Foreign Market Access Report

2003

Ministry of Commerce

People's Republic of China

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Foreword

The year of 2003 witnessed a rapid development of China's foreign trade and economic cooperation. According to the Chinese Customs, China's foreign trade volume reached US$851.21 billion in 2003, up by 37.1%, among which China's export was US$438.37 billion, up by 34.6%, while China's import was US$412.84 billion, up by 39.9%. According to the Ministry of Commerce (hereinafter referred to as MOFCOM), 510 Chinese-funded non-financial enterprises were set up overseas in 2003, with a total contractual investment of US$2.09 billion made by the Chinese side, and the respective increase compared with those of the previous years were 45.7% and 112.3%. In 2003, the turnover of completed engineering contracts by Chinese companies in other countries reached US$13.84 billion, which grew by 23.6%, and the volume of the newly signed contracts was US$17.67 billion, up by 17.4%. The volume of completed labour service cooperation contracts was US$3.31 billion in 2003, up by 7.7%, and that of the newly signed labour service cooperation contracts was US$3.09 billion, up by 12.2%.

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

The first Report was published in May, 2003, which is the Report 2002. MOFCOM is now publishing the Foreign Market Access Report: 2003.

I. Coverage of the Report

Based upon information provided by Chinese enterprises and government agencies, while taking into account of trade volumes between China and its global trading partners in 2003 provided by the Chinese Customs, the Report covers 19 trading partners of China, including the United Arab Emirates, the Philippines, the Republic of Korea, Malaysia, Japan, Saudi Arabia, Thailand, India, Indonesia, Vietnam, Russia, the European Union, Poland, Canada, the United States, Mexico, Brazil, Australia and South Africa. China's export to these trading partners accounted for about 70% of China's total export in 2003. The Report will evaluate more trading partners of China so as to present a more comprehensive scenario for the development of China's foreign trade and overseas investment.

II. Sources of information

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

III. Content of the Report

Information presented in the Report on each trading partner covers mainly three areas.

i. Bilateral economic and trade development

This part outlines the current development in trade, investment and economic cooperation between China and a given trading partner.

ii. Trade and investment regulatory regime of a given trading partner

This part briefs the trade and investment regulatory regime of a given trading partner, which mainly includes its legal framework for trade and investment administration, competent authorities for trade and investment and their main competences, etc.. For certain trading partners, introduction is also given on their important non-governmental trade organizations on a selected basis.

iii. Barriers to trade and investment

This part identifies various unjustified restrictions encountered by Chinese enterprises in their trade and investments on the market of a given trading partner, as well as the efforts of the Chinese government to eliminate such restrictions.

Wherever possible, the Report estimates the impact on China's exports of a specific foreign trade barrier. However, it should be understood that due to technical and information constraints, the estimates are made only to parts of the trade barriers according to the statistics provided by the Chinese Customs. For the same reason, such estimates are but approximations, and have not reflected the consequent impact regarding the loss of potential trade opportunities.

IV. Definition and classification of barriers to trade and investment

Trade barriers are defined in the Report mainly according to WTO agreements as the majority of China's trading partners are WTO members. In case of non-WTO members or a given trade barrier not covered by WTO agreements, bilateral or plural -lateral agreements or established international trade practices will be taken as

references.

Therefore, trade barriers are defined in the Report as government-imposed or government-supported measures with trade distorting effects that satisfy one of the following:

- inconsistent with any multilateral or plural-lateral agreement of which both the given trading partner and China are among the signatories, or any bilateral agreement signed between the given trading partner and China;

- imposing or threatening to impose unjustified obstacle or restriction on the access of Chinese products or services to the market of the given trading partner or the market of any other trading partner;

- causing or threatening to cause impairment to the competitiveness of Chinese products or services on the market of the given trading partner or the market of any other trading partner.

In addition, such practices are also regarded as trade barriers that a foreign government fails to fulfill the obligations provided in a multilateral/plural-lateral agreement of which both the given trading partner and China are among the signatories or a bilateral agreement signed between the given trading partner and China.

The Report classifies foreign trade barriers into fourteen different categories as follows:

- Tariff and tariff administrative measures, e.g., tariff peak and unjustified practices in tariff quota administration;

- Import restrictions, e.g., unjustified import ban and import licensing;

- Customs barriers, e.g. procedural obstacles in customs clearance, unjustified charges on imports;

- Discriminatory charge on imported goods;

- Technical barriers to trade, e.g., unjustified technical regulations and standards applied to imported products, complicated certification and conformity assessment procedures;

- Sanitary and phytosanitary measures, e.g., unnecessarily strict quarantine requirements and procedures applied to imported products;

- Trade remedy measures, e.g., unfair anti-dumping measures imposed on imported products, insufficient transparency in investigation procedures of

trade remedy, in particular the abusive application to Chinese enterprises of measures designed for non-market economy;

- Government procurement, e.g., insufficient transparency, violation of most-favored-nations clause;

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

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

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

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

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

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

The Report categorizes and discusses barriers of each trading partner on the basis of the information available. However, the omission of particular category of barriers does not imply the absence of such barriers in the given trading partner.

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

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

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

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

In addition, such practices are also regarded as barriers to investment that a foreign government fails to fulfill obligations provided in a multilateral/plural-lateral investment agreement of which both the given trading partner and China are among the signatories or a bilateral investment agreement signed between the given trading partner and China.

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

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

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

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

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

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

The United Arab Emirates

1. Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and the United Arab Emirates (hereinafter referred to as the UAE) in 2003 reached US$5.81 billion, up by 49.1%, among which China's export to the UAE was US$5.04 billion, up by 46%, while China's import from the UAE was US$0.77 million, an increase of 73.7%. China had a surplus of US$4.27 billion. The main exported products of China to the UAE were electronic and machinery products including household electric products, primary batteries, yarn and yarn products, clothing and clothing accessories, toys, etc. The main imported products of China from the UAE included liquefied petroleum gas, aluminium, product oil, other fuel oil, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in the UAE reached US$130 million in 2003, and the volume of the newly signed contracts was US$120 million. The volume of completed labour service cooperation contracts was US$29.58 million in 2003, and that of the newly signed labour service cooperation contracts was US$27.07 million. By the end of 2003, the accumulated turnover of engineering contracts completed by Chinese companies in the UAE had reached US$460 million, with that of all the contracts signed amounting to US$ 820 million, and the volume of the completed labour service contracts had reached US$180 million, with that of the total contracts signed amounting to US$260 million.

According to MOFCOM, 8 Chinese-funded non-financial enterprises were set up in the UAE in 2003, with a total contractual investment of US$2.93 million by Chinese investors. By the end of 2003, there were accumulatively 78 Chinese-funded enterprises set up in the UAE with a total contractual investment of US$ $50.18 million was by Chinese investors.

According to MOFCOM, UAE investors invested in 94 projects in China in 2003, with a contractual investment of US$170 million and an actual utilization volume of US$70 million. By the end of 2003, UAE investors had accumulatively invested in 351 FDI projects in China with a contractual volume of US$370 million and an actual utilization volume of US$150 million.

2. Introduction to the UAE trade regime

2.1. Legislation on trade and investment

The current legislation of the UAE concerning foreign trade and investment mainly includes the Company Law, the Law of Merchant Agent, the Trademark Law, the Insurance Law, the Audit Law, the Law on Transaction of Goods, the Labor Law, etc.

2.2 Trade administration

2.2.1 Tariff policy

The average tariff level of the UAE is relatively low. The UAE raised its tariff on ordinary goods, in accordance with the arrangement made by the Gulf Tariff League, from 4% to 5% as of January 1st, 2003. A few products are subject to high tariffs, e.g. tariff for alcoholic beverages is 25%, and that for cigarettes and tobacco products is 70%.

2.2.2 Import and export administration

Import restrictions are carried out by the UAE authorities over certain products.

In the UAE, import of certain products is banned, which include: certain medicines (narcotics, cocaine, heroin, etc.), counterfeit or replicated money, and publications, photographs, paintings, cards, books, magazines and sculptures which are religiously or morally inconsistent or subject to causing social turbulence.

In the UAE, import of certain products is restricted and subject to approval from competent authorities, which include: military weapons and ammunitions, alcohol and alcoholic drinks, medicines for medical purposes, chemical products, fertilizers, agricultural coloring agents, medical equipment, publications, audio-visual tapes, telephone exchange equipment, foods, live bees including queen bees, fireworks and explosives, camels, prey hawks and equid animals including horses, mules, donkeys, horse foals, zebras, etc.

2.2.3 Foreign exchange administration

Dirham, the UAE currency which is pegged to US dollar, is freely convertible. By the end of 2003, one US dollar is equivalent to 3.66 dihrams. Commercial banks provide loans in foreign exchange without approval of the central bank. Foreign companies or individuals can remit abroad their dividends, interests, wage incomes and operating profits without examination and approval requirements. However, foreign banks are required to obtain approval from the UAE central bank for remitting abroad their profits.

2.3 Investment administration

The UAE authorities implement administration of foreign investment activities according to the Company Law promulgated in 1984. The Company Law contains provisions including: comprehensive trade companies are to be operated only by UAE citizens; a minimum share of 51% is to be held by UAE citizens for other joint ventures established out of Free Trade Zones; establishment of subsidiaries or representative offices by foreign companies is to be guaranteed by a UAE citizen and the foreign companies are to pay certain commissions to the UAE guarantor;

representative offices of foreign companies in the UAE are not allowed to conduct direct business activities, including trade; foreigners are to operate foreign trade in the name of the UAE guarantor or agent. From 1996, the Government of Abu Dhabi Emirate allowed foreign representative offices to conduct trade and sale activities.

The UAE Government enforces Free Trade Zone policies with the aim of attracting foreign investment and introducing advanced management skills. In 1985, Dubai took the lead by establishing the Jabailer Ali Free Trade Zone. Currently, within the UAE territories there have been established 12 Free Trade Zones of different sizes. However, the preferential policies and incentive measures are basically the same, which include 100% foreign ownership, 15 years' exemption of corporate tax subject to 15 years' extension, free remittance of capital and income abroad, exemption of individual income tax, import tariff exemption, zero restriction of money transfer from or out of the UAE, zero requirement of registered capital, etc.

2.4 Competent authorities

The UAE is composed of seven emirates. The federal government is responsible for foreign affairs and national defence, as well as the formulation of the country's economic policies, and the Emirate governments are responsible for the formulation and implementation of their specific economic strategies, policies, measures and laws and regulations, and the management of their respective economic affairs. At the federal level, competent authorities involved in foreign trade and investment administration include the Ministry of Economy and Trade, the Ministry of Finance and Industry and the Ministry of Foreign Affairs.

The competence of the Ministry of Economy and Trade include: formulating economic and trade policies and their implementation measures, stipulating rules and regulations to regulate economic and trade activities, coordinating government and industries, and conducting trade negotiation with other state governments. The Ministry of Finance and Industry is responsible for negotiations about agreements on avoidance of double-taxation and investment protection, and foreign affairs related to economic issues fall into the charge of the Ministry of Foreign Affairs.

In addition, Chambers of Industry and Business (CIB) are working in all 7 Emirates. The CIB is a semi-official organization with main responsibilities as follows: implementation of the trade and industrial policies of respective Emirates, administration of private companies of respective Emirates, company registration, issuance of business licenses and certificates of CIB membership, and providing economic and trade information and soliciting clients for CIB members of respective Emirates. CBIs of the 7 Emirates collectively compose the UAE CBI, which sets up its headquarters in Abu Dhabi and is responsible for coordinating Emirate CBIs, organizing and participating in activities of Emirate CBIs, and promoting foreign exchange and cooperation of the UAE entrepreneurs.

3. Barriers to trade

3.1. Sanitary and phytosanitary measures

In October 2001, the Ministry of Agriculture and Fishery of the UAE promulgated Administrative Decision No., transmitting Regulation No. 460 on Animal Quarantine of Gulf Cooperative Council Countries. The Regulation imposes strict procedures of quarantine and custom clearance on imports of products of animal origin. It requires that products of animal origin intended to be imported shall comply with the EC standards, and an application for import license shall be made to the Ministry of Agriculture and Fishery for import license. The Regulation also authorizes respective Emirate governments to, according to specific situations, impose import bans on animals and products of animal origin imported through local ports.

After the outbreak of avian influenza in Hong Kong SAR of China in 2001, the authorities of the Dubai Emirate imposed import bans on frozen and live chickens from Hong Kong for more than one year. In June and September 2002, the government of the Dubai Emirate once again imposed ban on imports of poultry meat and products from Hong Kong and mainland China for the reason that the EC authorities had detected residues of chloramphenicol in such products China exported. The Chinese industry complains that the EC residue standards applied to imported products are not international standards, and that there are many problems unfolded in its implementation. Therefore, it is unjustifiable for the authorities of the Dubai Emirate to impose import ban without taking necessary risk assessment, and the imposition is inconsistent with WTO Sanitary and Phytosanitary Agreement. The Chinese side strongly urges the authorities of the Dubai Emirate to take prompt measures to rectify its action and eliminate the negative impact on China's export.

3.2. Barriers to trade in service

3.2.1 Civil engineering

In the UAE, civil engineering is not to be carried out by wholly foreign-owned companies and companies with less than 51% UAE ownership. It's provided that all companies with foreign ownership, after purchasing a new set of equipment, should lease from a wholly UAE-owned leasing company a set of equipment of same sort, including road equipment, e.g. cranes, bulldozers and loading machines. Foreign companies should employ a UAE company for equipment installation, maintenance and operation in construction sites, e.g. tower cranes. In addition, a supplier list administration is held over building materials used in civil engineering projects, which requires all building materials be purchased from listed suppliers. The above practices of the UAE are restrictive of Chinese companies' access to the UAE construction market.

3.2.2 Communications

The communication industry is not liberalized in the UAE. Currently, communication

business in the UAE is monopolized by ETISALAT, a UAE telecommunication company.

3.2.3 Financial business

By now, there have been 25 foreign banks and 5 foreign investment companies in the UAE. However, there hasn't been any new banking license issued by the UAE authorities in the last 20 years. Only UAE citizens can have access to the UAE securities market, and foreigners are not allowed to purchase security shares.

3.3 Sales agent

As regulated by the UAE legislation, foreign companies or individuals must seal a wholly UAE-owned agent to sell their products or provide services in the UAE market. To renounce the agency relationship, the foreign companies or individuals must obtain consent from the UAE agent and produce material reasons, which are supposed to be approved by UAE local courts. If the agency relationship is renounced without production of material reasons approved by local courts, the foreign companies or individuals will be either obliged to pay a large sum of compensation to the local agent, or excluded from the UAE market.

4. Barriers to investment

In recent years, the UAE Government adopted a series of measures that restricted the amount of foreign labour. In 1998, it's prescribed by the UAE Government that all foreign companies should provide a list of employment vacancies to the UAE labor and employment authorities so that UAE citizens could be arranged to fill the vacancies. As a particular example, priority must be given to UAE citizens regarding employment vacancies in the banking industry.

Australia

1. Bilateral trade relations

Australia was the ninth largest trading partner of China in 2003. According to China Customs, the bilateral trade volume between China and Australia in 2003 reached US$13.56 billion, up by 30.0%, among which China's export to Australia was US$6.26 billion, up by 36.6%, while China's import from Australia was US$7.30 billion, up by 24.8%. China had a deficit of US 1.04 billion. China mainly exported machinery and electronic products， textiles products and clothing, metal products, crude oil, etc. The major imported products of China from Australia included iron ores, coal, alumina, crude oil, magnesium ores, cereals and cereal powder, barley, liquefied gas, copper ores, paper and paper board, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by the Chinese companies in Australia reached US$ 17.26 million in 2003, and the volume of the newly signed contracts was US$ 2.32 million. The volume of completed labour service cooperation contracts was US$0.49 million, and that of the newly signed labour service cooperation contracts was US$1.1 million. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in Australia was US$218.68 million, with that of all the contracts signed US$234.48 billion, and the volume of the completed labour service contracts has reached US$18.54 million, with that of the total contracts signed US$110.24 million.

According to MOFCOM, 10 Chinese-funded non-financial enterprises were set up in Australia in 2003, with a total contractual investment of US$33.46 million by Chinese investors. By the end of 2003, there were accumulatively 225 Chinese-funded enterprises set up in Australia with a total investment of US$ 464.41 million from Chinese investors.

According to MOFCOM, Australia investors invested in 785 projects in China in 2003, with a contractual volume of US$1.91 billion and an actual utilization of US$0.59 billion. By the end of 2003, Australia investors had accumulatively invested in 6,073 FDI projects in China with a contractual volume of US$9.99 billion and an actual utilization volume of US$3.42 billion.

2. Introduction to the Australian trade regime

2.1. Legislation on trade and investment

The legal basis for Australia's antidumping system consists of the Customs Tariff Act and the Customs Act. The Customs Tariff Act was promulgated in 1975, and amended for several times with the latest amendment in 1998. The Customs Act was promulgated in 1901, with the latest amendment in 2003.

The legal basis for Australia's safeguard system is the Procedures for Safeguard Measures Investigation and the Act of Production Commission of 1998. The Procedures for Safeguard Measures Investigation was set down according to Chapter 2 and 3 of the Act of Production Commission of 1998, and enforced as of June 1998.

2.2. Trade administration system

2.2.1. Making of technical regulations

In Australia, technical regulations are made by competent government authorities and authorized institutions (e.g. Australia-New Zealand Food Administration)or commissions. Certain technical regulations will be enforced after approval of the Prime Minister, while some technical regulations should obtain approval of the Cabinet for enforcement.

The ministries of the Australian Government usually entrust the General Procuratorate for drafting of technical regulations. After the draft of a technical regulation comes out, the competent authorities will send it to other involved authorities for reference, and publicize the draft for public comment. The period for public comment ranges from 60 to 255 days, decided by the complicatedness and emergency of the technical regulation. In certain circumstances, competent authorities will hold discussions for opinion from experts.

2.2.2. Risk assessment for import of products of plant and animal origin

According to Australian laws, the Market Access and Biological Safety Administration (BA) will decide whether to carry out Import Risk Analysis (IRA) for import of animal or plant products before their entry into Australian market. The purpose of IRA is to make full evaluation of the possibility of pest or disease caused by the imported product after entry into Australia, provide a basis for competent authorities on which decision will be made whether to allow entry of the product, and enable interested parties to have a thorough understanding of above basis.

IRA is made based on the Import Risk Analysis Process Handbook, made by the Australian Quarantine and Inspection Service (AQIS) in 1998, which required fast assessment procedures for most imported animal and plant products, and formal examination procedure for important products. IRA is carried out upon import application by individuals, companies or industrial associations, and decided by BA. The draft of IRA will be made public with a period (often 60 days) left for interested parties to make appeals. The final result of IRA will be implemented by AQIS, and relevant notice will be made to WTO.

2.2.3. Antidumping investigation procedures

The Trade Measures Branch, under the Australian Customs Service, is responsible for anti-dumping affairs. The main competences of the Trade Measures Branch include:

examination of anti-dumping application and application for review, determination of initiating anti-dumping investigation, anti-dumping investigation activities and reporting to the Minister of Justice and Customs of the results of anti-dumping investigation and giving relevant advice.

The Minister of Justice and Customs is the final decision-making body of anti-dumping measures. He, based on relevant reports and advice, decides whether to adopt anti-dumping measures.

The Trade Measures Review Officer is entitled to limited right of review. He may review the following decisions: the decision of rejecting an anti-dumping application or terminating an anti-dumping investigation by the Customs, and the decision of adopting or not adopting anti-dumping measures. In his review, the Trade Measures Review Officer mainly addresses procedural issues in the anti-dumping investigations, and should any problems be found, he may request another round of investigation by the Customs.

According to the Customs Tariff Act, the anti-dumping investigation may consume 155 days at best.

2.3. Competent authorities

2.3.1. Authorities of trade and investment administration

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

The Australian Department of Foreign Affairs and Trade (DFAT) is responsible for foreign trade administration. The DFAT has the dual competences in foreign affairs and foreign trade, and works under the collective leadership of the Minister for Foreign Affairs and the Minister for Trade. Under the DFAT, there are 2 subordinate organizations, among which the Australian Trade Commission (AUSTRADE) works for trade promotion and market development, with its chairmanship concurrently assumed by the Minister for Trade, and the Australian Agency for International Development (AusAID) works for management of overseas aid programs, with the leadership of the Minister for Foreign Affairs.

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

The Australian Quarantine and Inspection Service (AQIS), under the Department of Agriculture, Fisheries and Forestry, is responsible for import and export inspection and quarantine. The Foreign Investment Review Board under the Department of the Treasury works for examination, approval and administration of foreign investment.

2.3.2. Standard-making institutions

The organizations of the Australian federal government are responsible for making technical regulations and non-mandatory standards. Such organizations include Australian Quarantine and Inspection Service (AQIS), Pesticide and Veterinary Medicine Registration Bureau, National Standards Commission (NSC), Medicine Administration Bureau, Food Standards Australia New Zealand (FSANZ), National Occupational Health and Safety Commission (NOHSC), etc. Among them, the National Standard Commission is mainly responsible for affairs regarding the national metrological system.

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

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

3. Barriers to trade

3.1. Tariff and tariff administrative measures

High tariff rates are kept for certain products, typically exemplified by automotive vehicles, textiles and clothes, and footwear.

From 1996, Australia's tariff rates for textiles and clothes, and footwear were reduced by 3% annually. However, with the influence from those industries, from 2000, the Australian government embarked on 3 initiatives to boost the competitiveness of Australia's textiles and clothes and footwear industries, which included suspension of the tariff reduction of above products. Presently, the tariff rates of textiles and clothes and footwear are significantly higher than the average tariff level of industrial products. Among them, the tariff rates for cotton fabrics, chemical fibers and cotton combination fabrics, woven carpets and industrial fabrics are universally 15%; special fabrics, ranging from 10% to 15%; knitted dresses, non-knitted dresses and bedclothes, 25%; and other fabrics, 15%.

3.2. Technical barriers to trade

The technical regulations are mandatory, while standards are divided into 2 categories, namely mandatory and non-mandatory. Up to now, more than 6000 standards have been made in Australia, about 2400 of which are mandatory.

3.2.1. Foodstuffs

In Australia, there does not exist a law on national level regulating foodstuff administrations. According to the Australian Constitute, the authority to administer foodstuff affairs resides in respective states, which makes the Australian foodstuff administrative system very complicated and decentralized. According to some undercounted statistics, there are more than 120 laws, regulations and 90 standards in Australia involving foodstuff administration, without considering regulations made by sub-state governments. Since 1970's, the Australian federal government, together with the state governments, have been committed to advance the unification of national foodstuff standards and regulations, but till now, such efforts haven't witnessed concrete effects, which, as complained by certain Chinese companies, entangled China's foodstuff export to Australia.

3.2.2. Medicine

The restrictive measures adopted by Australia on import of Chinese traditional medicines have impeded China's export of such products.

According to the Medical Appliances Act of 1989, medicines are categorized as Listed Medicines and Registered Medicines. After approval, all medicines should bear their category and registration number on the package. The application for Registered Medicines is both lengthy (generally more than 1 year) and costly (more than AUS$ 10,000 on average). The registration fee for Listed Medicines is AUS$ 400, with an annual fee of another AUS$ 400. If taking into account the fees for consultant employment, the total expense will exceed AUS$ 1000. Some medicines may have complicated components, which require more evident documents to be furnished in the registration procedure. If including fees for expert employment, the total expense will reach AUS$ 4,000-5,000. Currently, most Chinese traditional medicines in Australian market are "Listed Medicines". The comparatively expensive registration fees and unduly complicated registration procedures of the Listed Medicines have brought heavy burdens to relevant Chinese enterprises.

Besides, it's required by Australian laws that all manufacturers that provide medicines to Australia should pass Australia's GMP accreditation. For GMP accreditation, 2 officials from Australia should carry out spot investigation. All spending occurring in the officials' travel, including board and lodging expenses and travelling expenses, is to be born by the applicant. Such practices have brought to the foreign manufacturers, especially those of developing countries, added burden.

3.2.3. Machinery and electronic products

From the 1990's, China-made small household electric appliances gradually enlarged their sales in Australia, including roaster, fruit extractor, electric utensil and electric iron. In late 1990's, China-made white appliances, e.g. air conditioner and refrigerator, and black appliances, e.g. TV set and video cassette recorder, started their penetration

into the Australian market. At present time, machinery and electronic products have become China's biggest export to Australia, which in 2001 reached US$ 1.07 billion. Certain products have possessed a considerable market share in Australia, exemplified by TV sets, tractors and office equipment.

However, China's machinery and electronic products export to Australia are facing restrictions of safety certification. It's required by Australia that 63 machinery and electronic products are subject to safety certification before sales in Australia. A model of machinery or electronic product is to be examined after shipment into the Australian territory. If the examined product meets all requirements at once, such examination procedure will last 2 to 3 months. If the examined product fails any requirement, and re-examination is to be held after improvement, such procedure will take more time. Currently, a British company in Shanghai, authorized by the Australian authorities, can perform quality authentication according to Australian standards, and the laboratory of Haier Corporation has also obtained such authorization. However, generally speaking, the comparatively lengthy period and costly expenses of the above authentication procedure are bringing to Chinese machinery and electronic exporters unreasonably extra burdens.

3.3. Sanitary and phytosanitary measures

Australia implements one of the world's most stringent sanitary and phytosanitary systems, about which main trading countries have expressed dissatisfaction. Australia's sanitary and phytosanitary system has brought great impediment to the access of foreign agricultural products to Australian market, and the mostly affected products of China include labor-intensified agricultural products, e.g. fruit, vegetable and certain economic crops.

As the basis for sanitary and phytosanitary measures, the period of Import Risk Assessment (IRA) is unduly lengthy, and its technical standards are not made public. AQIS conducts IRA on one product from one country at one time, which makes many products difficult to obtain timely IRA and import permit.

From 1998 to February 2003, BA finished IRA merely on 24 animal products and 12 plant products, with IRA on 31 animal products and 20 animal products under working. In December 1998m BA finished IRA on Chinese duck pear from Hebei Province of China, and granted import permit. In 2002 and 2003, BA finished IRA on and granted import permit for Chinese duck pear and pear from Shandong Province of China. Currently, IRA is conducted by BA on lychee and longan from China, and other agricultural products including apple and peach are in the waiting list. However, most agricultural products are still out of the waiting list.

3.4. Trade remedies

3.4.1. Investigations involving Chinese products in 2003

Australia is among the most frequent using countries of antidumping investigation involving Chinese products. From September 1982 to the end of 2003, Australia has filed 39 antidumping investigations involving Chinese products.

On 11 August 2003, the Australian authorities decided to initiate antidumping investigation on A4 copy paper from China, involving US$ 13.48 million export of China. On 4 December 2003, the Australian authorities found that no dumping existed in the import of above products from China, and decided to terminate the investigation.

On 20 August 2003, the Australian authorities decided to initiate antidumping investigation involving hot rolled plate steel from China and certain other countries, involving US$ 0.52 million export of China. The Australian authorities scheduled to publicize the statement of basic facts of this investigation on 8 December, but declared postponement on 4 December.

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

During the visit of Hu Jintao, the Chinese State President, to Australia in October 2003, the Governments of the two countries signed the China-Australia Trade and Economic Framework Agreement. According to the Agreement, during the two years of feasibility study held by the two countries over the bilateral free trade agreement (31 October 2003 to 31 October 2005), Australia would not apply Paragraph 15 of the Protocol on the Accession of the People's Republic of China to the WTO. The two countries could not start consultation over the bilateral free trade agreement until Australia grants full market economy status to China, which means in the said period, Australia will grant equal treatment to China and other WTO members in antidumping investigation. The Chinese side highly appreciates the Australian side's attitude on above matter.

3.4.3. Non market economy status of China in antidumping investigation

Prior to 1997, the Australian authorities, in its anti-dumping investigations, regarded China as a non market economy. In recent years, certain positive amendments have been made to the Australian anti-dumping laws. Such laws regard China as an "Economy in Transit", which is, to a certain extent, conducive for the Chinese responding companies to make effective defences and protect their due interests. However, the treatment given to Chinese responding companies by the Australian anti-dumping investigating authorities are still different with those to companies with full market economy status, and unfair or discriminatory practices also exist in other fields, which have considerably impeded China's export trade to Australia.

3.4.4. Australia's amendment to antidumping laws

In December 2002, the Department of Justice and Customs submitted to the

Parliament the amendment to the anti-dumping clauses in the Customs Act (hereinafter referred to as "the Amendment") without soliciting public opinions. In March 2003, the Department of Justice and Customs promulgated the Amendment Regulations.

3.4.4.1. Main points of the Amendment

The Amendment set down regulations about the fair value calculation of products imported from economies in transition. The above regulation included the definition of economy in transition, exempted the Director of Justice and Customs from certain limitations, and set forth requirements for exporters in economies in transition to answer investigation questionnaires. The Amendment also deliberated the factors the Department of Justice and Customs in calculation of fair values.

3.4.4.2. Unreasonable points in the Amendment and Amendment Regulations

The Amendment and Amendment Regulations partially improved practices in antidumping investigation on products from economies in transition, and streamlined antidumping investigation procedures. However, the Amendment and Amendment Regulations continued to deny full market economy status of China, bearing unreasonable points as follows. Firstly, the definition of 'influence on price' was left unclear and thus interpreted as any factor. Secondly, in the Amendment, the burden of proof was shifted from petitioner to exporter, which brought to Chinese exporters added burden. Thirdly, the Department of Justice and Customs had too much discretion in deciding 'governmental influence on price'. Thirdly, most standards in the Amendment Regulations for market economy were not relevant for distinction of market economy and other economy, which made Chinese companies subject to discriminatory treatments.

3.4.4.3. Consultations of China and Australia over the Amendment and Amendment Regulations

The Amendment was passed by the Australian Parliament on 25 November 2003, and became effective as of 18 December the same year. The Amendment Regulations is going to be reviewed by the Australian Parliament on 10 February 2004, and become effective as of March 2004 if passed.

The Chinese side has kept a close watch on the consequences the Amendment and Amendment Regulations may bring about. From February to May 2003, the Chinese side expressed its concern and worry to the Australian side through different channels, and held official bilateral consultations. Subsequently, the Australian Department of Justice and Customs agreed to make revisions to the Amendment as follows.

Firstly, it's originally stipulated in the Amendment that where the domestic price of the investigated exported product was materially influenced by the government of the exporting country, the Department of Justice and Customs would calculate the fair

value of the product according to calculation methods applicable to economy in transition provided in the Amendment. After revision, this provision was changed to that where "market economy conditions do not prevail" in an exporting country, the Department of Justice and Customs would calculate the fair value of the product according to calculation methods applicable to economy in transition provided in the Amendment. The revision was thus kept in consistency with Paragraph 15 of the Protocol on the Accession of the People's Republic of China to the WTO.

Secondly, it's originally stipulated in the Amendment that the Department of Justice and Customs could consider other factors other than factors listed in the Amendment Regulations in calculation of the fair value of the exported product. The Australian authorities agreed to delete above provision to keep the considered factors limited to the listed ones.

Thirdly, it's originally stipulated in the Amendment that exporters should answer the questionnaires of the Department of Justice and Customs within 30 days. The Australian authorities agreed to grant the right of extension to the exporters.

3.5. Subsidy

In view of boosting the development of Australian textiles, clothes and footwear industry (TCF), the Australian government promulgated the TCF Strategic Investment Plan. According to the Plan, AUS$ 750 million will be appropriated to the TCF industry from 2001 to 2005, to expedite its re-equipment process, establishment of new factories, and promote research & development work. Companies of the TCF industry can apply for financial support from the Government, a certain proportion against their investment.

Besides, production bounties are given by the Australian Government to domestic manufacturers. This practice enabled the domestic manufacturers to maintain or expand their market shares with advantageous prices, and impaired the foreign manufacturers' competitive ability with their market-based prices. The products receiving production bounties covered shipping vessels, computers, circuit cards, machine tools, robots, fuel alcohol, books, etc. With realizing that the bounty practices are not in full conformity with relevant WTO principles and regulations, the Australian Government has started to phase out such practices, but still continue to provide bounties to certain products.

3.6. Barrier to trade in services

In Australia, branches of Australian banks are allowed to develop loan businesses with the statutory capital of the parent bank. But foreign banks in Australia are treated as subsidiaries of their parent banks in their home countries, which makes the foreign banks in Australia develop loan businesses only with the statutory capital of their own, rather than that of their parent banks. Such practice has greatly damaged the competitiveness of the foreign banks.

4. Barriers to investment

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

"Notification" and "Prior Approval" administrations are introduced on foreign investment projects of large volume and those in certain sensitive industries. If convinced that the applying foreign investment project detrimental to "Australian National Interests", the competent authorities may not approve such projects.

In most industries, foreign investment projects of relatively small volume are not subject to examination and approval. Investment projects by foreign governments should apply for approval, regardless of their scales. Furthermore, according to the Australian Foreign Investment Acquisition Act, foreign investment projects in some sensitive sectors, including real estate, finance, insurance, aviation, media, telecommunication and airport, should go through application, examination and approval procedures, and restrictive measures are imposed by the Australian Government on foreign investment projects in above sectors.

Restrictions on foreign investment's stock-holding share in certain sectors, including bank, insurance, media and aviation are kept by the Australian authorities, which constitute a *de facto* obstacle of access.

4.1. Financial services

It's deemed by the Australian government detrimental to Australian National Interests to transfer, in large scale, the proprietary of financial services to foreign companies. Foreign banks are allowed to operate in Australia, but case-by-case examination and approval should be conducted on applications by foreign companies to acquire Australian banks, and to a certain extent, the criteria for such examination and approval are subjective.

Approval should be obtained from the Department of Treasury for any person to have a stock share over 15% in any financial companies, including deposit institutions, insurance companies or holding companies of above both. Additional requirements may be made any time during or after the approval procedure.

4.2. Media

With the understanding that foreign investment control in media will be prejudicing Australian National Interests, the Australian authorities require that foreign companies

should obtain prior approval for stock investment in an Australian media company in the form of portfolio investment with a holding rate exceeding 5% in such company. It's also required that applications should be submitted for foreign companies to make stock investment in an Australian media company by non-portfolio investment, regardless of the investment scale.

4.3. Telecommunications

Prior approval should be obtained from the Australian Government for foreign investment in Australian telecommunication industry or foreign acquisition of incumbent telecommunication companies. Large investment projects are subject to examination and approval on a case-by-case basis, and if not against Australian National Interests, commonly speaking, they will receive the approval.

Brazil

1. Bilateral trade relations

According to China Customs, the bilateral trade volume between China and Brazil in 2003 reached US$7.98 billion, up by 78.7%, among which China's export to Brazil was US$2.14 billion, up by 46.3%, while China's import from Brazil was US$5.84 billion, up by 94.6%. China had a deficit of US$ 3.7 billion. China mainly exported coal, coke and semi-coke, machinery and electronic products, textile yarn and products thereof, diode and similar semi-conductor parts, textiles and clothes, etc. The major imported products of China from Brazil included iron sand, soy beans, steel billet and primarily forged steel pieces, steel plates, paper pulp, soy bean oil, edible plant oil, manganese sand, crude oil, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by the Chinese companies in Brazil reached US$ 13.25 million in 2003, and the volume of the newly signed contracts was US$ 15.70 million. The volume of completed labour service cooperation contracts was US$0.15 million, but no new labour service cooperation contract was signed. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in Brazil reached US$68.55 million, with that of all the contracts signed US$76.93 million, and the volume of the completed labour service contracts has reached US$7.76 million, with that of the total contracts signed being US$18.91 million.

According to MOFCOM, 6 Chinese-funded non-financial enterprises were set up in Brazil in 2003, with a total contractual investment of US$9.31 million by the Chinese investors. By the end of 2003, there were accumulatively 73 Chinese-funded enterprises set up in Brazil with a total investment of US$129 by the Chinese investors.

According to MOFCOM, Brazil investors invested in 35 projects in China in 2003, with a contractual volume of US$45.04 million and an actual utilization of US$16.71 million. By the end of 2003, Brazil investors had accumulatively invested in 312 FDI projects in China with a contractual volume of US$292.09 million and an actual utilization volume of US$89.14 million.

2. Introduction to Brazilian trade regime

2.1. Trade administration

According to Brazilian laws, all import products are required to obtain import licenses, which fall into 2 categories, namely automatic and non-automatic import licenses.

Automatic import licenses are required for products not subject to strict trade administration. Automatic import licenses are issued automatically upon application,

the examination and approval procedures for which are comparatively simple. Generally speaking, importers should apply for automatic import licenses before shipment. Otherwise, they may face a penalty of US$ 500.

The Secretariat of Foreign Trade under the Ministry of Development, Industry and Foreign Trade is responsible for examination of non-automatic import licenses. The importers may submit applications directly or through the Brazilian Foreign Trade Network through agents. Afterwards, the importers or their agents will provide required documents to designated banks, and pay application fees. Upon receiving relevant documents, the Secretariat of Foreign Trade will go through the examination and approval procedures. Generally speaking, the validity of non-automatic import licenses is 60 days. Before declaration in the customs, importers may apply for amendment to and extension of the non-automatic import licenses.

2.2. Investment administration

According to Brazilian laws, foreign investment in Brazil is subject to registration, but no examination or approval procedures are required. Brazil's central bank is responsible for the registration and administration of foreign investment, issue certificate of foreign investment, and publicize relevant statistics. There are no other government organizations in the Brazilian Government responsible for introduction of foreign investment, and sectoral authorities of the Brazilian Government are in charge of the drafting of foreign investment policies in their respective industries.

Foreign companies may make investment in goods, which is subject to non-voluntary import licensing.

Stringent administration on foreign currency is enforced by Brazil. Generally, foreign companies or persons may not open foreign currency account in Brazilian banks, and foreign currencies entering into Brazil are required, on the same day, to be converted into Brazilian currency. The remittance of foreign companies' profits is to be made under the supervision of the Brazilian central bank.

2.3. Competent authorities

2.3.1. Foreign Trade Commission

Established in 1995, the Brazilian Foreign Trade Commission works directly under the President Office, responsible for making foreign trade policies and guidelines, in particular, policies of export promotion, adjusting import tariff, and conducting investigation of unfair trade practices. The Minister of Development, Industry and Foreign Trade works as the chairman of the Foreign Trade Commission, with the assistance from other members, including the Director of Civil Office of the President Office, the Minister of Foreign Affairs, the Minister of Finance, the Minister of Agriculture, the Minister of Planning, Budget and Coordination, and the President of the Central Bank.

2.3.2. Ministry of Foreign Affairs

Before 2003, within the Ministry of Foreign Affairs there were 3 departments on vice-ministerial level responsible for trade-related foreign affairs, namely the Secretariat of Multilateral Affairs, the Secretariat of Political Affairs, and the Secretariat of American Integration. In 2003, structural reform was held by the Ministry of Foreign Affairs, in which the Department of Trade Promotion, the Department of Technological Cooperation and the Department of Latin American Integration were dismissed, leaving the Department of Economic Affairs responsible for negotiations under the WTO framework.

2.3.3. Ministry of Development, Industry and Foreign Trade

Within the Ministry of Development, Industry and Foreign Trade, the Secretariat of Foreign Trade, also at the vice-ministerial level, is responsible for foreign trade affairs. The main competence of the Secretariat is to implement foreign trade policies, enforce foreign trade administration, and participate in negotiation of international economic and trade agreements. Within the Secretariat there are set up the Secretarial Office and 4 departments. The Department of Trade Practices works for foreign trade statistics, issuing licenses and export & import registration. The Department of Trade Maintenance is responsible for policy-making regarding domestic industry remedies, including anti-dumping, countervailing and safeguard measures, enforcement of above measures and participation in related negotiations. The Department of International Negotiation works for multilateral trade negotiations, and the Department of Trade Policies is responsible for policy-making in foreign financing and credits, and supervision of the implementation of trade policies.

3. Barriers to trade

3.1 Tariff and tariff administrative measures

Presently, the average tariff level of Brazil remains at 12.8%, while relatively high tariff rates are levied on certain products, which brings about tariff peaks. For example, the tariff of automobile and personal computers is as high as 35%.

