding ecological criteria for the award of the label and high assessment fees contribute to the increase in exporting costs. Chinese footwear manufacturers are advised to pay attention to the terms and conditions when negotiating their contracts. If the contract requires that the raw materials used in the production comply with the ecological criteria, the Chinese manufacturer should strictly abide by the requirement so as to avoid any trade disputes. It is recommended that Chinese exporters should conduct economic assessment of the ecological criteria, calculate the cost incurred for complying with the criteria, and base their quotations on that cost accordingly.

3.5.7 Limit of Melamine in Textiles

On 15 September 2009, the EU published *Commission Directive 2009/121/EC* amending, for the purposes of their adaptation to technical progress, Annexes I and V to Directive *2008/121/EC* of the European Parliament and of the Council on textile names, which adds melamine to the list of fibers under surveillance and restricts melamine in textiles, and *Commission Directive 2009/122/EC* amending, for the purposes of its adaptation to technical progress, Annex II to *Directive 96/73/EC* of the European Parliament and of the Council on certain methods for quantitative analysis of binary textile fiber mixtures, which amends methods for quantitative analysis of melamine in textiles. The two Directives were based on a report on Chinese textile by a non-governmental organization to the WTO Committee on Technical Barriers to Trade (WTO TBT Committee). According to the Directives, Chinese exports of microfiber textiles using melamine as raw materials such as towels and bed sheets will be restricted. The EU has exaggerated the melamine problem and extended it to the textile industry, which has a negative demonstration effect and adversely affects Chinese textile exports.

3.5.8 Novel Foods

On 14 March 2008, the EU issued its *Proposal for a Regulation of the European Parliament and of the Council* on novel foods, intended to repeal and replace the current *Novel Food Regulation (EC) No 258/97*. The proposal sets out uniform rules for authorization procedures and the placing on the market of novel foods. The Chinese side believes that the definition of "novel food" and "traditional food" in the draft regulation is not scientific and operable, and the certification regarding a history of safe use of traditional food in third countries is too stringent. China hopes that the EU will further simplify authorization and safety assessment procedures of certain traditional foods which have been used for human consumption to a significant degree and whose safety has been well demonstrated, and further clarify ways and measures to offer technical assistance to third countries so as to help them adapt to the new regulation as soon as possible.

3.5.9 Regulation on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH)

According to *Regulation (EC) No 1907/2006* of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), starting from 1 December 2008, the pre-registration phase ended and formal registration starts. Manufacturers and exporters from third countries who have failed to pre-register their substances under the *REACH Regulation* will, in principle, no longer be allowed

to manufacture in or export to the 27 EU Member States until their formal registration. The full impact of the *REACH Regulation* on trade has now been widely felt. According to the WTO Technical Barriers to Trade Committee (WTO TBT Committee), the *REACH Regulation*'s major trade-related impact includes: (1) Overly complicated and onerous REACH registration procedures to be followed: The preparation of registration dossier such as chemical safety report consumes too much time and money. Some enterprises have to recruit special technical staff for this purpose, while others have to pay an exorbitant fee to an agency to submit the registration for them. The *REACH Regulation* is beyond the understanding and the ability of many small and medium-sized enterprises (SMEs), particularly those in developing and least developed countries, to comply with it. Moreover, the EU has failed to provide sufficient technical assistance in this regard. (2) High registration fees: The *REACH Regulation* requires enterprises to test every substance they manufacture. According to the EU estimates, the testing fee for an existing and a new substance is around EUR 85,000 and EUR 579,000 respectively. Each manufacturer or importer of a substance shall submit a registration dossier for the substance to the Helsinki-based European Chemicals Agency (ECHA), accompanied by a registration fee. The registration fee may be as high as EUR 31,000, and even small enterprises with sporadic exports also have to pay several thousand Euros in registration fee. For substances of very high concern (SVHC), an authorization is required for their use and their placing on the market. As an authorization for one substance for one use will cost about RMB Yuan 1 million, for an enterprise which need authorizations for many substances for different uses, the costs will run into millions of RMB Yuan. All the burdensome authorization fees will be borne by the enterprises. SMEs, although entitled to certain reduction and exemption, still face a lot of financial pressure. The majority of the enterprises in China's chemical industry being SMEs, they are not able to handle the complicated REACH registration procedures, nor can they afford the high registration fees, thus losing their opportunities of export to the EU. Some Chinese enterprises exporting many different substances in small volumes are forced out of the EU market, because their profits do not support the high registration fees. The REACH shock is fatal to many SMEs, compared with larger enterprises. The implementation of the *REACH Regulation* has seriously crippled the market competitiveness of Chinese SMEs in the chemical industry and restricted their production and export to the EU. (3) Differential interpretation and enforcement of the *REACH Regulation* in the EU Member States: Pursuant to the *REACH Regulation*, which took effect on 1 June 2007, substances which have not been pre-registered cannot be imported into the EU. However, in fact, this rule has been strictly enforced in some Member States, but not in others. This is enough to prove the *REACH Regulation* will not be applied uniformly in all EU Member States, which creates obstacles to the exports to the EU. (4) Disadvantaged position of non-EU manufacturers:

According to the *REACH Regulation*, manufacturers located outside the EU must submit registrations for their substances through their EU importers or only representatives in the EU. The so-called "only representative of a non-Community manufacturer" system is created because REACH is EU's internal legislation, which cannot directly regulate enterprises in third countries. However, such a practice actually adds to the inconveniences, difficulties and costs to many Chinese enterprises in their REACH compliance process.

In addition, the entry into force of the *REACH Regulation* increases production costs across the broad spectrum of industries, which will surely change the international trade landscape. Because of the presence of REACH, the manufacturing of energy-consuming, highly-polluting, low value-added, low-profit, and health-endangering products will be restricted or unprofitable in the EU. Production facilities of these products will be transferred to third-world countries, particularly China with cheap labor. The *REACH Regulation* may improve the protection of human health and the environment in the EU at the expenses of other poorer countries.

The *REACH Regulation* protects intellectual and information property rights of the person who is the first to complete animal testing or generate information. REACH subjects substances to uniform "standardized" safety assessment, based on a great deal of relevant information. Potential registrants who submit a registration for a substance or its use must pay an "information fee" for pre-registered information, even if the data in their registration dossier are generated by themselves; otherwise, the registration cannot be completed. Such a design may lead to malicious registration for the purpose of collecting "information fee" from potential registrants, which would increase their costs.