3.2. Import restriction

Among China’s exports to Brazil, main products subject to non-automatic import licenses include: garlic, mushroom, certain chemicals, certain pharmaceutical materials and finished products, products of animal or plant origin, tyre, textiles, glassware, ceramics, lock, electronic calculator, magnet, motorcycle, bicycle, toy, pencil, etc.

Some Chinese companies have complained that the product list of import licenses was adjusted in an unnecessarily frequent and arbitrary manner by the Ministry of

Development, Industry and Foreign Trade, excessive requirements were made for materials in applying for non-voluntary import licenses, and that the examination and approval procedures were unduly complicated, which in all posed obstacles to their exports to Brazil.

3.3. Technical barriers to trade

It's required by Brazil's Health Supervision Bureau that imported foodstuffs, medicines, medical apparatus and instruments and agricultural chemicals be subject to pre-registration, and that their packages bear the registration number and registration date. Some Chinese companies complained that the registration procedure was costly and time-consuming. For example, such procedure for certain foodstuffs might be extended as long as 7 months.

3.4. Sanitary and phytosanitary measures

For many years, China's garlic export to Brazil has been impeded by phytosanitary measures adopted by Brazil. In 1996, quarantine barriers were imposed by Brazil to China's garlic export, without evidence of any epidemic. In May 2000, a ban on import of China's garlic was declared by Brazil, alleging the existence of "risk of pest or disease". With insistent argument from the Chinese side, the Brazilian State Secretary, during his visit to China in July 2000, promised to lift the ban immediately after additional materials were provided by the Chinese side about the pest and disease situation of China's garlic. Subsequently, import of China's garlic was resumed, but restrictive measures were maintained both in import quantity (e.g., 15,000 thousand tons of import quota allocated to China's garlic in 2000) and import season (required to enter into Brazil by 30th September). In June 2001, a temporary ban on China's garlic export to Brazil was declared by the Brazilian side again.

On 24 May, 1999, the Ministry of Agriculture of China notified to the Food and Agricultural Organization (FAO) of the United Nations on the Mouth-and-Foot Disease (MFD) in certain areas of China. In the early 2000, the Brazilian authorities enforced a total ban on import of China's sausage skin in the name of China's MFD situation, but the decisions for such ban were not made public through official channel. After negotiation with its Chinese counterpart, the Brazilian side promised to resume import of Chinese sausage skin in the Joint Economic and Trade Commission, but in practice, the Brazilian authorities in charge had been refusing to issue import licenses to importers.

The Chinese side expressed deep concern over above matters, and held several rounds of consultations with the Brazilian side. In August 2002, the competent authorities from both sides held consultations about enhanced cooperation in sanitary and phytosanitary measures, and the Brazilian side affirmed that import of China's garlic and sausage skin would be resumed. Subsequently, the two sides signed the Memorandum on Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures. In February 2003, the Chinese authorities paid a visit to

Brazil, and the two parties signed a conference minutes, in which regulations were given on cooperation in sanitary and phytosanitary measures.

As to the issue of the garlic quarantine standard, upon consultations of the Chinese side, the Brazilian authorities declared to lift the quarantine restrictions on Chinese garlic, and promised to hold timely consultation with the Chinese authorities when finding Chinese garlic not conforming with Brazilian quarantine standards, rather than impose unilateral restrictive measures. It's hoped by the Chinese side that the Brazilian side keep conformity to above commitments, and implement bilateral agreements in a serious manner.

As to the issue of sausage skin quarantine standard, the Chinese side agreed with the format and content of the sanitary certificate for sausage skin formulated by the Brazilian side, and the Brazilian side promised to issue import licenses after going through necessary legal procedures, and make correspondent declarations. However, in 2003 the Brazilian authorities, via the Brazilian Embassy in China, requested for questionnaire investigation of and risk assessment on Chinese sausage skin. The Chinese side deems above requests of the Brazilian side unreasonable, and wishes that the Brazilian side promptly adopt progressive and effective measures to solve this matter, and bring its measures consistent with relevant WTO rules.

3.5. Trade remedies

Brazil is the WTO developing member country that initiates the most antidumping investigations. Since its first anti-dumping investigation in December 1989 on products from China, Brazil has filed 20 anti-dumping investigations on products from China up to end of 2003. A large variety of products from China have been under investigation, including machinery and electronic products, hardware, chemicals, light industrial products, textiles and clothing and foodstuffs, the accumulated value of which amounts to roughly US$ 46.37 million.

3.5.1. Amendments to procedures of antidumping and countervailing investigations

In September 2003, amendments were made to procedures of antidumping and countervailing investigations in Brazil. Firstly, investigation period was shortened from 12 months to 10 months. Secondly, preliminary examination was established, which means petitioners of antidumping investigations were required to submit investigation petition via internet, and the investigating authorities would conduct preliminary examination and analysis of the petition materials.

3.5.2. Antidumping investigations involving Chinese products

One antidumping investigation involving Chinese products was filed in 2003, and the investigated product was magnesium and magnesium powder.

In January 2003, the Brazilian Ministry of Development, Industry and Foreign Trade declared to initiate antidumping review investigation on bicycle tyres from China and certain other countries and regions.

On 7 February 2003, the Brazilian Commission of Foreign Trade publicized its determination for antidumping sunset review on pencils from China. The antidumping duties of 201.4% and 202.3% would continue to be imposed on wooden drawing pencils and color pencils from China respectively.

On March 2003, the Brazilian Commission of Foreign Trade publicized its definitive antidumping determination on glifosato from China, which imposed antidumping duty of 35.8% on said product from China for 5 years of enforcement. In this investigation, the Brazilian authorities refused to adopt main defenses of the Chinese respondents, and made the definitive determination without prior preliminary determination.

3.5.3. Discriminatory practices

In June 2001, standards were publicized by Brazil's Foreign Trade Secretariat to determine a "market economy", which enabled the Chinese responding companies to, theoretically, obtain market economy status through defense. But due to that the above standards were greatly general and ambiguous, and thus left excessive room of discretion to the investigating bodies, Chinese responding companies have never succeeded in obtaining market economy status yet. The Chinese side expresses its strong concern over the above discriminatory practices of the Brazilian authorities.

3.6. Other barriers

3.6.1. Work visa

Difficulties exist for foreign citizens to obtain working visas in Brazil. It was decided by the Ministry of Labor of Brazil in June 2002 that more rigorous criteria should be enforced in issuing visas to foreigners working in Brazil, especially foreign technicians. A complexity of supporting documents, as many as 12 kinds, are required in application for a working visa.

In May 2003, the Brazilian authorities set down measures that further restricted issuance of work visa to foreigners. It's decided that work visa would be suspended for 90 days for foreigners for better protection of domestic labor market. Foreigners affected by the restrictive measures included those who have signed contract of service provision or technological support, and those who apply for work visa based on certain contracts. If urgent necessity for application of work visa arise in specific cases, evaluation should be held by the Immigration Coordination Board of the Ministry of Labor. The above measures have brought significant difficulties to the normal business operation of Chinese enterprises in Brazil.

3.6.2. Requirement for maritime transportation insurance contract

It's provided by Brazilian laws that for commodities imported by sea, maritime transportation insurance contracts should be made by the importers, in which case the insurance premium should be 1.5% of the total import value. Such premium level runs far higher than the international average, 0.3%, which subsequently weakened the price advantage of the imported commodities.

Poland

1. Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Poland in 2003 reached US$19.8 billion, up by 43.1%, among which China's export to Poland was US$1.62 billion, up by 39.1%, while China's import from Poland was US$360 million, up by 64.3%. China had a surplus of US$1.26 billion. China mainly exported to Poland clothing and accessories, electromechanical products, electrical and electronic products, yarn and products thereof, footware, etc. China mainly imported from Poland steel, caprolactam, paper and paper board, kraft paper, electromechanical products, etc.

According to MOFCOM, the turnover of completed engineering contracts by the Chinese companies in Poland reached US$1.3 million in 2003 with no newly signed contracts. The volume of completed labour service cooperation contracts was US$20,000 with no newly signed contracts. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in Poland was US$40.12 million, with that of all the contracts signed US$112.54 million, and the volume of the completed labour service contracts had reached US$3.11 million, with that of the total contracts signed US$8.75 million.

According to MOFCOM, 2 Chinese-funded non-financial enterprises were set up in Poland in 2003, with a total contractual investment of US$210,000 from Chinese investors. By the end of 2003, there were accumulatively 20 Chinese-funded non-financial enterprises set up in Poland with a total contractual investment of US$2.783 million by Chinese investors.

According to MOFCOM, Polish investors invested in 8 projects in China in 2003, with an actually utilized volume of US$3.64 million, decreased by 101.4% from the corresponding period of 2002. By the end of 2003, Polish investors had accumulatively invested in 124 FDI projects in China with a contractual volume of US$56.55 million and an actually utilized volume of US$50.66 million.

2. Introduction to the Polish trade regime

2.1. Legislation on Trade and Investment

Major laws related to trade and investment in Poland include Law on Foreign Trade in

Commodities and Services, Law on Foreign Trade Administration, Customs Law, Law on Economic Activities, Antidumping Law, Law on the Prevention of Excessive Import of Goods into Polish Borders, Law on the Prevention of Excessive Import of Certain Textiles and Clothing, Law on Foreign Exchange, Civil Law and Law on Commercial Companies.

2.2. Trade administration

Since 1990, Poland has launched a thorough reform for its foreign trade administrative regime and eliminated the monopolized administration of foreign trade operation. According to the stipulation of Polish laws, all economic entities enjoy equal right in handling foreign trade and economic businesses. After becoming a liason country of the EU and a member of the WTO, Poland has gradually got its foreign trade administration in line with the foreign trade policy of EU. Import and export trade is mainly regulated through such economic means as tariff and foreign exchange rate with the dealing of all commodities opened except for a limited number of those subject to licensing and quota restriction.

2.2.1. Tariff policy

The new Customs Law began to be implemented as of January 1998 in Poland, new customs duty regulations are published every year by the country, incorporating four different rates of tariffs, i.e. autonomous tariff, agreed tariff, preferential tariff and concessionary tariff. Autonomous tariff mainly applies to non-WTO members, countries not entitled to MFN treatment and countries not eligible for preferential tariff rates. Agreed tariff mainly applies to WTO members. Preferential tariff mainly applies to developing countries. Concessionary tariff applies to countries that have concluded trade agreements with Poland, mainly EU member nations and countries of EFTA and Free Trade Area of Central and Eastern Europe. Zero tariff applies to some commodities from LDCs within given time.

In Poland, general commodities are subject to *ad valorem* duty, certain goods are subject to specific duty (normally agricultural products), while individual products are subject to mixed duty. The level of tariff protection mainly rests with Free Trade Agreements that Poland signed with the vast majority of its European trading partners or Agreements reached within the WTO. The current average import tariff rate of Poland is 2.71%.

Since July 1996, Polish Customs began to exercise harmonized customs procedures according to the practice of EU and EFTA. That is to say, only one single customs declaration form is needed for the turnover of cargo with its 21 neighbouring countries, speed of customs clearance has therefore been paced up. The document for customs declaration accepted by the Polish Customs is SAD.

The Customs Administrative regime of Poland is becoming consistent with that of the EU grandually and after Poland's accession to the EU on May 1st 2004, its Customs

will apply uniform customs policy and tariff system exercised by the EU.

2.2.2. Import administration

Poland exercises quota administration over the import of grain, auto parts, telecommunication products, metallurgical products, pharmaceuticals, electronic meters, computers, cables, environmental protection equipment, medical equipment, fire fighting articles for the army and police, articles for the disabled, oil, diesel, fuel oil, alcoholic drinks such as wine of alcoholic strength by volume of more than 22% vol., ethyl alcohol, denatured alcohol, cigarette and cigar.

It exercises licensing system over the import of fuel, natural gas, alcohol and products thereof, tobacco products, CKD, cheese, poultry meat, leased imported equipment, dual-use chemicals for military and civil purposes, nuclear technology products, multifunctional equipment and materials.

Commodities prohibited for import include toxic products, scrap, animal feeding, automobiles with 2-cylinder engine, cars and minivans been used for over 10 years, trucks been used for over 6 years, refrigerating units and freezers with freon, pure alcohol, etc.

For the import of firearms, ammunition, radioactive substance, certain chemicals, alcoholic beverages, certain food and agricultural products, business licenses and franchised licenses must be applied for.

2.2.3. Trade administration on food and agricultural products

According to the Law of Poland on National Standards and Supervision for Imported and Exported Agricultural Products and Food, importers and exporters of agricultural products and food should apply to the branches of the Central Standard Inspection Bureau of Poland or standard checking points at the border or in local cities for quality authentication of their imported and exported agricultural products and food. In the application they should explain the applicant, name of the importer and exporter, name of the commodity, type, quantity, quality grade, packing, form of contract, name and address of supplier and producer, exporting destination country of the cargo; suggest the place and time for authentication, name of the person authorized by the importer and exporter to draw the letter of authentication or to make an appeal and fill in the place and date of the application.

Agricultural products and food subject to the supervision of national standards mainly include: beef and cattle bowels, pork and pig bowels, poultry meat and poultry bowels, fish, milk, butter, cheese, potato, tomato, onion, garlic, green Chinese onion, cabbage, cauliflower, carrot, mushroom, syrup, coffee, tea, seasoning, corn, rice, rye, barley, wheat, oat, flour, edible oil, white sugar, drinking water, alcohol, cigarette, etc.

2.2.4. Export control

The majority of restrictive measures applied by Poland in its export in 2003 were adopted out of external reasons. In a bid to protect gene resources, Poland restricts the export of live geese, and goose eggs.

2.3. Investment administration

It is provided by the Law of Poland on Economic Activities that foreign nationals approved to establish in Poland enjoy equal right in economic activities as Polish nationals. Under circumstances where permanent residence does not prevail, according to the principle of mutual benefit, foreigners can engage in economic activities through branches or representative offices within the Polish border, the business scope of branches can not exceed that of the parent company, the activities of the representative office are only limited to advertising and business promotion for foreign enterprises. According to reciprocal principles, investors from the EU, OECD and countries signed Agreement on Investment Promotion and Protection with Poland are entitled to conduct economic activities of all forms allowed by law while investors from other countries can establish limited companies and joint-stock companies.

According to Polish law, equal treatment applies to investment from abroad or home. Except for the gambling industry, foreign investors can directly register for all kinds of economic activities in Poland, but to invest in the banking sector, an administrative license must be got before opening the company. As of January 2001, to participate in the following economic activities, an administrative license must be obtained: prospecting, mining, scrap storing in the massif, manufacturing and operation of weapons, ammunition and articles for military and police use, production, processing, storing, transportation and sales of fuel and energy products, personal and property security ensuring services, aviation transportation and services, construction of toll high way, administration of and transportation by railway and the spread of broadcasting and TV programs. Licenses are issued by corresponding state agencies with a term no lower than 2 years and no longer than 50 year.

There are 14 special economic zones in Poland at present. After its accession to the EU on May 1st 2004, Poland will be extending its preferential policy for the special economic zones to 2017.

Major tax types in Poland are legal person income tax, commodity value added tax, consumption tax, personal income tax and real estate tax. Besides, stamp tax need to be paid for the sales of contracts and agreements.

In 1988, the governments of China and Poland signed the Agreement between the People’s Republic of China and the Republic of Poland on Mutual Encouragement and Protection of Investment.

2.4. Competent authorities

In January 2003, the former Ministry of Economy, former Ministry of labor and social policies of Poland was restructured into the Ministry of Economy, Labor and Social Policies, the competent government department responsible for foreign economic and trade activities with a portfolio covering policies in the fields of economy, labor and social security among others. Its main functions include formulation and implementation of trade policies, formulation of trade-related laws and regulations, organization of multilateral and bilateral economic and trade cooperation with other countries and international organizations, being responsible for trade promotion, investment promotion and export expansion, implementing antidumping investigations as well as adopting corresponding measures to protect domestic market from the blow dealt by imported products and exercising quota and licensing administration over some of the imported and exported commodities.

The Ministry of Agriculture and Rural Development is responsible for affairs in relation to trade in agricultural products.

In June 2003, the Polish government restructured the former Foreign Investment Bureau and Information Bureau into Information and Foreign Investment Bureau of Poland, responsible for FDI promotion with the following main functions: to provide information and legal policy consulting service to foreign investors, to assist foreign investors to choose appropriate places for investment and cooperation partners, to help foreign investors in their contact and communication with Polish government agencies and to brief overseas nations on the economic development and investment environment of Poland.

3. Barriers to trade

3.1. Tariff and tariff administrative measures

Poland levies fairly high tariff on the imported products of auto making, metallurgy, petrochemical and other industries.

3.2. Techinical barriers to trade

According to the Law of Poland on Inspection and Certification, all the homemade or imported products that may threaten life, health and environment should declare for security inspection with security B label pasted. Inspection and certification are conducted by Polish Inspection and Certification Center and its authorized inspection and certification bodies. For the products without security labels or ineligible for technical security requirement but sold on the Polish marketplace, sales revenue thereof will be collected to the central treasury with a fine two times of the sales revenue. Catalogue of commodities subject to mandatory security inspection is published by the Inspection and Certification Center, mainly including steel products, metal products, machinery and equipment, precision apparatus, transportation vehicles, electronic products, building materials, glassware, wood and paper sheet, certain clothing and textile, labor insurance footware and gloves, toys, etc.

3.3. Sanitary and phytosanitary measures

3.3.1. Animal quarantine

According to the sanitary stipulation of Poland, importers of live animal, fresh and frozen meat and canned meat should apply to the animal quarantine department of the Agriculture Ministry for the animal quarantine license. On the entry of imported commodities into the border, animal quarantine examiners at the port will check the animal quarantine license issued by the country of origin and the quarantine license issued by the Polish Ministry of Agriculture. When applying for the quarantine license, indications should be made with regard to the country of origin, destination country (in the case of trans-shipment), types and quantity of commodities, name of border port in Poland, quarantine license issued by quarantine examiner in the region of pen-feeding or slaughter.

At present Poland only allows import of like products from the countries or regions that export to the EU animal and its products, once the EU stops import from a certain place, Poland will promptly adopt the same action. Only the enterprises obtaining license to export to the EU or the US or enterprises recognized by the quarantine examiners of the Polish Agriculture Ministry according to bilateral agreements can export meat and meat products to Poland.

3.3.2. Plant quarantine

The State Plant Quarantine Administration under the Ministry of Agriculture is responsible for the phytosanitary work of Poland. Imported plant and plant products should be examined by the plant quarantine officials at the Polishe border pass, and the accompanying plant quarantine certificate issued by relevant bodies in the country of origin be presented. If needed, the Polish quarantine staff can conduct sample inspection. Plant quarantine staff makes decisions on permitting cargo to enter the country, or destroying or refusing the cargo according to the quarantine result.

Dried coffee beans, tea leaf, cocoa, plant flavoring, original herbal, frozen fruits and vegetables and European grown fresh fruits and vegetable below 10 kilograms do not need to go through plant quarantine.

3.4 Trade remedies

Poland is the first country in the Central and Eastern European region that adopted trade remedies against China and the country with the most restriction on Chinese products in the region. By 2003, Poland had launched antidumping investigations on Chinese exported lighters and applied safeguard measures on two kinds of products, i.e. footware and electric iron.

3.4.1. Anti-dumping investigation on bycicles

In July 1997, Poland launched anti-dumping investigation on Chinese exported bycicles, preliminary ruling was made in August, deciding on the exercise of import quota restriction, the restrictive measures weren't applied later due to bankruptcy of the appealing enterprises.

3.4.2. Anti-dumping investigation on lighters

In December 1997, the Ministry of Economy of Poland, at the application of Polish lighter producer BUDZYNSCY, officially instituted anti-dumping case and investigation again Chinese made disposable lighter by reason of dumping. In October 1998, the Polish Ministry of Economy made a decision to levy anti-dumping duty on disposable lighters from China with a valid term of 2 years. In June 1999, the Polish Ministry of Economy, according to the application of BUDZYNSCY, commenced anti-dumping investigation on Chinese refillable lighters, by reason that import of the above-mentioned products was eluding measures to evade anti-dumping duty imposed on disposable lighters. In August 2000, the Polish Ministry of Economy made the decision to impose anti-dumping duty on Chinese refillable lighters, with the same amount of anti-dumping duty to be paid by the disposable lighters. In October 2000, the Polish Ministry of Eonomy decided to review the effect of anti-dumping duty imposition on Chinese disposable and refillable lighters. In November 2003, the Ministry of Economy, Labor and Social Policy came to the final decision to further extend the anti-dumping duty levied on Chinese disposable and refillable lighters.

3.4.3. Safeguard investigation on footwear

At the application of Polish Leather Association, the former Ministry of Economy of Poland decided in August 1998 to launch safeguard investigation on some of the footware from China and decided to apply safeguard measures on some Chinese footware as of January 15th 1999 by levying customs surtax within a term of 3 years until January 15th 2002. In March 2001 through review, the Ministry of Economy in January 2002 decided to prolong the imposition of customs surtax to December 31st 2005. After that Polish footware importers appealed to the Supreme Administrative Court of Poland on the above decision of the former Ministry of Economy and the court judged that former Polish Ministry of Economy lost the lawsuit. On February 21st 2003, the Polish Ministry of Economy, Labor and Social Policy decided to terminate the imposition of customs surtax on some Chinese footware.

3.4.4. Safeguard investigation on electric iron

In February 2000, the Polish Ministry of Economy, at the application of DECAL, began safeguard investigation on Chinese electric iron by reason of excessive import. In October 2000, the Ministry of Economy decided to adopt definitive safeguard measures on Chinese electric iron by levying customs surtax, with a term ending on September 30th 2004. In September 2002, the Polish Ministry of Economy conducted review investigation on Chinese electric iron and decided to continue the safeguard

measures against Chinese electric iron by imposing customs surtax.

After the accession of Poland to the EU on May 1st 2004, regardless of their final ending date, the above-mentioned antidumping or safeguard measures on Chinese products will be automatically suspended, at the same time, antidumping or safeguard measures adopted by the EU against Chinese products will automatically apply to Poland.

Russian Federation

1. Bilateral trade relations

The Russian Federation (hereinafter referred to as Russia) was the eighth largest trading partner of China in 2003. According to the China Customs, the bilateral trade volume between China and Russia in 2003 reached US$15.75 billion, up by 32.1%, among which China's export to Russia was US$6.03 billion, up by 71.4%, while China's import from Russia was US$9.73 billion, up by 15.7%. China had a deficit of US$3.7 billion. China mainly exported to Russia machinery and equipment, clothing and accessories, electric and electronic products, clothing of woven fabric, yarn and products thereof, grains and grain powder, rice, etc. and imported from Russia mainly fertilizer, crude oil, processed oil, other fuel, potassium chloride, steel, iron and steel plates, chemical fertilizers, etc..

According to MOFTEC, the turnover of completed engineering contracts by Chinese companies in Russia reached US$ 86.71 million in 2003, and the volume of the newly signed contracts was US$84.66 million. The volume of completed labour service cooperation contracts was US$118.58 million, and that of the newly signed labour service cooperation contracts was US$193.52 million. By the end of 2003, the accumulated turnover of engineering contracts completed by Chinese companies in Russia was US$1.01 billion, the accumulated volume of all the contracts signed was US$2.67 billion; and the volume of the completed labour service contracts had reached US$906.86 million, with that of the total contracts signed being US$1.72 billion.

According to the former MOFTEC, 41 Chinese-funded non-financial enterprises were set up in Russia in 2003, with a total contractual investment of US$340 million from the Chinese investors. By the end of 2003, there were accumulatively 523 Chinese-funded enterprises set up in Russia with a total investment of US$550 million from the Chinese investors.

According to the former MOFTEC, Russia investors invested in 129 projects in China in 2003, with a contractual volume of US$160 million and an actual utilization volume of US$50 million. By the end of 2003, Russia investors had accumulatively invested in 1542 FDI projects in China with a contractual volume of US$880 million and an actual utilization volume of US$330 million.

2. Introduction to the Russian trade regime

2.1. Legislation on trade and investment

The Russian legislation on trade and investment mainly includes the Law on State Adjustment of Foreign Economic Activity, the Federal Law on Special Protection, Anti-dumping and Compensation Against Imports, the Russian Federation Customs

Code, the Russian Federation Customs Regulation, the Regulation on Supervising Export of Dual-use Products and Technologies from the Russian Federation, the Russian Federation Law on Foreign Investment, the Russian Federation Law on Leasing, the Russian Federation Law on Product Distribution Agreement, the Russian Federation Code on Land, etc..

2.2. Trade administration

2.2.1. Tariff policy

2.2.1.1. Tariff

In November, 2001, the Russian federal government promulgated the Foreign Trade Product Classification and Tariff Regulation of the Russian Federation (Government Decree 830). The decree adjusts tariff lines for certain products and adjusts import duties on 140 products. According to the decree, the average Russian tariff is lowered by 5 percentage points.

The amended Customs Law enters into force as of January 1, 2004. The new Customs Law aims at further simplifying the customs supervision procedures and improved clearance efficiency.

Imports from countries of different categories are subject to different tariff rates. Tariff regulations simply list the basic rates. The basic tariff rates apply to imports from countries enjoying the status of most favoured nation, while tariff rates that are two times of the basic tariff rates shall be levied on imports from other countries. The Russian tariff regulations provide for various preferential tariff arrangements. For example, tariff exemption is applied to imports from the members of the Commonwealth of Independent States (hereinafter referred to as CIS) signing free trade agreement with Russia and from the least developed countries. Imports from countries enjoying the General System of Preferences shall be subject to tariff rates that are 75% of the basic rates. China is among countries enjoying the General System of Preferences.

Russia eliminated its export duties in July 1996. However, export duties have been restored on certain products upon exportation as of January 1999 after the financial crisis in 1998. Products subject to export duties include coal, petroleum, natural gas, processed oil, certain chemicals, non-ferrous metals, timber, leather, bean, rapeseed, sunflower seed and certain fishery products, etc...

2.2.1.2. Value added tax

Imports from non-CIS members are subject to value added tax (hereinafter referred to as VAT) as of February, 1993. The taxable basis for VAT at importation is the sum of the price declared at the customs, the import duty and the consumption duty. The rate

is 20% for most imports, while 10% for certain food and articles for child use. The VAT rate is lowered from 20% to 18% as of January 1, 2004. VAT will be levied on the added value incurred in the processing and selling of imported products within the Russian border.

Exports to non CIS members are exempted from VAT on exportation, while VAT is levied on exports to CIS members on exportation. VAT at exportation on ordinary products is 20%, and that on certain food and articles for child use is 10%.

2.2.2. Import administration

2.2.2.1. Licensing

License administration is applied to three categories of products. The first category includes chemicals and industrial wastes, decipher equipment; the second includes weapons and ammunitions, nuclear materials, precious metals, gems, anaesthetics, tranquillizers, dual-use technologies and materials, specific materials and equipment which can be used in weapon production; and the third includes other specified special products.

2.2.2.2. Import ban

Russia prohibits, within the territory of the Russian Federation, the sale of imported food without specifications in Russian as of May 1, 1997, and the same rule is applied to other imported products as of July 1, 1998. In December, 1998, Russian promulgated the Regulation on Attaching Authenticity Markings, Statistic Information Markings on Products and Commodities and the Procedure for Collecting Data of Circulation. The regulation stipulates that as of July, 1999, products and commodities listed in the annex to the regulation are prohibited to sell on Russian market without authenticity and statistic markings. The first group of products listed include mainly alcoholic products, audio-visual products and computer equipment.

2.3.3. Export administration

2.3.3.1. Quota and license administration

The export quota and license administration is applied to the following three categories of products. The first category includes products subject to quantitative restriction under relevant international agreements, such as textile products, certain ferrous metal articles and carborundum; the second includes certain special products, for example, wild animals, materials for medicinal products, decipher equipment, weapons and dual-use products, nuclear materials and installations thereof, precious metals and gems, ore and materials for palebiologic collection, semi-gem and articles thereof, anaesthetics, tranquilizers, toxicants and information on energy; and the third includes products in large demand on domestic market. For example, the Russian government decided on October 21, 1998, to apply license administration (without

quantitative restriction) on exports of unprocessed hide (of bovine, ovine and other animals) and oil producing seeds (sunflower seed, rapeseed and bean) as of November 25th and 15th respectively. The allocation of export quota is mainly through tender invitation and public sale. Exporters can obtain additional quota according to their export performance when there are quotas remained unused. The Special Representative's Office of the Ministry of Economic Development and Trade to different localities is responsible for issuing export license.

2.3.3.2. Supervision over export of dual-use product

The Russian government promulgated the Regulation on Supervising the Export of Dual-Use Products and Technologies. According to the regulation, exporters should apply for export license prior to the exportation of dual-use products and technologies. The Russian competent authorities shall examine if the export complies with the international obligations that the Russian Federation has committed.

2.3.3.3. Export and import contract registration

It is required to that all import and export contracts for transactions exceeding US$50,000 be registered as of October 1, 1996. The Special Representative's Office of the Ministry of Economic Development and Trade to different localities is responsible for the registration.

2.3.3.4. Harmonized certificate inspection on exports

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

2.3.3.5. Administration over exports of processing trade

The processing trade has developed rapidly in the past few years. Processing of imported materials and of locally purchased materials solely for export is classified as processing trade and subject to relevant administration. Products of processing trade enjoy certain tax incentives on exportation.

2.4. Competent authorities

The Ministry of Economic Development and Trade is the competent authority responsible for trade and investment administration in the government of the Russian Federation, and it is responsible for the study, formulation and implementation of unified foreign economic policies, making macro-adjustment to foreign economic activities, maintaining order in foreign trade, attracting foreign investment. The Foreign Investment Promotion Center affiliated to the ministry provides various help to foreign investors.

3. Barriers to trade

3.1. Tariff and tariff administrative measures

The current average tariff of Russia is 10.5%. The average tariff of sensitive products such as automobiles, cigarettes, alcohol and sugar is around 25%-30%, and that of clothing, footwear, light industry and textile products 15%-20%. The Russian Customs has levied high duties on daily utensils brought by Chinese workers and capital goods imported under labour service project within the framework of China-Russia economic cooperation programmes since 1997. Russia raised, as of January 1, 2002, the import tariff on certain products such as rice, sunflower seed, and compressors for refrigerators. Products of about 1500 tariff lines are subject to mixed tariff where the higher of the specific duty and *ad valorem* duty shall be applied. Temporarily raise of import tariff which is regarded as temporary protective tariff or special import tariff is applied often to restrict imports.

Russia imposes high tariff on imports of fire-retardant materials. Tariff on calcinated brick is 20%, that on non-calcinated brick 15%, and that on bulk fire-retardant materials 5%.

Though China is listed among countries enjoying the General System of Preferences, many Chinese products of competitiveness are excluded from the list of products enjoying preferential treatment. Those products include fruit juice, vegetable juice, table-water, carbonated drinks and other non-alcoholic beverages, beer, undenatured alcohol below 80 degrees for human consumption, alcohol, sweet wine and other alcoholic beverages, clothing of synthetic materials, footwear, leg guard, natural gems, manmade gems and articles thereof, jewelries for women of non-silver, gold or gem, telephone sets, phonograph, tape recorder, sound box, video recorder, video player, wireless telephone, telegraph transmission and receiving equipment, broadcasting transmission and receiving equipment, car, vehicle for passengers and cargos, racing bicycle, watch and clock and components thereof, watch ring and watch chain.

The above mentioned measures seriously impede the export of relevant products from China to Russia.

3.2. Barriers in customs procedures

In customs valuation, the Russian authorities establish a high minimum price level for

such products that China has competitiveness as clothing and household electric and electronic apparatus, which eliminates the competitiveness of Chinese products on Russian market.

The Russian Customs requests that, as of August 2002, products exported from China and transported to Moscow or/and Moscow Province by rail should be delivered to the desiganted13 railway stations for customs clearance. The Chinese side had several negotiations with the Russian side, requesting that the discriminative measure against Chinese products be eliminated; however, the Russian side maintains the measure up till now.

It is stipulated that importers shall pay customs fees worth 0.15% of the value of the invoiced products.

Chinese companies complain that Russian customs clearance procedure is over-complicated and time-consuming.

3.3. Import restrictions

Russia has, in recent years, extended the scope of products subject to import license administration. Imports of alcohol for human consumption and vodka became subject to license administration as of January, 1997. Imports of certain pharmaceuticals including certain veterinary drugs and products for medicine production, tobacco and tobacco industrial substitutes are subject to license administration as of January, 1999.

Quota administration is applied to poultry meat as of January, 2003. The Russian Ministry of Economic and Trade Development and the Ministry of Agriculture decided in November, 2003, to apply quota restrictions on imports of crude sugar as of 2004.

Experience requirement is placed on importers of alcoholic beverage. Importers applying to import alcoholic products shall have at least one-year experience in selling alcoholic products on the local market of Russia.

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

3.4. Technical barriers to trade

Russian requires that imports of fire retardant bricks be subject to radiation inspection. It is required that Chinese exports, prior to exportation, apply to the Russian Ministry of Health for inspection, who will issue a radiation-free certificate with which the Chinese relevant products can enter the Russian market. Russia is the only country all over the world requiring such certificate for fire-retardant materials. The application and inspection procedures are time and resource consuming, which increase the cost

of Chinese exporters.

The export of the traditional Chinese herbal medicines to Russia has to go through very complicated procedures taking at least 18 months. Fee for each registration is up to US$5000.

In addition, there exist in Russia about 60,000 compulsory decree and ministerial regulation concerning technical standards, and many of the quality standards are not in compliance with the international standards.

3.5. Sanitary and phytosanitary measures

Currently, the relevant competent Russian authority does not accept the inspection and quarantine certificate issued by the competent Chinese authority. Chinese establishments intending to export meat of animal origin to Russia shall be inspected by Russian veterinarians on an individual basis and get their approval prior to exportation. The exported meat shall be re-inspected, and the official inspection certificate issued by the competent Chinese authority shall become valid only after being endorsed by the Russian veterinarian. Regardless of the China-Russia Animal Health Certificate Agreement which provides that the Russian veterinarian only endorsed on Chinese certificates issued for the export of pork and beef, the Russian side insists on endorsing certificates issued for the export of other products such as other animal meat, poultry meat, casing, etc.. In addition, the Russian authority requests that all expenditure incurred in the visit of Russian veterinarians to China shall be paid by the relevant Chinese companies. These requirements constitute a serious obstacle to the export of meat of animal origin from China to Russia and greatly increase the cost of Chinese companies.

3.6. Trade remedies

Russia has not yet initiated any anti-dumping investigation involving Chinese products. However, since August, 2000, Russia has initiated 8 safeguard investigations involving Chinese products, and in the year 2002, there were 4 investigations. As China is the major exporter of the products subject to the investigations, the investigations and relevant measures adopted afterwards seriously injure the Chinese trade interest.

In January, 2003, Russia decided to adopt safeguard measures against imports of products of animal origin, and imports of such products are subject to a 3-4 year term quantitative restriction and quota administration as of April, 2003. According to the relevant provisions, the quotas are allocated according the average of the previous 3-year period. The import quota allocated to the imports of poultry meat from China is 3,100 tons in 2003, which is less than 1/10 of the Chinese export in 2002. The import quotas for pork are allocated according to the importer’s performance in the previous 3 years. As China restored its export of pork to Russian at the end of 2001, the allocation method means that China can only get a quota about 1/3 of its export to

Russia in 2002. The above measures violate the WTO Agreement on Safeguards, which provides that safeguard measures shall not reduce the quantity of imports below the average of imports in the last 3 representative years. The relevant Chinese companies have suffered serious losses as the measures prevent them from normal export to Russia.

3.7. Barriers to trade in services

3.7.1. Telecommunications and postal service

Foreign participation allowed in basic and value added telecommunication services is very much limited.

At present, Chinese companies cannot operate international express service in Russia.

3.7.2. Professional services

It is stipulated that only permanent residents living within the territory of Russia with professional accountant certificates of Russia can take the position of chief accountant or chief executive accountant. Foreigners are not allowed to participate in the qualification examinations for certified accountants. Neither are they allowed to set up accounting offices in Russia. It is stipulated that the head of any book-keeping agencies must be of Russian citizenship.

Currently, Chinese law companies are not allowed to set up representative offices in Russia.

It is stipulated that doctors, persons providing medical services and administrative staff in the medical sector must be permanent Russian residents living within the territory of Russia.

3.7.3. Construction service

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

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

3.7.4. Educational service

Chinese parties are not allowed to provide services of higher education whether through cooperation or in the form of a joint venture.

Chinese teachers employed by Russian educational institutions find it difficult to get the resident permit.

3.7.5. Financial service

It is stipulated that foreign capital shall not exceed 25% of the total capital of any joint banks.

Foreign banks in Russian are not allowed to establish subsidiaries, or branches in the same city, neither are they given access to the inter-bank ATM operation system, or allowed to provide on site real time electronic transfer service.

3.7.6. Tourist service

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

3.7.7. Transportation service

Chinese companies complain about the non-national treatment encountered in Russia when providing cross border on-land transportation service. The Russian Ministry of Transportation stipulates that transportation of Chinese products shall pay escort fee. The fee is different from transportation insurance, and no compensation is given in case of losses or damages. When there is a dispute, it should be settled between the owner and the transportation agent. Unreasonable restrictions are imposed on Chinese vehicles undertaking passenger and cargo transportation regarding the destination in Russia and the number of passengers or the amount of goods that they carry within the Russian territory during their trip back to China. The Chinese-funded companies are not given national treatment when engaged in cargo transportation, freight forwarding, warehouse service and logistics.

The market of railway transportation for passengers and cargos has not yet been opened. Only Russian citizens are allowed to provide maintenance service to railway transportation equipment.

No joint venture is allowed to engage in loading and unloading, container storage site operation, shipping agency, or customs clearance. Wholly foreign owned companies are not allowed to provide warehouse or freight forwarding services.

3.7.8. Other barriers in the service sector

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

Chinese employees working with Chinese-funded companies in Russia find the foreign exchange procedures very complicated and relevant charges very expensive.

Chinese companies complain that Russia's border procedures for the entry of Chinese workers are complicated, expensive and time-consuming, and that the eleven-month term of the working permit granted to Chinese employees working in Russia is too short with no multi-entrance visa available.

4. Barriers to investment

The Rural Land Circulation Act passed by the Russian Duma in June, 2002, prohibits the sale of land for agricultural uses to foreigners or companies with foreign shares exceeding 50%. Foreigners or companies with foreign shares exceeding 50% have to lease in order to use land for agricultural uses, and the term of leasing shall not exceed 49 years.

Chinese companies complain about the complicated procedures concerning product allocation when exploring and developing of petroleum and gas fields in the territory of Russia. The "unified tax" on foreign companies engaged in resources development is burdensome.

Chinese companies complain about the non-national treatment to the Chinese-funded companies in Russia, in particular about unpredictable charges and confiscations of products by relevant Russian authorities at will.

The Philippines

1. Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and the Philippines in 2003 reached US$9.4 billion, up by 78.7%, among which China's export to the Philippines was US$3.09 billion, up by 51.5%, while China's import from the Philippines was US$6.31 billion, up by 96%. China had a deficit of US$3.22 billion. China mainly exported coals, household electric products, hi-tech products, electronic technologies, product oils, cereals and cereal powders, diodes and certain semi-conductor devices, gasoline, yarn and yarn products, etc. The major imported products of China from the Philippines included household electric products, hi-tech products, electronic technologies, diodes and certain semi-conductor devices, electric transformers, selenium rectifiers and inductor and parts thereof, fresh and dried fruits including bananas, nuts, product oils, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in the Philippines reached US$100.82 million in 2003, and the volume of the newly signed contracts was US$597.58 million. The volume of completed labour service cooperation contracts was US$1.67 million, and that of the newly signed labour service cooperation contracts was US$0.92 million. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in the Philippines had reached US$747.49 million, with that of all the contracts signed being US$1.98 billion, and the volume of the completed labour service contracts had reached US$25.54 million, with the total contractual volume being US$51.96 million.

According to MOFCOM, 1 Chinese-funded non-financial enterprise was set up in the Philippines in 2003, with a total contractual investment of US0.5 million by Chinese investor. By the end of 2003, there were accumulatively 40 Chinese-funded enterprises set up in the Philippines with a total contractual investment of US$16.41 million by Chinese investors.

According to MOFCOM, the Philippine investors invested in 297 projects in China in 2003, with a contractual investment of US$560 million and an actual utilization of US$220 million. By the end of 2003, the Philippine investors had accumulatively invested in 1945 FDI projects in China with a contractual volume of US$3.74 billion and an actual utilization of US$16.4 billion.

2. Introduction to the Philippine trade regime

2.1. Legislation on trade and investment

Currently, foreign trade and foreign investment are subject mainly to such legislations as the Regulations on Retailing, the Law on Foreign Investment, the Act on Special Economic Zones, the Law on Investment in Lease, the Law on Export Development,

Regulations on Promotion of Foreign-Invested Business, Regulations on Liberalizing Foreign Investment in the Retailing Sector in the Philippines, Regulations on Extensively Upgrading the Environment Protection Level of Products, etc.

2.2. Trade and investment

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

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

Export of plant products to the Philippines must obtain Plant Phytosanitary Certificate issued by the Plant Industry Bureau of the Philippine Department of Agriculture. Companies registered with the Philippine authorities for certification to export meat products to the Philippine shall present, on exportation, the quarantine certificate issued by the competent Chinese authorities. Before being delivered to the Philippines, the exporting company shall get animal quarantine certificate issued by the competent Philippine authority. During customs clearance, the Customs will release the goods only after the Philippine quarantine authority completes inspections and issues the quarantine certificate. Within 48 hours after custom clearance, the State Meat Inspection Commission can randomly make sample investigation on any shipment of meat and poultry products.

The Philippine central bank conducts foreign exchange administration, adhering to monetary policies made by the Monetary Commission.

The Philippine Investment Commission is responsible for approval of foreign direct investments or portfolio investments. According to the Investment Priority Program of the Philippine Government, qualified companies may go through registration procedures in the Philippine Investment Agency to enjoy financial preferential policies, which include: 4 to 6 years' exemption of income tax, exemption of tax commensurate to wages of half of directly employed workers, exemption of import duties of live animals and materials containing genetic ingredients. Besides above preferential treatments, companies in export processing zones, free trade zones designated by the Philippine Government or other special trade zones registered with the Philippine Economic Zone Administration Bureau could import equipment and

raw materials without import duty, and pay gross income tax as low as 5%.

2.3 Competent authorities

The Department of Trade and Industry (hereinafter referred to as DTI) is the authority responsible for administering and steering the development of national economy, foreign trade and foreign investment utilization. Its competences main include trade promotion, investment promotion, training, protection of domestic interests, and issuing permit and registrations for certain business.

Affiliations to DTI with competences related to foreign trade administration include the Bureau of Export Trade Promotion (BETP), the Bureau of Import Service (BIS), the Bureau of International Trade Relations (BITR), and the Bureau of Trade Regulation and Consumer Protection. Other institutions involved in foreign trade promotion include the Foreign Trade Service Corporation (FTSC), the Garments and Textile Export Board (GTEB), and the Philippines Trade Training Center (PTTC). The Board of Investment (BOI) under DTI is the major institution in charge of foreign investment.

3. Barriers to trade

3.1. Tariff and tariff measures

Certain sensitive agricultural products are subject to high tariffs, quantitative restrictions or tariff quotas, including cereals, husbandry products, sugar, vegetables, etc. Agricultural products subject to tariff quota administration include cereal, livestock and meat thereof, sugar, potato, onion, garlic, coffee bean, tobacco leaf, corn, etc. In quota administration, the in-quota tariff and out-of-quota tariff are of comparative significant difference. For example, in-quota tariff rates for forage corn and potato are 35% and 45% respectively, and out-quota tariff rates are 65% and 60% respectively. From March 2003, the Philippine authorities raised tariff rate for vegetables from 7% to 20%. The Chinese side will keep a close watch on the tariff measures adopted by the Philippine authorities.

3.2. Import restrictions

The Philippine authorities impose quantitative restrictions on the import of rice, and authorize the National Grain Bureau as the only institution to conduct the import of rice. The import quantitative restriction for rice in 2003 was 194,315 metric tons.

The Philippine authorities impose strict control measures on import of medical raw materials. The import and domestic distribution of medical raw materials is monopolized by a state-owned company.

From December 2002, the Philippine authorities require that import of second-hand cars is forbidden, with the exception of cars for special purposes (such as fire engine,

and ambulance). Import of coal shall get approval from the government. Antibiotic semi-products must be purchased locally, unless the import price is 20% lower than the local price.

Over a long period of time, vegetables originating from China have been listed as 'sensitive products' by the Philippine authorities, which have adopted series of measures, apart from high tariff rates, including refusal of import license, to restrict their import. For example, potato export of China to the Philippines dropped to 173,750 metric tons, suffering a decrease of 51.94% over previous year. After rounds of consultations between competent Chinese authorities and the Philippine Department of Agriculture, in 2003 ginger, potato and carrot from China were granted access to the Philippine market, but the exporters were limited to 6 companies in China's Shandong and Fujian Provinces registered with the Philippine authorities, and the import dealership of above products was temporarily limited to one Philippine company. At the same time, the Philippine authorities were committed to gradual market access of other vegetables originating from China, including lettuce, Chinese cabbage, cauliflower, etc. It's wished by the Chinese side that the Philippine authorities observe relevant WTO principles, and gradually cut down on import restrictions on Chinese agricultural products.

3.3. Imposition of discriminatory charges on imported goods

The Philippine authorities impose higher excise duty on imported distilled alcohol than on locally-produced distilled alcohol. Excise duty on local distilled alcohol is 8 Peso/liter, and distilled alcohol made from imported raw materials is subject to a duty varying from 70 to 300 Peso/75ml on retail price.

3.4. Sanitary and phytosanitary measures

According to the Philippine regulations, foreign slaughterhouses have to get registered with the Department of Agriculture of the Philippines before they can export their products to the Philippines. The Department of Agriculture of the Philippines has sent several teams to China without the agreement of the competent Chinese authority to inspect Chinese slaughterhouses intending to export to the Philippines. Some teams even have more than 19 people. Their behaviours during inspection varied from one team to another. However, no Chinese slaughterhouse has obtained registration after the inspections. It is hoped that the Philippine authority would settle the issue concerning registration of Chinese slaughterhouses intending to export to the Philippines with the competent Chinese authorities with strict adherence to principles under the Agreement on the Application of Sanitary and Phytosanitary Measures of WTO. An early restoration of export of meat products from China to the Philippines is expected.

In September 2002, the Philippine Department of Agriculture publicized a compulsory system of third party risk assessment on all meat products and dairy products imported after April 1, 2003. Although in February 2003 the Philippine

authorities declared postponement of this requirement, the Chinese side desires to express its concern over this requirement's inconsistency with the commitments the Philippines have made under Agreement on the Application of Sanitary and Phytosanitary Measures of WTO.

3.5. Trade remedies

In April 2003, the Philippine authorities initiated investigation of safeguard measures on float glass and figured glassware from China, and antidumping investigation on glass mirrors from China, which in total involved an export volume of US$ 2.7 million.

In July 2003, the Philippine Department of Agriculture declared that from 2003, special protective tariff would be imposed on imported pork and pork products exceeding the provided maximum quantity, that is, the average import quantity of 3 consecutive years multiplied by 125%, 110% or 105% in different circumstances. Since adoption of above measures, China's export of pork products to the Philippines suffered a drastic decline, which was merely 25,000 metric tons in 2003, 98% less than that of previous year.

3.6 Government Procurement

Administrative Decree 120 promulgated by the Philippine Government requires counter-purchase if government-owned or controlled institutions or companies want to purchase goods worthy of more than US$1 million. The implementation regulations set up by the Department of Trade and Industry provide that foreign suppliers are obliged to purchase Philippine goods worth more than half the value of its supply; otherwise they shall pay penalties. The International Trade Company of the Philippines is responsible for the counter-purchase.

3.7. Barriers to trade in services

3.7.1. Communications

The Government of the Philippines offers no market access and national treatment in the satellite communication sector. It is stipulated that foreign investment in any company engaged in telecommunication services shall not exceed 40%.

3.7.2 Banking

The Philippine authorities only allow ten foreign banks to set up wholly-owned subsidiaries in the Philippines. Regulations in the Philippines require that 70% of the total asset and 50% of the total capital of any bank in the Philippines be held by the local party. It is also required that the subsidiary of foreign banks in the Philippines shall not take from or provide to its mother bank and/or other banks loans more than four times of its permanent capital. Chinese banks regard it as non national treatment,

which severely restricts the operation of foreign banks in the Philippines.

3.7.3. Insurance

Foreign insurance companies are allowed to conduct business in the Philippines. However, foreign-funded insurance companies cannot be engaged in insurance business of government-funded projects.

3.7.4. Advertisement

Certain regulations in the Philippines stipulate that foreign investment should not hold more than 30% of the shares of a company of the advertising sector and that all managerial staffs shall be Philippine citizens.

3.7.5. Shipping

Certain regulations in the Philippines stipulate that Philippine vessels could only, except temporary workers, employ workers and management personnel of Philippine nationality.

3.7.6. Retailing

According to Philippine legislation, retail companies with a registered capital of less than US$2.5 million shall be operated by Philippine citizens.

3.7.7. Civil engineering

Certain regulations in the Philippines stipulate that contractors of infrastructural projects, i.e. water supply, electric power, communications and transportations, should hold License for Public Utilities and have over 60% shares owned by Philippine stakeholders. Contractors of other projects, e.g. BOT projects, are not subject to above requirement, but the foreign contractors are required to produce capability certificates issued by their domestic authorities. Besides, foreign contractors are not allowed to undertake Philippine-invested civil engineering projects.

The Republic of Korea

1. Bilateral trade relations

The Republic of Korea (hereinafter referred to as Korea) was the sixth largest trading partner of China in 2003. According to the China Customs, the bilateral trade between China and Korea in 2003 reached US$63.23 billion, up by 43.4%, among which China's export to Korea was US$20.10 billion, up by 29.4%, while China's import from Korea was US$43.13 billion, up by 51%. China had a deficit of US$23.03 billion. China mainly exported to Korea clothing and clothing accessories, yarn, textile and textile products, chemical products, steel and steel products, corn, coal, aluminium and products thereof, television sets and parts thereof, radio and wireless communication equipment and parts thereof, fishery products, integrated circuit and micro-electronic parts, etc. China mainly imported from Korea primary integrated circuits and micro-electronics parts, plastics, steel and steel products, mobile telephones, television sets and parts thereof, radio and wireless communication equipment and parts thereof, consumer electronic products and parts thereof, terephthalic acid, automatic data processing equipment and parts thereof, chemical fiber filaments, color image monitors, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in Korea reached US$90 million in 2003, and the volume of the newly signed contracts was US$ 180 million. The volume of completed labour service cooperation contracts was US$230 million, and that of the newly signed labour service cooperation contracts was US$200 million. By the end of 2003, the accumulated turnover of engineering contracts completed by Chinese companies in Korea was US$ 120 million, with that of all the contracts signed reaching US$240 million, and the volume of the completed labour service contracts had reached US$1.77 billion, with that of the total contracts signed amounting to US$2.34 billion.

According to MOFCOM, 10 Chinese-funded non-financial enterprises were set up in Korea in 2003, with a total contractual investment of US$ $190 million from Chinese investors. By the end of 2003, there were accumulatively 72 Chinese-funded enterprises set up in Korea with a total contractual investment of US$ $300 million by Chinese investors.

According to MOFCOM, Korean investors invested in 4920 projects in China in 2003, with a contractual investment of US$9.18 billion and an actual utilization of US$4.49 billion. By the end of 2003, Korean investors had accumulatively invested in 27,128 FDI projects in China with a contractual investment of US$36.65 billion and an actual utilization of US$19.69 billion.

2. Introduction to the Korean trade regime

2.1. Legislation on trade and investment

Korean laws related to trade and investment mainly include Tariff Law, Foreign Trade Law, Implementation Regulations of Foreign Trade Law, Foreign Investment Promotion Law, etc., among which Foreign Trade Law and Foreign Investment Promotion Law serve as the basic legal regulation in the field of trade and investment.

The Ministry of Industry and Resources publishes specific policies and measures regarding foreign trade and investment by Import & Export Gazette, Import & Export Comprehensive Gazette and Import & Export Special Gazette. Import & Export Gazette publishes annual scheme of import and export, mainly concerning affairs on the approval and licensing of and ban on the import/export of certain products, information about restrictions on quantity, volume, standard and region of the import/export of certain products and the recommendation or confirmation of the import and export of certain products. It is one of the basic policy instruments of the Korean Government to directly manage import and export. Currently, the products subject to the measure are limited to important strategic products and certain agricultural products. , Import & Export Comprehensive Gazette publishes restrictive measures on import/export formulated according to the Foreign Trade Law and other relevant legislations, which refer to special laws and regulations developed by competent authorities of various sectors concerning import and export administration over certain products. Import & Export Special Gazette covers the management over certain products subject to special-designed import/export procedures according to the Implementation Order of Foreign Trade Law, which are not covered by the Import & Export Gazette and the Import & Export Comprehensive Gazette. The necessity of restrictions on these products is decided through consultations between the Ministry of Industries and Resources and other competent authorities. The above-mentioned three Gazettes only publish administrative information on products subject to restriction.

2.2 Trade administration

The Korean authorities have successively implemented approval administration, registration administration and declaration administration on foreign trade dealership. According to the Foreign Trade Law, from January 1, 2000, all Korean individuals and companies could be engaged with foreign trade activities freely. Each company engaged with foreign trade should apply for a fixed number, which should be provided in customs clearance.

Based on its WTO commitments, Korea implements quantitative restrictions on import of 67 agricultural products. The Korean Government is also commitment to loosened restrictions on import products. Starting from 2005, Korea will liberalize its import restriction on the last product, namely rice.

Under most circumstances, competent government authorities simply provide guiding policies on import and export administration using the three Gazettes, while

state-owned enterprises, non-government organizations and sectoral associations are responsible for specific management. Import and export organizations or relevant industrial associations for specific products are authorized to make 'Import and Export Guidelines' for respective products, which would, after confirmation by the Ministry of Industry and Resources, be publicized for administration of certain products' import and export. It's also provided that recommendation from relevant import and export organizations and industrial associations should be obtained for import of certain products subject to quantitative restrictions or special administration.

Import and export of special products is governed by specific laws and regulations. These products include medicines, agricultural chemicals, harmful chemicals, petroleum, cigarettes, ginseng, certain agricultural and fishery products, foreign magazines and films, etc.

2.3. Investment administration

In 1998, the Foreign Investment Promotion Law and its implementing rules were published.

By the end of March 2003, among all the 1121 economic sectors in Korea, there are 63 closed to foreign investment, 1029 completely open, 27 partially open, and 2 not yet open (namely broadcasting and television). The rate of investment liberalization reached 99.8%. Restriction on foreign investment in certain sectors is achieved by controlling shareholding ratio of foreign investors.

2.4. Competent authorities

2.4.1 Ministry of Industry and Resources

The Ministry of Industry and Resources works as the competent authority for trade and investment administration, responsible for the stipulation and implementation of policies concerning trade, investment, industries, energy and resources. Its main competences include the formulation of policies on import and export and foreign direct investment, including the development and amendment of such legislations as the Foreign Trade Law and the Foreign Investment Promotion Law, foreign trade and foreign direct investment administration, export and foreign investment promotion, enforcement of measures protecting domestic market from injuries incurred by imports, control on export and import of strategic materials vital to the national economy such as oil, coal, natural gas and products concerning national defence and edging technology, conducting international industrial and scientific cooperation, etc.

2.4.2. Trade Commission of Korea

The Trade Commission of Korea is subordinated to the Ministry of Industries and Resources. The Commission is mainly responsible for implementation of trade remedy measures including anti-dumping, countervailing and safeguard measures,

and investigation of unfair trade activity disturbing trade order and penalty recommendation thereof.

2.4.3. Ministry of Foreign Affairs and Commerce

Within the Ministry of Foreign Affairs and Commerce, there is established the Office of Commerce and Negotiation, which has the full authority over trade negotiations, including the formulation of policies on trade negotiations and the organization of foreign economic consultation.

2.4.4. Other relevant organizations

2.4.4.1 Korea Trade-Investment Promotion Agency (KOTRA)

Korea Trade-Investment Promotion Agency (KOTRA) was established in 1962 by the Korean Government with the aim of trade and investment promotion. KOTRA is directly under the Ministry of Industry and Resources, funded by national budget. The Chairman of KOTRA is appointed by the president upon nomination of the Minister of Industry and Resources. Based on government policies or authorizations, KOTRA conducts various trade and investment promotion activities, such as providing trade and investment information and consultations to enterprises, organizing enterprises to participate in exhibitions and assisting companies to develop overseas market. The Ministry of Industry and Resources superintends the work of KOTRA and offers guidance and assistance.

2.4.4.2 Korean Export Insurance Corporation

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

2.4.4.3 Agricultural & Fishery Marketing Corporation (AFMC)

As a state-owned enterprise, the Korean Agricultural & Fishery Marketing Corporation (AFMC) operates state trade in certain agricultural and fishery products subject to quantitative restrictions, carries out government policies on supporting export of agricultural and fishery products, and imports agricultural and fishery products vital to the national economy at the authorization of government.

3. Barriers to trade

3.1. Tariff and tariff administrative measures

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

Currently, special tariffs in the Korean tariff system include adjustive tariff, anti-dumping tariff, retaliatory tariff, safeguard tariff, special safeguard tariff, countervailing tariff, etc. Major issues in its tariff system are as follows:

3.1.1 Adjustive tariff

Since 1984, Korean has adopted the adjustive tariff system. According to the Tariff Law, the adjustive tariff, that should not exceed 100%, applies to agricultural, forestry, animal and fishery products where competitiveness of the relevant domestic industries is weak, or where market order may be disturbed or industrial interests damaged by increase of import, and products to which temporary protection is necessary for concerns of environmental protection, consumer protection or balanced development of domestic industries. Annual adjustive tariff schemes are published in the form of President Order after the review of the Ministry of Finance and Economy.

In 2003, 23 products are subject to adjustive tariffs, the same level as in 2002, but the adjustive tariff rates for 11 products are reduced by 1%-5%. Certain products subject to adjustive tariffs are wholly or mainly imported from China in which Chinese companies enjoy competitive advantage, such as perch, tricholoma matsutake, shrimp sauce, starch noodle, bean sauce pie, blended condiments including chilly sauce, silk and yarn, silk textures, cotton textures etc. Korea's administration of adjustive tariffs has significantly impeded export of relevant Chinese products to Korea

In 2002 and 2003, Korea lifted or reduced adjustive tariff over certain products. However, it's deemed by the Chinese side that the lifted items and reduced level are much limited, and that adjustive tariff administration still poses restriction of relevant Chinese exports to Korea.

3.1.2. Tariff quota

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

3.1.3. application of tariff items

The Korean customs usually adopt 'main ingredient' or 'import purpose or incentive' criteria in deciding the tariff items applicable to 'mixed product', namely those consisting of various ingredients. This practice frequently results in unreasonably high tariff rates applied to certain products. For example, when Chinese companies export mixed feedstuffs or mixed feedstuff additives to Korea, the Korean customs usually

compare the applicable tariff rates for above products and their main ingredients, and choose the higher one to apply.

3.2. Import restrictions

Korea conducts very strict licensing administration on imports of patent medicines including Chinese patent medicines. In 1993, the Korean authorities promulgated the Guidelines for Supply-Demand Coordination and Control of Import of Chinese Traditional Medicine Materials, and abiding by this carry out coordination and control of the supply and demand of 70 Chinese traditional medicine materials, which account for 72% of Korean market, and restrict the export of above products from China. Currently, Korea continues its practice to, on the basis of the supply-demand situation on the Korean market, decide the import quantity of 21 Chinese traditional medicine products, including medlar seed, angelica and eucommia. These discriminatory practices to restrict import of Chinese traditional medicine materials and protect Korea's domestic production of herbal medicines have impeded China's export of Chinese traditional medicine materials to Korea.

3.3 Barriers in customs procedures

3.3.1 Disposal of arrived cargo

According to certain regulations of the Korean customs, written consent of the consignee is required for disposal of import cargo after its arrival at Korean ports. In cases where the Korean consignee maliciously exploits this regulation, and refuses to make cargo payments or contact the Chinese exporter, the Chinese exporter has no authority to take one-sided disposal action. Because the cargo is not allowed to be shipped back to China, the Chinese exporter usually has to accept the Korean consignee's request for lower price or unconditional on-credit sale, and thus suffers considerable losses. It's hoped, therefore, by Chinese companies that the Korean authorities amend the above regulations to enable the exporter to have absolute ownership of and disposal right over the arrived cargo in Korean ports, so as to fail the fraudulent practices of unlawful Korean companies, which would distort the bilateral normal trade.

3.3.2 Sample testing of agricultural products

In July 2003, the Korean customs declared to increase the sample testing rate of import agricultural products by a large margin, invoking the need for further cracking down on illegal practices such as smuggling of agricultural products. Presently, the average sample testing rate for import products remains at 3%-5%, but this rate for agricultural products has been elevated to 20%. The sample testing rate for frozen pepper and mixed seasoning, in particular, reaches 100%. This practice has extended the customs clearance period for relevant Chinese agricultural products, and unreasonably raised their transaction costs.

3.3.3 Pre-clearance payable tariff examination

Since 2000, the Korean customs has imposed pre-clearance payable tariff examination over certain agricultural products invoking the need for prevention of tariff circumvention by lower price declaration. By July 2003, there have been 18 agricultural products subject to this administration, namely sesame, perilla seed，ginger, dried red bean, dried green bean, soy bean for bean sprout, onion, barley, sweet potato starch, frozen chilli, frozen garlic, pickled garlic, fresh and refrigerated garlic, fresh and refrigerated garlic head, garlic temporarily marinated for storage, dried garlic and carrot. The Korean customs imposes price examination over above agricultural products before their customs clearance to see if they are suspicious of tariff circumvention. The Korean customs has recently strengthened this examination, to judge whether the exporter's declared price is reasonable by examining the transaction contract and payment form and comparing the imported product's declared price with its market value collected by the customs computer system. The Korean customs will complete the customs clearance procedure for the imported products only when, after above examination procedure, deeming their declared prices are deemed reasonable. However, generally speaking, the Korean customs doesn't make public the basic price for examination.

The 18 products subject to pre-clearance payable tariff examination by the Korean customs are mainly imported from China, and 14 products of them, except perilla seeds, frozen chilli, carrot and frozen garlic, are also subject to quota administration. Through this examination, the Korean authorities have restricted import of out-of-quota products, prolonged customs clearance period of certain products, discouraged the willingness of the Korean importer, and hindered export of Chinese agricultural products. The Chinese side expresses its concern over the transparency and implementation practice of this examination system.

3.4. Technical barriers to Trade

3.4.1 Medicine's clinical test

According to Korea's Medicine Law, Anaesthetics Administration Law and their implementation regulations, Korea's Department for Food and Medicine Safety promulgated the Regulation on Safety and Effectiveness Examination of Medicines. Based upon this Regulation, all import medicines should apply for import license and go through the safety and effectiveness examination by the Korean authorities. To obtain access to Korean market, Chinese traditional medicines are required to provide extraordinarily multifarious clinical test statistics, and new Chinese traditional medicines are required to carry out extremely strict clinical tests. Before June 2003, the Korean authorities accepted materials of acute toxicity test provided by the Chinese authorities, while after that, they require that all import medicines must go through acute toxicity test in Korea or by international institutions recognized by the Korean authorities. In addition, the Korean medicine authorities often give implicit suggestions to medicine importer for various medicine tests. Due to that these tests are

time-consuming and expensive, and that most Chinese traditional patent medicines are not recorded in Korean pharmacopoeias, Chinese traditional patent medicines, in practice, can hardly obtain import license. Up to the end of 2003, only 1 Chinese traditional patent medicine was granted market access by Korean authorities, let alone western patent medicines containing components of Chinese traditional medicines.

Even recorded in Koran pharmacopoeias, Chinese traditional patent medicines are faced up with various impediments in entering Korean market. It's complained by a renowned Chinese traditional medicine manufacturer that prescriptions recorded in Korean medicine books about Chinese traditional medicines came from ancient Chinese medicine books, and most part of the prescriptions of Chinese traditional medicines in Codex China were also recorded in Korea's governmentally-recognized medicine books. Over recent years, prescriptions in China have been undergoing continuous amendment and improvement for better scientific foundation and reinforced effectiveness. However, such amendment and improvement are not recognized by Korean authorities, nor reflected in Korea's medicine books. consequently, when prescriptions of Chinese traditional patent medicines were slightly different from those recorded in Korea's medicine books, Korea's Department for Food and Medicine Safety would treat these medicines as new medicines, and require them to go through new examination procedures. In fact, the prescriptions in China's and Korea's medicine books were factually identical, with slight difference in the ingredients of certain herbal medicine or dosage. For example, the prescription of Chinese Liuwei Dihuang was totally identical with that in Korea's medicine book, except for a minor difference in dosage; China's prescription of Chinese Shiquan Dabu Pill only added the component of *co donopsis pilosula* root (dangshen) compared with Korea's medicine book.

3.4.2 Korean Standards

The Korean Standards (KS) is a national standard system established by Korea's Industrial Standardization Law. Under supervision of Korean Administration for Technical Standards (KATS), the Korean Standard Association (KSA) is responsible for KS drafting and certification. KATS also promulgated safety regulations to establish compulsory certification systems. For example, under Electronic Products Safety Law electronic products certification system is established which designates certification institutions to conduct certification of electronic products; under Quality Administration and Industrial Products Safety Control Law, consumer products safety system is established to designate testing laboratories to test products such as baby carrier, lighter and toy. KSA usually, responding to requirements of Korean companies, arbitrarily changes certification methods applied to Chinese companies without prior notice, which forces Chinese companies to consume doubled financial resource and time for certification, and increases their cost for access to Korean market.

3.5. Sanitary and phytosanitary measures

Currently, Chinese products significantly affected by Korea's inspection and

quarantine measures are agricultural products, fishery products, products of animal origin, food and food additives, medicines and medicine materials.

3.5.1. Agricultural products

In evidence of the Brief Guide to HS Customs Clearance: 2002, Korea has almost put all agricultural products subject to strict import inspection and quarantine requirements.

In January 2002, Korea put under precise inspection of sulphur dioxide 11 kinds of products from China, namely medlar seed, shredded dry reddish, Chinese angelica, *scutellaria baicalensis*, *scutellaria baicalensis* root, *astragalus membanaceus*, *astragalus membanaceus* root, ginger, lotus root, arrowroot etc.

In 2003, Korea imposed supervision over import of more than 110 agricultural products, including tomato, cabbage and all fruits. Import sampling test was conducted to control residue of pesticide, heavy metal and hormone in import agricultural products. If the unqualified rate proved comparatively high, a batch-by-batch precise inspection of involved agricultural products might be decided and held by Korean authorities at any time.

In purchase of unpolished rice, it's required by the Supply Administration of the Republic of Korea (SAROK) that the rate of white bad rice for unpolished rice imported from China should not exceed 2%, while for other countries, US No.3 unpolished rice standard is applied, which means this rate should not exceed 6%.

Besides, it's required by Korean authorities that feeding grass imported from China should receive second-fumigation treatment after entry into Korea.

It's requested by the Chinese side that Korean authorities abolish above unreasonable requirements and discriminatory practices.

3.5.2 Chinese traditional medicine material

In October 1998, Korean Department for Food and Medicine Safety promulgated amendment to Regulation for Administration of Import Medicines, in which it's required that no residue of sulphur dioxide could be found in imported Chinese traditional medicine materials (residue lower than 10ppm treated as nonexistence), while no similar requirement applied to Korean medicine materials. In September 2003, Korean Department for Food and Medicine Safety promulgated Notice for Application of Testing Standards and Methods for Sulphur Dioxide Residue in Medicine Materials, tantamount to implementation rules for above Regulation. This Notice unified standards for sulphur dioxide residue in import and domestic medicine materials, but still required the residue lower than 10ppm. Actually, in processing of Chinese traditional medicine materials, sulphur fumigation is used for dehydration and storage, and to prevent moisture, mildewing and rotting and insect biting. The

above requirement lacks sufficient scientific basis, stands far above widely recognized international standards for food additives, and poses severe impediment to China's export of Chinese traditional medicine materials to Korea. Therefore, the Chinese side expresses its deep concern over this requirement of the Korean Department for Food and Medicine Safety.

Besides, it's complained by Chinese companies that Korean authorities tended to adjust testing standards for certain medicine materials considering Korea's domestic supply and demand situation, which brought uncertainty to the testing and customs clearance of involved Chinese traditional medicine materials.

3.5.3 Fishery product

As of September 1999, Korea adopted precise test on the live eel and mandarin fish imported from Mainland China and Taiwan, asserting above-standard residue of terramycin and mercury. Zero-existence standard was applied in the residue testing of a certain pesticide, which was higher than internationally recognized standard. This practice greatly prolonged time needed for customs clearance which under normal situation was usually 3-4 days, and as a consequence, the survival ratio of live fish was reduced. This practice creates obstacles to the export of Chinese live and fresh fish to Korea.

Since 2001, Korea has carried out a box-by-box metal detection on fishery products from China, and required conforming fishery products to be labeled.

Before July 2002, Korea adopted the measure of precise inspection prior to customs clearance on 18 live and fresh fishes. Since then, Korean authorities start to impose above measures on 5 products, and decide product items subject to inspection prior to customs clearance based on sampling test, which means this kind of inspection applies to one specific product of one company that fails to meet the inspection requirement twice in 6 months.

Currently, special import administration is imposed on 6 fishery products, namely loach, eel (2 varieties), blood clam, scallop and oyster. Chinese companies exporting above products are required to receive the precision inspection from Korean quarantine authorities once a month, and should any inconformity be found in the case of one company, all companies exporting same product to Korea will be required to receive precision inspection. The Chinese side expresses its concern over the enlargement of this practice.

3.5.4. Product of animal origin

3.5.4.1. Registration system for production companies

For export products of animal origin, the relevant production companies are subject to registration with competent Korean authorities prior to exportation. However, the

assessment and registration procedures of Korea are extraordinarily slow. Up to now, only 11 poultry meat producing enterprises in China were registered with the Korean authorities to export their products to Korea, and this measure greatly limits China's export of poultry products to Korea.

3.5.4.2. Import quarantine recognition system

For all products of animal origin, Korea enforces import quarantine recognition system, i.e., exporting countries are required to make application and submit relevant documents on its animal diseases, to be endorsed and evaluated by competent Korean authorities. Countries that are not member of OIE should accept on-site inspections and investigations by competent Korean authorities and can only start relevant export after the signature of bilateral quarantine agreement. Korean authorities, on the pretext that China is not a member country of OIE and mouth-feet-disease affected region, ban export of artiodactylous products, such as beef, pork and mutton, produced in whole China's territory to Korea. Furthermore, according to Requirements of Sanitary Conditions for Import of Coarse Fodder drafted by Korea's Ministry of Agriculture and Forestry, countries that are banned to export artiodactylous animals and products thereof to Korea are automatically banned to export coarse fodder. Subsequently, Chinese coarse fodder exporters have to accept one-by-one quarantine recognition by Korean authorities before allowed to export this product to Korea.

3.5.4.3. Poultry Inspection

In June 2001, Korea imposed provisional import ban on certain products from China, due to the fact that it found flu pathogen in such products exported by a Chinese company. Though the ban was conditionally lifted in November of the same year, owing to the excessively strict and complicated inspection and quarantine procedures conducted by Korea, i.e., precise inspections on every shipment that takes 45 days, importers and exporters still have to bear expensive inspection fees and port storage fees. This requirement has increased the poultry's import cost, prolonged period for customs clearance, and adversely affected entry of Chinese poultry to Korea. Affected by this practice, export of Chinese poultry to Korea faces serious difficulties, leaving only one Chinese company exporting duck to Korea.

3.5.4.4. Standards applicable to food additives

Korea's Food Code doesn't provide specific regulations about food additives, stating that Codex Alimentarius can be referred to apply standards for food additives. However, in practice this regulation hasn't been effectively enforced. For example, Korea's Ministry of Agriculture and Forestry refused to apply international standards in Codex Alimentarius to edible salt and salt for foodstuffs, which has impeded China's common salt export to Korea.

3.5.5.5. Regionalization of epidemic-infected area

China has always been regarded as one single quarantine region by Korea, which means if an epidemic or a pest forbidden to enter the Korean territory is discovered in products originating from a region of China, Korea usually bans the import of products of the same kind from the whole territory of China regardless of the fact that other producing area are not infected. For this reason, fresh fruits from China find it difficult to enter the Korean market. Currently, China's competent authorities have submitted application for cherry export to its Korean counterpart, which is conducting evaluation of plant diseases and insect pests of China's cherry. As for quarantine evaluation of animal products, e.g. poultry, Korea would stop all Chinese export of a product based on the discovery of pathogen in such products of one single Chinese enterprise.

The Chinese side considers above practices of Korea in violation of the principle of Regionalization of Epidemic-infected Area as provided by the Agreement on the Application of Sanitary and Phytosanitary Measures of WTO, and wishes that Korea amend its relevant regulation in this regard.

3.6. Trade remedies

Up to the end of 2003, Korea has initiated 16 antidumping investigations and 2 safeguard investigations involving Chinese exports. Most antidumping investigations were concluded with imposition of antidumping duties or price undertaking (refer to Table I, II), while no safeguard measures were taken in safeguard investigations. Currently, 4 products imported from China are subject to antidumping duties, namely disposable lighter, alkali battery, silicon-manganese alloy and printing paper, on former 3 products of which antidumping duties were imposed after antidumping reviews. Two products are under antidumping review, namely choline chloride and sodium dithionite.

Table I: Antidumping Cases with Antidumping Duties Levied by 2003

Investigated product	Investigation Initiation Time	Determination	Change in 2003
disposable lighter	7 February, 1997	All respondents subject to antidumping duty of 32.84% for 5 years, except zero duty for Ningbo Xinhai Co.	Sunset review determination on 23 April 2003 of antidumping duty from 36.42% to 65.31% for 5 years until November 2007
alkali battery,	7 November, 1997	Price undertaking applicable to certain respondents, with other respondents subject to antidumping duty from 17.95% to 24.68%	Sunset review determination on 3 December 2003 of price undertaking applicable to certain respondents with antidumping duty of 15.66% for other respondents for 5 years
silicon-manganese	16 November, 1999	Price undertaking applicable to Ningbo Zhongyin Co.,	Sunset review determination on 3 December 2003 of price undertaking

alloy		with other respondents subject to antidumping duty of 26.7% for 3 years	applicable to Tianjin Energizer Co. with antidumping duty of 24.97% for other respondents for 3 years
copy paper	26 November, 2002	Determination on 7 November 2003 of antidumping duty from 5.50% to 8.99% for 3 years	

Table II: Antidumping Cases Initiated in 2003

Investigated product	**Investigation Initiation Time**	**Involved Export Volume**	**Change in 2003**
sodium silicate	1 July, 2003	US$ 2.48 million	Termination on 19 November 2003, no Injury
sodium dithionite	2 August, 2003	US$ 5.58 million	Under investigation
choline chloride	11 December, 2003	US$ 240 thousand	Under investigation

Prior to 1998, Korea had long taken China as a non-market economy. In 1998, Korea adjusted antidumping policy concerning China, and started to take China as a market economy in transition as of 1 January, 1999. In respective antidumping cases, Korean Trade Commission will consider whether to take China's investigated industry as market-oriented industry, and whether to grant market economy status to single Chinese respondent. In practice, 10 to 16 questions will be included in the investigation questionnaire for application of market economy status. However, specific standards in deciding market economy status are contained in internal working brochures, not made public by the Korean authorities. Hence, whether Chinese respondent may obtain market economy status is mainly decided by the discretion of Korean investigating officials and the responding situations of the Chinese respondent. The Chinese side deems Korea's regulations about market economy status as lack of transparency. In the Fourth Session of China-Korea Trade Remedies Cooperation Seminar, the Chinese side produced its concern to the Korean side, which didn't give explicit reply.

In practice, the Korean investigating body often refuses to grant market economy status to China's state-owned enterprises on the pretext of leadership appointment, raw material purchase, product pricing, etc. in sodium silicate antidumping investigation in 2003, main Chinese respondents were state-owned enterprises. In deciding whether to give market economy status to the Chinese respondents, Korean authorities required them to submit a mass of additional materials apart from market economy questionnaires. On 27 October 2003, the Department of Fair Trade for Imports and Exports of the Ministry of Commerce of China wrote to the Trade Commission of Korea, introducing the marketization level of Chinese sodium silicate industry and requesting the Korean authorities to recognize this industry as a market-oriented industry and give Chinese respondents market economy status. Later,

this investigation was concluded with determination of no injury, but the Korean authorities failed to give market economy status to Chinese state-owned enterprises.

3.7. Government procurement

Korea is a signatory country to the Agreement on Government Procurement of WTO. However, in the public bidding import of agricultural products under government procurement, Korean Agricultural & Fishery Marketing Corporation（AFMC） adopts unduly stringent standards for public bidding, and uses highly unilateral contract, which is inconsistent with accepted trade practices. For example, in Korea's public bidding import of agricultural products under government procurement, bidding companies are required to render a deposit equivalent to 10% of contract value before bidding, and this deposit may be seized, partially or wholly, by the Korean authorities with various reasons. In addition, it's provided in the public bidding import contract that if the Korean side deems prices of agricultural products lower than purchase prices, it may reject loading and shipment. This provision is significantly arbitrary, and may directly threaten reimbursement of deposit. After arrival of import products at Korean ports, apart from examination according to relevant Korean laws and regulations, Korean Agricultural & Fishery Products Trade Association may carry out quality or quantity examination by itself, and if the quality or quantity of the import products fails to be deemed consistent after examination, these products will be rejected, even examined and approved in shipment site. The above practices have added risks to Chinese exporters in participating in Korea's public bidding import of agricultural products under government procurement, and poses unreasonably heavy burden to Chinese companies.

3.8. Barriers to trade in services

3.8.1. Civil engineering

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

3.8.2. Financial service

Korea applies different standards of supervision toward foreign banks' branches in Korea and Korean local banks. Korea treats the foreign banks' branches in Korea the same as their subsidiaries regarding their business scope and capitals. It's required that if a foreign bank wishes to establish its second branch in Korea, it should go through all procedures applicable for establishing its first branch in Korea, which are more complicated than procedures applicable for a Korean bank establishing branches. Furthermore, in administration of business scope and capital, Korean authorities treat a foreign bank's branch as its subsidiary bank, and impose strict capital requirement for establishment of new offices of foreign bank's branches. These practices have

impeded business development of foreign banks in Korea. The capital requirements restrict the size of loans to a single borrower, of credits and large loans to a single group and inter-bank lending and borrowing, which limits the financing ability and asset sizes of Chinese-funded banks in Korea.

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

3.8.3. Telecommunication

It's provided by Korean authorities that foreign ownership in telecommunication services could not exceed 40%.

3.8.4. Education

In Korea, preschool education institutions, primary schools, middle schools, colleges, graduate colleges and special schools are listed as non-profit legal persons. Therefore, these educational institutions are prohibited of free money transfer, and closed to foreign investment. Up to now, there hasn't been any foreign college establishing branch schools in Korea.

3.8.5. Legal service

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

3.9. Protection of intellectual property

3.9.1. Prescription of Chinese traditional patent medicine

Korea treated Chinese traditional patent medicine as western medicine. When applying for import license, importers are supposed to submit certificate for production and sale of the imported Chinese traditional patent medicine, which is an official document issued by the Chinese Government, and contains information about the medicine's raw materials, ingredients and composition and specifications. According to relevant regulations, the Korean Government will not protect medicine's certain data in circumstances of specific 'public interests', which makes prescriptions of Chinese traditional patent medicines lack of adequate and effective protection in Korean market.