3.5.10 Regulations on Wines

On the grounds of alleged protection of consumers from misleading traditional terms used to describe wine sector products, the EU restricts the use of general or descriptive commercial value claims of wines placed on the EU market by third countries, and attempts to claim exclusive rights to these traditional terms such as "château", "classic" and "premium" in wine labeling.

The EU provides no uniform definitions for these traditional terms, and the Member States make no real efforts in monitoring or restricting the use of such traditional terms. As a matter of fact, this restriction contravenes Article 2 of the WTO *Agreement on Technical Barriers to Trade* (*WTO TBT Agreement*). At the same time, as almost all the names of wine grape varieties contain in part protected designation of origin (PDO) and protected geographical indication (PGI), the EU claims

exclusive rights to a series of wine grape variety names. However, such claim and protection are not justified on any reasonable grounds, because wine grape variety names are generic names and do not contain geographic elements. For example, the geographic element in "nebbiolo d'Alba" is the suffix "d'Alba", but the wine grape variety name itself does not include any designated place of origin or geographic indication. China hopes that the EU will reconsider its restriction on the wine grape variety names in the packaging and description of wines. In addition, the EU has not yet made known its plan on how to enforce the restrictions on imported wines. China hopes that the enforcement and all the transitional arrangements of EU wine regulations, particularly the rules of wine packaging, will fully comply with the provisions of the *WTO TBT Agreement* and the principles of the *WTO Agreements* so as to avoid any negative impact on the market access of wine products from non-EU countries.

3.6 Sanitary and Phytosanitary Measures

3.6.1 Labeling Requirements on Organic Agricultural Products

Pursuant to Article 24 of *Council Regulation (EC) No 834/2007* of 28 June 2007 on organic production and labeling of organic products, an indication of the place where the agricultural raw materials of which the product is composed have been farmed shall appear in product labeling and shall take one of the following forms, as appropriate: (a) "EU Agriculture", where the agricultural raw material has been farmed in the EU; (b) "non-EU Agriculture", where the agricultural raw material has been farmed in third countries; and (c) "EU/non-EU Agriculture", where part of the agricultural raw materials has been farmed in the Community and part of it has been farmed in a third country.

The EU claims that compulsory indications of country of origin for products processed in the EU are necessary in order not to mislead consumers as to the organic nature of products. However, as a matter of fact, obligatory indications are unnecessary because the quality of the organic raw materials has already checked and certified by the EU before they are used in processing. Categorization of an organic agricultural product must be based on its process of production but not on the origin of its raw materials, because the latter does not affect whether a product is "organic" or not. Besides, according to the requirements on the production, processing, labeling and marketing of processed organic food as laid down in Codex Alimentarius, there is no provision on labeling the place of origin of the ingredients of organic products. The compulsory labeling requirements of the EU conform neither to the standards of Codex Alimentarius nor to Article 2(2) of the *WTO Agreement on Technical Barriers to Trade* (*WTO TBT Agreement*). China

recommends that the entry into effect of the Regulation be postponed.

3.6.2 Marketing Standards for Poultrymeat

In June 2009, the EU submitted to the WTO a *Proposal for a Council Regulation amending Regulation (EC) No 1234/2007* establishing a common organization of agricultural markets as regards the marketing standards for poultrymeat. The Proposal intends to revise the definition of "fresh poultrymeat" and to introduce a definition of "fresh poultrymeat preparation". According to the new definitions, "chilled poultrymeat" and "frozen poultrymeat" no longer fall under "fresh poultrymeat preparation", and when thawed, cannot be called "fresh poultrymeat". The new definitions are stricter than international standards such as Terrestrial Animal Health Code established by the World Organization for Animal Health (OIE). This, in effect, discriminates against poultrymeat products from non-EU Member States, because fresh poultrymeat, if not chilled or frozen, cannot possibly be transported over a long distance to Europe. China advises the EU to establish poultrymeat standards on the basis of current international standards so as not to hamper international trade unnecessarily.

3.6.3 Requirements on Wood Packaging

The new EU requirements on wood packaging, which are more stringent than those set out in FAO International Standard for Phytosanitary Measures (IPSM) No 15 established by International Plant Protection Convention (IPPC), will apply as from 2009. According to its new requirements, the EU provides that wood packaging materials in international trade should be subject to an approved phytosanitary treatment and display a mark certifying such treatment. In addition, the EU requires that wood packaging materials be free from bark with the exception of any number of individual pieces of bark if they are either less than 3 cm in width (regardless of the length) or, if greater than 3 cm in width, of not more than 50 cm2 in area. These new requirements on wood packaging are so demanding that they will pose unnecessary barriers to trade.

3.6.4 Import Ban on Infant Food Containing Milk or Soy Products from China

On 25 November 2009, the EU published *Commission Regulation (EC) No 1135/2009* imposing special conditions governing the import of certain products originating in or consigned from China, and repealing *Commission Decision 2008/798/EC*. Pursuant to the Regulation, the EU maintains the prohibition on importation into the Community of products containing milk or milk products, soya or soya products originating in or consigned from China. Identity and physical checks, including sampling and analysis to control the presence of melamine, shall be carried out on approximately 20% of such consignments. On the pretext of countering health risks that may

result from exposure to the melamine content of food products, the EU has, in the absence of ample scientific evidence, exaggerated the concerns over the safety of Chinese foods and ignored China's regulatory controls on melamine in such products, which has harmed the interest of Chinese export enterprises.

3.7 Trade Remedy Measures

3.7.1 Brief Account of Trade Remedy Measures on Chinese Products

In 2009, the EU launched 7 new anti-dumping investigations into Chinese products, as compared with 5 such investigations last year. By 31 December 2009, the EU has initiated a total number of 150 anti-dumping proceedings against Chinese exports and imposed anti-dumping duties on 48 categories of Chinese commodities exported to the EU. In 2009, the EU did not open any anti-subsidy investigations except the 2 cases against the US and India. In 2009, the EU conducted an anti-circumvention investigation into steel wire ropes and steel cables originating in China and transshipped from South Korea and Malaysia.