3.9.2. Maliciously forestalled registration of famous Chinese tea trade marks

Fifty four famous Chinese tea trade marks, including Tuo, Biluochun, etc., were maliciously registered by squatting in Korea. It's provided in Korea's Trademark Law

that examiners might reject unfaithful trade mark registration, and prohibit trade mark registration without franchise of foreign trade mark owners. However, legal procedures applicable for relevant Chinese companies to invalidate unlawful trade mark registration are both complicated and time-consuming, as long as one to one-and-half years. It's deemed by the Chinese side that effective protection of intellectual property is still wanting.

3.10. Other barriers

3.10.1 Marking of Origin

Due to long period of propaganda of Korean media, Korean consumers have formed a notion that domestic products are superior to imported ones, and some consumers even believe that purchase of imported products, in particular imported agricultural products, is a disgrace. In this atmosphere, Korea's Marking of Origin system was set up in 1990's.

From July 1st, 2002, Korea began to apply the Marking of Origin to domestically produced live fish. According to relevant requirements, after certain period of implementation, Korea would re-evaluate the measure and apply it to imported live fish by steps. However, in June 2003, without prior consultation with other competent departments, Korea's Ministry of Marine Fishery declared that Marking of Origin system would apply to imported live fish from 1 July that year. The Ministry of Marine Fishery also embarked on promoting relevant amendment to Regulations on Administration of Foreign Trade, though imported live fish are not included in the requirement for place of origin in Foreign Trade Law. Korea's different marking requirements applied to locally-produced live fish and imported live fish have posed *de facto* obstruction to the import of live fish.

3.10.2. Multiple-entry visa

The consular authorities of China and Korea have sealed agreement on reciprocal issuance of multiple-entry visa to business people. However, in dealing with visa applications tabled by Chinese companies for their resident staff in Korea, the Korean competent authorities are found violating the agreement, operating without transparency and enjoying too much discretion, etc. All these have caused much inconvenience to the life and work of Chinese business people in Korea. In addition, Korean authorities often impose fines on Chinese companies, or refuse to issue visa or extend visa on pretext of cracking down on overstay in Korea. It's said that in 2003, more than 100 Chinese companies have closed business for refusal of visa issuance or visa extension by Korean authorities.

3.10.3 Transparency in legislation

In Korea, transparency in making and implementing laws and regulations is to be improved. For example, Korea often fails to make notice to WTO as required in

drafting or amending laws, regulations or implementation rules relating to trade, or even makes such notice to WTO after completion of amendment and implementation. In addition, relevant Korean authorities often make internal policies, namely 'Guidelines', for inspection and quarantine of imported products, in particular agricultural products and fishery products. These Guidelines are seldom made public. Koran officials have large room of discretion in implementation of laws and regulations, which brings much uncertainty to the business operation of enterprises.

3.10.4. Discriminatory clauses in corn's public bidding import

Discriminatory clauses are made and implemented in corn's public bidding import, which mainly include:

3.10.4.1. Quality and quantity inspection clause for corn

The Unified Regulations on Bidding and Contract of Korea's Feedstuff Association, Association of Agriculture and Starch Sugar Association clearly provides that the inspection certificate issued by relevant inspection authorities at the loading port serves as the final reference for cargo's quality and quantity. The Sales Confirmation Letter signed by these associations for purchasing from foreign suppliers US or South American corn also accepts the quality and quantity inspection conducted by the loading port as the final result. However, in recent years, some Korean Associations add a compulsory clause to bidding invitations extended to Chinese exporters, according to which the inspection conducted by the port of discharge in Korea regarding product quality and quantity will be taken as the final reference.

3.10.4.2. Short weight indemnification clause for corn

To accept a bulk cargo delivery wastage of no more than 1% is a common practice in international trade. Korea's Unified Regulations on Bidding and Contract provides for the same, and requires indemnification from the supplier only when the short weight rate exceeds 1% of the cargo's total weight. However, Korea's Feedstuff Association, Association of Agriculture, and Starch Sugar Association allow for no wastage when corn of Chinese origin is concerned, and require that Chinese exporters assume the indemnification responsibility for any wastage that shall otherwise occur.

3.10.4.3. Bulk density indemnification clause for corn

Korea's Unified Regulations on Bidding and Contract explicitly allows for a 3% difference between the final bulk density and the bulk density specified in the sales contract. However, when it comes to corn of Chinese origin, Korea's Feedstuff Association, Association of Agriculture and Starch Sugar Association require that the final bulk density should meet the inspection results of relevant ports of discharge in Korea and allows for no downward float.

3.10.5. Interests Protection for Shipping Companies

The Korean Customs has no regulations for protecting the interests of foreign shipping companies, which subjects Chinese shipping companies to losses of no reason. For example, according to information from a certain Chinese shipping company, due to market fluctuations and some other factors, it sometimes occurs that an imported cargo, after its arrival at port or even after payment delivery (e.g. low-value agricultural goods), will be jettisoned by Korean consignees. In cases like this, relevant shipping companies are held by the Korean Customs as responsible for jettison disposal. However, the responsible shipping company will have to wait at least two years to auction off the cargo. By then, most of the cargo will have become almost valueless, and a large amount of disposal fee incurred on relevant shipping companies. The Chinese side hopes that the Korean Customs will make early amendments to relevant regulations so that the legitimate interests of Chinese shipping companies can be safeguarded.

Canada

1. Bilateral trade relations

Canada was the 10th largest trading partner of China in 2003. According to China Customs, the bilateral trade volume between China and Canada in 2003 reached US$10.01 billion, up by 26.2%, among which China's export to Canada was US$5.63 billion, up by 30.9%, while China's import from Canada was US$4.37 billion, down by 20.6%. China had a surplus of US$1.26 billion. China mainly exported machinery and electronic products, textiles and clothes, textile yarn and products thereof, metal products, toys, primary batteries, etc. The major imported products of China from Canada included fertilizers, potassium chloride, paper pulp, iron ore, ethylene glycol, coal, cereals and cereal powders, wheat, waste steel, edible plant oil, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by the Chinese companies in Canada reached US$ 7.4 million in 2003, and the volume of the newly signed contracts was US$ 1.38 million. The volume of completed labour service cooperation contracts was US$0.77 million, and that of the newly signed labour service cooperation contracts was US$0.20 million. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in Canada was US$73.38 million, with that of all the contracts signed reaching US$71.95 million, and the volume of the completed labour service contracts had reached US$38.04 million, with that of the total contracts signed reaching US$64.43 million.

According to MOFCOM, 11 Chinese-funded non-financial enterprises were set up in Canada in 2003, with a contractual investment of US$7.85 million from Chinese investors. By the end of 2003, there were accumulatively 155 Chinese-funded enterprises set up in Canada with investment of US$443.81 million from Chinese investors.

According to MOFCOM, Canada investors invested in 901 projects in China in 2003, with a contractual volume of US$1.61 billion and an actual utilization of US$0.56 billion. By the end of 2003, Canada investors had accumulatively invested in 6941 FDI projects in China with a contractual volume of US$11.99 billion and an actual utilization volume of US$3.92 billion.

2. Introduction to the Canadian trade regime

2.1. Legislation on trade and investment

Canadian laws related to trade and investment mainly include: the Customs Act, the Import and Export Permits Act, the Plant Quarantine Act, the Imported Products Labelling Act, the Food and Drug Act, the Special Import Measures Act and the Canadian Investment Act.

2.2. Trade administration

2.2.1. Tariff policy

After years of tariff negotiation and concession, the tariff rate of Canada has been reduced to a comparatively low level. In 2002, Canada's average tariff level for agricultural products was 21.2%, and for industrial products, 4.2%.

Canada's tariff regulations, including regulations concerning the Generalized System of Preferences, are made by Canadian Ministry of Treasury on basis of relevant bilateral and multilateral agreements, and implemented by Canadian Border Services Agency. Laws applicable to formulation and implementation of tariff regulations include: Customs Act, Act on Implementation of World Trade Organization Agreements, etc.

Different tariff rates are imposed on products from different countries. The Most Favored Nations (MFN) tariff rate applies to all WTO members and countries with which Canada signed relevant bilateral trade agreements. The preferential tariff rates take various forms and apply to different countries, mainly including the United States Tariff (UST), Commonwealth Caribbean Countries Tariff (CCCT), Canada-Israel Agreement Tariff (CIAT), New Zealand Tariff(NZT)、Australia Tariff(AUT)、Mexican Tariff(MT)、Mexico-US Tariff(MUST)、Chile Tariff(CT)、Least Developed Country Tariff(LDCT)and General Preferential Tariff(GPT)etc.

2.2.2. Import Administration

Canada imposes import licensing to products as follows:

(1) Textiles and clothing: according to arrangements provided by the Agreement on Textiles and Clothing (ATC) of WTO, the Canadian Government holds periodic negotiations with relevant exporting countries for allocation of import quotas.

(2) Steel products: from 1986, Export and Import Administration of Canada's former Ministry of Foreign Affairs and International Trade imposes surveillance over import of steel products according to provisions of Import and Export Permits Act and judgments of Canada's International Trade Tribunal. Importers are required to obtain import permit for steel products.

Special licensing administration has been enforced for products as follow:

(1) Plant: according to Plant Protection Act, licenses should be obtained for import of all plants, plant products and plant by-products, with the exception of private import for family consumption purpose. Such licenses are issued by the Department of Agriculture and Agricultural Foods.

(2) Drug: Drug Licenses should be obtained for import of any drugs subject to control

or restriction, and such licenses are applicable for a whole and separate lot of import. The invoice or its copy for the imported goods should be furnished to the Ministry of Health for the application of Drug Licenses.

(3) Endangered animals and plants: Endangered Species Licenses should be obtained for import of animals and plants regarded as endangered species by the Organization of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Such licenses are issued by the Ministry of Environments.

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

2.2.3. Quality supervision of imported products

Strict testing standards and procedures are set forth by Canadian authorities for consumer products. For example, for import of electric household appliances, importers are required to obtain certification of North America's main quality testing institutions, e.g. Canadian Standard Association (CSA) or Underwriter's Laboratory of Canada (U.L.C.). For import of products with potential hazards, certificates for consistency with safety standards are required to be submitted to Canadian testing authorities before sale, and sampling test may be carried out by Product Safety Administration of Canada's Ministry of Health according to Hazardous Products Act.

Imported products have to comply with the Act of Imported Products Labeling. Imported products to be repackaged by the importer for retail should comply with regulations on labeling in the Act of Consumer Packaging and Labeling. In principle, this Act requires the label of a product bear its common name, quantity, and name and address of its producer. Government inspectors are authorized to inspect any products, including those imported, that they suspect to be inconsistent with above labeling requirements at any place or time, and detain or confiscate products found as offending the above labeling requirements.

2.2.4. Inspection and quarantine of imported products

According to Canada's Food and Drug Act, importers of agricultural products, foods, and animal and plant products are required to guarantee imported products' consistency with testing standards set forth by Food Inspection Administration of Canada. All imported foods are subject to sample inspection, and inspectors are authorized to detain or confiscate the products found as offending this Act. In cases where customs staff are suspicious of the uniformity of certain commodities with relevant regulations, they may detain the commodities and inform the inspectors for spot inspection. Even after clearance of customs procedures, the inspectors still may conduct inspection at the importer's warehouses.

More stringent SPS measures may be taken on certain import commodities. According to the Animal Diseases and Protection Act, imported animals and animal products usually are transported to separate warehouses directly, and receive inspection by the Veterinary Inspection Division of the Ministry of Agriculture and Agricultural Foods.

Inspectors from the Ministry of Health of Canada may inspect, at any place or time, foods, medicines or cosmetics that are suspected of potential hazards to human, and are authorized to detain or confiscate products found in violation with relevant standards.

In 2003, Canada finished amendment to the Meat Inspection Act. According to the amendment, all companies in line of meat and poultry production, including storage companies, are required to implement compulsory safety standards for meat products, and all imported meat products must meet equivalent HACCP requirements. In addition, the amendment further promotes application of certain voluntary standards.

2.2.5. Antidumping system

Canadian Border Services Agency (CBSA) and International Trade Tribunal (ITT) carry out antidumping investigation according to Special Import Measures Act, effective as of 1984.

CBSA's main competences in antidumping investigation include: acceptance of antidumping petition, determination of dumping margin, and determination of the rate of antidumping duty. ITT's main competence in this matter is determination of industrial injury and causal link between dumping and industrial injury.

Within 30 days after receiving petition for antidumping investigation, CBSA shall initiate the investigation if finding petition meeting certain requirements after examination. For countries taken as non-market economies, CBSA shall issue investigation questionnaires to their governments to determine whether provisions regarding State Controlled Economy shall apply to this case. The commissioner of CBSA may hold spot investigation in the investigated foreign companies. Different with practices of other countries, CBSA doesn't provide the investigated companies outlines of the spot investigation.

Within 60 days after initiation of antidumping investigation, ITT shall make preliminary determination about industrial injury. Within 90 days, or 135 days in the case of extension, CBSA shall make preliminary determination about existence of dumping and dumping margin. After CBSA's preliminary determination, ITT shall conduct material investigation of industrial injury, and make definitive determination of industrial injury within 30 days after CBSA makes its definitive determination of dumping.

2.3. Investment administration

The foreign investment scale of Canada is one of the largest in the world, and the Canadian Government has been advocating for full absorption and utilization of foreign investment. The Investment Canada Act was enacted and brought into force as of June 1985, which currently serves as the legal basis for the Canadian Government to conduct foreign investment administration.

For most investment projects in Canada by non-Canadian citizens, the Investment Canada Act only requires the Notice of Investment, instead of examination or approval by certain government agencies. However, some investment projects either of comparatively large scales or in certain sensitive economic sectors, especially those investment projects considered of potential damage to certain key economic sectors or posing serious competitive threat to existing Canadian industries, are still subject to Canadian Government's examination and other laws or regulations.

There are not many restrictive measures in Canada on operation of foreign investment businesses. Although no special export performance requirements are employed, the Canadian Government are in favour of export-oriented businesses, and foreign investment businesses exporting most of their products may enjoy preferential treatments. No restrictions are imposed upon their withdrawal of investment or remitting of their profits.

On 12 May, 1986, the governments of China and Canada signed the Agreement on Prevention of Double Taxation, Tax-dodging and Tax Evasion by the Government of China and the People's Republic of China. In addition, China and Canada have been engaged in consultations of bilateral investment protection agreement, which unfortunately hasn't been concluded by now.

2.4. Competent authorities

In December 2003, governmental reform was held by Canada. The former Ministry of Foreign Affairs and International Trade was split into the Ministry of Foreign Affairs and the Ministry of International Trade, and the former Canada Customs and Revenue Agency was transferred to Canadian Border Services Administration.

The Ministry of International Trade is responsible for administration of foreign trade, and the Ministry of Agriculture and Agricultural Foods, the Ministry of Industry, the Ministry of Human Resource Development, the Ministry of Fishery and Ocean, the Ministry of Health, the Ministry of Cultural Heritages and the Canadian International Development Agency also participate in the administration of foreign trade according to their respective authorities.

The Ministry of Treasury works to assist the Canadian Government, the Minister of Treasury and the Secretary of State in charge of international financial organizations, in drawing the financial and other economic policies, and realizing various economic and social development objectives. The Ministry of Industry is responsible for making

relevant policies and development plans, and providing services in relevant fields. There have been several organizations established in Canada for facilitation and promotion of foreign trade. Canada Trade Commissioner Services is a service network with 135 overseas agencies, which provides to Canadian businesses various services, covering consultation of foreign markets and business visits, and information of potential trading partners etc. Its staff in foreign countries enjoy diplomatic treatments. The Team Canada is a visiting delegation under the leadership of the Canadian Premier, Minister of International Trade, Governors and District heads, and participation of senior managers of Canadian businesses. The Team Canada works with the aim to promote Canadian trade and boost employment opportunities, and has won its merits as a unique trade promotion pattern.

3. Barriers to trade

3.1. Tariff and tariff administrative measures

3.1.1. Tariff peak

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

3.1.2. Tariff quota

Tariff quota administration is imposed by the Canadian authorities upon most agricultural products, including dairy products, poultry, meat, eggs and wheat and barley products, which account for approximately 2% of total imports. For some agricultural products, the out-of-quota tariff rates prove to be extremely high, e.g. 313.5% for other dairy foods for smearing, which constitutes a *de facto* quantitative restriction.

3.2 Sanitary and phytosanitary measures

According to the Animal Diseases and Protection Act, all imported animals and animal products are subject to inspection by the Veterinary Inspection Division of the Ministry of Agriculture and Agricultural Foods. Due to the fact that this Division does not have inspection offices in customs of all importing ports, and that inspectors do not provide 24-hour service, importers have need to apply for inspection to the Veterinary Inspection Offices of local customs in at least 48 hours' advance of the commodities' arrival.

3.3 Trade remedies

Canada has been one of countries that are most frequently using trade remedy measures, represented by anti-dumping measures. From 1981 to the end of 2003, Canada has filed 24 anti-dumping investigations and 1 safeguard investigation involving China. In 2003, Canada filed 2 anti-dumping investigations involving China, and the investigated products are wood Venetian blinds and slats and steel fuel tanks.

3.4.1 Problems in Canada's anti-dumping practices involving China

Over a long period Canada has been deeming China as a non-market economy. In anti-dumping investigations the Canadian authorities disregarded cost information of Chinese enterprises, and determined the normal value of their products using the discriminatory 'third country' criteria, which resulted in unreasonably high anti-dumping duties levied on Chinese enterprises.

In July 2002, in the wind-shield anti-dumping investigation, the wind-shield industry of China was found of market economic status. The Chinese side highly appreciates this progressive improvement.

However, certain unreasonable practices continue to exist in market economy status examination of antidumping investigation by Canadian authorities, which has brought burden to Chinese respondent companies and the Canadian Government. On 18 December 2002, former Canada Customs and Revenue Agency initiated antidumping investigation on carbon steel fittings from China, and issued government questionnaires to the Chinese Government. These questionnaires were of involute requirements ranging from competences of various Chinese authorities, relevant laws and regulations to China's foreign trade administration regime, and required huge workload of information collection and translation, which brought to Chinese Government great working burden. In fact, in previous antidumping investigations, large quantities of materials regarding above issues have been provided by Chinese Government to the Canadian authorities. The Chinese side is concerned about this issue, and hopes that the Canadian authorities make improvements to above practices.

3.4.2. C-50 Bill concerning Product-specific Safeguard Measures and Transitional Safeguard Measures against China

On 31 March 2003, the C-50 Bill concerning product-specific safeguard measures and transitional safeguard measures against China was approved by Canada. Some provisions of the C-50 Bill unreasonably loosened standards for adoption of above measures, aggrandized the discretionariness of the Canadian authorities of such adoption, and thus fell inconsistent with relevant provisions of WTO legal documents. The Chinese side has held several rounds of negotiations with the Canadian side.

3.5. Government procurement

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

There are some discriminatory practices in Canadian provincial government procurement. Preferential treatments are given to Canadian small-and-medium-sized enterprises in most provinces. In the case that Canadian small-sized enterprises offer a higher bidding price, if only the price difference is within a certain margin, these enterprises will be granted priority considerations by the provincial governments. As a general routine, the provincial governments will provide some government procurement programs exclusively to Canadian small-sized enterprises, or reserve part of certain programs to them.

In Quebec, when more than two companies participate in bidding of government procurement programs, the *Canadian First* principle will apply. In Ontario, 10% price preference will be given to providers of Canadian content on the basis of their bidding price, and discriminatory priority principles are allowed when substantial Canadian economic or industry interests are held involved in certain government procurement programs. Priorities are given to local provincial enterprises in Saskatchewan, and in practice, 10% price preference is given to local manufacturers. Special price preference is given to local products in Manitoba. Special preferences are also given to Canadian products in British Columbia, based on factors as employer, investment, export potential etc.

3.6 Barrier to trade in services

Canada continues to restrict foreign investment in health, culture and education sectors, which are evidenced by restrictive measures in fields such as broadcasting services, infrastructural telecommunication services, insurance services, engineering services and legal services.

With relevant legislations, strict protection measures are carried out for Canadian domestic broadcasting services. Ownership of foreign investment in basic telecommunication services and insurance industry is restricted.

Malaysia

1. Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Malaysia in 2003 reached US$20.13 billion, up by 41%, among which China's export to Malaysia was US$6.14 billion, up by 23.5%, while China's import from Malaysia was US$13.99 billion, up by 50.5%. China had a deficit of US$7.85 billion. China mainly exported cereal and cereal powder, maize, household electric appliances, integrated circuit and microelectronic parts, vegetables, textile yarn and products thereof, etc. The major imported products of China from Malaysia included integrated household electronic products and electronic products, diode and similar semiconductor parts, integrated circuits and microelectronic parts, palm oil, product oil, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in Malaysia reached US$230 million in 2003, and the volume of the newly signed contracts was US$260 million. The volume of completed labour service cooperation contracts was US$20 million, and that of the newly signed labour service cooperation contracts was US$20 million. By the end of 2003, the accumulated turnover of engineering contracts completed by Chinese companies in Malaysia was US$1.64 billion, with that of all the contracts signed reaching US$3.06 billion, and the volume of the completed labour service contracts had reached US$150 million, with that of the total contracts signed reaching US$210 million.

According to MOFCOM, 8 Chinese-funded non-financial companies were set up in Malaysia in 2003, with a total contractual investment of US$3.19 million by Chinese investors. By the end of 2003, there were accumulatively 105 Chinese-funded enterprises set up in Malaysia with a total contractual investment of US$38.88 million by Chinese investors.

According to MOFCOM, Malaysian investors invested in 350 projects in China in 2003, with a contractual investment of US$960 million and an actual utilization of US$250 million. By the end of 2003, Malaysian investors had accumulatively invested in 2888 FDI projects in China with a contractual volume of US$7.16 billion, and an actual utilization volume of US$3.09 billion.

2. Introduction to the Malaysian trade regime

2.1. Legislation on trade and investment

Malaysia's laws and regulations involving administration of foreign trade and foreign investment mainly include the Customs Acts 1967, the Customs Import Control Regulation, the Customs Export Control Regulation, the Domestic Tax Act, the

Foreign Exchange Act and the Investment Promotion Act. In addition, the Corporate Act has provided regulations on foreign-invested companies. The Countervailing and Antidumping Act promulgated in 1993 and the implementation regulations thereof promulgated in 1994 contain regulations on countervailing and antidumping measures.

2.2. Trade administration

2.2.1 Import administration

In line with the Customs Acts and the Customs Import Control Regulations, the control on imported products varies according to different categories of goods. Firstly, there are 14 categories subject to import ban. Secondly, there are 40 categories of 411 tariff lines subject to import restrictions, the importation of which can take place only at the presence of import licenses issued by the competent authorities endorsed or recognized by the Customs. Thirdly, certain products are subject to automatic import licensing, on which the licensing authority imposes control for statistical purpose.

2.2.2. Export administration

The Customs Law and the Customs Export Control Regulation control export by categories. Products forbidden to export include green turtle eggs and rattan plants. Products subject to export restrictions can be exported only after obtaining export licenses, special permits or endorsed letters from the head of the customs or government authorities or legal institutions designated by the head of the Customs.

2.2.3. Quota administration

Quota administration is taken charge of by the Department of International Trade and Industry. The Department gives notice annually to qualified enterprises for them to apply for quota. The quota is allocated with consideration of the quota usage of the previous year, and import and export performance. Though with quota, the enterprises shall also apply for licenses from the respective issuing authorities when export or import.

2.2.4. Investment promotion

The government of Malaysia offers preferential policies to foreign investors. According to the Promotion of Investment Act formulated in 1986 and other relevant taxation orders, foreign investors in sectors like manufacturing, agriculture, tourism, information, environmental protection and scientific research and development are entitled to various tax exemption or reduction.

2.3. Tariff policy

2.3.1. Import duties

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

Companies located in Sabah, Sarawak and the East Corridor of the Malaysian Peninsula are exempted from import duties on all the imported raw materials and spare parts the production of which no domestic production exists, regardless of whether the final products are intended to supply local markets or foreign markets.

2.3.2. Export duties

Goods that are subject to export duties include crude oil, timber, logs and palm oil, etc.

2.4. Competent authorities

The Ministry of International Trade and Industry is responsible for the administration of trade and investment, except financial services including banking, insurance and securities. The Ministry of International Trade and Industry, together with certain other competent authorities such as the Fishery Development Authority, the Department of Agriculture, the Atomic Energy Licensing Board, the Department of Veterinary Services, etc., can issue import and export licenses to products within their respective competences. For example, as far as the import and export licensing administration is concerned, the Ministry of International Trade and Industry works in charge of general products and automatic vehicles, the Fishery Development Authority is responsible for fisheries and fishery products, the Department of Agriculture is responsible for plant and plant products, the Atomic Energy Licensing Board is responsible for radioactive materials and devices of radioactivity, the Department of Veterinary Services works for animal and animal products, and the Customs takes charge of alcohols and tobacco products.

The Standards and Industrial Research Institute of Malaysia (SIRIM) and the National Productivity Corporation of Malaysia are the main bodies responsible for product quality and technical regulations.

The Malaysian Customs supervises importation and exportation of goods, as well as levying tariffs.

The Trade Practices Unit (TPU) of Malaysia is responsible for countervailing and antidumping investigations.

3. Barriers to trade

3.1. Tariff and tariff administrative measures

Since 1997, the government of Malaysia has raised the import tariff rates of some large machinery and equipments and some luxury consumer goods.

To protect local industries, Malaysia has begun to implement special tariff policies in certain industries according to market prices. In 2002, Malaysia imposed a high tariff rate of 25% on steel imports, and in March 2002 further raised the tariff of 199 types of steel materials to more than 50%.

3.2. Import restrictions

Only one Malaysian governmentally controlled company is granted import dealership of rice, together with considerable discretion of regulation in this business. The Chinese side hereby expresses its concern over the accessibility of Malaysian rice market.

3.3. Sanitary and phytosanitary measures

Registration and examination system is conducted by Malaysian authorities on foreign production companies that export animal products to Malaysia. All Chinese companies exporting animal products should go through the joint registration and examination procedures by the Malaysian Department of Agriculture and Religious Affairs Board to obtain approval for export. In May 2003, the Veterinary Administration of the Department of Agriculture of Malaysia imposed a general ban on import of Chinese poultry meat without carrying out any testing or producing any evidence, but simply invoking the Japanese Government's allegation of H5N1 avian influenza separated from the duck meat exported by a certain Chinese company. Affected by this ban, 65 containers of frozen chicken meat from China, worth US$ 1.77, was held up in a Malaysian port, which brought great losses to involved Chinese companies. The Malaysian authorities reacted passively to the request of the Chinese side, and didn't lift the said ban on Chinese chicken meat until October 2003. Above measures of Malaysia adversely affected the normal trade of poultry meat between China and Malaysia, and violated, as provided by the Agreement on the Implication of Sanitary and Phytosanitary Measures of the WTO, the principle that appropriate sanitary and phytosanitary protection levels be adopted based on risk assessment. The Chinese side expresses its concern over this matter.

3.4. Barriers to trade in services

3.4.1. Banking

The Central Bank of Malaysia requires 30% of managerial personnel in foreign-funded banks to be Malaysia nationals. The Central Bank also requires that no

more than 40% of the loans to foreign-invested companies and institutions located in Malaysia can be provided by foreign-funded banks and more than 60% provided by local banks. In addition, the existing foreign-funded banks in Malaysia are forbidden to open new subsidiaries or provide automatic teller machines, and the Central Bank does not allow new foreign banks to establish subsidiaries in the country. Foreign investors are allowed to hold no more than 30% of the share of any local banks in Malaysia. Moreover, representative offices of foreign banks in Malaysia can only employ two foreigners. Besides, certain restrictions remain in the network connection between foreign banks in Malaysia and Malaysian local banks.

3.4.2. Insurance

The percentage of foreign shares can not exceed 49%.

3.4.3. Securities

In Malaysia, foreign ownership in securities companies and trust companies are limited to 49% and 30% respectively. In January 2001, the Securities Commission of Malaysia promulgated the ten-year plan for the capital market, it which it's made clear that liberalization of foreign investment access would be put into practice progressively, and foreign investment would be allowed to obtain securities brokerage license and have majority holding shares in trust management companies. Fund management companies that exclusively provide service to foreigners would be allowed to be 100% foreign owned, and those that provide service to both foreigners and Malaysians would be allowed to be 70% foreign owned at best.

3.4.4. Legal services

In Malaysia, foreign lawyers are not allowed to develop local legal services, join local law firms or undertake business in the name of foreign law firms. Foreign law firms are not allowed to have more than 30% of the joint law firm's shares.

3.5.5. Labor services

The Malaysian labor market is not fully accessible to Chinese companies. In September 2003, competent authorities of the two Governments signed the Memorandum for Labor Cooperation between China and Malaysia. According to the Memorandum, under certain conditions the Malaysian Government will grant market access to Chinese technicians in building maintenance, pottery production and furniture production. It's wished that the Malaysian Government would further liberalize its labor market coupled with the development of the friendly political relationship and enhancement of economic and trade communications between the two countries.

4. Barriers to investment

The Malaysian authorities allow 100% foreign ownership in manufacturing industries.

However, the foreign ownership is not allowed to exceed 70% in fields such as paper packaging, plastic packaging, metal ram, metal shaping and electroplating, wire packing, printing and the steel and iron industry.

In May 2003, the Malaysian Government undertook amendment to the policies restricting foreign ownerships. Foreign investors would be allowed to hold 100% shares in foreign investment programs in the manufacturing industry approved after 17 June 2003 and those programs previously approved. The Malaysian authorities would conduct a case-by-case approval in this matter.

The United States of America

1. Bilateral trade relations

The United States of America (hereinafter referred to as the US) is the second largest trading partner of China in 2003. According to the China Customs, the bilateral trade between China and the US in 2003 reached US$12.63 billion, up by 30.0%, among which China's export to US was US$92.47 billion, up by 32.2%, while China's import from US was US$33.86 billion, up by 24.3%. China had a surplus of US$42.72 billion. China mainly exported to US machinery and electronic products, toys, clothing and garments, footwear, furniture, tourist bags, plastic products, etc. China mainly imported from US soy beans, machinery and electronic products, waste steel, fertilizers, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in the US reached US$150 million in 2003, and the volume of the newly signed contracts was US$ 180 million. The volume of completed labour service cooperation contracts was US$140 million, and that of the newly signed labour service cooperation contracts was US$90 million. By the end of 2003, the accumulated turnover of engineering contracts completed by Chinese companies in the US reached US$1.78 billion, with that of all the contracts signed being US$2.42 billion, and the volume of completed labour service contracts had reached US$1.78 billion, with that of the total contracts signed being US$1.83 billion.

According to MOFCOM, 83 Chinese-funded non-financial enterprises were set up in the US in 2003, with an investment of US$110 million by Chinese investors. By the end of 2003, there were accumulatively 786 Chinese-funded enterprises set up in the US with a total investment of US$950 million by Chinese investors.

According to the former MOFTEC, US investors invested in 4060 projects in China in 2003, with a total contractual investment of US$10.16 billion and an actual utilization of US$4.2 billion. By the end of 2003, US investors had accumulatively invested in 41,340 FDI projects in China with a contractual investment of US$86.44 billion and an actual utilization of US$44.09 billion.

2. Introduction to the US trade regime

2.1 Legislation on trade and investment

Currently, there are 4 major laws that govern trade related issues. The Smoot-Howley Tariff Act of 1930 is the main law governing tariff rate setting and tariff imposition. It also regulates antidumping and countervailing issues. The Trade Act of 1974 (amended in 1974) regulates non-tariff barriers issues, GSP scheme to developing

countries, safeguard measures and investigations under Section 301. It provides the main legal basis for US trade administration. The Export Administration Act of 1979 regulates the export control. Omnibus Trade and Competitiveness Act of 1988 is a comprehensive law that regulates economic activities both domestic and international, and provides for investigations under Section 301, Special 301 and Super 301.

2.2 Competent authorities

In the US, the Congress is responsible for the formulation of important policies and laws. The US administration headed by the President implements the laws and policies, and those regarding trade are mainly handled by the Office of the United States Trade Representative (hereinafter referred to as USTR), Department of Commerce (hereinafter referred to as DOC), Department of the Treasury, Department of Agriculture (USDA), etc. Main responsibilities of the executive branches lie in 3 dimensions, namely, tariff imposition which is handled by the Treasury Department and the Customs Office, import and export administration implemented by DOC, USDA and the Customs Office, and foreign trade negotiations shouldered by the State Economic Committee directly responding to the President and the USTR. The State Economic Committee provides guidelines for national safety and macro-economic policies, and the USTR is responsible for multilateral and bilateral trade negotiations. The Department of Defense, DOC, USDA, Department of Transportation and the U.S. International Trade Commission (USITC) provide advice and consultation for trade negotiations. If necessary, the Trade Policy Staff Committee (TPSC) would get involved.

2.2.1 The Congress

As clearly defined in the Constitution, the US Congress has responsibilities for trade administration. Macro trade policies (i.e. strategies) and targets as well as relevant laws and regulations are made in the interest of the nation's economy and security. The Congress also issues authorizations to the President for negotiations. The functions of the Congress in trade administration are served in 4 manners: first, enact laws and regulations regarding trade issues; second, grant prior mandate or give afterwards approvals to executive branches for making important trade policies and signing international trade agreements; thirdly, make annual fiscal budgets for executive branches; fourthly, appoint senior officials for executive branches.

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

2.2.2 Department of Commerce (DOC)

The Department of Commerce (DOC) is the key agency in the federal government who is responsible for trade administration and export promotion. Its main duties includes enforcing trade laws and regulations as well as antidumping and

countervailing measures, implementing trade and investment promotion policies, monitoring the implementation and execution of bilateral and multilateral agreements and providing consulting and training services for American enterprises.

The International Trade Administration (ITA) and the Export Administration (under the Bureau of Industry and Security) are two important subordinated offices affiliated to the DOC. The main functions of ITA include export promotion, trade statistics, tariff information collection, supervision over the fulfillment of market access commitments and the implementation of international trade agreements or treaties by foreign countries, removal of market access barriers, antidumping and countervailing investigations, etc. The Export Administration is mainly responsible for export control in relation to national security and high technology.

2.2.3 United States Trade Representative (USTR)

The predecessor of the United States Trade Representative (USTR) is the Office of Special Trade Representative, established under the Trade Expansion Act of 1962, and was renamed as USTR in 1980. Being the chief trade consultant and trade negotiator for the President, USTR is the cabinet member specifically responsible for the coordination of trade and investment policies and negotiations with other countries in the aforesaid areas. Specifically speaking, its main duties include providing consultations on trade issues for the President; policy and strategy coordination among the White House, the Congress, relevant executive branches and private sectors, representing the US government in bilateral and multilateral trade negotiations. In addition, USTR is responsible for GSP scheme, investigations under Section 301 and other trade remedy related issues.

USTR held structural reform in June 2003. Division for Chinese Affairs and Division for Japanese Affairs were dismissed and incorporated into the Division for North Asian Affairs.

2.2.4 International Trade Commission (ITC)

The International Trade Commission (ITC) was established by the Constitution as a national advisory body for the Government, and is not part of the administration. Its main duties include injury investigations for antidumping and countervailing cases, research on trade and tariff issues and policy recommendation to the Congress, the President and other executive branches based on their findings.

2.2.5 Co-ordinations among foreign trade authorities

Coordination among the Congress and executive branches is conducted through organizations in three tiers. The primary level is the Trade Policy Staff Committee, composed of senior officials from relevant executive branches. The trade Policy Review Group served as the medium level is chaired by the USTR, and consists of 17 representatives from federal executive branches. National Economic Council, the

highest-level agency for coordination, responds directly to the President, and it is composed of the Secretaries of Commerce, Agriculture, Treasury, Transportation and Energy, the Assistants from the committees and agencies under the White House. The main responsibility of this committee is to review and assess the memorandums on trade policy issues, special and controversial trade policy issues submitted by the Trade Policy Review Group.

2.3 Trade administration

2.3.1. Sunset review of antidumping investigation

Sunset review of antidumping investigation, also referred to as expiry review, is the administrative review held by antidumping investigation body upon termination of antidumping measures. The investigation body shall determine to maintain or terminate antidumping measures based on results of sunset review.

The Uruguay Round Agreement Act has provided detailed regulations for sunset review of antidumping investigation. According to this Act, notice shall be made on the Federal Registers by Department of Commerce upon initiation of sunset review. Domestic interested parties shall submit notice for intervention in sunset review within 15 days of notice on the Federal Registers, and those interested parties that fail to submit such notice shall be deemed as unwilling to intervene in sunset review by the Department of Commerce. During the process of sunset review, the Department of Commerce shall not accept or consider any opinion produced by interested parties on their initiative.

2.3.2. Certification of machinery and electronic products

Machinery and electronic products, whether domestically manufactured or imported, should meet a series of standards in US market. There are over 400 certification institutions for machinery and electronic products in US, the most renowned of which are as follows:

Underwriter’s Laboratory (UL), founded in 1894, is the world’s largest non-governmental institution for safety test.

Federal Communication Commission (FCC), founded in 1934, is an independent governmental organization directly responsible to US parliament. FCC works for inter-state and international communication administration, and carries out safety test for products such as TV set, cable, satellite, electric wire, wireless equipment, aircraft, etc.

ETL Laboratory, subordinate to the Intertek Systems Certification Co. (ITS), is responsible for testing and certification of products such as electronic household appliances, automobile, fireproofing products, flaming retarding products, etc.

3. Barriers to trade

3.1. Tariffs and administrative measures

3.1.1 Tariff peak

The US imposes high tariff on certain products, which constitutes tariff peak (see Table III).

Table III Quantity of Tariff Peak Products in US

Index / product	Domestic Tariff Peak Index	International Tariff Peak Index
Agricultural Product (not including fish and fishery product)	323	110
Textile and clothing	408	259
Leather product, rubber product, footwear and traveling appliance	62	43

Illustration: Tariff peak products under 'Domestic Tariff Peak Index' refer to those products tariff rates of which are higher than 3 times of arithmetic average tariff rate of all *ad valorem* tariff items, calculated by 6-digit HS codes. Tariff peak products under 'International Tariff Peak Index' refer to those products tariff rates of which are higher than 15%, calculated by 6-digit HS codes.

The US applies high import duties on pottery and glassware. At present, the average tariff rate of porcelain products is 30%, among which, the rate of products for household-use is 10%, for hotel-use is 32%, and the rates of wine cups and other glassware are 33.2% and 38% respectively.

The tariff rate applied to clothing is 33.3% in the US, and the rate for certain wool fibers is 31.5%. The level of average tariff rate for shoes is comparatively high. For instance, the average tariff rate for shoes of fabric surface is 33%, and the highest rate reaches 48%.

After China's accession to the WTO, import quota of Chinese luggage has been lifted, but the tariff rates remain unchanged. The duty for silk and linen luggage is 6.3%, and the duty for chemical-fibre-fabrics-surface, cotton surface and PVC surface luggage is 19.9%. Some Chinese companies complained that the tariffs for luggage are still high.

3.1.2. Tariff escalation

Serious tariff escalation exists in the US. For metal products, precious metal and precious stone, the arithmetic average tariff for primary product is 0.43%, for semi-finished products, 1.17%, and for finished products, 6.12%. For textiles and

clothing, the arithmetic average tariff for primary products is 7.17%, for semi-finished product, 9.21%, and for finished product, 10.16%. This unreasonable tariff structure seriously diminished the competitiveness of Chinese products in the US market.

3.1.3. Tariff quota

In order to protect the interests of domestic producers, the US has imposed quantitative restrictions on imports of agricultural products through tariff quotas. The quotas are mainly imposed on creams (non-concentrated) and milk containing 1-6% cream without sugar and sweeteners, sealed packed oil, tuna fish, broom species (including sorghum) and certain olive products.

Starting from March 1, 2000, the US has also imposed import quota administration on steel wires.

3.1.3. Restriction on fancy costume import

In February 2000, the US Court of International Trade ruled on the petition tabled by a US fancy costume producer, and adjudicated that the fancy costume should be classified as clothing, and that its HS number should be adjusted from chapter 95 to chapter 61. US Custom Office and US Treasury then announced the acceptance of the ruling, and the Committee for Implementations of Textile Agreements (hereinafter referred to as CITA) decided that the imports of fancy costumes shipped as of April 1, 2002, are subject to quota restrictions. These measures resulted in a rise of 15-20% from 0% of tariff rates for fancy costumes, and licensing requirement for importation of this kind of goods which was not there before.

As the largest supplier to the US, China exported fancy costumes of US$320 million to the US in 2001. The new measures certainly impede China's exports in this sector. The Chinese government holds that these new measures are inconsistent with the principle of the Doha Ministerial Declaration and violate relevant regulations in GATT and the WTO Agreement on Textiles and Clothing. The Chinese government has negotiated with its US counterpart for many times, and called for rectifications on the unjustified measures.

In April 2002, US Department of Commerce appealed the ruling of the Court of International Trade. In August 2003, US Court of Appeals for Federal Circuit overruled ruling of the Court of International Trade. Currently, China's export of fancy costumes is not restricted by quota and high tariff any longer.

3.2 Import restrictions

3.2.1. Import bans

Relevant US Laws regulate that if domestic industries vital to national security is or will be injured by import, the import(s) in question can be subject to restriction.

Article 2 Section 232 of the Trade Expansion Act of 1962 authorizes the President to impose import restrictions upon certain products when the import quantity of a certain product reaches a certain level, or when under certain circumstances, the importation could threaten national security. The measures of import restriction include imposition of extra tariff, quota restriction and/or import license. Moreover, Section 232 also enables domestic industries to file petitions to the relevant US authorities for implementing bans on imports. Furthermore, there is no time limit attached to the ban. When an industry files a petition under Section 232, no evidence of injury is required. Although there are some provisions on factors that need to be considered for determining the injury or threaten of injury to national security as a result of importation, the criteria are very ambiguous. Therefore, the Act grants too much discretionary power to the President, DOC and relevant authorities in practice. In order to avoid trade distortion, China hopes that these measures should be implemented in a more prudent manner.

3.2.2. Import licensing

Certain quota administrative measures, especially those concerning agricultural and textile products, are not reasonable, and have affected China's exports to the US.

At present, the US imposes quota restrictions upon textile and clothing products originated from China, India, Pakistan, Vietnam, etc. However, the Chinese products in question are subject to the most severe quota restriction in terms of the categories of products involved and the quantitative control. In addition, without sufficient evidence as required by relevant bilateral agreements, the US authorities sometimes even unilaterally decide to deduct certain amount of quotas from China' package at its determination that illegal transhipments exist in China's textile trade. These actions had severely affected China's textile export to the US. From December 1990 to the end of 2002, without clear evidences and thorough consultations, the US cut back China's quotas under Sino-US bilateral agreement for 10 times involving over 6 million dozens and 1.3 million kilograms of quotas at the value of more than US$500 million. Chinese companies suffered a great deal of losses as a result. In fact, the thorough investigation afterward revealed that many illegal transits, asserted by the US, were done by exporters of third countries rather than Chinese exporters, and exporters engaged in such transit trade included even some US importers with the assistant from some staff members of the US Customs who imported Chinese products originally destined to third countries to the US market. Consultations were held for solving these problems between China and the US, and US has corrected only some of its practice so far.

Restrictive measures are taken by the US on peanut import. According to quantity of domestic peanut production, the US authorities will decide annual peanut import quota, which will be made public on 1 April every year. All peanut importers are required to store imported peanut in bonded warehouses before 1 April. If the quantity of stored peanut exceeds peanut quota, importers will have to dispose of the peanut of excessive quantity, for example transhipment to third country. The above practice has

impeded the due interests of peanut importers and exporters, posed great obstacle to normal import of peanut.

3.3 Barriers in customs procedures

3.3.1. Unreasonable customs clearance requirements to certain products

Several Chinese companies complained that the US Customs and relevant authorities requested them to provide additional documents and information on goods waiting for custom clearance. For some products, the requirements are quite beyond the necessity for normal customs clearance. These formalities are complicated and incurred excessive costs, which constitutes barriers to new and small exporters. These complicated formalities are often applied to such products as textiles, clothing and footwear. A lot of additional information required by the US Customs is irrelevant to customs clearance and trade statistics collection.

3.3.2. Bioterrorism Act

In June 2002, the US promulgated that Public Health Security and Bioterrorism Preparedness and Response Act (hereinafter referred to as Bioterrorism Act). In October 2003, the US Food and Drug Administration (hereinafter referred to as FDA) publicized Bioterrorism Act's implementation rules, including 2 interim final regulations, namely *Registration of Food Facilities* and *Prior Notice of Imported Food Shipments*, which came into force as of December 2003. FDA also publcized drafts of other implementation rules, namely the *Official Establishment Inventory (OEI) Development and Maintenance Procedures* and the *Administrative Detention of Food for Human or Animal Consumption*. The Bioterrorism Act, together with its implementation rules, set forth regulations of two parts. Firstly, domestic and foreign companies engaged in production, processing, packaging or storing of foods and feedstuffs should be registered with FDA before 12 December 2003, and foods and feedstuffs which unregistered foreign companies produce or participate in the production of would be detained at the entry port. Secondly, after 12 December 2003, imported food should go through prior notice procedure before shipment, and imported food without prior notice would be detained as well.

It's held by the Chinese side that a series of unreasonable points exist in the regulations of the Bioterrorism Act, which may severely affect the food export to the US.

Firstly, obviously the Bioterrorism Act would materially affect food trade, but the US didn't make notice to the WTO in this regard.

Secondly, the Bioterrorism Act would affect practically all companies in the line of food production and export, set forth involute procedural requirements to above companies, and potentially impose unduly strict punishment measures. Therefore, the Bioterrorism Act would adversely affect the normal food trade between China and the

US. On one side, the implementation of the Bioterrorism Act may affect the normal speed of customs clearance by large margin. The food import of the US amounted to US$ 41.9 billion, involving millions of registrations and prior notices. Taking China for example, China's food export to the US reached US$ 1.63 billion, with 2926 exporters and much more production, processing and storing companies. The Chinese side expresses concern over the capacity of the US authorities to complete registration and prior notice procedures in time and guarantee the normal speed of customs clearance. On the other hand, to complete the registration procedure, exporters have to put in resources of personnel and facilities, which would inevitably increase their cost and affect their competitiveness in the US market.

Thirdly, the regulation regarding US agent of the Bioterrorism Act is not justified. The Bioterrorism Act required all exporters to provide information about their 'US agent', which would force exporters to employ an agent. This requirement violates the national treatment principle and weakens the competitiveness of foreign exporters in the US market by increasing their export cost and distorting their existing trade pattern in a material manner.

The Chinese side is greatly concerned over the problems that arise or may arise in the process of the Bioterrorism Act's implementation, and expresses its worry about its adverse impact on the normal export of China's agricultural products to the US.

3.4 Discriminatory imposition of domestic taxes and charges on imports

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

3.5 Technical barriers to trade

3.5.1 Technical measures on trade in the US

The US agencies for technical standards and the authorities of regulation administration are structurally decentralized and dispersedly located. The federal government is responsible for enacting technical regulations in areas such as manufacturing, transportation, environmental protection, food and drugs. American Standard Institute is not a standard making institution itself, but a coordinator of all standard setting. In the US, all the standards are established by various non-governmental institutions, professional societies and industry associations and are later adopted by relevant industries voluntarily. Today, there are more than 400 non-governmental standard institutions and associations in the US. It's also estimated that more than 40,000 standards are adopted as federal standards by the competent US authorities, and that more than 50,000 standards have been established by various US non-governmental standard institutions, professional societies and sectoral associations.

The system of conformity assessment is rather decentralized and complicated. The competent US authorities are responsible for the certification of independent labs, or appointing certain labs as the authorized test labs for different industries. Certificates issued by these labs are valid and recognized by the sector concerned. Recognition and accreditation is mainly carried out by various specific independent labs, and most of them are members of the American Council of Independent Laboratories. As for the Conformity Assessment Procedures (CAP), the US usually applies the Third Party Assessment principle. Globally speaking, for certain industrial products such as electronic equipment and household electronic appliances, the Conformity Assessment Procedures are often carried out by the manufacturers themselves pursuant to the relevant standards. After marketing, the products will then be checked and supervised by relevant authorities. However, the US doesn't adopt this common practice, and insists on having compulsory assessment by a third party. This brings unnecessary burdens to foreign manufacturers.

3.5.2 Technical measures on food

The US started to implement the Nutrition Labelling and Education Act (NLEA) in May, 1994, which imposes compulsory labelling requirement on all pre-packaged food products, and the relevant requirements are complicated and trivial. In particular, the Act requires the label of Nutrition Facts on all packaged foods. For each kind of food, the cost of analysis on nutrition facts is approximately US$500 to US$2000. In 2002, the National Food Processors Association (NFPA) promulgated the Food Allergen Labelling Guidelines, according to which food processing companies are required to clearly and accurately indicate food's ingredients on its label, especially those ingredients that might cause allergic response.

Although the measure is applied to US producers as well, delay in the examination and approval procedure by the competent US authorities brings extra cost for foreign producers.

3.5.3 Technical measures on traditional Chinese medicines and health enhancing food

US FDA adopts various unreasonable administrative measures on the trade in traditional Chinese medicines, regardless of the fundamental differences between traditional Chinese medicines and western medicines.

Starting from the 1980's, the export to the US of traditional Chinese medicines has been blocked by US restrictions in the form of ingredient identification. In recent years, these measures have made many troubles for the exports of Chinese health enhancing products developed according to traditional Chinese medical theories. For example, FDA prohibits food products with statin to be placed on the market as non-medicine. One Chinese product, WPU (WBL) Xuezhikong, produced by WPU Biotech Company, is approved by the Chinese Ministry of Health as a health-enhancing product, whereas, FDA took it as a medicine in 1998 and prohibited

the product to be sold as a health enhancing product, just because it contains natural statin. The arbitrary recognition of certain Chinese health-enhancing products as medicine lacks scientific evidence.

In 2001, the State of California decided that as the heavy metal contents in more than 110 traditional Chinese medicines originated from China exceeded the local heavy metal residues standards for potable water, all the relevant products to be sold in California should bear the label of "having toxics ingredients" both in Chinese and English, according to the Safe Drinking Water and Toxics Enforcement Act of 1986 (Proposition 65). The Chinese producers believed that the purposes and the dose of traditional Chinese medicines were completely incomparable with those designed for drinking water. It was unjustifiable to apply drinking water standards to traditional Chinese medicines. This measure seriously affected the exports of traditional Chinese medicines to the US.

3.6 Sanitary and Phytosanitary Measures (SPS)

The US has implemented many SPS measures on imports. Some of them are inconsistent with the provisions of the WTO/SPS agreement, and have created obstacles for the exports from China.

3.6.1 Bonsai

Early in the 1990s, the US banned the imports of bonsai (Chinese *Penjing*) from China for the reason that the products carried hazardous organisms. In 1992, China had submitted relevant documents of bonsai. In 1994, the competent US authorities proposed that the Chinese authorities chose 5 plants for them to analyze as there were too many species of bonsai intended for export to the US. In April, 1995, the US claimed that, as the possibilities of a change in ecological conditions exist after transplanting those 5 kinds of Chinese bonsais into the accepted growing media, the risk assessment should be reviewed. In October 1996, the US provided China with the risk assessment report on hazardous organisms. In that report, about 100 kinds of hazardous organisms were listed as forbidden in the bonsais to be imported. China held that these requirements lacked scientific evidences, and had impeded normal trade unreasonably. Upon the request of the Chinese authorities, by the end of 1996, US and China had formed a special working group to further study this issue, and had signed the Protocol on the Export of Bonsai from China to the US in April, 1997. But after that, US made things complicated again by bringing out a provision that requires going through 9 steps for importing Chinese bonsais. In 1999, the China-US Agricultural Cooperation Agreement was signed. This agreement makes a specific arrangement for the export of Chinese bonsais, but the US side failed to fully undertake the obligations provided in the agreement.

After rounds of consultation initiated by China, in 2003 the US declared a bill which agreed on import of 5 bonsais, but also set forth stringent quarantine requirements, e.g. in the whole growing process the bonsai could not contact the soil. The above

requirements have strongly violated the regular pattern of plant growing, thus became inconsistent with the bilateral Protocol previously reached, and subsequently rendered the normal trade of this product impossible. The Chinese side expresses its deep concern over this matter, and hopes the US side implement the bilateral Protocol in a concrete manner to promote proper settlement of this matter.

3.6.2. Chinese duck pear and longan

In the China-US Agricultural Cooperation Agreement of 1999, there were set forth quarantine arrangements for importing Chinese duck pear and longan. After rounds of consultation initiated by China, in 2003 the US declared to allow Chinese duck pear and longan export to the US.

In December 2003, the US Department of Agriculture suspended sine die import of Chinese duck pear on pretext that *alternaria kikuchiana tanaka* was detected in Chinese duck pear sold in US market, and required that all Chinese duck pears in US market be withdrawn from shop shelves, unbagged and buried, and that unsold Chinese duck pears be disposed of or returned. The Chinese side considers the above action of the US lack of sufficient scientific basis, violating relevant WTO rules, and requests the US side implement bilateral arrangements in a concrete manner to promote proper settlement of this matter.

3.6.2 Honey and fishery products

In August 2002, while investigating asserted illegal transit trade of Chinese honey, the US authorities claimed that they had found chloramphenicol residue in honey of Chinese origin exceeding the MRL, and whereat detained 50 containers of honey of Chinese origin. The US authorities subsequently banned honey import from China, as well as from countries considered engaged with transit trade of honey with China. Invoking this situation, the Sates of Louisiana and South Carolina prohibited the distributions of certain fishery products imported from China. It's also decided by competent authorities to tighten the MRL of chloramphenicol for Chinese honey, from 5ppb to 0.3ppb. It's also decided that processing companies of the unqualified goods should be put onto the list of automatic detention, which means their goods shall be detained automatically without any inspection. If the producers concerned want to get removed from this list, the importers have to submit applications to FDA together with documents proving that the goods of this producer have passed inspection and are qualified for 5 consecutive batches. If products from one region of China have been found with residues exceeding MRL for several times, all producers in this region will be added to the list of automatic detention. In June 2002, competent authorities of the Chinese Government held consultations with FDA about quarantine of honey and fishery products, and the two parties signed conference minutes.

The Chinese side holds that the Chinese Government and industries have always attached great importance to food safety and adopted a series of quality supervision and inspection measures. On March 5th, 2002, the Chinese government published the

List of Veterinary Medicine and Other Chemical Compounds Prohibited to Use in Food Producing Animals, which bans the use of 29 veterinary medicines and pesticides including chloramphenicol, and also strengthened the inspections of chloramphenicol residues in goods intended for export. The Chinese side believed that the US expansion and strengthening of import inspection measures on Chinese products only because of a few batches of unqualified goods lacked scientific evidences and failed to comply with relevant provisions of WTO agreements. These measures have produced huge negative effects on exports of China's agricultural products.

3.6.3 Canned mushrooms

China's export of canned mushrooms to the US has been almost blocked off due to many years' implementation of unreasonable import quarantine measures by the US. In 1989, claiming that aureus staphylococcal enterotoxin had been found in canned mushrooms produced by 9 factories in China, FDA announced that as of October 17, 1989, all canned mushrooms from China should be automatically detained. The Chinese side held that the introduction of this measure by the US was somehow arbitrary. Many talks have been held between two sides in this regard. By June, 2002, two parties had reached a consensus which was further demonstrated in a draft minutes of the meeting regarding the quarantine issue signed by both parties. In December 2002, the Certification and Accreditation Administration of China submitted to FDA Procedures for Examination and Recommendation, Inspection and Supervision of Chinese Companies Exporting Canned Mushrooms to the US, and set down Procedures for Registration and Approval of Thermal Sterilization Treatment of Chinese Companies Exporting Canned Mushrooms to the US. In September 2003, FDA lifted the automatic detention and batch-by-batch inspection measures previously applied to 21 Chinese canned mushroom exporters recommended by the Chinese authorities.

Currently, the US authorities are going through the materials provided the Chinese authorities, and expressed their willingness to settle the 'automatic detention' problem which has been lasting for 15 years. The Chinese side wishes that the US authorities take serious consideration of the provided materials, and reach satisfactory solution to the quarantine dispute of canned mushrooms.

3.7 Trade remedies

By frequently using antidumping and safeguard measures, the US has practically restricted the exports from China since July 1980. From July 1980 to the end of 2003, the US initiated 104 antidumping investigations and 7 safeguard investigations involving Chinese exports, including 5 product-specific safeguard investigations. In 2003, the US filed 9 antidumping investigations and 2 product-specific safeguard investigations involving Chinese exports.

There are many discriminatory provisions regarding Chinese products in relevant US

legislations. Many unfair practices that exist in the investigations also perform as barriers to China's exports to the US.

3.7.1. Existing issues in the antidumping investigations against Chinese products

3.7.1.1 China's Market Economy Status

Section 771 of Smoot-Howley Tariff Act of 1930 stipulates that there are 6 criteria for defining whether a country is a market economy or not, and they are: the convertibility of the currency of that country; the liberty of employees to negotiate wages with their employers; its domestic market openness to joint-ventures and other kinds of foreign investment; the degree of government ownership of or control over production materials; the degree of government control over the distribution of production resource and the influences on the prices and production quantity; and other factors that are considered suitable for assessment by competent authorities. However, in practice, for consecutive years the US has disregarded China's achievements in its market economy development, and discriminatorily taken China as a non-market economy.

According to relevant US laws, in antidumping investigations, if the respondent company could prove that its industry meets standards for Market Oriented Industry (MOI), the US antidumping investigation authorities should adopt the cost data of this respondent company or its industry in calculation of production cost and dumping margin, rather than adopting Surrogate Country approach. US DOC has set down 3 standards for MOI test as follows: the government hasn't interfered into the pricing or production quantity determination of the investigated product; the production enterprises of the investigated product are mainly privately or collectively owned; all costs in the production process, whether material costs (raw materials and parts, public utilities including water, electric power and gas) or immaterial costs (labor force and management fee), should be purchased at market-decided price. However, although in numerous antidumping investigations, Chinese respondents continued to provide proof for their consistency with above MOI standards, US authorities refused to give MOI status, and insisted on using unfair Surrogate Country approach. This practice has disregarded China's achievements in market economy development, failed to reflect Chinese products' cost advantage in raw materials and labours, resulted in determination of unduly high dumping margin, and severely damaged due interests of Chinese companies.

In color TV set antidumping investigation initiated in May 2003, a certain Chinese respondent applied for MOI status for twice on behalf of China's color TV set industry. This respondent has provided evidences to DOC, effectively showing that this company was a publicly listed company that didn't receive subsidies from the government, and that other Chinese respondents also conducted production, pricing and selling in market-economy patterns. However, DOC failed to consider this respondent's request in a reasonable manner, and refused to give China's color TV set industry MOI status.

3.7.1.2 Profit margins calculation of producers in the surrogate country

When using the surrogate country method, if a surrogate country has many like product producers where some are profitable while some not, DOC normally counts profits of the losing producers as zero. Thus, the average profit margin of the surrogate country is got through dividing the sum of all the profit margins by the number of the producers.

But in recent cases, without prior notice to the Chinese respondents, DOC changed this method suddenly with no good reason. They left out the number of unprofitable companies from the divisor and resulted in an artificial rise of the profit margin of the surrogate country. But at the same time, the indirect costs and marketing, management and miscellaneous costs of these unprofitable companies were counted in the relevant statistics. This incongruous way of calculation put Chinese companies into a very disadvantageous position.

3.7.1.3. Byrd Amendment

In 2000, the US approved the 2000 Continued Dumping and Subsidy Offset Act, also called Byrd Amendment. This act clearly states that antidumping and countervailing duties collected by the Customs can be distributed as Offset Payment by the Department of Treasury to the US domestic producers who have filed the investigation petitions. The US disbursed the first payment of offset payment of US$207 million to the beneficiaries, mainly iron and steelworks and bearing factories, on January 27, 2002, according to this Act. Presently, the offset payment of US$270 million for year 2003 is ready to disburse.

Many countries expressed strong oppositions against the act immediately after its promulgation. Altogether, 11 WTO members including EU had requested a panel on this issue at WTO/DSB (Dispute settlement Body). On September 17, 2000, the DSB panel adjudicated that the Byrd Amendment violated WTO rules and should be repealed. The ruling given on January 16, 2003 by WTO Appellate Body also supported the judgment of the Panel. The Chinese side believes that the Byrd Amendment violates relevant regulations of WTO Agreement on Subsidies and Countervailing Measures, and fosters unfair trade remedy petitions from US domestic industries aiming at importation interruptions. China hopes that the US respects the adjudication of the WTO and repeal the Byrd Amendment at the earliest date possible.

3.7.1.4. Windshield antidumping investigation

In February 2001, suspecting that the flat glass sectors of South Korea, Indonesia and Thailand had got specific subsidies from their governments, DOC refused to use the import prices of purchases by the Chinese companies from these countries. But in the countervailing investigations against these countries thereafter, DOC adjudicated that

the non-specific subsidies got by those countries' exporters had not exceeded the minimum levels. In this case, the Chinese side requests that DOC should correct its cognizance in the windshield case pursuant to the countervailing determination.

3.7.1.5. Bulk Aspirin antidumping investigation

During the Bulk Aspirin antidumping investigation in May 2000, without creditable evidences, DOC deemed that the indirect administrative costs of Chinese producers should be lower than that of the surrogate country producers as a result of the high production integration level of Chinese producers. So, when calculating the normal value of Chinese products, DOC raised the indirect costs for the Chinese products by several times. This had artificially brought up the figures of total production costs of Chinese producers and resulted in a higher normal value. Therefore, the antidumping margin concluded in the final determination was very disadvantageous towards Chinese producers.

3.7.1.6. Antidumping investigation against crawfish tail meat

The relevant regulation of the US stipulates that the level of economic development of the country selected as the surrogate country should be comparable to that of the non-market economy country whose export is subject to investigation. While in recent years, DOC has derailed from this stipulation for many times. During the administrative review for the crawfish tail meat antidumping investigation, although India had been chosen as the analogue country at first, DOC then replaced it with Australia by reason of no mass production of crawfish tail meat and whole crawfish in India. The economic development level of China is far from comparable with that of Australia and the Chinese whole crawfish does not belong to the same species of products of Australia. Furthermore, the production costs in Australia are much higher than those in China. So, the final antidumping duties determined by DOC based on the above-mentioned assessment are extremely unreasonable.

3.7.1.7. Concentrated apple juice antidumping investigation

In 1999, the US initiated antidumping investigation against Chinese concentrated apple juice. Although, one Chinese producer was given the zero dumping margin, and the rest of the respondents were also charged with low antidumping duties, the total export of Chinese concentrated apple juice to the US plumped down. On November 7, 2000, DOC made a re-determination on this investigation, and another 5 Chinese respondents gained 0% dumping rate. But, when calculating new antidumping duties for the rest of the Chinese respondents to whom the weighted average duties should be applied, DOC thought that the number of the companies who had gained 0% dumping margin should not be counted into the denominator. Since all the six verified respondents had been charged 0% dumping margin, DOC deemed that there was no denominator for counting a weighted mean. So very unreasonably, DOC decided that half of the single antidumping duty given to the remaining imports should be the antidumping duty given to the unverified Chinese firms subject to the investigation.

Thus, the antidumping duties to those unverified firms were raised from the original 14.88% to 28.33%.

3.7.1.8 Honey antidumping review

In the honey antidumping review, the US authorities unjustifiably denied 3 Chinese companies of their qualification for new exporter review, which severely damaged their due interests.

In the process of examination, DOC refused a Chinese company of qualification for new exporter review based on false information provided by the US customs. Afterwards, the Chinese company proved in a proper manner that the records of the US customs were false, to which the US customs explicitly admitted, but DOC still refused to give this Chinese company such qualification. This Chinese company was severely affected by this false determination with large bulk of cargo excluded from US market, and its normal operation was greatly frustrated.

In the process of application for qualification of new exporter review, another Chinese respondent provided proof that its supplier had no export of honey to the US in the investigation period, and that this company was not linked with any other company that exported honey to the US in the investigation period, which makes this company fully consistent with requirements of certain US laws regarding qualification of new exporter review. However, DOC found that this company's supplier had sold investigated product to exporters that exported honey to the US in the investigation period and other exporters participating in annual review. On this excuse, DOC refused to give qualification of new exporter review to this company.

DOC also rejected another Chinese company's qualification of new exporter review on pretext that it didn't have qualified sale to the US. In fact, the said Chinese company provided effective commercial invoices and bills of lading, evidencing one of its exports was directly shipped from China to the US, which fully met requirement for direct sale to the US according to relevant US laws. However, DOC argued that the importer was not in the territory of the US, and refused to adopt this sale.

It's deemed by the Chinese side that the above arbitrary practices of DOC contradict relevant US laws and DOC's previous practices, and unjustifiably violate interests of Chinese companies.

3.7.2 Product-specific safeguard measures against Chinese products

3.7.2.1. US Legislation on product-specific safeguard measures

Section 421 of US Trade Act of 1974 sets forth regulations about procedures of implementing product-specific safeguard measures. It's deemed by the Chinese side that Paragraph 16 of the Protocol on the Accession of the People's Republic of China to the WTO doesn't provide sufficiently detailed procedural and substantial

regulations over implementation and enforcement of product-specific safeguard measures, and that Section 421 doesn't provide detailed regulations over certain important concepts and procedures about product-specific safeguard measures. In particular, Section 421 is not consistent with relevant WTO rules in the definition of 'significant cause', criteria for 'rapid increase', definition of 'other related factors', definition of 'similar or directly competitive products', etc.

In the 4 product-specific safeguard investigations in 2002 and 2003, the US authorities referred to Section 201 about global safeguard measures, Section 406 about remedies of import from communist countries and even Section 731 about antidumping investigation. However, it's deemed by the Chinese side that the procedural and substantial requirements for product-specific safeguard measures in Paragraph 16 of the Protocol on the Accession of the People's Republic of China to the WTO is significantly different with relevant provisions of Agreement on Safeguards and Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Agreement on Antidumping) of WTO, and that US's practice of invoking domestic legislation and precedents about safeguard measures and antidumping could not necessarily guarantee the practice under Section 421 fully consistent with provisions of the Protocol on the Accession of the People's Republic of China to the WTO.

It's hoped by the Chinese side that the US amend Section 421 of Trade Act of 1974 to bring it into full consistency with relevant WTO rules.

3.7.2.2. US practice of product-specific safeguard investigation

On 19 August 2002, responding to a US company of critically small production capacity, ITC initiated product-specific safeguard investigation on pedestal actuators imported from China. China's export of this product to the US is only US$ 170 thousand. On 18 October, ITC made the determination that China's pedestal actuators exported to the US caused market disruption to relevant US industry, and suggested quota restrictions. Afterwards, the Chinese and US authorities held consultations. On 17 January 2003, US President Bush decided that no remedies would be adopted.

On 28 November 2002, three US manufacturers of steel wire garment hangers petitioned to ITC for product-specific safeguard investigation of this product from China. On 27 January 2003, ITC made the determination that China's steel wire garment hangers exported to the US caused market disruption to relevant US industry, and suggested remedies of increased tariff rate. On 25 April, US President Bush decided that no remedies would be adopted.

On 5 June, the US Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers petitioned to ITC for product-specific safeguard investigation of Certain Brake Drums and Rotors from China. On 5 August, ITC made the determination that import of said product from China didn't cause market disruption to the US market, and terminated the investigation.,

On 5 September, four US companies petitioned to ITC for product-specific safeguard investigation of certain ductile iron waterworks fittings from China. On 16 October, ITC made the determination that 'critical circumstances' didn't exist in China's export of said product. On 14 December, ITC determined that said import of said product from China caused market disruption to relevant US industry. Afterwards, the Chinese authorities held consultations with the US authorities. On 3 March 2004, US President Bush decided that no remedies would be adopted.

3.7.2.3 Restriction on Chinese textile products

On 17 December 2003, US Committee for the Implementation of Textile Agreements (US CITA) of DOC decided to, according to Paragraph 242 of the Protocol on the Accession of the People's Republic of China to the WTO, request consultation with China on import of brassieres, knit fabrics and robes and dressing gowns. On 24 December, CITA made formal request for consultation, and started to restrict China's export of above textile products to the US as of that day. China and the US have held two rounds of consultations about this matter, without reaching any agreement.

It's deemed by the Chinese side that the petition materials submitted by the US petitioner are wanting in definition of causal link, and bear other inconsistencies with Paragraph 242, and that the implementation procedures of the US restriction measures lack determination on basic concepts such as market disruption, which renders the whole implementation process not conforming with basic requirements for petition as set forth by Paragraph 242. Therefore, the Chinese side strongly opposes to the US determination on restriction measures on 3 textile products imported from China.

3.7.2.4. 201 safeguard measures on steel products

On June 28, 2001, ITC instituted a safeguard investigation under Section 201 on imports of steel products of 4 categories and 33 sub-categories, and then brought up a remedy proposal of imposing tariff elevating, tariff quota or quota restriction in December of the same year. On March 5, 2002, the US government announced to impose safeguard measures pursuant to section 201 on imports of 16 types of steel products from certain countries. The tariff increase ranges from 8-30%, and the term is 3 years.

The 201 safeguard measures on steel products adopted by the US highly violated WTO principles about fair competition and free trade, greatly affected China's export of said product to the US, and brought about chaotic situation to the global steel trade. Chinese enterprises made fierce complaints over this matter, and the Chinese Government attached high attention to the development of this matter. According to relevant WTO rules, soon after US declaration of 201 safeguard measures on steel products, Chinese Government held bilateral consultation with the US Government, requesting for exclusion of Chinese products from the execution list or provision of equivalent compensations, which were founded by regulations of *de minimis* imports

and special and differential treatment for developing countries as provided in relevant US laws and the Agreement on Safeguards of WTO. However, the US side didn't give satisfactory answer to China's reasonable requests. Therefore, in July 2002, China raised a complaint to the Dispute Settlement Mechanism (DSM) of WTO over the US 201 safeguard measures, and made notice to the WTO about its list of retaliation.

In July and December 2003, the panel and appellate body of WTO ruled against US 201 safeguard measures on steel products. Subsequently, the Chinese Government, together with the Governments of EU, Japan and other WTO members, urged the US Government to lift its safeguard measures on steel products. On 4 December, the US Government declared to lift above safeguard measures.

3.8. Government procurement

The Buy American Act of 1933 is the main legal resort for US regulations on government procurement. Many discriminatory provisions exist in this law, such as, the prohibition of certain public agencies to purchase foreign products and services, the application of special standards to local products, requirement on preferential price terms for local suppliers, etc.

For the supply and construction contracts, the un-processed products to be purchased must be made in the US, and the finished products must have more than 50% made locally. The administrative order No. 10582 of 1954 expanded the scope of application of this Act, giving support in practice towards US small and medium sized enterprises as well as enterprises running under their production capacity. It enables the US government to refuse the foreign tenders in the name of protecting national security and national interests. The US government also uses other instruments to help small enterprises in participating government procurement tenders, for instance, to provide loans, or to reserve certain contracts for small enterprises. The value of the reserved contracts is around 30% of the total expenditures of the federal government procurement. In state laws, there are also "buy local" provisions, especially in sectors such as iron and steel, automobile, printing and the related services.

In 2002, a Chinese company complained that its US partner had tried to participate in a tender for a power station organized by the Bureau of Reclamation of the US Department of the Interior for two times, in August and September 2002 respectively, and had been refused both. The US Department of the Interior explained that, according to the provisions in the Trade Act of 1974, the bidder could only use the equipments from the US, the Caribbean, NAFTA and other listed countries. The Chinese side held that the US provisions of government procurement, which limit the supply by origin, had injured China's trade interest unreasonably.

3.9. Export restrictions

In the past few years, the US had continuously restricted exports from several Chinese companies accusing that these companies had exported restricted goods to counties

subject to US sanction.

On August 30, 2001, the US Government announced a two-year sanction on China Metallurgical Equipment Corporation, asserting that it had provided assistance to Pakistan's missile program, and restricted the company from contracting in launching satellites made in the US and/or having parts made in US. Besides, the US company intending to launch satellites using China's Long-march rocket should get permission from the US Department of State. However, if the US company intends to launch satellites using the rocket of other countries, the permission will be issued by DOC. The measure shows its discriminatory nature.

According to preliminary statistics, from 1999 to now, the US has declared sanctions against at least 33 Chinese companies. In June 2002, US authorities announced that 9 Chinese companies were put into the list of red flag and warned US companies to pay special attentions when dealing with these Chinese companies. Currently, 7 Chinese companies still remain on the said list. The US also requested to enlarge the scope of visit to Chinese end users who have imported US high-techs. The Chinese side noticed that competent authorities of the US are drafting new export control laws, and some US parliament members have advocated strengthened control over export of military and dual-use products to China.

It's deemed by the Chinese side that numerous discriminatory practices against China exist in US export control, which has seriously affected the bilateral trade. The Chinese side urges the US to adjust its export control policies and rectify discriminatory practices against China.

3.10. Subsidies

According to the Agreement on Subsidies and Countervailing Measures of WTO, all members should strictly abide by the duty of notice to guarantee the transparency of subsidy policies. However, up to now, only part subsidizing measures on the federal and state levels are made public by the US.

A series of subsidizing and incentive measures on export of agricultural products are set down by the US. Exporters are provided with subsidy in cash under the Export Promotion Program of the US, which apply to products exported to more than 70 countries. Sales promotion activities of agricultural products by US companies on certain foreign markets are also provided with sponsorship under the Market Access Program.

On 2 May 2002, the US House of Representative passed the Farm Security and Rural Investment Act of 2002 (hereinafter referred to as FSRI Act), which was signed by the US President Bush on 13 May 2002. The FSRI Act contains a provision on commercial subsidies, which provides regulation about increase of agricultural subsidy by large margin by the US Government in the enforcement of the FSRI Act (2002-2007) and establishment of security network for the farmers. Under the FSRI

Act, US Government will establish a three-leveled income security network and provide large amount of subsidies for farmers of wheat, cereals for feedstuff, cotton, rice and rapeseed, and provide price and loan subsidies and import protection for producers of dairy products, sugar and peanut. After the enforcement of the FSRI Act, US agricultural subsidies will reach the historic peak both in amount and coverage.

It's deemed by the Chinese side that subsidies under the FSRI Act are yellow-box subsidies, which will pose significant influence on US agricultural product market. The allocation of agricultural subsidies are comparatively concentrated in few agricultural products, namely peanut, dairy products, sugar, etc, and few large farms. Consequently, the FSRI Act will bring undue promotions to the development of US agriculture. Therefore, the Chinese side holds that the above measures of the US have violated its commitment to WTO and in Doha Conference about reduction of agricultural subsidies, and expresses great concern over the possible adverse influence incurred by the FSRI Act to the agricultural product export of developing countries to the US.

3.11 Barriers to trade in services

A great number of restrictive measures exist in the US market for trade in services. Those measures stand as barriers to trade in services. The total volume of export of the trade in services from China is small, so there are not so many complains from Chinese companies at this stage. In this report, we have just commented on the barriers in several important sub-sectors.

3.11.1 Banking

US adjusted its administrative system for the international business sector of banking nationwide in 1991, and enhanced restrictions on foreign banks' local business.

The Foreign Bank Supervision Enhancement Act of 1991 provides that, branches of a foreign bank cannot absorb retail deposits (in small amount)and this kind of business can only be operated by its subsidiaries. The minimum amount of wholesale deposit was US$100,000. This provision has extremely limited the business scope of foreign banks and greatly restrained their development. Moreover, the Act also stipulates that foreign banks are not allowed to join the federal deposit insurance system. This means that the deposit in foreign bank subsidiaries cannot be protected under the Federal Deposit Insurance Corporation Law, and foreign banks need to be examined by the Federal Reserve once a year.

The US stringently restricted the establishment and the business scope of branches and affiliates of foreign banks. For those foreign banks who have already established themselves in the US，for the setting up of every new branch they need to go through application procedures. In practice, the US authorities for financial institution administration very often do not issue retail business licenses to foreign banks. These measures have seriously diminished the competitiveness of foreign banks in the US.

The restrictions on merges, acquisitions and holding majority stake of US banks by foreign banks are very rigorous in the US. The Federal Deposit Insurance Corporation Improvement Act of 1991 regulates that a foreign bank, who acquires more than 5% of the stakes of a US bank, needs ratification by the Federal Reserve Committee, while in the past, this threshold was 25%.

The enforcement of above legislations has seriously affected the business of foreign banks. A number of Chinese banks continue to submit applications to the US authorities of financial institute administration for establishing new branches, but none of them has obtained approval. It seriously hinders Chinese banks' normal business operations in the US. In the period of 10 years from 1991 to 2001, the foreign bank's proportion in total assets held by the US banking sector decreased continuously, from 18% to 14%. At the same time, the number of foreign banks in US also decreased. For example, in New York, there were altogether 463 foreign banks' branches and affiliates in 1991, and in 2001, the number was cut down to 265.

3.11.2. Insurance sector

In the US，the administration of the insurance sector varies from state to state, and the regulations regarding market access for foreign insurance business also differ from one another. This limits the business opportunities for foreign insurance companies. Many states regulate that foreign insurance companies can have branches and subsidiaries in these states, but for the branches of foreign companies, the requirement of registered capital, taxation and management fees are different from the domestic companies. Some states do not issue business licenses to foreign insurance companies who are owned or controlled by their governments. Some states do not allow a foreign insurance company to set up new subsidiaries if it has already got a license from another state.

3.11.3. Professional service

Professional service refers to services such as legal consultancy, accounting, auditing, architecture, relevant construction consulting, etc. In recent years, the US has gradually opened its professional service market. But in some areas, the restrictions still exist. Furthermore, every state has its own regulation on issuing business licenses to foreign professional service entities. The disparity and lack of transparency in the administrative system of each state constitutes barriers to foreign professional service providers.

3.12 Unjustifiable protection of intellectual property

According to Section 337 of the Tariff Act of 1930, ITC conducts investigation into asserted unfair trade practices in import, and impose restrictive measures. In practice, the main target of Section 337 investigation is violation of US intellectual property by foreign companies in the exportation to the US.

In recent years, Section 337 investigations involving Chinese products are increasing rapidly. In 2003, 7 Section 337 investigations are filed against Chinese products, up by 40% compared with 2002. China has become the major target of Section 337 investigation.

Discriminations against imported products exist in the legislation and practice of Section 337 investigation, on which GATT and WTO have ruled against the US. The Chinese side holds that the inconsistencies mainly include: firstly, the criteria for adoption of general exclusion order are unduly low, and administrative judges and ITC have great discretion in determining to adopt general exclusion order, which unjustifiably damages the interests of the foreign exporters not named as respondents. Secondly, certain Section 337 investigations only name country of origin of investigated products without naming respondent companies, which in fact deprives involved foreign companies of the right to respond, and unjustifiably damages the interests of involved foreign companies. Therefore, the Chinese side expresses great concern over the consistency of the legislation and practice of Section 337 investigation with relevant WTO rules.

3.13. Other barriers

3.13.1. Generalized System of Preferences

The Generalized System of Preferences (hereinafter referred to as GSP) is designed to allow industrialized countries to grant non-reciprocal, non-discriminatory and general tariff reductions to developing countries and regions. The tariffs under the GSP are lower than those for most favored nations. The Trade Act of 2002 was signed by the US President on 6 August 2002, which renewed the GSP authorization and extended the GSP scheme to 31 December 2006. As a developing country, China should be eligible for the US GSP as other developing countries. Presently, China has raised this request to the US officially.