3.7.2 Trade Remedy Investigation Cases in 2009 Involving Chinese Products

3.7.2.1 Anti-dumping Proceedings Concerning Chinese Products

Table 2: Anti-dumping Proceedings Concerning Chinese Products in 2009

No	Date of Initiation	Product	CN Code	Progress
1	9 March	cargo scanning system	ex 90221900, ex90222900, ex90278017, ex90301000, ex87059090	On 17 December 2009, the European Commission issued its preliminary ruling, imposing a uniform provisional anti-dumping duty of 36.3%.
2	8 April	molybdenum wires	ex81029600	On 18 December 2009, the European Commission decided in its preliminary ruling to impose a uniform provisional anti-dumping duty of 64.3%.

3	11 August	sodium gluconate	ex29181600	Under investigation
4	13 August	alloy wheels	ex87087010, ex87087050	Under investigation
5	8 September	polyester high tenacity yarns	54022000	Under investigation
6	2 October	ironing boards	ex39249090, ex44219098, ex73239390, ex73239991, ex73239999, ex85167970, ex85169000	Under investigation
7	17 December	chopped glass fiber strands	70191100, 70191200, 70191910, ex70193100	Under investigation

3.7.2.2 Others

In 2009, the EU made its definitive rulings on anti-dumping proceedings concerning certain products originating in China such as prestressed non-alloy steel wires and stranded steel wires, fasteners, candles and like products, steel wire rods, aluminum foils and seamless steel tubes. While no measures were adopted against galvanized sheets and cold-rolled stainless steel, anti-dumping duties were imposed on the rest of Chinese products. Five Chinese enterprises involved in the candle case were granted an anti-dumping duty at zero, the largest number of Chinese firms awarded zero anti-dumping duty by the EU in a single case in recent years. Also in 2009, the EU announced its definitive rulings in its anti-dumping sunset review of Chinese steel pipe parts and furfuryl alcohol, maintaining its anti-dumping duty measures on these products, conducted anti-dumping mid-term review of Chinese silicon metals, iron manhole covers, trichloroisocyanuric acid (TCCA) and ironing boards, and initiated anti-dumping sunset review of silicon metals, polyethylene terephthalate (PET), glyphosate, and plywood originating in China and cyclamate originating in China and Indonesia.

At the same time, the EU initiated an anti-circumvention investigation into steel wire ropes and steel cables originating in China. The customs tariff numbers (CN Codes) of the implicated

products are 7312 1081, 73121083, 7312 1085, 7312 1089, and 7312 1098. The EU also announced its definitive anti-circumvention ruling on trolleys and main components originating in China and transshipped from Thailand (whether declared originating from Thailand or not), imposing an anti-dumping duty of 46.6%. The customs tariff numbers (CN Codes) of the implicated products are 8427 9000 and 8431 2000.

In 2009, the EU repealed the anti-dumping duty on bicycle parts imported from China by certain importers in EU Member States and suspended the anti-dumping duty on the imports of glyphosate from China.

3.7.3 Problems in EU's Trade Remedy Regime and Practices

3.7.3.1 Problems in EU's Anti-dumping investigation on China commodities

3.7.3.1.1China's Market Economy Status

In its 2008 assessment, the EU concluded that although considerable progress had been made, China had met only one of the five criteria used to gauge market economy status (MES). Therefore, the EU has continued to deny China's status as a market economy and use analog or surrogate countries to determine the dumping margins of Chinese firms subject to anti-dumping investigations. Although the EU has laid down in relevant anti-dumping regulations five technical criteria for granting the request from individual Chinese companies of market economy treatment (MET), these five criteria are too abstract and give too much discretion to the investigation authorities. Particularly in recent years, the European Commission has been overcritical in examining the request of MET filed by Chinese firms, and in total disregard of their explanations and counterpleas, often deny them such treatment based on certain minor trivialities. By the end of 2009, all the lawsuits filed by Chinese businesses to the European Court of Justice (ECJ) regarding MET have been lost, except for one single case involving ironing boards. Besides, in recent years the EU has often adopted double standards in granting MET to different Chinese enterprises. It is much easier for EU-invested enterprises in China to be granted MET. In consequence, some EU multinational companies may come to invest in China on the one hand, and file anti-dumping complaints against relevant Chinese products in the EU on the other hand in order to beat their Chinese competitors.

3.7.3.1.2 Failure of the EU Anti-dumping Investigation Authorities to Automatically Adopt Export Prices of Chinese Firms

According to Article 9.5 of the *Basic Regulation*, i.e., *Council Regulation (EC) No 384/96* of 22

December 1995 on protection against dumped imports from countries not members of the European Community, the EU anti-dumping investigation authorities would directly adopt the export prices of Chinese respondent firms to determine the margins of dumping, when they have demonstrated to the effect that they have met the five EU technical criteria for MET. Pursuant to relevant provisions in the WTO *Anti-Dumping Agreement*, the EU anti-dumping investigation authorities shall, as laid down in Article 6.10, directly use the export prices of Chinese respondent firms to calculate a separate dumping margin for them, unless the EU anti-dumping investigation authorities can demonstrate that special conditions as laid out in Articles 6.10.2 and 2.3 exist, and as a result, the export prices of Chinese respondent firms cease to apply. The automatic adoption of the export prices is the treatment entitled to the respondent firms, has nothing to do with whether or not the firms in question are granted MET, and applies to all the WTO members.

3.7.3.1.3 Protracted Proceedings in the EU

Chinese exporters have very few remedies to resort to when facing EU's anti-dumping measures against them. Apart from requesting the Chinese government to solve trade disputes with the EU within the framework of the WTO, they can only institute a lawsuit in EU's Court of First Instance (CFI) and the European Court of Justice (ECJ). However, the CFI and the ECJ usually do not accept litigations of such a nature, and if they do, the legal procedures are very slow and long-running. On 1 October 2009, the ECJ ruled for the first time in favor of a Chinese exporter. It annulled the imposition of an 18.1% definitive anti-dumping duty on ironing boards exported to the EU by Foshan Shunde Yonjian Housewares & Hardware (YHH), a company based in Foshan, China's Guangdong province. The European Commission imposed such an anti-dumping duty, according to *Council Regulation (EC) No 452/2007* of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine. This was the first anti-dumping case to be granted expedited treatment by the CFI, and the ECJ also handed down its judgment in an expeditious manner. The application before the CFI was lodged on 12 June 2007, and both the initial application and appeal took just over two years, far less time than a normal application before the CFI alone would take. Generally speaking, the often lengthy litigation in the EU that Chinese exporters have to go through cannot remove the adverse effects of anti-dumping measures in a timely fashion.