3.13.2. Section 301 investigation

The Section 301 refers to the Section 301 of the Trade Act of 1974, and has been amended for many times thereafter. Presently, there are three kinds of investigations invoking this clause: section 301 investigation, special Section 301 investigation and super Section 301 investigation. These investigations are the domestic procedures for the US to implement trade retaliation. Section 301 stipulates that, if a foreign country has implemented an unfair, or unjustifiable or unreasonable trade restrictive measure, or has not given a proper protection on intellectual property rights, the US government would act correspondingly, and the actions include to apply to WTO for the authorization of trade retaliation, or to impose retaliatory measures directly.

In 2001 and 2002, in the annual Special 301 report, USTR placed China in the list for intensified supervision, and claimed that if China could not fully implement the

Sino-US Agreement on Intellectual Property Rights, US would impose trade sanctions. After consultations between the two governments, the US government terminated the special section 301 investigations against China.

3.13.3. Rules of origin for textiles and clothing

The US revised its rules of origin for textile and clothing in July 1996, and the main change is the definition of origins. For textile products, the place of origin changes from the place of processing to the place where fibers are made, and for clothing, the place of origin changes from the place of cutting to that of finished sewing. At present, unbleached cotton fabrics occupy a large portion of total textile export of China to the US. Many countries in Southeastern Asia and Europe import unbleached cotton fabrics from China and process them into clothes. Under such circumstances, according to US new rules of origin, the clothes made in this way should also be counted as originated from China, and consequently shall be counted into the quota assigned to the Chinese export of textile products. It is the same with clothing. Many exports of clothes from China are through processing trade where China imports cuttings from a certain country and exports the finished clothes to the US using quotas of the countries concerned. However, with the new rules, exporting clothes that uses other countries' cuttings should also use China's quota. These measures are against the trade liberalization process on textile and clothing products, and seriously affect China's relevant exports to the US.

4. Barriers to investment

4.1. Discriminations in taxation

The requirements on enterprise information release governing foreign enterprises in the US Tax Code are found discriminatory. The legislation provides that foreign enterprise branches or enterprises with more than 25% shares owned by foreign companies should keep records on every transaction. These records must be kept in places specified by the US tax authorities, and a report on its transactions should also be submitted annually. Enterprises who fail in doing so will face penalty.

The US Internal Revenue Code provides that tax reduction and exemption be restricted when US enterprises pay interests to certain parties not governed by US taxation regime, or when interests are paid for the loans that are guaranteed by parties as such. In practice, the certain parties usually refer to foreign enterprises.

In some US states, when calculating income tax of foreign enterprises, the local authorities estimate arbitrarily proportion of income generated locally against that generated globally by foreign enterprises. In this way of calculation, incomes earned outside that state will also be levied taxes, and it leads to double taxation.

4.2. Conditional National Treatment

The US gives conditional National Treatment to foreign-funded companies.

4.2.1 Reciprocal requirement

Companies only from countries and regions that grant "corresponding" or "equivalent" investment opportunities to the US are allowed to make investments in the US. Under certain circumstances, the US even requires cross-sector-reciprocation, which means that the host country for US investment should also open sectors that are not correspondingly opened by the US.

4.2.2. Performance requirement

Foreign-funded enterprises in the US must make contributions to the US economy and employment, or should reach certain specific production level in terms of output, local content, etc.

4.2.3. Public subsidy

The subsidiaries of foreign enterprises in the US cannot enjoy the R&D assistance and other preferential arrangements enjoyed by US companies.

4.3. Sector restrictions on foreign investments

According to the Jones Act and Outer Continental Shelf Lands Act of 1953, foreign enterprises are subject to certain restrictions in undertaking domestic and offing water transportation businesses. Foreign enterprises need permissions to undertake fishing business in US proprietary economic zones.

According to the Federal Energy Act of 1992, activities of building, operating and maintaining facilities for development, transmission and utilization of energy resources should be undertaken by US citizens permitted by the Federal Energy Management Advisory Committee and US companies set up under the US laws.

Mexico

1. Bilateral trade relations

According to China Customs, the bilateral trade volume between China and Mexico in 2003 reached US$4.95 billion, up by 24.3%, among which China's export to Mexico was US$3.27 billion, up by 14.1%, while China's import from Mexico was US$1.68 billion, up by 50.4%. China had a surplus of US$1.59 billion. China mainly exported machinery and electronic products, textiles and clothes, textile yarn and products thereof, toys, coke and semi-coke, etc. The major imported products of China from Mexico included machinery and electronic products, iron ore, integrated circuits and micro-electronic parts, steel billets and primarily forged steel pieces, diode and similar semi-conductor parts, steel products, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in Mexico reached US$250 million in 2003, and the volume of the newly signed contracts was US$ 160 million. The volume of completed labour service cooperation contracts was US$10.57 million, and that of the newly signed labour service cooperation contracts was US$7.29 million. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in Mexico was US$360 million, with that of all the contracts signed reaching US$350 million, and the volume of the completed labour service contracts had reached US$43.86 million, with that of the total contracts signed reaching US$58.50 million.

According to MOFCOM, 2 Chinese-funded non-financial enterprises were set up in Mexico in 2003, with a total contractual investment of US$3.3 million by the Chinese investors. By the end of 2003, there were accumulatively 47 Chinese-funded enterprises set up in Mexico with a total investment of US$167.41 million from Chinese investors.

According to the MOFCOM, Mexico investors invested in 8 projects in China in 2003, with a contractual volume of US$25.47 million and an actual utilization of US$5.55 million. By the end of 2003, Mexico investors had accumulatively invested in 61 FDI projects in China with a contractual volume of US$71.66 million and an actual utilization volume of US$20.02 million.

2. Introduction to the Mexican trade regime

2.1. Legislation on trade and investment

Mexico's laws regarding trade and investment mainly include: Mexico Foreign Trade Law, Mexico Health Law, Mexico National Security Law, Mexico Industrial Property Law, Regulations on Unfair International Trade Practices, etc.

2.2. Trade administration

2.2.1. Tariff

The average tariff level of Mexico in 2001 was 16.5%, among which semi-finished products stood at 13.5%, capital goods 14.1%, and consumer goods 28.7%.

As of 1 January 2003, according to the North American Free Trade Agreement, Mexico has lifted tariff of 26 agricultural products, including wheat, rice, barley, potato, sugar cane, poultry, pork, beef, etc. currently, Mexico imposes tariff on 3 agricultural products, namely corn, bean and milk powder.

2.2.2. Import licensing

The Ministry of Economic Affairs conducts import licensing administration. Presently, import licensing administration is imposed on imports of petrochemical products (in particular gasoline), motors, large freight carriers, weapons and certain important machineries, which in the aggregate account for 2.8% of the total tariff codes.

2.2.3. Antidumping investigation procedures

In January 1986, Mexico Foreign Trade Law was promulgated, which was drafted according to Section 131 of Mexico's Constitution. Regulations of antidumping investigation are contained in the Foreign Trade Law. In September 1986, as an implementation rule, the Regulations on Unfair International Trade Practices were promulgated. In 1993, the amended Foreign Trade Law was passed, which fortified authority of competent government departments in dealing with unfair trade practices, and shortened the period of antidumping investigation.

Under the Ministry of Economic Affairs, there is established the Vice-Ministerial Office of Standardization and Industry& Foreign Trade Service. The General Administration of International Trade Practices, which is subordinate to the Vice-Ministerial Office, is responsible for antidumping investigation.

Mexican Foreign Trade and Tariff Commission comprises officials from the Ministry of Economic Affairs, the Ministry of Finance, etc. If the General Administration of International Trade Practices makes affirmative determination on imposition of antidumping duties after investigation, it should report to the Foreign Trade and Tariff Commission, which will make definitive determination. Where interested parties of antidumping investigation are not satisfied with the determination in antidumping investigation made by the General Administration of International Trade Practices, they may request administrative review of the General Administration. If rejected by the General Administration, the interested parties may appeal to the Court of Revenues. If not satisfied with the judgement of the Court of Revenues, the interested parties may appeal to the Constitutional Court.

2.3. Competent authorities

The Ministry of Economic Affairs is responsible for foreign trade administration, assisted by the Ministry of Foreign Affairs, the Ministry of Finance and Public Loans, the National Foreign Trade Bank, etc.

In particular, the Ministry of Economic Affairs is responsible for making economic and trade policies, and organizing negotiations with relevant foreign organizations. There are six subordinate organizations under the Ministry of Economic Affairs at vice-ministerial level, among which three are working with responsibilities of foreign trade administration as follows: the Vice-Ministerial Office of International Trade Negotiations which is responsible for formulating foreign trade policies and monitoring the implementation of such policies; the vice-Ministerial Office of Standardization and Industry& Foreign Trade Service, with some subordinate organizations including General Administration of International Trade Practices, the Department of Foreign Trade Service, the Department of Standardization, the Department of Industry and the Department of National Vehicles Registration, among which the General Administration of International Trade Practices is responsible for supervision and punishment of unfair trade practices, and the Department of Foreign Trade Service is in charge of making export promotion plans and monitoring their implementation, administering quota and licenses affairs and addressing rules of origin affairs; the vice-Ministerial Office of Industry and Foreign Trade Promotion, responsible for coordination of other governmental organizations and industries and promotion of foreign trade, industry, small-and-medium-sized businesses and regional economic development.

There are three other vice-ministerial organizations, namely Vice-Ministerial Office of Internal Trade, Office of Planning, Communication and Liaison Technology, and Office of Comprehensive Support. Under the Ministry of Economic Affairs there are also two subordinate organizations at the directorate-general level, i.e. the Office of General Coordinator for Mining and General Administration of Legal Affairs.

Three departments relating to trade administration are established within the Ministry of Foreign Affairs, namely the Department of North American and European Economic Relations, the Department lf Latin American and Asian-Pacific Economic Relations and the Department of the Organization of Economic Cooperation and Development. They mainly coordinate and deal with bilateral or multilateral economic and trade relations with respective countries, and policy issues with relevant international economic organizations.

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

The National Foreign Trade Bank was founded in 1937, with the function of promoting export trade and maintaining trade balance.

3. Barriers to trade

3.1. Barriers in customs procedures

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

In the import of machinery and electronic products, importers should provide to the Mexican customs authorities the quality inspection certificate, issued by the Mexican Ministry of Economic Affairs, manual of operating instructions and repairing guarantee.

Some requirements by the Mexican customs authorities are procedurally complicated and time-consuming, which also go beyond the necessity of customs statistics collection and trade administration.

3.2. Technical barriers to trade

Standards are divided into 2 categories in Mexico, namely compulsory standards and voluntary standards. Compulsory standards are alternatively named as "Mexican Official Standards" (NOM), which aim to protect life and health of human, animals and plants, protect environments or prevent frauds. Voluntary standards are also named as "Mexican Standards" (NMX), which aim to provide guidance to the consumption and production activities, and improve product quality. According to the Federal Law on Measurement and Standardization (LFMN) which came into force on 1st August, 1997, Mexican Official Standards and Mexican Standards are to be reviewed every 5 years.

There are 9 governmental organizations and 6 non-governmental ones in Mexico engaged in making standards. The Mexican National Standardization Commission is responsible for making policies and annual plans of standardization, and coordinating the standard-making activities of other organizations.

In most cases, Mexican National Standards are made based on international standards. Presently, approximately 65% of the Mexican National Standards are consistent with ISO or other international standards. However, such consistency rate proves to be very low in certain fields, some as low as merely 10% to 20%, e.g. standards regarding pollutant emission, place of origin and tourism service, etc.

The Ministry of Health of Mexico publicized a draft of Mexican Official Standards (NOM) in August 2003, which provided the minimum levels of and the testing methods for release of lead and cadmium in earchenware of ceramic glaze and chinaware used as food or drinking container or used for processing of food or drinking. The effective date of this standard remains undecided. The Chinese side will keep a close watch on the implementation of this standard, and expresses its concern over its WTO-consistency.

3.4. Trade remedies

After an anti-dumping investigation in January 1990 on jean imported from China, Mexico has initiated 29 anti-dumping investigations on Chinese products up to end of 2003. Up to now, the Mexican authorities levy anti-dumping duties on more than 1300 Chinese products, most of which are very competitive in the Mexican market.

In 2003, Mexico initiated 4 antidumping investigations involving Chinese products, twice as much as in 2002. The investigated products include carbon steel fitting, baby carriage, hexametafosfato de sodio and steel nail.

On 3 January 2003, the Ministry of Economic Affairs of Mexico declared to initiate antidumping review on ceramic tableware from China. Mexico decided in May 1992 to impose antidumping duties of 23% and 26%on ceramic tableware from China, and in October 1997, raised above duties to 95.06% and 99.81% respectively.

As far as the Mexican anti-dumping measures against Chinese products are concerned, discriminatory practices widely exist both on the legislative and practice level. The Mexican authorities have abused anti-dumping measures against Chinese products, which severely prejudiced China's trade interests. As a typical example, Mexico, in 1993, initiated anti-dumping investigations against more than 4000 products from China, ranging from toys, textiles to footwear, and maintained anti-dumping duties on these products as high as 16% to 1105% for a long period. The above series of anti-dumping investigations claim to be a rare case in the history of international trade, due to its wide coverage, high anti-dumping duty and unfair practices.

Over a long period of time, the Mexican authorities, in their anti-dumping investigations, have been denying China's market economy status. Subsequently, the Mexican authorities have adopted the surrogate country method in determining the normal value of Chinese products, and had undue discretionary power in anti-dumping investigations. The above practices have weakened the opportunity of China's responding enterprises for effective defense, and thus resulted in high anti-dumping duties. The Chinese side wishes that the Mexican authorities adopt concrete measures to redress above unfair practices in anti-dumping investigations.

3.5. Other barriers

On 16 July, 2002, the inspection authorities of the Ministry of Finance and the

Customs Authorities of Mexico inspected a Chinese company in Mexico engaged in motorcycle distribution, and detained 327 sets of motorcycle assembly parts imported from China. It's alleged by the Mexican authorities that this company's distribution price of motorcycles was 50% lower than that of other companies, and that the tail gas emission of this company's imported motorcycles was not in conformity with the Mexican standards. According to relevant Mexican laws, the Mexican authorities should return the detained commodities should the involved company provide counter evidences. The Chinese company submitted to the Mexican customs authorities a statement of defence, and notarized documents for price and other evidence materials issued by the CCPIT (China Commission for Promotion of International Trade) office in Mexico. After rounds of consultations, the Mexican authorities returned the detained motorcycles to the Chinese company, and this matter has reached a satisfactory settlement.

South Africa

1. Bilateral trade relations

South Africa is the largest trading partner of China in Africa. According to China Customs, the bilateral trade volume between China and South Africa in 2003 reached US$3.87 billion, up by 50.1%, among which China's export to South Africa was US$2.03 billion, up by 54.9%, while China's import from South Africa was US$1.84 billion, up by 45.1%. China had a slight surplus of US$190 million. China mainly exported coke, machinery and electronic products, garment, cereals and cereal powders, corn, textile yarn and products thereof, etc. The major imported products of China from South Africa included iron sand and iron fine ores, steel products, steel plates, magnesium sand and magnesium fine ores, paper pulp, etc.

According to the Ministry of Commerce (hereinafter referred to as MOFCOM), the turnover of completed engineering contracts by Chinese companies in South Africa reached US$ 16.31 million in 2003, and the volume of the newly signed contracts was US$ 47.94 million. The volume of completed labour service cooperation contracts was US$2.83 million, and that of the newly signed labour service cooperation contracts was US$3.91 million. By the end of 2003, the accumulated turnover of engineering contracts completed by Chinese companies in South Africa was US$65.86 million, with that of all the contracts signed reaching US$430 million, and the volume of the completed labour service contracts had reached US$50.73 million, with that of the total contracts signed amounting to US$66.96 million.

According to MOFCOM, 10 Chinese-funded non-financial enterprises were set up in South Africa in 2003, with a total contractual investment of US$7.25 million from Chinese investors. By the end of 2003, there were accumulatively 108 Chinese-funded enterprises set up in South Africa with a total investment of US$130 million from Chinese investors.

According to MOFCOM, South African investors invested in 92 projects in China in 2003, with a contractual volume of US$120 million and an actual utilization of US$32.45 million. By the end of 2003, South African investors had accumulatively invested in 334 FDI projects in China with a contractual volume of US$330 million and an actual utilization volume of US$98.55 million.

2. Introduction to the South African trade regime

2.1. Trade administration

The Import and Export Control Act and the International Trade Administration Act serve as the legal basis for South African foreign trade administration.

The import of most products are liberalized in South Africa, but certain special products are subject to licensing administration, which include: fish and fishery

products, certain dairy products, certain red teas, fermented beverages, alcohols, petroleum and certain petrochemical products, radioactive mineral products, certain footwear, waste products, certain medicines and pharmaceutical products, environmentally hazardous products, gambling devices, arms, etc.

Export licensing administration is imposed on strategic products, agricultural products, waste metals, etc. In addition, export of ostrich and its breeding eggs is forbidden.

According to the Import and Export Control Act, the minister of Trade and Industry is responsible for promulgation and publication of the lists for import and export licensing administration. The Import and Export Administration, subordinate to the Department of Trade and Industry, takes charge of issuing import and export licenses without prior agreement of other relevant authorities of involved industries.

2.2. Foreign exchange administration

According to the Foreign Exchange Administration Act as amended in 1999, the South African Reserve Bank is responsible for the administration of foreign exchange. In 1995, South Africa abolished the Financial Rand system, and lifted most restrictive measures of foreign exchange on non-residents. Since June 1997, foreign exchange controls on residents became gradually loosened.

Foreign investors are required for endorsement of 'Non-resident' by authorized dealers on the share certificates for transfer abroad of the share bonus of the publicly listed companies in South Africa. In addition, foreign investors are required to keep records of their investment in South Africa.

Companies are required to file application for taking more than 50 thousand Rands out of South Africa at one time.

Generally speaking, no restriction is imposed on transfer abroad of earnings of investment by non-residents.

2.3. Competent authorities

The Department of Trade and Industry (DTI) of South Africa is responsible for foreign trade administration. The main tasks of DTI include: making national trade development plans and setting domestic market competition rules; providing guidance for development of domestic trade; drafting industrial development plans and investment incentive policies; formulating export promotion policies; drawing preferential policies for foreign investments and plans for overseas investment; conducting foreign economic and trade negotiations and reaching bilateral and multilateral trade agreements; and coordinating trade and investment relations between provinces.

On 22 January 2003, the South African President signed the International Trade

Administration Act. Under this Act, the International Trade Administration Commission (ITAC) was established, the competences and administrative procedures were set down for the Commission, the enforcement of certain parts of the Agreement of the South African Customs Community (hereinafter referred to as 'SACU Agreement') was provided for, and the import and export administration and tariff adjustments under the framework of SACU Agreement were legislated.

On 15 July 2003, the ITAC came into being formally, which incorporates the former Board on Tariffs and Trade (BTT). It's aimed at facilitating fair trade among SACU countries. ITAC enjoys expanded competences on the basis of former BTT, which continues to deal with antidumping and countervailing investigations in SACU region, conducts management and supervision of import and export administration, licensing administration, tariff structural reform and industrial preferential policies, and has the authority to require local importers and exporters to provide business information.

Other governmental organizations relating to trade and investment administration include the National Economic Development and Labour Council and the Board for Regional Industrial Development. Besides, the Credit Guarantee Insurance Corporation and the Industrial Development Corporation also play their respective roles in economic and trade development.

3. Barriers to Trade

3.1. Trade remedies

South Africa is among the countries that most frequently adopts antidumping measures on Chinese products. From April 1990 to the end of 2003, the South African authorities filed 30 antidumping investigations on Chinese products, which covered a variety of products, ranging from light industrial products, native products and animal by-products, medical products and mineral products to hardware products. In 2003, the South African authorities initiated 3 antidumping investigations, involving China's export of US$ 11 million (refer to table IV).

Table IV Antidumping investigations filed by South Africa in 2003 involving Chinese exports

Investigated product	Date of investigation	China's Export Involved (US$ million)
glass fibre chopped strand mats and rovings	2003-11-20	1.18
forged grinding balls	2003-10-3	4.77
glass mirror	2003-5-28	5.50

On 18 November 2003, the Antidumping Regulations was promulgated by ITAC, which for the first time makes clear regulations on antidumping investigation. The Antidumping Regulations is mainly based on relevant antidumping legislations of the EU and the US, which consists of 68 clauses and falls into four parts, namely Definitions, General Principles, Procedures and Review.

In antidumping investigations, the South African authorities continue to deny China of market economy status, only allowing Chinese companies to apply for separate market economy status. The South African authorities issue Questionnaires to Economies in Transition, which require Chinese companies, applying for market economy status, to prove that, in the past or present, no governmental interference existed or exists in the acquisition of raw materials, human power, dynamics and fuels, real estates and equipment, and that the transportation is completed under market economy conditions. In addition, Chinese respondent companies are required to provide information regarding worker's wages, production and sales decision-making, mechanism of sales price, convertibility of foreign exchange, government's authority in appointment of senior managements, government's share in the companies, etc.

Regulations on application of Surrogate Country approach in antidumping investigations are provided for the International Trade Administration Act. ITAC may determine the fair value of investigated products on the basis of the fair values of such products in a third country or a surrogate country if it decides that the governmental interference of the exporting country or country of origin has made the fair value of the investigated products not decided by free market principles. However, on the key issue of how to determine the existence of governmental interference and how to determine the market economy status of a certain country, no specific regulations are provided by the South African laws, and no definite standards are made public in actual practices. This has enabled the South African antidumping authorities to have great discretion in this matter, and resulted in arbitrariness of the determinations.

3.2. Foreign exchange control

in South Africa, certain companies are restricted in the amount of loans from local banks, which include companies with over 75% of capital or assets owned by non-residents, companies with more than 75% of incomes distributed to non-residents, and companies with more than 75% of voting right or capital assets owned or controlled by non-residents. The said loans include all kinds of bank loans, credits, overdraft from banks, financial lease and trusts.

3.3. Other barriers

According to South Africa's Maritime Judicial Regulation Act promulgated in 1993, in the case of disputes between Chinese state-owned companies and companies of other countries (including South Africa), upon request of the involved foreign companies, South Africa may detain vessels of any Chinese state-owned shipping company. The above rules are apparently unjustifiable, and South Africa is the only country applying such rules.

From 2000, 5 vessels of a certain Chinese ocean shipping company have been detained by the South African authorities due to commercial dispute between other state-owned enterprises of China and companies in India, Greece, Cyprus, etc. The detentions were enforced on the allegation that the detained vessels were subject to

the Maritime Judicial Regulation Act because the vessels and assets of other Chinese state-owned enterprises involved in commercial disputes were owned or controlled by the Chinese Government.

The Chinese side has held negotiations with the South African authorities. In July 2002, Mr. Shi Guangsheng, former Minister of Foreign Trade and Economic Cooperation of China, wrote to Mr. Ervin, the Minister of DTI of South Africa, wishing that South African authorities consider China's accomplishments in its market economic progression, and readdress the above discriminatory practice. In July 2003, Mr. Zhang Fuse, the Minister of Justice of China, wrote to Mr. Maduna, the Minister of Justice and Constitutional Development of South Africa, explaining that no relationship of property or civil liability was in existence between the Chinese ocean shipping company and other companies involved in commercial disputes, and requesting that the Minister invoke his right authorized by the Maritime Judicial Regulation Act to exclude Chinese vessels from application of the provision regarding detention of 'related vessels'.

The Chinese side continues to hold its concern over the above matter, and hopes the South African authorities amend the unjustifiable provisions in the Maritime Judicial Regulation Act, and exclude Chinese vessels from application of the provision regarding detention of 'related vessels'.

European Community

1. Bilateral trade relations

The European Community (hereinafter referred to as the EC) was the third largest trading partner of China in 2003, and was China's sixth largest investor in terms of its actual investment. According to the China Customs, the bilateral trade between China and the EC in 2003 reached US$12.52 billion, up by 44.4%, among which China's export to the EC was US$72.15 billion, up by 49.7%, while China's import from the EC was US$53.06 billion, up by 37.7%. China had a surplus of US$19.09 billion. China mainly exported machinery and equipment, electric and electronic product, hi-tech products, electronic technologies, charcoal and semi-charcoal, diodes and similar semiconductors, clothing and accessories, toys, coal, metal products, etc. China mainly imported from EC machinery and equipment, electric and electronic products, hi-tech products, electronic technologies, diodes and similar semiconductors, steel, steel and iron materials, integrated circuits and microelectronic components, paper and paper board, primary plastics, etc.

According to MOFCOM, the turnover of completed engineering contracts by the Chinese companies in the EC reached US$ 420 million in 2003, and the volume of the newly signed contracts was US$ 550 million. The volume of completed labour service cooperation contracts was US$100 million, and that of the newly signed labour service cooperation contracts was US$120 million. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in the EC was US$1.31 billion, with that of all the contracts signed US$1.9 billion, and the volume of the completed labour service contracts had reached US$700 million, with that of the total contracts signed US$850 million.

According to MOFCOM, 41 Chinese-funded non-financial enterprises were set up in the EC in 2003, with a total contractual investment of US$510 million from Chinese investors. By the end of 2003, there were accumulatively 432 Chinese-funded enterprises set up in the EC with a total investment of US$680 million from Chinese investors.

According to MOFCOM, the EC investors invested in 2074 projects in China in 2003, with a contractual investment of US$5.85 billion and an actual utilization of US$3.93 billion. By the end of 2003, the EC investors had accumulatively invested in 16,158 FDI projects in China with a contractual investment of US$65.94 billion and an actual utilization of US$37.87 billion.

2. Introduction to the EC trade regime

The economic integration in Europe began in the 1950s. By July 1, 1968, tariff union was established among the EC members at the time. The establishment of the

European Single Market was basically completed in 1993. The European single currency—Euro, was successfully launched on January 1, 1999, which marked the establishment of the European Economic and Monetary Union among the members of the EC. A series of common policies have been gradually developed and modified during the process of integration of more than 50 years, and among them, those closely related with trade include the Common Commercial Policy, the Common Agricultural Policy, the Common Fishery Policy and the Common Consumer Protection Policy.

2.1. Legislation on the Common Commercial Policy

Article 133 of the Treat Establishing the European Community lies at the foundation of the EC Common Commercial Policy. Art. 133 provides that the Common Commercial Policy shall be based on consensus with emphasis on the revision of tariff rates, the conclusion of tariff and trade agreements, the harmonized adoption of trade liberalization measures, export policies and protection. The EC Nice Treaty, which comes into force as of February, 2003, extends the coverage of the Common Commercial Policy to trade in services, intellectual property and investment. The EC trade policies can be further divided into import and export regimes. The legislative documents mainly assume the form of regulation, directive and decision[1].

2.2. Tariff policy

Common tariff policy of harmonized tariff rates and administration are applied to all the 15 EC members. In 1992, the European Council of Ministers approved the Regulation on Establishing the EC Customs Code (Regulation 2913/92/EEC), providing the common tariff regulation including product classification categories, agreed tariff rates, preferential tariff rates and the Scheme of Generalize Tariff Preference, rules of origin and customs valuation.

2.3. Trade administration

2.3.1. Import administration

The EC legislation governing imports mainly include the Regulation on Implementing Common Rules on Imports (Regulation 3285/94/EC) and the Regulation on the Common Import system for Imports from Certain Third Countries (Regulation 519/94/EC). The EC common import system substituted import quotas previously implemented by member states with the harmonized import quota administration, and

[1] According to the Treat Establishing the European Community, the EC legislation assumes mainly three forms, namely Regulation, Directive and Decision, which are formulated by the Council of Ministers, the European Parliament and the European Commission according to their respective mandate. Regulation is all applicable directly in all EC members with binding force. Directive has into binding force on the addressed EC members and usually cannot be applied directly. Decision is applicable directly to the specified subject with binding force.

harmonized rules were developed regarding import quota allocation, the principles for import license administration and the procedure for relevant administrative decisions.

2.3.1.1. Quota allocation

Import quotas are mainly allocated in 3 ways:

A. Importers are divided into tradition importers and new importers with priority given to the former.

B. First come first get

C. Proportionate distribution

The EC authorities choose from the abovementioned approaches according to different situations. When neither is appropriate, the EC authorities may adopt special administrative measures according to stipulated procedures.

2.3.1.2. License administration

License administration is applied to imports of productions subject to quantitative restriction, safeguard measures and import surveillance. Products currently subject to license administration include textiles and clothing, certain agricultural produces imported from WTO members such as grains, rice, beef , mutton, milk and products thereof, sugar, processed fruit and vegetables, banana, plant oil, seeds and wine, agricultural produces subject to tariff quotas.

2.3.1.3. Import registration

Import surveillance is applied to the imports of 20 categories of products from China. The products subject to surveillance include food preparations, ammonium chloride, polyhydric alcohols, citric acid, tetracycline and its derivatives, chloramphenicol, basic dyes and preparations based thereon, vat dyes and preparations based thereon, firecrackers, polyvinyl alcohols, gloves, footwear, ornamental ceramic articles or porcelain or china, certain glassware, zinc (not alloyed, containing by weight less than 99,99 % of zinc), radio-broadcast receivers for automobiles, bicycles, toys, playing cards, brooms and brushes. According the EC regulations, the importation of the above mentioned products should go through registration procedure.

2.3.1.4. Textile imports

The EC legislation governing textile imports mainly include the Regulation on Implementing Common Rules on Certain Textile Imports (Regulation 3030/93/EC) and the Regulation on Implementing Common Rules on Textile Imports from Certain Third Countries (Regulation 517/94/EC). The latter governs the textile imports from

certain third countries who have not yet reached bilateral agreement on trade in textiles with the EC or textile imports not covered by other EC regulations.

The European Council of Minister promulgated Regulation 138/2003/EC, amending the Council Regulation 3030/93/EC, providing the procedures for application of product specific safeguard against textiles of Chinese origin which include the procedures for bilateral consultations and possible adoption of import restriction.

2.3.1.5. Imports of agricultural products

Regarding the administration over agricultural imports, quantitative restriction is applied to certain products. Legislation governing imports of agricultural products includes the Regulation on Measures necessary to the Implementation of the Agreement on Agriculture reached in the Uruguay Round (Regulation 974/95/EC) and the Regulation on Trade Arrangement on Certain Processed Agricultural Products (Regulation 3448/93/EC).

The European Commission promulgated in November, 2003, the Commission Regulation 1972/2003, requiring the acceding countries to the EU to take measures on the listed agricultural products to maintain normal trade order. The measures include charges on agricultural products in excess of store, levying import duty on agricultural products imported form third countries and placed on the market according to the rate of date on which the products are placed on the market so as to avoid double tax rebate.

2.3.2. Export administration

Most of the products can move out of the EC without any restriction, but a few are subject to certain export restrictions. Legislation governing export include the Regulation on Implementing Common Rules on Export (Regulation 2603/1969), Regulation on the Export of Cultural Products (Regulation EEC 3911/1992), Council Decision of 22 December 2000 on the application of principles of a framework agreement on project finance in the field of officially supported export credits (2001/77/EC).

Export license administration and end-user monitoring system are applied to the export of certain products and technologies involving nuclear proliferation and weapons of mass destruction by the EC. The Council Regulation 1334/2000 on the export control over products and technology for dual uses was promulgated on June 22nd, 2000. The regulation strengthens the control of export activities involving software and technologies by way of electronic media, fax and telephone, and the export permit no longer cover the product itself but also the supply of components, maintenance as well as various technical services. The regulation lists China among countries subject to weapon sanctions. Products with military purpose generally are

prohibited to export to China.

2.3.3. Scheme of Generalized Tariff Preference

Imports into the EC from the developing countries enjoy preferential treatment under the Scheme of Generalized Tariff Preferences (hereinafter referred to as GSP). The GSP "graduation" mechanism of the EC came into place as of 1995. The graduation is divided into "country graduation" and "product graduation". Country graduation refers to the removal of a beneficiary country from the list of countries benefiting from the GSP where it has achieved a specific level of industrial development calculated according to a formula set out in the EC GSP regulation. Product graduation refers to the removal of tariff preferences in respect of products belonging to a given sector and imported from a beneficiary country where the EC imports from that country of the products concerned have exceed 25% of the EC imports of the same products from all the beneficiary countries.

Currently, the EC is implementing its 6th GSP programme (Council Regulation 2501/2002/EC) that covers the period from January 1, 2002, to December 31, 2004. The graduation mechanism set out in the 6th EC GSP Scheme is reversible with respect to both country graduation and product graduation. The tariff preferences are re-established at the application of the country concerned if, in three consecutive years, the country or the sector concerned has not met the criteria set out for graduation.

2.4. Common agricultural policy

The Common Agricultural Policy (hereinafter referred to as CAP), proposed in the Treaty of Rome, is one of the earliest common policies adopted by the EC. The European Commission formally proposed, on June 30, 1960, the Scheme for the Common Agricultural Policy, which has been implemented since 1962. The objectives of the CAP is to improve efficiency in the agricultural sector, to guarantee fair income of farmers, to stabilize markets for agricultural products, to maintain reasonable price levels and to guarantee agricultural product supplies. The major measures adopted by the CAP include the establishment of the Common Agricultural Fund, harmonization of agricultural product markets and prices, subsidies provided for exports of agricultural products as well as import quotas and import duties adjustable at market supply and demand with the aim to protect the EC agricultural sector from the competition posed by cheap imports. The current subsidy to agricultural within the framework of the Common Agricultural Policy reaches Euro 44 billion annually.

After years of discussion, the Council of Agricultural Ministers, in June, 2003, reached a common position on the Common Agricultural Policy Reform to separate subsidy from production.

2.5. Common Fisheries Policy

According to the Common Fisheries Policy (hereinafter referred to as CFP), the EC

decided to extend, as of 1977, its member states' rights to marine resources to 200 miles from their coasts in the North Atlantic and the North Sea which is regarded as the common fishing waters subject to the management of the Community. The member states authorize the European Commission to negotiate fisheries agreements with 3rd countries. The CFP mainly involves the distribution of fishing quotas of the EC, the conservation of marine resources and the marketing of fishery products.

The European Commission published its reform programme on the Common Fishery Policy in May, 2002, to reform on the 20-year-old fishery policy. The European Council of Ministers approved the reform programme tabled by the European Commission in December 2002. The new policy is implemented as of 2003. The new Common Fishery Policy promotes the protection on fishery resources and assists fishing population in finding more proper ways of survival and development by a large cut the size of fishing fleet. The EC will not invest in establishing new fishing fleet.

2.6. Common consumer policy

Article 153 lies at the foundation of the EC Common Consumer Policy, which provides, "In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organize themselves in order to safeguard their interests." It is also provided that consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities, and that apart from implementing the harmonized consumer policy, the EC member states may maintain or introduce more stringent protective measures after notifying the European Commission.

With the aim to establish the single market and facilitate the free movement of goods within the Single Market, the EC authorities have formulated a large number of technical regulations, standards and conformity assessment procedures regarding product safety, quality, packaging and labeling constitute an import part of the Common Consumer Policy.

On January 15, 2002, Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety was published. The directive sets up the guidance for future EU technical regulations and standards, which covers the safety aspect of products in nearly all sectors, establishes the procedure for developing European standards and for disposal of products not in conformity with the requirements prescribed in the directive. The directive comes into force as of January 15, 2004.

In addition, the EC has formulated various detailed technical regulations regarding product safety and quality on electric products, chemicals, food, cosmetics, toys and medical products.

Table V: Major EC Technical Regulations

	Sector/products	Regulation No.
1	Electric products	89/236/EEC，92/31/EEC，93/68/EEC
2	Equipment designed for use within certain voltage lime	73/23/EEC，93/68/EEC
3	Simple pressure vessels	87/404/EEC，90/488/EEC，93/68/EEC
4	Toys	88/378/EEC，93/68/EEC
5	Construction products	89/106/EEC，93/68/EEC
6	Machinery	98/37/EEC，98/79/EC
7	Personal protective equipment	89/686/EEC，93/95/EEC，96/58/EC，93/68/EEC
8	Non-automatic weighing instruments	90/384/EEC，93/68/EEC
9	Active implantable medicinal devices	90/385/EEC，93/42/EEC，93/68/EEC
10	Appliances burning gaseous fuels	90/396/EEC，93/68/EEC
11	New hot-water boilers fired with liquid or gaseous fuels	92/42/EEC
12	Explosives for civil use	93/15/EEC
13	Medical devices	93/42/EEC，98/79/EC，2000/70/EC
14	Equipment and protective systems intended for use in potentially explosive atmosphere	94/9/EC
15	Recreational craft	94/25/EC
16	Packaging and packaging waste	94/62/EC
17	Lifts	95/16/EC
18	Pressure equipment	97/23/EC
19	Vitro diagnostic medical devices	98/79/EC
20	Radio equipment and telecommunications terminal equipment	1999/5/EC
21	Marine equipment	96/98/EC，98/85/EC
22	Household electric refrigerators, freezers and combinations thereof	96/57/EC
23	Transportable pressure equipment	1999/36/EC
24	Equipment for use outdoors	2000/14/EC
25	Fluorescent lighting	2000/55/EC
26	Medicinal products for human use	2001/83/EC
27	Veterinary medicinal products	2001/82/EC
28	Cosmetics	76/768/EEC
29	Chemicals	76/769/EEC，1999/45/EC
30	Electric and electronic equipment	2002/95/EC，2002/96/EC
31	Products with defects	85/374/EEC

2.7. Investment administration

The Treaty Establishing the European Community provides that decisions on investment policy be kept within the competence of member states.

2.8. Competent EC authorities

Decisions concerning the CCP such as trade agreement negotiation shall be made by the European Council of Ministers at proposals tabled by the European Commission after consulting Article 133 Committee. The Directorate-general for Trade (hereinafter referred to as DG Trade) and the European Commission shall work together with experts appointed by member states in the CCP areas, where opinions of various stakeholders, in particular the business circles and intermediary agents, shall be sought.

2.8.1. European Council of Ministers

The European Council of Ministers (hereinafter referred to as the Council) is the decision-making body of the CCP. Following the relevant voting procedure, the Council shall decide whether to adopt a policy, initiate negotiations on trade agreements with third countries, approve an agreement, give the European Commission the mandate for negotiation, set up negotiation objectives for the European Commission, etc. During the negotiation with a third country, the European Commission shall inform and consult member states via Article 133 Committee, and the decision shall be made by the Council, not by any other institutes on its behalf. In most cases, the voting procedure of weighted majority shall apply to a decision in the CCP area in the Council; however, on special issues, consensus shall be reached in making a decision.

2.8.2. European Parliament

According to the EC treaties, the Commission shall consult the European Parliament in trade agreement negotiations. In daily work, the Commission usually informs the European Parliament of its activities in the field of the common commercial policy. The European Parliament share with the Council of Ministers the decision-making rights on certain trade legislation.

2.8.3. European Commission

The European Commission (hereinafter referred to as the Commission) is the executive body of the EC. According to the Treaty Establishing the European Communities (hereinafter referred to as the Treaty of Amsterdam), the competence of the Commission includes implementing Council decisions, submitting proposals to the Council for CCP implementation, making recommendations on negotiations and conducting negotiations on trade agreements with trading partners at the mandate of

the Council.

The Commission has 34 directorates-general, and DG Trade is responsible for the implementation and management of the common commercial policy.

2.8.4. Article 133 Committee

Article 133 Committee refers to the advisory committee set up according to Article 133 of the Treaty Establishing the European Community, which is composed of representatives of the member states. The Commission consults the Committee when addressing issues concerning the common commercial policy.

3. Barriers to trade

3.1 Tariff and tariff administration measures

3.1.1 Tariff peak

The average tariff of the EC in 2003 was 6.4%; however, tariff peaks exist in such sectors as food, beverage, tobacco, textile, etc. For example, in agricultural sector, tariff peaks are maintained on meat, diary products, processed and non processed grains, processed fruit and vegetables, and some of them reaches 209.9% (refer to Table VI). Tariff peaks impeded the export of footwear, live animal products, poultry and animal products and fishery products from China to the EC.