3.7.3.1.4Arbitrary and Unjustifiable Practices of the EU Anti-dumping Investigations

Arbitrary and unjustifiable practices of the EU anti-dumping investigation authorities in cases involving Chinese exports include: arbitrariness and irrationality in selecting analog or surrogate

countries (for example, in the seven anti-dumping cases against China initiated in 2009, the US was chosen as the analog country for five cases and Turkey for the two case involving alloy wheels and chopped glass fiber strands); irrational sampling methods in determining market economy status for individual Chinese enterprises, which cannot ensure the legitimate rights of those enterprises involved; untimely delivery of notices of initiation before the launch of anti-dumping investigations, making it difficult for Chinese enterprises to respond in time; inadequate disclosure of information, the name and the number of Chinese applicants for MET not made publicly known, which makes it hard to determine representativeness; the automatic application of trade defense measures to all EU Member States after its recent enlargement; the over-reliance upon the constructed normal value and the variances in its calculation methodology, and the excessive use of imputed export prices.

3.8 Barriers to Trade in Services

The services sector is the most important part of the EU economy. According to WTO data, service trade accounts for 70% of gross value added (GVA) and employment in the EU and creates more job opportunities than any other industry. However, progress of liberalization in EU service trade lags far behind that of commodity trade, an EU-wide common internal market for services is yet to take shape, and obstacles to the freedom of movement for services still remain largely intact between the EU Member States. The most pronounced barriers are monopoly and legislative discrepancies in service trade in the EU Member States. Due to the complexity and intangibility of services themselves, as well as the importance of professional expertise and the qualifications of service suppliers, the EU Member States have stipulated meticulous and elaborate regulations, which vary greatly from country to country. All this causes a lot of inconveniences to service providers from third countries. On 12 December 2006, the EU published *Directive 2006/123/EC* of the European Parliament and of the Council on services in the internal market. Seeking to eliminate regulatory and administrative barriers between Member States and to establish a genuine internal market for services, the Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free cross-border movement of services supplied by providers established in a Member State. However, the Directive does not cover subsectors regulated by other EU measures, for example, financial services such as banking, credit, insurance and reinsurance, occupational or personal pension, securities, investment funds, and payment and investment advice; electronic communications services and networks; services in the field of transport, including port services; services of temporary work agencies; health care services; social services relating to social housing, childcare and support of families and persons permanently or temporarily in need; private security services; and services provided by notaries.

Although the EU has committed to open up its internal market of services in negotiations on trade in services under the multilateral framework, the EU Member States have not unified the internal markets of trade in services, thus offsetting any material benefits accrued from the negotiations between the EU and third countries. The regime of services trade between the EU and third countries is based on its commitments under the *General Agreement on Trade in Services* (GATS), regional agreements and bilateral agreements. Liberalization of services in EU Member States varies. Sector-wise barriers to trade in services in the EU are mainly as follows:

3.8.1 Financial Services

Although the financial wholesale market has been integrated in the EU, its financial retail market (particularly small banking, mortgage and credit market) is still fragmented because of competition. Only 5% of the credit banks are allowed to provide cross-border transactions, and the type of mortgages is restricted in certain Member States. In accordance with the EU directives on insurance, insurance companies from third countries are only allowed to establish branches and agencies, but it does not mean third-country suppliers can provide insurance services freely in the EU. Legislative pending issues in the EU are handled by the Member States, as long as they do not run counter to general principles of the EU.

3.8.2 Transport Services

Transport services are largely monopolized in the EU. To maintain the proportion of vessels registered in the EU, tax relief and social security premium relief are granted to crews working on EU registered vessels. Vessel companies in the EU which use vessels from third countries will not be able to have access to state support.

3.8.3 Postal and Courier Services

Monopoly over courier services by public postal operators in EU Member States restricts market access and fair competition in the EU express delivery services market. On 20 February 2008, the EU published *Directive 2008/6/EC* of the European Parliament and of the Council amending *Directive 97/67/EC* with regard to the full accomplishment of the internal market of Community postal service. Pursuant to the Directive, the EU Member States shall fully open up its postal market by 31 December 2010, but a number of Member States are allowed to postpone their market open-up until 31 December 2012. In 2006, Belgium introduced a new licensing scheme and a new funding mechanism in the universal service. According to the new regime, the Belgian Postal Service (De Post) will undertake universal service obligations and will be duly

compensated in case that it should fail to make any profits as a result of liberalization of the postal market. Private express delivery service providers will, according to the new licensing system, also undertake universal service obligations, but they should finance the funding mechanism in the universal service. In fact, the express delivery and logistics industry is distinct from traditional postal services in that it is a value-added service. There is no reason to impose on the express industry the obligations of providing and financing the universal service.

3.8.4 Professional Services

The EU Member States are left to regulate their own professional services market. There are differing degrees of restrictions on the freedom of movement for professionals and market access in the EU Member States.

3.8.4.1 Restrictions on the Field of Services

In legal services market in the EU, the areas open to foreign suppliers are consulting services regarding laws of the host country and public international laws. In respect of accounting and auditing, the EU provides limited market access and national treatment in cross-border services, business presence, and movement of people; in tax services, access to the EU market is provided only to the supply of tax advice services.

3.8.4.2 Restrictions on Professional Eligibility

Most EU Member States place very high threshold requirements on the professional qualifications of service providers. Legal service providers must have five years of university education and work experience, and pass vocational examination to become a member of the professional association in a Member State. Market access restrictions in accounting and auditing include: minimum university education (no less than 3 years for accountants and tax consultants, 4 to 5 years for auditors), 3 to 6 years of related work experience, passing vocational examinations, and in most Member States, membership in relevant professional associations.

3.8.4.3 Quantitative Restrictions in Service Activities

Some Member States in the EU even go so far as to place quantitative restrictions on market access, based on demographic and geographic data, including limits of the total number of service providers and geographic distances.

3.8.4.4 Restrictions on Service Pricings

Prices for legal services have not been liberalized in the EU. Although some Member States no

longer apply official pricing in legal services, Austria, Germany and Italy set minimum prices for legal services, Belgium, France, Greece and Spain set minimum prices for notary services, Italy and Latvia set maximum prices for legal services, Austria, Belgium, France and Germany set a cap on maximum prices for notary services, Austria, Belgium, Portugal and Spain set recommended prices for legal and notary services. In accounting and auditing, official prices are set for statutory auditing in Greece and Portugal and for tax consultancy in Germany, maximum and minimum prices are set for public accountants in Italy, and recommended prices are set for accounting and auditing in Austria, Greece, Portugal and Slovakia.

3.8.5 Electronic Communications Market

On 25 November 2009, the EU published *Directive 2009/140/EC* of the European Parliament and of the Council amending *Directives 2002/21/EC* on a common regulatory framework for electronic communications networks and services, *2002/19/EC* on access to, and interconnection of, electronic communications networks and associated facilities, and *2002/20/EC* on the authorization of electronic communications networks and services. The Directive calls for the establishment of the Body of European Regulators for Electronic Communications (BEREC) to strengthen the Community mechanism for regulating the internal telecommunications market, the clarification of the responsibilities of electronic communications networks and services, the reform of spectrum management, the strengthening of the protection of customers' rights and data by enacting relevant regulations and implementing measures, and reasonable incentive policy to the electronic communications sector in order to promote the development of the internal market and the international competitiveness of the EU electronic communications sector. The EU Member States shall amend their national laws necessary to comply with the Directive by 25 May 2011.

All the EU Member States have committed to provide national treatment and market access in wireless voice and data services under relevant WTO agreements. In accordance with *Directive 2002/21/EC* of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, the EU Member States shall coordinate in their efforts to further liberalize its electronic communications market. However, the implementation of the aforesaid framework regulation in the EU Member States is far from satisfying. Major problems lie in the supply and pricing of different kinds of wireless local loops, circuits sharing and server hosting. In addition, unfair competition caused by state-owned electronic communications operators in certain EU Member States poses problems to foreign companies who are new to the market. China hopes that the adoption of the new

framework regulation will help coordinate the electronic communications markets in the EU Member States and open up the EU electronic communications market.

3.9 Public Procurement

According to the relevant EU public procurement legislations, the award or signing of public contracts should be published. However, according to the WTO statistics, nearly 20% of the EU public procurement project results failed to be made publicly available, which indicates that there is still room for improvement in the transparency of the EU public procurement. As the EU legislations can only be enforced through the transposition into the national laws of Member States, *Directive 2007/66/EC* of the European Parliament and of the Council of 11 December 2007 amending *Council Directives 89/665/EEC* and *92/13/EEC* with regard to improving the effectiveness of review procedures concerning the award of public contracts should have been transposed into national laws of Member States by 20 December 2009. However, according to the WTO data, some Member States failed to bring into force their laws necessary to comply with the Directive by the deadline.

The EU regulates public procurement through "directives", which are binding on all the EU Member States. However, because the EU Member States are left with the power to formulate their own implementing measures for these directives, there are wide disparities in the rules of government procurement in different EU Member States. Take France as an example. As France has very strong production facilities in the aeronautics and defense industries, the French government continues to increase its stakes in several large defense contractors, making it difficult for non-EU companies to participate in the French public procurement market for defense contracts. Preference is often granted to French companies even in the competition between EU suppliers. For another example, Greece requires the submission of various certifications issued by competent authorities demonstrating in details to the effect that all the members of the board of directors in a company putting in a bid for public procurement contracts have paid their own taxes and their employees' pension fund and that no members of the board of directors ever get involved in crimes, business bribery or other wrongdoings for financial gains. Submission of these documents is a time- and labor-consuming process for foreign companies. For still another example, the Spanish government rarely considers the tenders submitted by foreign companies in its infrastructure construction project bids. Many of the infrastructure construction projects, even if public tenders are held, are mostly awarded to Spanish businesses, which leads to strong growth in the Spanish construction industry but failure of many foreign construction companies in Spain.

3.10 Subsidies

3.10.1 Agricultural Subsidies

The EU announced in January 2009 that it would reinstate export subsidies for butter, cheese and skimmed milk powder (SMP). In 2007, during a period of sustained high prices, the EU set export subsidies for all dairy products at zero for the first time. In 2009, as part of its reform of common agricultural policy, the EU increased milk production quotas and dairy prices fell. To ensure the income of farmers, the EU decided to reactivate export subsidies for dairy products. As the world's largest provider of agricultural subsidies, the EU heavily subsidizes its dairy products. During Uruguay Round of trade negotiations, the EU has committed to cut its export subsidies as an exchange for similar reductions in subsidies by its negotiating partners. The EU's resumption of export subsidies for dairy products in face of slight changes in dairy prices will shatter the confidence of its negotiating partners in the success of subsidy reduction in the Uruguay Round.

3.10.2 Financial Incentives for Vehicles Complying with New Emission Limits

On 13 November 2009, the European Commission published a Commission Staff Working Document titled *Guidance on Financial Incentives for Vehicles*, which aims at giving practical guidelines to Member States on how to design financial incentives for the early compliance by motor vehicles with Euro 5 and 6 emission limit values set out in *Regulation (EC) No 715/2007*. According to the document, financial incentives include straight grants, loans, tax deductions, other kinds of fiscal incentives or incentives in other monetary form. It is thus wider in scope than previous provisions which were limited to tax incentives. The incentive policy covers not only incentives for new vehicles offered for sale on the market of a Member State, but also incentives for the retrofitting of in-use vehicles and scrapping of vehicles which do not comply with the Regulation. As part of the efforts of *Responding to the Crisis in the European Automotive Industry*, the European Commission adopted in February 2009 *Guidance on Scrapping Schemes for Vehicles*. The above two guidelines are complementary.

The guideline provides that a cap be imposed on the maximum amount of support to be granted. That is, financial incentives shall not exceed the additional cost of the technical devices introduced to ensure compliance with the relevant Euro 5 and 6 emission limits, including cost of installation on the vehicle. The time limits for the application of different financial incentives are: The end date for incentives for vehicles complying with Euro 5 is 1 January 2012, and the end date for incentives for Euro 6 vehicles is 31 August 2016. It is worth noting whether the above financial incentives are consistent with the WTO rules.