Table VI: EU Tariff Peaks

HS Code	Products	Simple Average (%)	Lowest (%)	Peak (%)
4	Diary products, birds' eggs, natural honey	38.4	0	209.9
2	Meat and edible meat offal	28.3	0	192.2
7	Edible vegetables and certain roots and tubers	12.7	0	150.1
20	Preparations of vegetables, fruit	20.6	0	146.9
8	Edible fruit and nuts, citrus fruit or melons	9	0	118.1
17	Sugars and sugar confectionery	21.4	2.1	114.4
1	Live animals	20.6	0	107.8
10	Cereals	39.2	0	101.1
16	Preparations of marine animals	18.5	0	97.2
11	flour, malt, starches, inulin, wheat gluten	22.2	1.2	84.4
23	Residues and waste from the food industries, prepared animal food	7	0	76
15	Animal or vegetable fats, and oils, prepared edible fats, animal or vegetable waxes	8.9	0	75.8
24	Tobacco and manufactured tobacco substitutes	18.3	2.2	74.9
18	Cocoa and cocoa preparations	11.8	0	68.9
22	Beverages, spirits and vinegar	5.5	0	58.6

12	Oil seeds and oleaginous fruits, plants of economic value, straw and fodder	1.8	0	52.3
19	Preparations for cereals, flour, starch or milk; pastrycook's products	16.4	7.6	49.6
29	Organic chemicals	3.7	0	39.8
37	Photographic or cinematographic goods	5.6	0	23.3
35	Albuminoidal substances, glues, enzymes	7	0	23.2
3	Marine products	9.8	0	23
38	Miscellaneous chemicals products	5.5	0	22.2
21	Miscellaneous edible preparations	9.6	0	21.1
13	Lac; gums, resins and other vegetable saps and extracts	2.2	0	19.2
33	Essential oils and resinoids; perfumery, cosmetic or toilet preparations	2.9	0	17.3
64	Footwear, gaiters and the like; parts of such articles	10	3	17
9	Coffee, tea, mate and spices	3.1	0	12.5
61	Articles of apparel and clothing accessories, knitted or crocheted	11.9	8	12.4
62	Articles of apparel and clothing accessories, not knitted or crocheted	11.9	6.3	12.4
63	Other made up textile articles; sets; worn clothing and worn textile articles	10.1	0	12.4
56	Wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	6.4	3.2	12
69	Ceramic products	4.8	0	12

(Source: WTO Secretariat)

3.1.2 Tariff escalation

Tariff escalation is applied to textile imports. For example, tariff rates for finished clothes are much higher than those on raw materials of textile products. The EC tariff regime provides that non-preferential suppliers, when exporting to the EC, shall be subject to the following MFN rates: average rate at 0.7% for raw materials, average rate at 5.3% for fibre and yarn, average rate at 6.3% for fabrics and average rate at 11.9% for apparel.

3.1.3 Seasonal duties

Apart from specific duties or mixed duties, seasonal duties are levied on certain fruit and horticultural products. Seasonal duties are adjusted when like products of the EC origin begins to be placed on the market. Frequent changes of the tariff rates designed for agricultural produces and horticultural products bring inconvenience to the export of relevant Chinese products.

3.1.4 Tariff quotas

3.1.4.1. Tariff quotas on canned mushroom, garlic, dried sweet potatoes and manioc

The EC applies tariff quotas on the export of canned mushroom, garlic, dried sweet potatoes and manioc from China.

3.1.4.1.1. Canned mushroom

After the German unification in1990 and the accession of Sweden, Finland and Austria into the EC, the EC did not increase the quotas allocated to China in corresponding to the fact that certain market used to be of third countries had become part of the EC market, which restricted the export of the Chinese canned mushroom into the EC, and the market share of Chinese products has witnessed a constant declining. In the allocation of import quotas by nation, the EC refused to increase quotas allocated to Chinese products though it had increased the overall import quotas for the relevant products as a result of its enlargement; however, the national quotas allocated to other third countries such as Poland, Bulgaria, Hungary and Romania witnessed a continuous increase. For example, Poland, in 1980s, exported no mushroom to the EC, but the annual import quota allocated to the Polish exporters increased from 28840 tons to 42630 tons from 1992 to 2001, which far exceeded the export capacity of Poland in the said product. Since the German unification and the accession of the 3 new members, China's export of canned mushroom has been greatly affected. The relevant farmers and processing plants suffer great losses. Consequently, many Chinese plants of canned mushroom have to reduce their production, and some even went bankruptcy. According to the Commission Regulation 2334/2003 of December 31, 2003, the quota allocated to China for the year of 2004 is kept at 22750 tons regardless of the fact that the EC fifth enlargement will take place on May 1, 2004.

3.1.4.1.2. Garlic

Imports of Chinese garlic have been subject to tariff quota administration as of 1994. The Commission Regulation (EC) 1104/2002 of May 25, 2000 provides unilateral quota restrictions on imports of garlic form China. The import quota allocated to China for the period between June 1, 2000, and May 31, 2001, is 12000 tons. The Commission Regulation (EC) No 1047/2001 of 30 May 2001 provides for a quota of 13200 tons for garlic imports from China during the period from June 2001 to May 2002 while 19147 tons for imports from another country with much less garlic-producing capacity. Chinese garlic exports to the EC have experienced a continuous decrease because of the said quantitative restriction. The relevant Chinese industry has suffered losses consequently.

3.1.4.1.3. Dried sweet potatoes and manioc

According to bilateral agreement, dried sweet potatoes and manioc exported from China to the EC are subject to bilateral quota administration with the amount of quota at 600,000 tons and 370,000 tons respectively. With the increasing demand on the Chinese market, the actual volume of export has been much smaller than the quota.

Years ago, the Chinese side has lifted the quota administration on the said products; however, it is still maintained by the EC side.

3.1.4.2. Tariff quota on rice imports

The European Council of Ministers gave the European Commission the mandate to initiate negotiations with other trading partners on the application of tariff quotas on imports of rice. In pursuant to the relevant WTO rules, the European Commission has held consultations with the US, Pakistan, India, Thailand and Guyana, and there is a plant to extend the application of the quota to other trading partners. The Chinese side will watch on the equality and fairness in the application of tariff quota on imports of rice.

As 10 more countries in Central and Eastern Europe will accede to the EC as of May1, 2004, the Chinese side hopes that the EC will increase quotas allocated to China, i.e. quotas on canned mushroom and garlic after the EC enlargement.

3.1.5. GSP

Products in 36 chapters of 9 categories exported from China to the EC are graduated from the GSP according to the EC 5th GSP for the period between 1996 to 2001. According the 6th GSP, products in 11 chapters of 6 categories exported from China to the EC are graduated as of 2003 (refer to Table VII). There are not many products exported form China currently enjoying GSP.

The Chinese side is applying for the special incentive arrangement in accordance to the 6th GSP, and the Chinese side is concerned over the impartiality in the EC assessment. The Chinese will follow closely on the application of GSP restoration clause provided in the EC GSP.

Table VII: Graduated Products Exported from China

Category 3	Chapter 4	Products of animal origin
Category 16	Chapter 39-40	Plastics and rubber
Category 20	Chapter 47-49	Paper
Category 28	Chapter 84-85	Electronic products
Category 29	Chapter 84-85	Consumer electronic products
Category 32	Chapter 90-92	Watch and meters

3.2. Quantitative restrictions

3.2.1. Quantitative restrictions on textiles.

Prior to the China's accession to the WTO, the imports of textiles from China was used to be governed by the bilateral textile agreement in pursuant to the Multi-fibre Agreement. The bilateral agreement was notified to the WTO after China's accession. Currently, quantitative restrictions are still applied to 41 categories of textile products

imported from China. However, only a dozen of categories of textiles exported from many Asian countries at the same development level as China are subject the quantitative restrictions. In addition, the annual increase rate of quotas granted to Chinese products is much smaller than that to those countries.

Taking that state trading is applied to certain silk and linen products, the EC imposes quantitative restrictions on imports of 9 categories of silk and linen products from China.

According to the bilateral agreement, the Chinese side may apply to transfer quotas not used-up in the previous year within the same category of products or among different categories. In practice, when the Chinese side files the application, the EC side usually postpones the reply for quite a long time (at least 2 months), and this affects the internal quota administration on the Chinese side.

The above measures seriously impede the export of Chinese textiles and clothing to the EC.

3.2.2. Quantitative restriction on three categories of industrial products

The EC imposes quantitative restriction on 3 categories of industrial products imported from China, namely footwear, ceramic and porcelain tableware. After bilateral consultation, the EC increases the quotas allocated to the Chinese products (refer to Table VIII) because of its enlargement in May, 2004. The Chinese side will watch closely on the allocation and administration of the import quotas.

Table VIII: Quota Allocated to Certain Product Imported from China

Product	HS Code	Quota/annum	
		2004.1-4(EU15)	2004.5-12(EU25)
Footwear	ex640299	18201035pairs	58538970pairs
	640351，640359	1423109pairs	3183457pairs
	ex640391，ex640399	5634436pairs	13992904pairs
	ex640411	8474332pairs	18901998pairs
	64041910	14828849pairs	33502413pairs
Porcelain tableware	691110	28036tons	67905tons
Ceramic tableware	691200	21212tons	58124tons

3.3. Technical barriers to trade

The EC has developed in recent years a large number of technical regulations, standards and conformity assessment procedures. Part of the technical regulations and procedures establish over-strict requirements on products, and some even lack sufficient scientific proof, which directly or indirectly constitutes a kind of barrier to export from third countries in particular the developing countries.

3.3.1 Technical regulations

3.3.1.1 Directive on the restriction on the marketing and use of certain azocolourants

On September 11, 2002, Directive 2002/61 was published, amending for the 19th time Directive 76/769/EEC, restricting the use of 22 azocolourants in textile and leather products. The EC member states have adopted the directive as of September 11, 2003. The member state authorities have already restricted the placing on the market of several products containing azocolourants. The directive provides that azocolourants releasing the aromatic amines above 30 ppm in the finished articles or in the dyed parts shall not be used in textile and leather articles which may come into direct and prolonged contact with the human skin or oral cavity. By way of derogation, until 1 January 2005, this provision shall not apply to textile articles made of recycled fibres if the amines are released by residues deriving from previous dyeing of the same fibres and if the listed amines are released in concentrations below 70 ppm.

Products that fail to comply with the directive shall not enter the EC market after the said date. The Commission Directive 2003/03/EC promulgated in January, 2003 restricts the use of blue colorant in textile and leather products.

What needs to be mentioned is that currently, opinions still vary on the negative impact on human health of certain azocolourants in textile and leather products.

3.3.1.2. WEEE and RoHS directives

On February 13, 2003, the EC promulgated the Directive 2002/96/EC on Waste Electric and Electronic Equipment (WEEE) and the Directive 2002/95/EC on the Restriction of the Use Certain Hazardous Substances in Electric and Electronic Equipment (RoHS). WEEE provides that producers of products placed on the market as of August 13, 2005, provide deposit for the expenses incurred in the collection, treatment, recycling and environment-friendly disposal of waste electric and electronic products, and that producers pay for the disposal of waste products (not intended for private household user) placed on the market (historical wastes) before August 13, 2005. The RoHS directives provides that member states ensure restriction of the use of lead, mercury, cadmium, chromium VI, PBB and PBDE in electric and electronic products placed on the market as of July 1, 2006.

The Chinese side is concerned over the effect of the two directives on the bilateral trade in electric and electronic products. MOFCOM has been keeping in touch with the relevant EC agencies. The Chinese side is particularly concerned over the sharing of the cost for the disposal of historical wastes and the current absence of standard testing methods for the implementation of RoHS directive which may increase the cost of small and medium sized enterprises outside the EC. It is hoped that the relevant information will be passed to third countries to minimized the effect on trade.

3.3.1.3. Registration, Evaluation and Authorization of Chemicals (Draft)

The European Commission passed on October 29, 2003, the draft on the Registration, Evaluation and Authorization of Chemicals (hereinafter referred to as REACH). According to the legislation procedure, the draft will be discussed in the European Parliament and the Council of Ministers. REACH is intended to take the place of the 7 directives currently governing chemicals by a harmonized registration-evaluation-authorization system to administer the production, importation and sales of chemicals. Though REACH will play a positive role in strengthening the safe management of Chemicals and the reduction of damages caused by chemicals on human health and environment, it will increase the production cost by a large margin for its over complicated registration procedures, expensive testing fees, documentation requirements and lack of protection on commercial secrets. REACH will have great impact on downstream industries as well as international trade in chemicals.

The Chinese side assessed the draft on REACH and provided comments to the European Commission, pointing out issues in the draft concerning risk assessment of chemicals, information flow, registration procedures, data requirements and sharing, evaluation procedures, authorization procedures. The message was also passed to the EC at the WTO TBT Committee meetings and China-EC Economic and Trade Jointly Commission meetings.

There are substantial amendments in the final draft, opinions of the interested parties have been taken; however, the issues of insufficient consideration over the industrial and trade interests of developing countries, repetitive legislation on certain chemicals and the sharing of costs for data generating have not yet been addressed. The second draft covers genetically modified products, which increase the burden on information concerning production chain.

The Chinese side will follow closely on the discussion about REACH and watch closely on the consistence of REACH with relevant WTO rules.

3.3.1.4. Eco-design Directly (draft)

The European Commission passed the Eco-design Directly (draft) on August 1, 2003, which introduces the concept of life-circle environment effect assessment. It is provided that manufacturers or importers assess the product's effect on environment during the whole life circle at the stage of design, and that design be chosen by balancing the environment performance and product's safety, function and quality to minimize negative effect on environment. The directive provides that manufacturers conduct conformity assessment in pursuant to the implementing details formulated otherwise, and the CE marking be attached before a product is placed on the market.

The draft stipulates that when a product whose manufacturer is a participant to EMS or a product is granted with Eco-label, the product will be regarded as in conformity with the relevant requirement of the directive. As manufacturers outside the EC find it

difficult to participate in EMS, the requirement put products and manufacturers outside the EC in a disadvantageous position, and constitutes as a kind of discrimination.

The Chinese side is concerned over the consistence of the directive with the WTO rules.

3.3.1.5. Draft directive on traditional herbal medicinal products

The draft directive of the European Parliament and of the Council amending Directive 2001/83/EC as regards traditional herbal medicinal products (hereinafter referred to as Herbal Medicinal Product Draft) was published on January 17, 2002. The Herbal Medicinal Product Draft provides that traditional herbal medicines shall not contain any active ingredients at pharmacologically active levels or not originated from herbal, plant or other vegetable substances, that it shall be clearly indicated that efficacy of this herbal medicine has not been proved by clinical evidence, that the traditional herbal medicine shall be available for use within the EC for 30 years, or that the product shall be available for medicinal use within the territory of the EC for 15 years and in a specified territory(ies) outside the EC throughout a period of time which completes the period of 30 years. The European Parliament made in November, 2002, recommendations to amend the draft which mainly include a broader definition of traditional herbal medicine which allows traditional herbal medicine to have non-herbal medicinal ingredients, the deletion of the requirement to indicate that efficacy of this herbal medicine has not been proved by clinical evidence, the shortening of the available period from 15 years to 10 years, authorizing member states to register traditional herbal medicines not up to the minimum period of availability with the EC. However, the recommendations were not fully taken in the common position of the European Council of Ministers and the modification made by the Commission. The draft tabled by the Commission in April, 2003, provides that the traditional herbal medicine shall in principle be available for use within the EC for at least 15 years; neither does the draft authorize member states to register a traditional herbal medicine not up the minimum requirement on the availability period.

The Herbal Medicinal Product Draft provided, on theory, the possibility for traditional Chinese medicine to access the EC market in the name of medicine; however, the provisions on the minimum availability of use still constitute practical obstacles to the export of relevant Chinese products.

3.3.1. 6. Amendment to the Battery and Accumulator Directive

The European conducted a 2-moth online public consultation on the amendment of Battery and Accumulator Directive as of February, 2003. The Chinese industry tabled its positions to the Commission in April, 2003, recommending that sufficient consideration be given to the battery's environment impact, the currently economic and technology development, market demand and possible cost on producers incurred by the collection and recycling of waste batteries during the process so as to make a

reasonable amendment to the directive and ensure the sustainable and healthy development of battery industry. The Chinese industry points out that the amendment shall not create and differentiated treatment to between producers inside and outside the EC.

In the modified draft tabled by the Commission in November, 2003, the EC adopts higher standards than the international ones concerning the contents of certain substances in batteries. The Chinese side is concerned over the reasonableness of the requirement and will follow closely on the amendment of the battery directive.

3.3.2. Standard for child-resistant lighters

The Committee of European Normalization (hereinafter referred to as CEN) published in May, 2002, Standard for Lighters – Child-resistance for lighters – Safety requirements and test methods (hereinafter referred to as EN 13869:2002), mainly requiring lighters with an ex-factory value or customs price less than 2 Euro to install child-resistant device (hereinafter referred to as CR). China is one of the world's largest lighter manufacturers, as well as one of the major suppliers of lighters to the EC market. Prices of the majority of the lighters on the EC market imported from China are less than 2 Euro. EN 13869:2002, which establishes a linkage between the price and the safety of a product, does not comply with the relevant WTO rules, in particular the provisions of the Agreement on Technical Barriers to Trade, and constitutes a kind of discrimination against lighters imported from China and the relevant Chinese industry. The standard will impede the export of Chinese lighters to the EC. The standard puts all responsibility of safety on lighter itself ignoring other means to prevent accidents occurred by children's use of lighters. The requirement constitutes a kind of unjustified barriers to trade in lighters.

Before and after the publication of the standard, the Chinese side has expressed concerns over the unjustified provisions in the standard and the possible trade distortion effect of the standard. In January, 2003, the European Commission sent a little to CEN, suggesting to use technical definition instead of price threshold and to consider the possibility of simplifying certification procedure. After 12 months' discussion, CEN insists on the previous version. In September, 2003, the Chinese side expressed once again its concerns over the application of the CR standard, requesting that prior to mutually agreeable amendment, CR standard not be published as a referenced standard within the framework of General Product Safety Directive and not be granted with any compulsory nature. The Chinese side will watch closely on the relevant EC decision.

3.3.3. Conformity assessment procedure

The EC establishes 8 harmonized models (and 8 derivatives) of conformity assessment procedures with respect to different products and criteria. However, differences exist in the implementing measures of member states, which creates

obstacles to the free movement of some products imported from China on the EC market. For example, the Chinese machine tool industry complains that while Germany, Spain, Netherlands, Greece and Italy accept machine tools imported from China which bear CE marking after self-certification according to the criteria of CE marking, the competent authorities of the Nordic members sometimes require the products to satisfy higher standards before being allowed to place on the market. Sometimes modifications have to be made to meet the requirements. These increase the difficulties and uncertainty for Chinese products to gain access to the EC market.

The Commission Directive 2003/66 of March, 2003, amends the requirements on energy labeling on household refrigerators, providing that refrigerators with energy consumption at 30-42% of the designed energy consumption at standard conditions be classified as A+ and energy consumption below 30% as A++. The directive requires that member states adopt and publish the provisions to comply with this Directive no later than 30 June 2004, and Member States shall allow the circulation of labels, fiches and communications with industries no later than 1 July 2004. As the certification for energy labeling can only be conducted by the EC accredited certification agents, the change of the requirement may increase the certification cost of Chinese exporters.

3.3.4. Label/marking

3.3.4.1 Labels on cosmetics

The EC requires member state to take all necessary measures to ensure that labeling on cosmetic packaging, container and marking be prominent, and the information be provided about the name and address of producer and distributor or registered office, volume of container, shelf life, instructions, and approved number or identification. Member states are required to take all necessary measures to ensure that wordings or pictures or other forms of labeling, specification and advertisement imply certain features that cosmetics do not possess.

3.3.4.2. Eco-label standard

A series of modified EU eco-label criteria were published in 2002 for the purpose of enhancing the environment protection level of products. Very strict requirements are provided for regarding the content and emission to air of certain hazardous substances in raw materials and finished products of textile products, paper, etc. In addition, criteria are set for the consumption of energy and natural recourses and the disposal of wastes in the process of manufacturing. Currently the EC has promulgated Eco-label standards on 19 products such as detergent, various tissue paper, washing machine, dish washer, bed, bedding, soil modifier, interior paintings, footwear, fibre products, paper for copying machine, bulb, personal computer, refrigerator, TV set, and companies are encouraged to apply for it.

The relevant Chinese industries show their concerns over the possible tendency of

protectionism by abusing such environmental protection requirements as eco-label criteria.

3.4. Sanitary and phytosanitary measures

3.4.1 Complicated food safety regime

The EC has frequently published new and modified policies and technical regulations on food safety. The increasingly complicated food safety regime has in fact become a serious barrier to the imports of food from third countries. The EC has designed heavy and complicated certification and registration procedures to governing imports of products of animal origin, as well as the always changing criteria on food safety. The relevant Chinese industry complains about the difficulties in knowing exactly the EU food safety policy and the specific requirements, and it has become one of the reasons why exports from China are rejected from time to time for not in compliance with the EC requirements. On the other hand, in order to catch up with the EC changing requirements on food safety, the Chinese industry has to provide a lot of documents and receive the EC on-spot inspections. These increase the burden of the relevant Chinese industry.

3.4.1.1. Regulation laying down health rules concerning animal by-products not intended for human consumption

Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption stipulates in details the collection, production, processing, storing, disposal and placing on the market of animal by-products not intended for human consumption. The implementation of the regulation may affect the export of petfood, gelatin, hydrolyzed protein, greaves, fishmeal about USD 100 million. The Chinese side will follow closely the measures adopted for the implementation.

3.4.1.2. Regulation on transboundary movements of genetically modified organisms

Regulation (EC) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms provides for the traceablilty from production to sales of genetically modified organisms. Products both food and feed with genetically modified organisms exceeding 0.9% placed on the market shall attach the label of “Genetically modified product}. All genetically modified products shall be subject to the risk assessment at the European Food Safety Bureau. The GMO content in the new regulation is lowered from the previous 1% to 0.9%. Product classified as GMO product shall present detailed specifications.

3.4.1.3 Directive as regards indication of the ingredients present in foodstuffs

Directive 2003/89/EC of the European Parliament and of the Council of 10 November 2003 amending Directive 2000/13/EC as regards indication of the ingredients present in foodstuffs amends the Directive 2000/13/EC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, by requiring that ingredients in food exceeding 2% be indicated by the name of the substance rather than the name of the group of substance , which was used to be applied to ingredients exceeding 25%. The Chinese side is concerned that the measure may exceed the necessity to attain its legitimate objective.

3.4.2. Residue standards

3.4.2.1 Withdrawal of the authorization on the use of active substances

The Commission withdrew in December, 2003, the authorization on the use of 110 active substances in addition to the 320 substances withdrew in July, 2003, and 20 previously withdrew. The number of actively substances authorized to be used in the EC has been cut by more than one half.

3.4.2.2. Residues in tea

Maximum residue limits (hereinafter referred to as MRL) have set for 118 pesticides. The revised EU MRL of pesticides in tea which comes into force as of July, 2001. The revised fenvalerate MRL in tea is reduced from 10mg/kg to 0.1mg/kg, and the new fen propathrin MRL to 0.02mg/kg. The principle on risk assessment is that MRL of chemicals in food should be set according to the daily intake of the chemicals concerned. People drink tea water in which dried tea leaves have been put; therefore, pesticide MRL of tea shall be developed according to the amount of pesticide released into the hot water where tea leaves have been put. The sampling procedure designed for tests on pesticide residues in tea provides that samples should be taken from dried tea leaves rather than tea water. In reality, the amount of pesticide residues in dry tea leaves are usually much more than that released into tea water. Tests on samples of dry tea leaves will certainly discover a lot of cases exceeding MRL. The measures have already put the export of tea from China to the EC into great difficulty. The Chinese side requests that pesticide residues samples be taken from tea water rather than dry tea leaves.

3.4.2.3. Aflatoxin in corn

The European Commission published the draft to revise the maximum limits of total aflatoxin in corn in 2003, revising the limit to 10μg/kg; however, the maximum limit set by the Codex Alimentarius Commission is 15μg/kg, but the US FDA 20μg/kg. The proposed EC standard is much stricter than the international standard.

3.4.3. Suspension on imports from China of food of animal origin

The EC regulation prohibits the use of chloramphenicol in food production. The EC prohibited the import of all products of animal origin from China and intended for human consumption or animal feed use except casings and certain fishery products caught, frozen and packaged in their final packaging at sea and landed directly on the EC territory following the detection of chloramphenicol in certain food products imported from China. In the same year, the Chinese competent authority detected chloramphenecol in products of animal origin imported from the EC. The EC import ban on Chinese food products overextends the scope of products subject to the protective measure and does not have sufficient scientific evidence. Chinese exports to the EC suffered from the ban have reached about US$500 million. The Chinese side expresses great concern over the non-national treatment existing in the EC regarding the use of chloramphenecol and residues monitoring.

By the end of 2003, the EC has lifted the suspension on certain imports from China; however, the poultry meat, rabbit meat, honey, shrimp are still subject to the import suspension, which accounts for 1/3 of the exports of products of animal origin from China to the EC. The EC inspection in China from September 12-27, 2003, recognizes the improvement the Chinese authorities have taken on residue monitoring; however, recommendations for further improvements were made. The EC inspection report was handed over to the Chinese side in November, 2003 on which the Chinese side had commented. The Chinese side is looking forward to the final report.

3.4.4. Others

The Commission directive 2002/72/EC of 6 August 2002 relating to plastic materials and articles intended to come into contact with foodstuffs as amend to 90/128/EEC provides the prohibition of sales and importation of plastics and articles which contain Divinylbenzene not satisfying the maximum limit stipulated in the directive and the prohibition of sales and importation of plastics and articles in contact with food not in compliance the directive.

The European Council of Agricultural decided in August, 2003, that four antibiotics, namely Monensin –Natrium, Salino-mycin-Natrium, Avil-amycin and Flavophospholipol, will be prohibited to use as feed additives as of end of 2005.

3.5. Trade remedies

The EC legislation in the area of trade remedies mainly include Regulation (EC) 384/1996 on protection against dumped imports from countries not members of the European Community, Regulation (EC) 2026/1997 on protection against subsidized imports from countries not members of the European Community and Council Regulation (EC) No 3285/94 on the common rules for imports. The 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 Regulation (EC) No 519/94 on common rules for imports from certain third countries provides for the determination of market disruption and trade diversion, the procedures for investigation and bilateral consultation and the adoption of product specific safeguard measure.

By the end of December, 2003, EC has initiated 98 anti-dumping investigations involving Chinese exports and 2 safeguard investigations. Among them, there are 3 anti-dumping investigations and 1 safeguard investigation. By the end of 2003, anti-dumping and safeguard measures are taken against 33 products and 1 product respectively of Chinese origin.

3.5.1. EC enlargement on trade remedies measures

According to the Acceding Treaty signed between 15 EC members and 10 associate member states, EC will extend to 25 members as of May, 2004. The EC enlargement will have great impact on the EC trade remedy policy and actual implementation. First, according to the EC common commercial policy, the currently legislation on trade remedy will apply to all 25 members, and the relevant legislation in the 10 acceding countries will be nullified. Second, the composition of the EC agencies related with trade remedy measures such as the Council of Ministers, the European Commission, Advisory Committee is subject to change, and the trade interests of the acceding countries will influence the future trade remedy policy and its actual implementation. Thirdly, the trade remedy measures currently adopted by the 15 EC members will be automatically applied to exports to the enlarged EC of 25 members, which means that investigations initiated before May 1, 2004, will base on statistics in the EC of 15 members, but the result will be applied to the EC of 25 members.

Currently, anti-dumping and safeguard measures are taken against 33 products and 1 product respectively of Chinese origin. The volume of export of the products subject to the EC trade remedy measures to the 10 acceding countries in the past 3 years reached US$ 100 million annually on average. The automatic application of the EC trade remedy measure to the 10 acceding countries will have a great impact on the export from China to the 10 countries and play a destructive role on the trade channels established by Chinese exporters in the 10 acceding countries. Some of the products exported from China may even be driven out of the market, and thus the exporters suffer a consequent loss.

3.5.2. Market economy status

China is discriminatively taken as a non market economy in the anti-dumping investigations initiated by foreign government against Chinese exports, which has serious negative impact on Chinese exporters in responding to the investigation. It is one of the major discrimination imposed on China within the WTO framework. The EC has been regarding China as a non-market economy, and consequently, in its anti-dumping investigations, the normal value of imports from China shall be determined on the basis of the price or constructed value in a market economy third

country, the "surrogate" country. In June, 2003, China officially applied to the EC for the status of full market economy. Since then, the Chinese leaders when meeting their counterparts in EC and the EC member states have repeated their wish to solve the issue. MOFCOM delivered to the EC the Chinese Market Economy Development Report: 2003 written by Chinese research institutes, which studies the achievement in the construction of China's market economy.

With the effort from MOFCOM, the EC agreed to give a preliminary reply to the application in the first half of 2004.

3.5.3. Individual treatment and surrogate country

In dealing with anti-dumping investigations, the EC may determine an individual duty for an exporter at the application of Chinese exporters, and 5 criteria are provided for. In the Commission Regulation 1972/2002, EC officially includes the 5 criteria determining individual treatment in its anti-dumping legislation. Since the acceptance of Chinese exporters' application for individual treatment, the EC has granted market economy status to 25 Chinese exporters.

Currently, when calculating the normal value of exports with the origin of a non market economy, the European Commission usually chooses as the basis the cost and selling price in a surrogate country of market economy producing similar products. It is no doubt that the production situation and conditions in the exporting country differ from those in a surrogate country. However, the European Commission requests that 10 days after the initiation of the investigation procedure, the responding exporters shall comment on the choice of the surrogate country or recommend another surrogate country. The time limitation and complexity in choosing a surrogate country frequently leave the exporters no other choice. The choice of surrogate country facilitates the European Commission to artificially raise the dumping margins in the investigation.

3.5.4. Safeguard measure

3.5.4.1. Safeguard measure against steel product

The European Commission published the decision to initiate safeguard investigations against 21 steel products on March 28, 2003, and the rule on provisional safeguard measures, declaring to impose provisional safeguard measure on 15 imported steel products including non-alloyed hot rolled steel. According the rule, the EC adopted the provisional safeguard measure "in critical circumstances where delay would cause damage which it would be difficult to repair". The provisional measure assumes the form of tariff quota with the maximum at the average import volume in the last 3 years plus an increase rate of 10%. Out-of-quota imports are subject to the specific rates already determined on each product. 3 products of Chinese origin are subject to the measure. The remaining 12 products were exempted as imports from developing countries.

The European Commission published the definitive safeguard regulation, declaring to adopt definitive safeguard measure on 7 imported steel products including non-alloy hot-rolled steel products. 2 products of Chinese origin were subject to the measure. After the US lifted the safeguard measure adopted in pursuant to Article 201, the EC declared, on December 6, 2003, to repeal the definitive safeguard measure adopted in September, 2002.

3.5.4.2. Safeguard measure on canned citrus

On June 11, 2003, the European Commission published the communication to initiate safeguard and transitional product-specific safeguard (only targeting China) investigation against imports of canned citrus. On November 8, 2003, the European Commission published the regulation on provisional safeguard measure, deciding to adopt provisional safeguard measure against canned citrus originate in China and other countries. The provisional safeguard measure took the form of tariff quota, and the quota allocated to China in the 154 days during which provisional safeguard measure was adopted was 11389 tons. The quota would be allocated between traditional and other importers at the proportion of 85% and 15%. Imports of canned citrus exceeding the quota would be subject to a specific duty of Euro 155/ton. The Chinese exporters actively participated in the investigation, and on December 10, 2003, the European Commission declared to terminate the procedure of transitional product-specific safeguard investigation against imports of canned citrus originated in China.

3.6. Subsidies

Large amount of subsidies are provided to certain sectors in EC at various excuses, which, as a result, puts imported products of competitive sectors in disadvantageous position in competition. Since its birth, the common agricultural policy has been distorting the world market for agricultural products, deteriorating the world market climate and damaging the interests in agricultural sector of developing countries. Though the common agricultural policy has been subject to modification, the draft reform programme on the common agricultural policy cannot remove its nature to distort the world market for agricultural products. On one hand, the long-term large sum of subsidies to agriculture seriously depresses the prices of agricultural product on the world market. The current reform programme is not sufficient to pull back the prices. On the other hand, even if the reform programme is able to ease the conflict on the world market for agricultural products, the main beneficiaries of the reform are those countries such as the US who is able subsidized and Canada as well as Australia who has comparative advantages in agriculture. Agricultural sector in developing countries like China who has neither the ability to subsidize nor competitive advantages will continue to suffer from the EC subsidy policy.

3.7. Barriers to trade in services

3.7.1. Barriers to medical services

Doctors of traditional Chinese medicinal science can by no means obtain a practitioner's licence, and in addition, the medical insurance in the EC does not cover the iatrical treatment of traditional Chinese medicinal science (excluding acupuncture and massage).

3.7.2. Distribution

Certain EC member states impose very strict control on foreign investment in chain stores. It is provided in France that investment in a new supermarket not only seek the approval of the local residents by a voting of all the local residents, but also that of the local retailer's association. A large supermarket group in Shanghai, China, encountered great difficulties in investing a Chinese supermarket in Brussels, Belgium.

3.7.3. Barriers in the banking sector

German legislation governing activities of banks provides that apart from EC, Japanese and US banks, the capital of head-offices of other foreign commercial banks cannot be counted as the capital of their subsidiaries in Germany. Due to the restrictions on capital, the subsidiary of a Chinese bank in Frankfurt finds itself confined when conducting such business as syndicated loan and project loan. The requirements on the qualification of business executives of the subsidiary of foreign banks in Germany are very strict. It is provided that business executives shall be natural person resident in Germany with at least one-year working experience in Germany. At least one of the business executives has a good master over German. Chinese banks complain that under the abovementioned terms, the chief executive sent by the head office to the subsidiary in Germany cannot exert his powers in administration for a least one year, and these requirements greatly affect the daily operation of Chinese banks in Germany.

The UK classifies banks into full-capacity banks and wholesale banks which can only engage in wholesale financing business according to the services provided. Currently, there is no Chinese-funded bank that has got the licence of full-capacity bank.

The French legislation provides that 2% shall be taken as special risk reserve with regard to financing outside the EC.

The Greek legislation provides that the majority of the board of the subsidiary of foreign banks shall be EU citizens.

The Luxemburg legislation provides that 2% shall be taken as special risk reserve with regard to financing outside the EC. In addition, there are special requirements on the visa application for Chinese citizens to be working with Chinese-funded banks in Luxemburg. For example, holders of Chinese passport shall provide notarial deed of

the passport together with the application documents.

There are certain restrictions on non-EU banks in the Italian administration, and different measures are applied to non-EU banks. For example, the competent Italian authority provides for different requirements on the first subsidiary set up by EU and non-EU banks with regard to the size of loans to single clients.

3.8. Others

3.8.1 Working visa

The visa policy of certain EC member states on employees sent by Chinese companies to their invested companies in Europe seriously restricts the investment of Chinese enterprises in Europe. Some EC member states impose high qualification requirements on employees of Chinese funded enterprises in Europe sent from China, and the visa application procedures are complicated and time consuming. The visa granted usually allows on entry, or with a term of 3-12 months. The employees at representative office of some Chinese enterprises in France can only get a visa for short stay with a term of 3 months, and the French government does not allow them to apply for visa extensions in France. The employees have to go back China for visa application every 3 months, and the procedure needs at least 20 days. The requirement seriously affects the daily task of the representative office and increases the operational costs. In addition, the working visa granting period needs at least for 6 months, and some Chinese-funded enterprises in France complain that they have to wait for 2 years for the visa, during which period dozens of documents have to be submitted.

3.8.2. Resident permit

Upon arriving in the EC, the managerial staff sent from China to the Chinese-funded enterprises usually encounters additional requirements when applying for resident permit. The competent authorities in certain EC member states require the Chinese staff to submit various kinds of document, some of which are not required on staff sent from other countries. The Chinese companies established in Belgium and Luxembourg complain that the application procedures for resident permit and working permit are very complicated for employees sent from China. The practices in fact impede the investment from China.

3.8.3. Working visa for foreign employees

Specific requirements are laid down by certain EC member states concerning the number and qualification of foreign employees in foreign-funded enterprises. It is provided in Germany and France that application for working visa shall be refused when the labour force needed by a foreign company can be employed on the local labour market. In fact, Chinese investor can only in normal cases sent senior managerial staff and CFO to their companies invested in the EC, and other staff find it

difficult to get a working visa. For example, a Chinese enterprise employs more than 70 local employees at its representative office in Antwerp, Belgium; however, the Belgian authority only allow the company to send 4 managers to the office from China, and those exceeding the number will not obtain a working visa.

Japan

1. Bilateral trade relations

By 2003, Japan has been the largest trading partner of China for 11 consecutive years. According to the China Customs, the bilateral trade volume between China and Japan in 2003 reached US$133.57 billion, up by 31.1%, among which China's export to Japan was US$59.42 billion, up by 22.7%, while China's import from Japan was US$74.15 billion, up by 38.7%. China had a deficit of US$14.73 billion. China mainly exported to Japan coal, machinery and equipment, electrical and electronic products, clothing and accessories, hi-tech products, electronic technologies, crude oil, yarn and products thereof, clothing of woven fabric, charcoal and semi-charcoal, etc.. China mainly imported from Japan machinery and equipment, electric and electronic products, hi-tech products, electronic technologies, diodes and similar semiconductors, integrated circuits and micro-electronic components, converters and components thereof, steel, switches and circuit protection equipment and components thereof, steel and iron plates, etc..

According to MOFCOM, the turnover of completed engineering contracts by the Chinese companies in Japan reached US$30 million in 2003, and the volume of the newly signed contracts was US$60 million. The volume of completed labour service cooperation contracts was US$680 million, and that of the newly signed labour service cooperation contracts was US$770 million. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in Japan was US$190 million, with that of all the contracts signed US$270 million, and the volume of the completed labour service contracts had reached US$3.38 billion, with that of the total contracts signed US$4.7 billion.

According to MOFCOM, 14 Chinese-funded non-financial enterprises were set up in Japan in 2003, with a total contractual investment of US$75.08 million from Chinese investors. By the end of 2003, there were accumulatively 250 Chinese-funded enterprises set up in Japan with a total investment of US$89.62 million by Chinese investors.

According to MOFCOM, Japan investors invested in 3254 projects in China in 2003, with a contractual volume of US$7.96 billion and an actual utilization of US$5.05 billion. By the end of 2003, Japan investors had accumulatively invested in 28,401 FDI projects in China with a contractual volume of US$57.49 billion and an actual utilization volume of US$41.39 billion.

2. Introduction to the Japanese trade regime

2.1. Legislation on trade and investment

The legislation governing trade administration mainly comprises of Foreign Exchange

and Foreign Trade Control Law and relevant Cabinet Decree, Ministerial Decree, Notices, Proceedings of Importation/Exportation and Importation/Exportation Announcement promulgated by government agencies. Among these, the Foreign Exchange and Foreign Trade Control Law stands at the center, which governs some general aspects of trade administration. The detailed provisions are issued through the updated Import/Export Administration Decree (Cabinet Decree), Regulations on Import /Export (Ministerial Decree), etc.

The tariff legislation of Japan mainly includes Customs Act, Customs Tariff Law and Temporary Tariff Measures Law. As the basic act of the tariff administration, Customs Law governs tariff collection, customs clearance, related procedures for entry and exit of ships at ports and bonded system. Customs Tariff Law provides details of the measures to set tariff rates and taxable price, tariff exemption/reduction or refund, special tariff system such as anti-dumping duty and import bans. The annexed list of tariff rates classifies imported goods into 22 categories, 98 chapters and more than 7200 tariff lines (in 2003) according to the HS Convention of WCO. Temporary Tariff Measures Law stipulates certain short-term or provisional tariff rates, systems on tariff exemption/reduction or refund and the general system of preferences, serving as the supplement to the Customs Tariff Law.

2.2. Trade administration

Article 1 of Foreign Exchange and Foreign Trade Control Law as amended on May 30, 2003, provides that transactions in foreign exchange and trade in principle be free in Japan, and that regulation or adjustment on foreign transactions be kept to the minimum.