3.11 Other Barriers

3.11.1 Visa, Work Permit and Residence Permit

In recent years, some EU Member States have adopted a tougher visa policy towards transferees from Chinese-funded companies in the EU, which amounts to a disincentive to investment in the EU from Chinese businesses.

In some EU Member States, foreign citizens must first be issued a work permit before they can be employed in these countries. However, it is often not easy to obtain a work permit in the first place.

Upon arrival in France, business executives of Chinese-invested companies in France often encounter unexpected requirements in applying for residence permits. The French authorities require the Chinese business people to submit a variety of documentary papers, many of which are simply not required for staff sent from other countries. Such practices have in effect impeded the investment from Chinese businesses in the EU Member States. Because of complicated and tedious procedures for processing applications for residence permits in Lithuania, it is very difficult for foreign investors to obtain and renew their residence permits in that country. In principle, Lithuanian embassies and consulates can process residence applications, but in practice, citizens from non-EU Member States can only apply for residence permits upon arrival in Lithuania, and it takes six months for the Immigration Agency to decide whether a residence permit should be issued.

3.11.2 Carbon Tariffs

At an informal meeting of environment ministers of the EU Member States in July 2009, France tabled a proposal on creating a “carbon tariff” on imported products, which was later rejected. On 18 September 2009, the French President Nicolas Sarkozy and the German Chancellor Angela Merkel sent a joint letter to the UN Secretary General Ban Ki-Moon calling for the introduction of “carbon tariffs” on imports from countries that do not make sufficient commitments on climate change.

The proposed imposition of “carbon tariffs” on imports contravenes not only the basic WTO rule of non-discrimination but also the fundamental principle of “common but differentiated responsibilities” in the *Kyoto Protocol*. Many developing countries have expressed their

dissatisfaction with the French “carbon tariff” proposal, believing that the idea of “carbon tariffs” is a trade protectionist measure proposed by developed countries in the name of tackling climate change, and if put into force, will seriously injure the economy of developing countries.

4 Barriers to Investment

According to the *Treaty establishing the European Community*, investment policy is to be kept within the competence of each of the Member States and the Member States may enact their own investment legislations consistent with relevant treaties and EU laws. The *Treaty of Lisbon*, which aims at simplifying the decision-making procedure and deepening the reform in the EU, was ratified by all the Member States in November 2009. Running into effect on 1 December 2009, the Treaty integrates foreign direct investment (FDI) into the common trade policy of the EU. For lack of implementing measures and practical experiences, the division of jurisdiction in investment between the European Commission and the Member States today mainly depends on whether the EU has enacted relevant sector-specific legislations. As a result, the laws, policies and practices in the Member States have a greater impact on Chinese investors than the EU common investment policy. Restrictions on FDI still exist in the legislations, policies and measures of the EU Member States, which hamper market access and impede investment inflow to the EU. In what follows, a brief account of major barriers to investment in the EU Member States is given.

4.1 Austria

A bank from a country located outside the European Economic Area (EEA) must first seek the approval from Austria or another EEA country before establishing a branch in Austria. Foreign investment is prohibited in sectors such as transport, electric power generation, ammunition, explosives, state-monopolized industries, auditing and legal professions in Austria. Trading in real estate should be approved by the local competent authorities. It is noteworthy that Austria imposes very strict environmental standards on foreign investment. Meanwhile, cumbersome bureaucracy also brings inconveniences to foreign investors.

4.2 Ireland

In Ireland, restrictions apply to investment in Irish airlines and the purchase of agricultural lands by non-EU residents. The application of government incentives to a particular foreign investor seeking them is subject to approval.

4.3 Bulgaria

In Bulgaria, local companies in which foreign investors have a controlling interest, unless

authorized by the competent authorities, cannot engage in the manufacturing and exporting of arms, banking and insurance, exploration and utilization of natural resources, and acquisition of property in certain regions. Bankruptcy rules in the *Business Law* and Amendments to the 2005 *Securities Law* greatly strengthened the protection of minority shareholders, but there is much room for improvement in law enforcement.

4.4 Denmark

There is a five-year residency requirement for foreign ownership of real estate in Denmark. In other words, foreign enterprises are restricted in the investment in real estate.

4.5 Estonia

In Estonia, licenses are required for foreign investment in sectors such as banking, mining, gas and water supply or related facilities, railroads and transport, energy, and communications networks. In addition, there are certain restrictions on land purchases by foreign investors exceeding 10 hectares.

4.6 Finland

According to the relevant law in Finland, to establish a limited liability company in Finland, at least one of the initiators must be a permanent citizen from the European Economic Area (EEA); if the initiators are legal entities, at least one of them should have a fixed domicile registered in the EEA for business operation, in the absence of which prior approval from the competent authorities have to be obtained. Pursuant to the *Law on Financial Regulatory Institutions* promulgated in Finland in 2003, investment and operation by non-EEA service providers in financial sectors should first obtain authorization. Stock trading corporations should be authorized by Finland's Ministry of Finance, insurance corporations by the Bureau of Insurance Supervision under Finland's Ministry of Social Affairs and Health (MSAH), and banks, investment corporations, fund management corporations, trustee and pawn shops by Finland's Financial Supervisory Authority (FIN-FSA). Investment and operation in telecommunications services by non-EEA service suppliers must first be approved by the Telecommunications Administration Bureau under Finland's Ministry of Transportation and Communications. According to the *Law on Telecommunications Market* issued in Finland in 1997, applicants should have adequate capital resources to provide telecommunications and networks services, and the authorities should have no grounds to suspect that the applicants would violate the relevant laws. In addition, in accordance with the revised *Trade Law* in 1994, non-EEA citizens or companies should first obtain prior approval from the Finnish government or inform the competent authorities before

they can invest in certain fields in Finland, such as automobile inspection, trading in or producing alcohol and medicine, stock trading, production and marketing of precious metals, synthetic fertilizers, trade in feed and seed, postal services, insurance, security services, investment fund, electric power generation and telecommunications service, air services, debt collection services, chemicals and dangerous goods storage, electric appliances designing, manufacturing and maintenance services.

4.7 France

According to the decree from the French Council of State (Conseil d'État) in 2004, foreign buyout in certain sensitive sectors is subject to prior ratification. Pursuant to the government decree issued on 30 December 2005, merger and acquisition of French businesses by third-country companies in the following eleven strategically important business sectors are subject to prior authorization. These eleven sensitive areas identified by the decree cover: (1) businesses involved in the gaming industry, (2) regulated businesses providing private security services, (3) businesses involved in the research and development or the manufacture of means of fighting the illegal use of pathogens or toxic substances by terrorists and preventing the adverse health-related consequences of such use, (4) businesses dealing with wire tapping and mail interception equipment, (5) businesses licensed to provide evaluation and certification services relating to the security of information technology systems and products, (6) businesses providing goods or services relating to the security of the information systems subject to the *French National Defense Code*, (7) businesses relating to dual-use technologies and items subject to the export control of the EU, (8) businesses involved in providing cryptology goods and services subject to *the French Act of Trust in Digital Economy*, (9) activities of national defense businesses, (10) businesses involved in the research, development, production and trade in military or war materials subject to the *French National Defense Code*, and (11) businesses that have entered into a design or equipment supply contract with the French Defense Ministry. On the basis of the EU *Directive on Takeover Bids* (2004/25/EC), the French government adopted an act in 2006, which includes specific measures against hostile takeovers. Under the act, in case of unsolicited bids for French companies, the target companies may issue free warrants to existing shareholders and employees, who would then be entitled to subscribe for new shares on preferential terms, or take American-style “poison pill” defense to thwart a hostile bid. Since 2008, the French government has grown increasingly wary of foreign takeover intentions of French businesses in certain sectors and increased its interventions. France has set up a Strategic Investment Fund (Le Fonds stratégique d'investissement or FSI) to take stakes in companies with key technologies. Under the supervision of the French Parliament, the FSI will be run by state-owned financial institutions. The French

government also calls for the largest investment fund in France to increase its stakes in French companies to protect French industry from foreign takeover attempts.

In addition, in France, only French nationals, nationals of the EU Members States or nationals of the countries that have signed bilateral agreements with France can invest in certain sectors, which include privately-run research institutions, insurance brokerages, casinos and gaming clubs, forwarding agencies, public market trading, audio-video communications, commodity brokerages, tobacco retailing, beverage retailing, French-language publishing firms, private security companies, telecommunications, theatrical and artistic performing companies, and pharmacists.

4.8 Germany

Under the 2002 *Takeover Act* in Germany, local companies may adopt the right to "opt out" and retention measures to prevent a hostile takeover. Germany requires foreign investors to obtain licensing before investing in certain financial institutions, public transport, and real estate agencies.

In July 2004, Germany passed a law, requiring that a foreign investment entity expected to increase its stake to over 25% in German companies manufacturing arms or providing encryption technologies to government communications should file a notice to the competent authorities for authorization and that the authorities may reject the takeover within one month after the receipt of the notice. In 2005, the law was extended to cover the takeover of companies producing engines for tanks and tracked vehicles.

In early 2009, Germany approved a proposed legislation, which requires that when national security and public order is perceived to be under threat, investment by a non-EU investor holding at least 25% of shares in German companies should be subject to government authorization.

4.9 Greece

In Greece, laws governing taxation and investment are numerous, confusing and subject to frequent changes, thus contributing to poor predictability on the part of foreign investors. Furthermore, the government examination and approval process is lengthy and inefficient, which adds to the risks of foreign investors. The Greek authorities tend to approve the application for tax and investment incentive measures on foreign investment based on local content and export performance, but these criteria actually are not the prerequisites for foreign investment. Moreover, investment from non-EU Member States in mining, shipping, air transportation, broadcasting and

banking is subject to licensing and other kinds of authorization. For example, investment from non-EU Member States in exploration and exploitation of mineral resources is subject to special authorization from the Greek cabinet, purchases in border areas and specified islands are subject to licensing from the Greek Ministry of Defense, and non-EU banks are subject to minimum capital requirements.

Greek legal restrictions in foreign investment in strategically important companies include ex-ante licensing and ex-post authorization. Unless granted ex-ante approval from the Inter-ministerial Privatization Commission, the voting right of foreign shareholders must be limited to within 20%. Certain key decision-making in enterprises and decisions about special management issues must be subject to the approval from the Economy and Finance Minister.

4.10 Hungary

According to its EU membership agreement, Hungary is allowed to prohibit foreigners from purchasing land until 2014. Hungary also restricts foreign ownership to varying degrees in areas such as industries related to national defense, civil aviation, television and broadcasting. Besides, administrative procedures can be tedious, complicated and burdensome, and the investment code lacks transparency.

4.11 The Netherlands

In the Netherlands, elaborate corporate defensive measures have been put in place to guard against hostile foreign takeovers, but on the other hand, they may cause obstacles to mergers and acquisitions by foreign investors and lead to redundant costs.

4.12 Czech

In the Czech Republic, it is required that non-EU nationals should register a company (a legal entity) before they are entitled to purchase real estate in the country, whether for commercial or residential purposes. However, exceptions apply to a permanent resident with a spouse of the Czech nationality. Industries subject to investment restrictions in Czech include mortgage banking, asset management companies, passenger airlines, passenger and freight road transport, bonds underwriting, and construction engineering services. For seven years after its accession to the EU, Czech bars foreign nationals from purchasing farmland in the country. Foreign investment in chemical weaponry and its related chemical materials is banned. Restrictions are placed on investment in military goods, nuclear fuel (uranium) exploitation, industries with high energy consumption and heavy pollution that may pose serious environmental damage such as coke

smelting and chemical production, and exploitation of resources. Investment in these industries shall be subjected to close scrutiny before approval and strict supervision after approval by the competent government authorities. Czech encourages investment in such industries as high-tech manufacturing (such as electronics, microelectronics, aeronautics and astronautics, high-end equipment, high-tech automobiles, life science, pharmaceuticals, bio-technology, and medical equipment), and business support services (such as software development centers, solution centers, regional headquarters, client contact centers, high-tech maintenance centers, and shared services centers), and technology or design centers (such as innovation activity, application-oriented research and development).

4.13 Lithuania

Starting from 1 January 2009, corporate income tax in Lithuania would be raised from 15% to 20%, and preferential tax policies for credit institutions and agricultural enterprises would be abolished. At the same time, value-added tax (VAT) would rise from 18% to 19%, preferential tax rates for fruits, vegetables, news and publications would be abolished, and preferential VAT rates for medicines and heating services for civil use would be abolished in July and September 2009 respectively. Furthermore, consumption taxes would be raised to differing degrees for commodities like tobacco, alcohol and refined oil. The tax reform will lead to upsurge in domestic prices and investment costs.

Foreign citizens are barred from purchasing agriculture and forest land in Lithuania. Although this restriction will cease to apply to residents from the EU Member States from 2011, it remains in place for non-EU residents.

4.14 Latvia

In Latvia, foreign acquisition of formerly state-owned enterprises through the country's privatization process is subject to performance requirements. Bureaucratic procedures can be non-transparent, and solution to business disputes is far from efficient.

4.15 Luxemburg

In Luxemburg, branches or subsidiaries of a non-EEA bank must be licensed. Furthermore, investments that directly affect national security are restricted.

4.16 Malta

With the transformation and upgrading of its industries, Malta encourages foreign investors in

such sectors as electronics, finance, services, tourism, medicine, and education. In contrast, foreign investment in traditional, labor-intensive and resource-consuming projects is restricted. Labor inflow from developing countries is strictly regulated. Work visa is rarely granted unless the applicants are technical and managerial personnel which cannot be locally recruited. Moreover, the approval process for issuing work visa is complicated, thus making it difficult for foreign labor service providers to enter the country.

4.17 Portugal

Investors from non-EU Member States must obtain approval before entering sectors such as national defense, water management, public-service telecommunications, railroad, and maritime transport. Meanwhile, their market access to scheduled air transport and television operation is also restricted. Legislation governing investment is complicated and investment dispute settlement is inefficient.

4.18 Sweden

Sweden imposes certain restrictions, but not a complete ban, on investment projects related to strategic national interests such as defense, air transport, operations at sea, mining, strategic materials, banking and insurance. Restrictions are mainly enforced through licensing only those well-qualified, well-capitalized companies to enter these sectors. Sweden imposes no foreign investment ceilings and allows 100% foreign equity. However, according to EU and Swedish legislations, foreign acquisitions and mergers should be submitted to Sweden’s Competition Bureau for approval.

4.19 Romania

Tax laws in Romania are subject to frequent changes. Intellectual property right (IPR) infringement cases are lengthy and costly, and court rulings often do not follow precedents. Legislative and regulatory unpredictability in Romania constitutes a long-term deterrent to foreign investment. In addition, all payments and transfers must be documented, and derivative-based transactions still require approval.

4.20 Slovakia

The Slovakian government monopolizes railroad construction, postal services, water supplies and forestry, to which foreign investors have no market access. In addition, the settlement of investment disputes through judicial system in Slovakia tends to be a slow and tiring process.

4.21 Cyprus

Cyprus imposes stringent restrictions on foreign investment in real estate, stipulating that foreign nationals can only purchase one property for personal use with a total area not exceeding one acre. This restriction will no longer apply to citizens from the EU Member States as from May 2009, although it remains in force to non-EU residents. In the field of education, the Cyprus law makes a difference between universities and colleges. Cyprus incentivizes foreign investors (including those from non-EU Member States) to establish or acquire universities in Cyprus, but non-EU investment in local colleges is discouraged. Investors from non-EU Member States may establish or acquire local colleges by registering a company in Cyprus or other EU Member States, with the prerequisite that the company must have EU shareholders and members of the board of directors. However, whether as a member of the board of director or as a shareholder, non-EU investor cannot participate in the running of the local college. In traditional media, one single investor from a non-EU Member State can hold no more than 5% of the stock of a local mass media company, and the total foreign investment should not exceed 25% of the equity. The current Cyprian legislations restrict market access to real estate industry. According to the relevant laws in Cyprus, only individuals (not companies) can be licensed to be real estate agents, and licenses can only be awarded to those with apprenticeship of over eight years under a licensed individual. In architecture, non-EU entities cannot be registered as a construction contractor, nor can they hold a majority ownership of a local construction company. Only after they have obtained special approval from the Cyprian Council of Ministers can a natural person or a legal entity from non-EU Member States bid for some specific architecture projects.

4.22 Spain

With the exception of investment from other EU Member States, Spain requires investment in the following fields to be licensed by the Directorate General of Trade Policy in the Ministry of Economy, including investment in “sensitive industries” such as casinos, television, radio broadcasting, air transport and national defense, investment by foreign governments and investment by enterprises directly or indirectly controlled by foreign governments, and investment by foreign state-owned enterprises. Besides, Spanish banks request an announcement before a majority of loan activities can begin.

4.23 Italy

Italy imposes harsh restrictions on investment in national defense, aircraft manufacturing, oil and natural gas exploration, domestic airlines and maritime transport. The Italian laws provide for

specific restrictions on investments in the aforesaid sectors.

On 13 September 2007, the Italian government approved an act transposing the EU *Directive on Takeover Bids* (2004/25/EC) into its national law, which was adopted by the Italian Parliament in November and entered into force in December 2007. Under the act, defensive measures, unless authorized by the shareholders, cannot be taken against an unfriendly merger or acquisition bid from a foreign investor. It also introduces a common pre-bid defense mechanism known as the "breakthrough rule" (for example, shareholders' agreement on voting). The act seeks to protect minority shareholders and to allow local companies to reciprocate against a bidder not subject to the breakthrough rule in his own country.

4.24 Poland

Investment policies, laws and regulations in Poland are numerous and unstable, thereby creating unpredictability on the part of foreign investors. Problems are also compounded by the low efficiency of the Polish government bureaucracy. In addition, it is difficult for Chinese expatriates sent to Chinese-funded enterprises in Poland to be granted a work visa and a work permit.

4.25 Belgium

Investment approval in Belgium is often subject to job creation requirements. Laws relating to investment are transparent, but administrative procedures are lengthy and cumbersome.

4.26 Britain

As for foreign takeovers, the British government requires that at least, one British citizen should have a seat in the board of directors of the registered company.

4.27 Slovenia

In Slovenia, foreign investors seeking government incentives face some employment-creation requirements. Obstacles to foreign investment also include an incomplete commercial code, restrictive labor regulations, and burdensome bureaucracy.

Such investment regulations and practices as described above have, to varying degrees, raised serious barriers to business activities of Chinese-funded enterprises in the EU Member States concerned.