2.2.1. Import administration

The Import Administration Decree stipulates that imported goods subject to import administration be limited to those that examination and approval are a must. Import administration covers products subject to import quota, specified goods of certain origin or of certain loading places and goods required to go through certain procedures, i.e. prior verification by the competent minister. However, Import Circular No. 3 stipulates that goods listed in the Circular do not need examination and approval for importation when verified by competent minister such as the minister of METI or when the relevant certificate of origin has been submitted to the Customs. Products subject to import quota include the non-liberalized products such as aquatic products, narcosis products, nuclear fuel, ammunitions and weapons, and the animals or plants and their derivatives provided in the Appendix I of Washington Convention as well as substances listed in the annex of Montreal Protocol. Specified products of certain origin or loading places cover whales and products thereof imported from countries not yet a signatory to the International Treaty on Restrictions of Whale Fishing, trout or bull trout and products thereof originated in China, Korea and Chinese Taipei, marine mammals, fish or shellfish or alga and products thereof caught in *mare liberum*, raw silk products originated in 14 countries/regions such as Brazil, thrown

silk originated in China and Korea, silk products not including products of combed silk and mixed silk produced in China, Japan, Korea or Chinese Taipei but loaded elsewhere, special silk products produced in China but loaded elsewhere out of China, silk recycled from knee carpet, flax bed sheet, flax table cloth and curtains made from silk produced in China and Japan (not including combed or mixed silk), etc.. Products subject to the approval of competent ministers covers certain medical products, textile products, fishery products and rare wild animals.

2.2.2. Export control

As a member to Wassenaar Agreement, Japan controls the export of certain military-related technologies and products, taking as its reference the lists of military products and dual-use products as well as two annexes incorporated in the Wassenaar Agreement. The export control regulations which takes the Export Decree as its main frame provides such systems as export restrictions, restrictions on technology supply and post-export examinations, etc.

2.2.2.1. Export Control for security reason (the “know” control)

In order to prevent the proliferation of weapons and mass destruction weapons in particular, it is stipulated that any weapon, nuclear-related product, biochemical related weapons, missile and related products, regular weapons shall not be exported unless the Minister of Economy, Trade and Finance approves. Whenever the Japanese exporter “know” that products concerned may be used in the production of mass destruction weapons, the products cannot be exported until the METI approves.

2.2.2.2. Export control applied to countries subject to the UN sanctions.

Products subject to the control include products to be exported to Iraq, Angola and Cambodia which are subject to UN sanctions, products in short supply on domestic market, i.e., crude oil, nuclear fuel, products that may cause excessive competition or disturb export order, i.e. fishing boats, products prohibited to be exported, i.e., national treasure or narcotic drugs, exported products that must be controlled according to the international treaties.

2.2.2.3. Restriction on technology supply

Technology related to the design, manufacturing or application of specified products that Japanese citizens provide to non-citizens must be examined and approved prior to exportation.

2.2.2.4. Approval to export in certain special forms of trade

When products produced outside the border of Japan in the form of processing trade commissioned by Japanese companies imported into Japan and pose damages to the relevant Japanese industry, the export of the relevant raw materials from Japan shall

be subject to examination and approval.

2.3. Investment administration

Since 1990s, Japanese government has been encouraging FDI in Japan. The Conference on the Investment in Japan was set up in 1994, headed by the premier and with various cabinet members sitting at the table. The sub-groups under the conference find as its members officials from more than 20 government agencies and representatives from foreign invested companies. The objective of the conference is to seek ways to increase foreign investment in Japan. In May, 1997, Japan amended the Foreign Exchange and Foreign Trade Administration Law and renamed it as the Foreign Exchange and Foreign Trade Control Law., which deregulates the application, examination and approval procedures for foreign investment in Japan and provides for the specific deadline for examination and approval conducted by government agencies. On May 27, 2003, the Comprehensive Consulting Window for Foreign Direct Investment in Japan was set up jointly by 12 government agencies.

2.4. Competent authorities

Governmental agencies involved in trade administration include the Ministry of Economy, Trade and Industry (hereinafter referred to as METI), the Ministry of Finance, the Japanese Customs, the Bank of Japan, etc...

The METI is the competent authority for trade administration. It set up local branches in major cities of Japan. Authorized by METI, the local branches are responsible for the formulation and implementation of trade policies, conducting examination and approval as well as licensing for import/export. The competence of the Ministry of Finance regarding trade administration include designating settlement currency and terms, examining and approving the forms of settlement in trading activities, the examination and approval of the imports of goods with paying nature such as precious metals and currencies, collection of statistics. The Japanese Customs is mainly responsible for the supervision over the exit/entry of goods, ships, airplanes and passengers, collection of duties, verification of the import/export approval issued by METI in pursuant to Import/Export Trade Administrative Decree, examination and approval of certain imports and exports at the authorization of METI, administration over bonded areas and the collection and release of trade statistics. The Bank of Japan is the Japanese central bank, responsible for reviewing and approving foreign exchange business and the collection and releasing financial statistics.

At the authorization of the minister of METI, business associations such as the Japanese Standard Association, Chemical Fibre Association, Fishery Product Association, Iron and Steel League take charge of the examination and approval for import/export within their respective fields. To a certain extent, they play the role of trade supervision.

The Japanese government was restructured in 2003. The Bureau of Consumer Safety

was established under the Ministry of Agriculture, Forestry and Fisheries (hereinafter referred to as MAFF), responsible for consumer safety policies, health administration, quarantine affairs, labeling and standards. The Medical Bureau under the Ministry of Health, Labour and Welfare (hereinafter referred to as MHLW) was restructured into the Bureau of Drug and Food. The Food and Health Department under the Bureau of Drug and Food was restructured into the Food Safety Department to which the Office for Imported Food Safety Policy was added, and the management on the safety of imported food is strengthened. The Food Safety Commission is established directly under the cabinet, responsible for risk assessment on food safety, policy instruction and supervision over government agencies in charge of risk assessment such as MAFF and MHLW, establishing mechanism to exchange risk information. Special task force of private experts is organized to evaluate specific cases

3. Barriers to trade

3.1. Tariff and tariff administrative measures

The average tariff of Japan in 2003 is 2.5% which is higher than that of 2.2% in 2002. High tariffs and certain unreasonable tariff measures are maintained on certain products.

3.1.1. Tariff peak

With the progress of tariffication on rice and salt, transitional tariff peaks are applied to rice and salt. As of April 1 of 1999, Japan applies tariffs to imports of rice falling out of the framework of minimum access. The tariff applied to rice in 1999 was 351.17 yen/kg (approximately a rate of 400%), and the tariff is lowered by 2.5% on an annual basis. The practice in fact eliminates the price competitiveness of imported rice and blocks the access of imported rice to Japanese market. In 2001, the Ministry of Finance declared to remove the zero tariff used to apply to imports of table salt and salt for industrial use, and the basic rate decided on salt is 0.5 yen/kg. However, in the 3 years following 2001, a provisional rate much higher than the basic rate is applied to salt, and the provisional rate on salt was 3.3 yen/kg in 2002, 2.9 yen/kg in 2003 and 2.5 yen/kg in 2004. China will watch closely on the progress made by Japan in reducing the high tariffs on rice and salts as committed.

Japanese tariffs applied to agricultural or fishery products are generally higher than those to industrial products. More than 80% of the agricultural or fishery products are subject to import duties, and the duties for half of them are more than 15%, for instance, beef, diary products such as cheese, eggs, honey, citrus, grapes, apples, pine apples, cherry, banana and other fruits, beverages such as coffee, black tea, green tea, the processed grains such as corn flour, rice flour, wheat flour, potato flour, starch and products thereof, refined glue, man-made butter, sugar, chocolate cookies and coco products, biscuit, mashed tomato and jam, fruit and vegetable juice, ice-cream, grape juice, cigar, cut tobacco, etc. Duties applied to certain other agricultural products are much higher than the rests; for example, that on poultry meat is 11.9%, on pinnatifida

and other alga 10.5%, on processed fish such as smoked salmon 10.5%, on sausage 10%, on veneer and chestnut 10%.

In addition, the average tariffs on textile products are above 10%, and the tariff on skiing shoes reaches 27%.

3.1.2. Tariff escalation

Based on the principle of tariff escalation, Japan fixes tariffs on certain products according to the degree of process. However, the wide gap between the tariff on raw materials and that on semi-finished products or finished products which even goes as large as 30-40%, eliminates the competitiveness of semi-finished or finished products made in China on Japan's market.

The effect of tariff escalation is prominent on farm/fishery products and food. Tariffs on maize flour, wheat flour and potato flour are as high as 15% to 25%. Tariffs on certain imported food made of flour such as sweet snacks and biscuits are 25% to 34%. Fruits are subject to a tariff rate of 16-32%, and a highest tariff applied to such processed products as jam, jelly and mashed fruit is 40%. A rate of 17% is applied to tea and coffee, and tariff on beverage based on tea or coffee find the highest at 25%. Tariffs on fishery products are normally between 2% and 3.5%, but tariffs applied to dried, salted, or smoked fish or fish meal is raised to about 10%.

Tariff escalation is prominent in the textile sector among manufactured products. Most of raw materials such as raw silk, cotton, wool and flex are imported without duty. However, a duty of 2.1% to 8.7% is applied to semi-products such as yarn and fabric, while more than 10% is applied to some. Tariff on clothing comes up to 10% to 12%.

3.1.3. Tariff quotas

Japan applies tariff quota administration on 20 categories of products in 2003. 18 categories including maize, natural cheese, malt, sugarcane dregs, coco-products without sugar, tomato jam, canned pineapple, diary products, skimmed milk powder, sugarless concentrated milk, butter, miscellaneous beans, starch and starch products, peanut, paste made from the arum root, oil for concoction, pod, whey are subject to the quota administration of the MAFF, and METI is responsible for administration over the remaining 2 categories including leather and leather footwear. Japan has a very complicated tariff quota management system, and its transparency needs to be improved. For example, Japanese authority delays, on the excuse of lack of experience, the publication of quota allocation result. Moreover, the competent Japanese authorities only release the list of enterprises obtaining quota without the quantity of the quota that each enterprise has obtained. In that case, the applicants could not judge the fairness of allocation by comparing their quotas with their counterparts'. The excessively high tariffs on products outside the tariff quota in fact block the imports of out-of-quota products. The practices impede normal trade operation.

3.1.4. *Ad valorem* duty and specific duty

The wide existence of combined use of *ad valorem* duty and specific duty either in the form of optional duty or mixed duty makes the calculation of tariffs more complicated and brings inconvenience to exporters. The possible calculation of specific duty in *ad valorem* duty reveals higher tariff rates which constitute a kind of impediment to trade.

3.1.5. Removal of Generalized Tariff Preference

Products enjoying the rate within the scheme of generalized tariff preference (hereinafter referred to as GSP) are subject to annual adjustment. The number of products enjoying the preferential treatment is decreasing. For example, in March, 2003, Japan removes the GSP tariff applied to imports from China of roasted eel of European breed. The rate applied to frozen roasted eel of European breed is raised from 7.2% to 9.6%, and at the same time, lead oxide, pottery tableware and bedding of Chinese origin are removed from GSP, and the import duty on the above 3 categories of products is raised from 0 to more than 2%. In December, 2003, the Japanese GSP was amended once more, which aimed at removing soda power, scissors and spoon out of GSP and raising the duties applied to the products from the previous 0 to 5.5%, 3.7% and 3.9% respectively. The removal of Chinese products from GSP has a great negative impact on the Chinese exporters and impedes the export of Chinese products to Japan. The Chinese side is concerned over the issue.

3.2. Import restrictions

3.2.1. Import quota on silk

In the trade in silk and silk clothing, the competent Japanese authority does not distribute all import quotas on the excuse that importers have limited capability to import. The dispute has not yet been settled after several negotiations initiated by the Chinese side.

3.2.2. Rice tendering regime

According to the Uruguay Round Agreements, Japan should apply the system of minimum access regarding the import of rice, involving ordinary importation and SBS (simultaneous buy and sell). Existing issues in the area includes:

The goal of market access is not really attained in ordinary import tendering which accounts for the majority of total rice import. In the ordinary tender, as most quotas are allocated to the countries directly designated by the Food Agency (restructured into the General Food Policy Bureau in 2003), MAFF, the lack of transparency as a result of too much government interference in the tenders leads to the fact that tenders won by Chinese companies take a very small proportion (referred to Table IX) in the

total, which is inconsistence with the competitiveness of Chinese rice with regard to its price, quality and taste. The Global Tendering was launched, according to which system no country is designated. The quota allocated to the Global Tendering will be increased on an annual term. By 2002, 170,000 tons of rice has been imported through the Global Tendering.

Table IX：Tender Won by Chinese Bidders in Ordinary Tendering in 2003

Unit: ton

Date of Tendering	Successful Bidding	Amount Bid by China	Amount Won by China
February 7	231,592	60,000	20,200
February 13	13,892(all from US)	-	-
June 4	7,000(all from Thailand)	-	-
October 17	101,000	10,600	700
November 21	121,800	67,300	6,800

In the SBS tendering, the importers shall sell the imported rice at the amount demanded by domestic customers to the Food Agency, MAFF, and then the Food Agency adds up an internally fixed price and sells the rice to domestic wholesalers. The amount of rice imported through SBS is subject to frequent changes.

The Chinese side reckons that the unjustified practices in the Japanese rice import regime eliminate the competitiveness of Chinese rice on the Japanese market. The Chinese side will watch closely the measures taken in Japan concerning the reform on rice tendering system as well as the improvement of transparency.

3.2.3. Restriction on laver import

Pursuant to the Foreign Exchange and Foreign Trade Control Law and the Import Administration Decree, METI applies quota administration to imports of laver. According to the Notification on Import Quota for Laver promulgated by METI, imports of dried laver and seasoned laver are subject to import quota and import examination and approval, and the place of origin is limited to Korea. However, the Japanese notification to WTO claims that the quota is allocated to all countries. The above discriminative measures restrict the export of Chinese laver to Japan. The Chinese side is looking forward to the removal of the import restriction on laver by the Japanese side in pursuant to the WTO principles of Most-Favoured-Nation and general elimination of quantitative restriction and having access to the Japanese laver market.

3.3. Barriers in customs procedures

Chinese companies complain that the fresh foods exported to Japan are often delayed in Customs clearance, which incurs losses

3.4. Technical barrier to trade

3.4.1. Chinese traditional medicines and health enhancing food

In Japan, products with medicinal values are classified into medicine and food. According to the notice promulgated by the Drug Bureau, MHLW, products with medical effects can be classified as medicine. Accordingly, many products classified as health enhancing food in China are defined as medicines because of the medical or disease prevention functions as described in the product specification, and thus they should be subject to the rules governing imports of medicine and sale.

According to the Pharmaceutical Affairs Law, medicines can be classified into "OTC medicine" and "prescription medicines". "OTC medicines" can only be sold on drug stores and have no access to hospitals, and the market share of OTC medicines is about 10%. Customers can buy OTC medicines freely, and expenses incurred are not covered by medical insurance. Prescription Medicines are only sold in hospitals, and expenses shall be covered by medical insurance. It accounts for 90% of the market. Up to now, none of the traditional Chinese medicines exported to Japan has been listed as "prescription medicines". Customers have to buy them at their own expenses, and this has greatly restricted the market of the traditional Chinese medicines in Japan.

Most of the Chinese medicines are made from animals or plants; therefore, they are sometime subject to unreasonable quarantine measures in Japan.

In 2003, the Japanese Parliament approved the amendment to the Pharmaceutical Affairs Law, prohibiting medicine import by individuals; however, Japanese pharmaceutical companies are allowed to produce medicine by means of OEM outside Japan and to import the products using their own brands into Japan. The amendment will come into force as of April 1, 2005.

Technical barriers to trade in Japan have long restricted the export of Chinese traditional medicines and health enhancing food to Japan, and the Chinese side is concerned over the issue.

3.4.2. Plastic toys

As of August 1, 2002, all toys placed on the Japanese market should not be made from PVC containing DEHP. Toys intended to keep in touch with the mouths of small children should not be made from PVC containing DINP. The Japanese ban involves all toys intended to keep in touch with mouths, and the legal definition of small children is children under 6 years old. The requirement is more severe than what is implemented in other WTO members that DEHP and DINP be temporarily banned in toys intended to sip by children under 3. As a matter of fact, researches carried out by scientists in Europe or the US do not show injuries to human beings caused by the two substances. Such restrictive measures exceed the necessity to fulfill its legitimate objective. The Chinese side is concerned over the issue.

3.4.3. Amendment to the Chemical Substances Control Law

Japan promulgated the amendment to the Chemical Substance Control Law on May 28, 2003. The main provisions concerns with the assessment on and management of the negative effects of chemicals on organism in environment, application of more strict measures on highly persistent chemicals, the reform on the assessment system on new chemicals by studying the negative effects on organism in environment as a result of their exposure, the introduction of new compulsory reporting system which requires that producers and importer provide information on toxicity of chemicals. The amendment will come into force as of April 1, 2004. The Chinese side will watch closely the effect of the amendment on bilateral trade in chemicals.

3.4.4. Requirement on labeling food with origin

JAS provides that food placed on the Japanese market have indication on its origin. As of 2003, it is required that imported rice shall bear markings about its type, producing area, name of producer and certificate number, etc.. Otherwise, it is not allowed to sell. In December, 2003, MHLW and MAFF promulgated announcement once again, requiring that imported fresh food of animal origin have markings of origin. In the implementation, further requirements are added by the local government. For example, it is required in Hiroshima Prefecture that the agricultural association supervising the producer be named in the marking. Gifu Prefecture applies the requirement to vegetables, requiring that all vegetables placed on the market have the identification marking. Inspections are conducted on the quality and identification of origin of fishery products. DNA analysis is carried out on products made from eels marked with “produced domestically”, and the results of the analysis are published on official websites. The Japanese government has long been advocating the consumption of domestically produced food, while the Japanese media publish from time to time stories about residues in Chinese agricultural products exceeding MRL, which creates a misunderstanding among the Japanese consumers that food of Chinese origin are unsafe. Thus, the application and spread of identification certificate system constitute a great barrier to the export of the relevant Chinese agricultural products. The Chinese side is concerned over the issue.

3.5. Sanitary and phytosanitary measures

China is the second largest supplier of agricultural produces and food to Japan. The insistence on taking certain unusual and unnecessary measures on imports of Chinese agricultural products impedes that the export of relevant products from China to Japan.

It is stipulated that all imported agricultural products be examined by the local quarantine authority set up by MHLW. The import inspections are classified into the supervision inspection and compulsory inspection. As to the application of supervision inspection, the MHLW sets a yearly plan in advance to decide the

products to be inspected, frequencies, inspection items and methods. The local quarantine authorities are responsible for the implementation of the plan. The results of the supervision inspection do not have great influence on custom clearance, but if the products are found not satisfying the relevant standard(s), the frequencies of sampling would be raised to a higher level, usually 50%. If more of the same products are found not up to the standard(s), the compulsory inspection will be imposed upon. MHLW will designate the organizations to carry out the compulsory inspection and ask them to provide the final results. The products subject to compulsory inspection are not allowed to pass through the customs before the results have come out. When the products have entered Japanese market after strict inspection, they will have to be inspected by the competent local authority. If substandard products are found, the importers and retailers should recall their goods and usually have to apologize on newspaper.

3.5.1 Residues

3.5.1.1. Provisional standard system

The provisional standard system of pesticide and veterinary drug residues was carried out in April, 2003. The system provides that though MRL has not been set for certain pesticide or veterinary drug, the food may be prohibited to sell or import if residues exceeding certain level. In May, 2003, MHLW formulated MRLs for 11 pesticides, modified those for 4, kept MRL for chlorpyrifos in spinach at 0.01 ppm, used provisional standard system to replace the specific MRL in some products. The Chinese side is concerned over the transparency of the provisional standard system and the stability of the relevant standards, as well as the possible effect on trade.

3.5.1.2. Amendment to Law Regulating Chemicals

The amended Law Regulating Chemicals comes into force as of March 10, 2003. The major amendments include the prohibition of the production, importation and use of unregistered pesticides, the prohibition of using pesticides not according to the standard usage, the strengthened punishment and more severe fines. The Chinese side will watch closely on the possible effect of the implementation of the amendment on the export of relevant products to Japan.

3.5.1.3. MRL for chlorpyrifos in spinach

It is provided that chlorpyrifos MRL in spinach be 0.01ppm. Only a few countries apply similar strict MRL. CAC and the US do not set such MRL, and European MRL is 0.05ppm. Statistics reveal that the average daily intake of spinach in Japan is 22.8g while those of radish and cabbage are 47.3g and 37.4g respectively, the MRLs for which are 3.0ppm and 1.0ppm respectively, 300 times and 100 times as that in spinach. The Chinese side considers that MRL should be set in accordance with the average daily intake of the relevant food. In this case, the Chinese side is concerned over the consistence of the chlorpyrifos MRL in spinach with the risk assessment principle as

provided in the WTO SPS Agreement.

In July, 2002, and May, 2003, taking spinach imported from China exceeding chlorpyrofos MRL as excuse, MHLW announced twice to apply import self-control which is a *de facto* import ban over imports for frozen spinach originated from China, requiring the Japanese importers to handed in application and large sum of testing fees prior to importation. 16 samples are taken from each container, and the name of importer whose imported spinach has been found exceeding MRL are to be published on newspaper, and even penalty of 15-day's detention are to be given. The above requirements force the Japanese importers not to import from China. The Japanese practice goes against the basic principle reached bilaterally to give differential treatment and to conduct negotiation, and Chinese exporters of spinach suffer from great losses.

It should be pointed out the concentration occurs in frozen vegetables, and consequently residue standards should be different when applied to processed and unprocessed vegetables. With the absence of MRL on frozen spinach, the Japanese side applies the MRL of fresh spinach to frozen product and correspondingly takes restrictive measures against imports from China. The Chinese side is concerned over the negative impact on the bilateral trade in vegetables.

On September 30, 2003, MHLW declare to take compulsory chlorpyrifos inspection on fresh and frozen cowpea including those after simple processing.

3.5.1.4. *Matsutake*

Compulsory inspection is applied to *matsutake* as of the end of 2002 for the reason that pesticide residues exceeded Japanese MRL. After negotiations initiated by the competent authorities and Chamber of Commerce at various levels, MHLW announced on September 26, 2003, to lift the compulsory inspection on *matsutake* and products thereof collected, processed and exported by Yunnan companies approved by the Yunnan provincial authorities and companies in all other provinces.

3.5.1.5. Certain fishery products

Without any prior notification, on July 3, 2003, MHLW announced to impose compulsory Enofloxacin inspection on imports of roasted eel from China, and the MRL is 0.05ppm. The Japanese government further required the local inspection agents to re-inspect Chinese roasted eel entered the Japanese market before July 2, 2003. As a consequence, Chinese exporter suffered a loss exceeding US$100 million simply for the goods detained at harbour and stored in warehouses. The Japanese side failed to give prior notification and transitional period to the Chinese side in pursuant to WTO SPS Agreement and conducted compulsory Enofloxacin inspection without sufficient scientific evaluation and risk assessment. The Chinese side is concerned over the restrictive measure against imports of Chinese eel products.

On October 2, 2003, MHLW announced to increase the number of samples taken from shrimps of Chinese origin during the compulsory aureomycin inspections. The requirement prolongs the customs clearance procedure for the Chinese imports.

3.5.2. Harmonization with international standards

The Japanese Food Sanitation Law provides that additives in food be examined and approved by MHLW, that only approved additives be used in food, that production or importation of food with unapproved additive(s) be prohibited. The Specifications and Standards for Foods, Food Additives, etc. under the Food Sanitation Law and its annexes (March 22, 1996) further provides that companies provide testing documents to prove the safety and effectiveness of the additives along with the application. Test fees incurred for the approval would be borne by applicants. The examination period lasts normally for 1 year. Although some additives have been accepted by FAO and WHO and widely used, there are still troubles in exporting products containing such additives to Japan because they are not included in the list of approved food additives in Japan.

The Food Sanitation Law as amended in May, 2003, provides that imported agricultural products be forbidden to be placed on the market when containing pesticide(s) whose MRL(s) has(ve) not been set. Currently, Japan has set MRL for 229 pesticides. According to the amendment, imported agricultural products are forbidden if they have pesticides whose MRL have not yet been set in Japan, even if the amount of residues of which satisfy the international standards and is accepted as not harmful to human beings. The Chinese side is concerned over the inconsistence of the Japanese technical regulations with the international standards.

3.5.3. Quantitative restrictions in plant quarantine

In order to prevent invasion of harmful animals and plants as a result of dramatic increase of the imported fresh vegetables, MAFF requires, in pursuant to the Notice on Regulating Import Plant Quarantine (dated March 22, 2001), that quarantine institutes at harbours and airports set ceilings for their respectively daily work load according to the average actual quarantine work load in the past three years based on the work load in the two months with largest imports as of 1st April of 2001. Quarantine applications exceeding the daily ceiling of work load should be dealt with ON the next day. Such limitation hinders the imports of fresh vegetables, and China's relevant export suffers a considerably.

MAFF explains that the adoption of such measure would be helpful to guarantee foods safety and relieve the quarantine authorities of the heavy duty. In fact, Japan has been transferring staff from different institutes to those facing heavy workload in order to ensure the efficient and timely quarantine on imports. The workload ceiling set by Japan constitutes a hidden quarantine barrier which exerts a negative impact on China's export of vegetables to Japan.

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3.5.4. Inspection and quarantine procedures

Under ordinary circumstances in Japan, food samples subject to analysis are transported to the testing center in the morning when preparation is made for test, i.e. peeling peanuts or slicing large piece of food. In the afternoon, machine tests on pesticide residues and additives will be conducted. Confirmative tests will be conducted in case of suspected results. The complicated inspection procedures contribute to the large extent the delay on customs clearance.

Currently, 700 pesticides are used all over the world. The Yokohama Import Food Inspection and Quarantine Centre with the best equipment and staff is able to test only more than 60 pesticides. There is a lack of equipment and human resources in front of the large workload involving data collection and management, which affects the speed of testing. For example, the Ovine Casing Import Association has set up a disinfecting station within the Yokohama Import Food Inspection and Quarantine Centre. Subject to the limitation on humane resources and working place, casing imported from China have to wait for days before getting disinfected.

3.5.5. Plant fumigating

According to the Paragraph 2, Article 5, the Plant Protection Law dated May 4, 1950, the quarantine authorities would fumigate and destroy the fresh flowers on which given pests or harmful plants disease are found. However, only 14 kinds of harmful animals and 4 kinds of harmful plants are listed in the appendix II to the Guideline of Import Plant Quarantine dated July 8, 1950**,** while other harmful animals or plants not listed in the appendix would be also dealt with according to the same regulation. The provision gives too much discretion inspectors, and results in different implementation standards. Thus, importers find it difficult to decide if the product is subject to fumigation. Because of the insufficient capability in dealing with plant fumigation, the owners have to wait for days, and the fresh plants get rotten.

3.5.6. Inspection and quarantine on imported poultry meat

Japan used to conduct microorganism inspection on imported poultry meat. However, as of 2003, poultry meat imported from China is not only subject to virus tests at a frequency of 5% per batch, but also residue tests on sulfanilamides, Enofloxacin and chloramphenicol. Flavoured food is subject to sweet additives residues test. The China-Japan Protocol on the Sanitary Conditions of Poultry Meat Exported from China to Japan was signed on January 10, 2003. The Japanese side lifted the import ban on poultry meat of Chinese origin. MAFF once again announced to suspend import from China of poultry meat not including cooked poultry meat produced in establishments registered with MAFF for processing thermally cloven-hoofed animals on May 12, 2003, for the reason that Avian Influenza H5N1 had be isolated from duck meat imported from China. There was no case of avian influenza in the areas where poultry meat intended to export to Japan was produced, and poultry meat exported to Japan has been subject to strict inspection during the production and prior to

exportation. In 2002, China totally exported 92,000 tons of poultry meat to Japan, among which duck meat accounted for 740 tons, and the remaining was broiler meat. The Japanese complete import ban on poultry meat from China on the basis that virus had been isolated from 2 samples taken from the duck meat produced in Shandong Province violates the principle of regionalization as provided in the WTO SPS Agreement, far exceeding the necessity to provide proper protection. After negotiations initiated by the Chinese side, Japan agreed to lift the ban on imports of broiler meat as of August 20, 2003; however, it suspends the import of other kind of poultry meat.

3.5.7. Frequent enforcement of compulsory inspections

On August 29, 2003, MHLW issued the Notice on Enforcing Compulsory Inspection on Imported Food, nullifying, in pursuant to the amendment to the Food Sanitary Law promulgated in 2003, the previous provision that Cabinet Order be issued prior to compulsory inspection on imported products. Compulsory inspection is applied to certain imported food used to be subject to sample investigation. The measure involved food of 8 categories imported from 7 countries and regions, among which 9 groups of food falling in 2 categories of Chinese origin are involved, including processed pork products (meat products for direct consumption included), shrimps and simple-processed products thereof, dry fishery products, frozen food, products of bean origin, dim sum, processed fruit seeds, processed seeds and preserved vegetables. Not long after, test on sweet additives in processed poultry meat (limited only to meat products for direct consumption) was added. Companies subject to the compulsory inspection include 56 in mainland China, 2 in Taiwan and 1 in Viet Nam. Though the compulsory inspection is only applied to products and enterprises violating the Japanese regulations, the batch by batch inspection is time and money consuming, which diminishes the competitiveness of the imported products in terms of the price and quality. By November, 2003, MHLW has maintained compulsory inspection on 28 categories of products imported from China. As there are insufficient inspection agents in Japan, the fresh vegetables such as Holland bean, Sweet bean and *Matsutake* have to wait for more than 20 days for inspection, which deteriorates the quality of the relevant products in addition to the expensive testing fees. The measure severely impedes the export of the products from China.

3.5.8. Basic Law on Food Safety

The Japanese Parliament passed the Basic Law on Food Safety on May 23, 2003. The law clearly defines the role and liability of the central and local governments, enterprises and consumers. Risk assessment is introduced into the food safety system, and risk assessment is separated from risk management. It is decided to set up Food Safety Commission. The Chinese side will follow closely its implementation.

3.5.9. Amendment to the Feed Safety Law

The Japanese Parliament approved the Feed Safety Law on June 11, 2003, which

mainly prohibits the production, sale, importation and use of feed with hazardous substances. The Chinese side will watch closely its implementation.

3.5.10. Amendment to the Food Sanitation Law

The Japanese Parliament approved the Amendment to the Food Sanitation Law on July 31, 2003, which strengthens the monitoring and inspection system. It is provided that import ban and sale prohibition be applied to imported products 5% of which exceeds the Japanese MRL or whose country of origin fails to meet the Japanese food sanitary standard during the inspections. HACCP is introduced into the food safety control system. More severe penalties are provided. The amendment comes into force as of September 7, 2003. The Chinese side will watch closely the possible effect on trade of the amendment after its implementation.

3.6. Trade remedies

In the past few years Japan has initiated several safeguard investigations and adopted safeguard measures to restrict Chinese exports to Japan.

3.6.1. Safeguard investigation on towels imported from China

On April 16, 2001, METI initiated a 6-month safeguard investigation on imports of towels from China and Viet Nam for import surges from China and Viet Nam. Without adequate evidences of import surges, Japanese government extended the investigations twice on Oct.16, 2001, and Apr.16, 2002. Following the second extension due on Oct.15, 2002, Japan decided to extend the investigation for another 6 months for the reason of high import growth rate and unstable import situation. However, according to the statistics of METI, the growth rates of exports of towels from China decreased year by year from 2000 to 2003, which were 17.6%, 17.3% and 8.3% respectively. The change of monthly export growth rate is within normal margins. However, Japan extended the investigation period twice for another time in April and October, 2003, extending the investigation period to April 15, 2004. While there is no evidence proving the surge of export of towels from China to Japan, the repetitious extension by METI of safeguard investigation period seriously impedes he export of Chinese towels to Japan.

3.6.2. Other safeguard investigation petitions

In the past two years, Japan has planed to carry out safeguard investigations on eels, textile products and bicycles. Japan didn’t initiate the investigations after several consultations. However, those plans still severely disturb the export of Chinese products to Japan.

3.7. Export control

The Catch-All export control regime is applied as of 2002 within which framework,

the government collects information and decides the list of foreign companies subject to export control. The Japanese exporters, when export the relevant sensitive goods and technologies to the listed foreign companies, shall conduct prior consultation which in fact is a kind of examination and approval procedure; otherwise, the product cannot be exported. On April 15, 2003, METI promulgated the second list of companies subject to Catch-All. The number of companies listed increases from 80 to 129 (refer to Table X). Without tabling any clear evidences, the number of Chinese companies listed increases from 7 to 16 up by 142.8% with 1 deleted from the list and 10 more added. The regime severely affected the normal business transaction of the relevant Chinese companies. Several negotiations initiated by the Chinese side were initiated, but up till now there is no satisfactory reply.

Table X：Number of Companies Subject to CATCH-ALL by Country

2002		2003	
China	7	China	15
		Taiwan, China	1
Israel	3	Israel	7
Iran	17	Iran	22
India	30	India	41
D. P. R. Korean	3	D. P. R. Korean	17
Syria	1	Syria	1
Pakistan	15	Pakistan	19
Libya	2	Libya	4
Afghanistan	1	Afghanistan	1
Afghanistan + Pakistan	1	Afghanistan + Pakistan	1
Total	80	Total	129

Fields subject to technology supply control as provided in the Foreign Exchange Decree have a very wide coverage, and the criteria for technologies subject to examination and approval lack transparency. Companies are required to provide a large number of documents even about their commercial secret fro the approval. The approval procedure takes a very long time, which increases the cost of companies. The requirement incurs a lot of difficulties for the investment and technology cooperation between the Chinese and Japanese enterprises.

3.8. Barriers to trade in services

3.8.1. Construction and engineering

Japan takes a lot of measures to protect its domestic construction market despite its strong capacity in the sector. Currently, Japan invites the bidding for big construction projects among the domestic companies. Only small numbers of projects such as gardens, civil construction, the embassy buildings and corporations are implemented through international bidding. Japan sets down strict restrictions on the construction duration and the technical level. According to Immigration Control and Refugee Recognition Act, no workers can enter into the Japan except the managerial staff and

technicians from the foreign companies winning the bid. The labour costs are expensive in Japan, and the offer of subcontractors high, which increase the construction cost of the foreign winner in Japan. Consequently, foreign winners have to withdraw from the projects.

3.8.2. Transportation

Japan allows other WTO members to set up freight forwarders in Japan and sign on their bills of lading. However, Japan adopts the so called “equivalent principle” to the Chinese-funded freight forwarding companies, meaning that the Japanese authority will not permit the Chinese-funded companies to sign on the bills of lading if the Chinese authority does not permit Japanese-funded companies to sign the bills of lading in China. At present, the Japanese shipping companies such as NYK, K"Line (Japan) Ltd, Mitsui OSK Lines have already obtained in China the right to sign on the bills of lading as a container liner or NVOOC; however, the Chinese freight forwarders still cannot get access to the Japanese market and sign on the bills of lading. The measure violates the rules of the MFN treatment and the equivalent principle used to apply and has affected development of multi-mode transportation of Chinese-funded companies in Japan. .

3.8.3. Financial sector

Japan adopts prudent measures in the field of trusteeship services. For instance, trustee services can only be provided by entities with legal person status registered in Japan. The savings or deposits collected by the branches of foreign-funded banks are not brought under the coverage of the Japanese savings insurance.

3.9. Protection of intellectual property rights

To protect the domestic agriculture by preventing the losing of Japanese high quality breed, the Japanese Parliament passed the amendment to the Agricultural Seed and Seedlings Law, and the amendment comes into force as of July 1, 2003. The major amendments include the extension of the scope of activities subject to penalties as a result of violating the intellectual property right of agricultural seed and seedlings by putting violation through harvest under penalties, the raise of economic punishment to strengthen the strike on violation. Correspondingly, Japan amended the Custom Tariff Law, providing that the customs have the authority to ban the imports of agricultural produces in violation of the cultivator’s right which refer to the exclusive right acquired through registered new plant breed, including the right of production and sales and the right to loyalty through licensed production and sales.

On December 1, 2003, Kumamoto Provincial Government applied to the Japanese Customhouse to ban the imports from China of certain Igusa on the basis that the patented Igusa of Hinomidori has been detected in the imported Igusa tatami matting from China in violation of the provincial intellectual property right. The Japanese Customhouse imposes container by container inspection on Igusa products imported

from China as of December 4, 2003. The relevant importers complain that the Japanese side accepted the petition and took inspection action without any investigation in the evidences, that importers subject to inspection exceed far more than the five as named by the petitioner, that though Kumamoto Provincial Government only applied for import ban on Tatami matting, certain other mat products become subject to the inspection, and that the testing methods and results have not yet been published. The Japanese measures lead to the situation that goods in the opened containers have to use bulk transportation at a higher price than container transportation, that a large number of containers are detained at harbours and that costs of Chinese exporters increase in large margins. The measure seriously disturbs the normal trade order. The Chinese side is concerned over the effect of the implementation of the amendment on bilateral trade in agricultural products.

Appendix:

Table XI Products subject to a Tariff of More than 15%

Tariff Line	Product description	Tariff Rate
0201~0202	meat of bovine animals, fresh, chilled, or frozen	38.5%
0206.10.090	Certain edible offal of bovine animals, fresh, chilled	21.3%
0206.29.090	Certain edible offal of bovine animals, frozen	21.3%
0210.20	Edible flours and meals of meat of bovine animals, salted, in brine, dried or smoked.	161.5*
04.01	milk and cream, not concentrated nor containing added sugar or other sweetening matter	21.3% ~ 25%+1199*
04.02	Milk and cream, concentrated or containing added sugar or other sweetening matter	21.3%+92*~ 35%+466*
04.03	fermented or acidified milk and cream and products thereof	21.3 %~ 35%
04.04	yogurt	21.3%~35%+1204*
04.05	Butter and other fats and oils derived from milk	29.8%+179*~35%+1363*
04.06	Cheese and curd	22.4%~40%
04.07	Birds' eggs, in shell fresh, preserved or cooked	17%~25%
04.08	Birds' eggs, not in shell, and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved	18.8%~25%
04.09	Natural honey	25.5%
0803.00.100	Bananas, including plantains, fresh	20%~25%
0804.30.010	Pineapples, fresh	17%
0805	Citrus fruit, fresh or dried	16%~32%
0806.10.000	Grapes, fresh, imported between March 1 and October 31.	17%
0808.10.000	Apply, fresh	17%
0811.90.110	Pineapple, frozen with added sugar	23.8%
0811.90.210	Other pineapple frozen	23.8%
0812.10.000	Cherries provisionally preserved after certain treatment	17%
0812.90.100	Bananas provisionally preserved after certain treatment	20%~25%
0812.90.200	Citrus provisionally preserved after certain treatment imported between June 1 and November 30.	16%
0812.90.200	Oranges provisionally preserved after treatment between December 1 and May 31 of the next year	32%
0812.90.440	Certain citrus fruit	17%
0902.10.000	Green tea not fermented in immediate packings of a content not exceeding 3kg.	17%

Tariff Item	Product description	Tariff Rate
0902.20.200	Other green tea	17%
0902.30.010	Black tea partly fermented (with a net content not exceeding 3kg)	17%
0902.40.220	Other black tea partly fermented tea	17%
1001.90.011	Other wheat and maslin	20%
1102.10.000	Rye flour	15%
1102.20.000	Maize flour	21.3%
1102.30.010	Rice foulr	25%
1102.90.110	Barley and wheat flour	25%
1102.90.210	Rye flour	25%
1102.90.300	Others	21.3%
1103.11.010	Groats and meal of wheat	25%
1103.13.000	Groats and meal of maize	21.3%
1103.14.010	Groats and meal of rice	25%
1103.19.110	Groats and meal of barley	20%
1103.19.210	Groats and meal of rye	20%
1103.19.300	Groats and meal of other cereals	17%
1103.21.010	Wheat pellets	25%
1103.29.210	Maize pellets	21.3%
1103.29.250	Rice pellets	25%
1103.29.310	Barley pellets	20%
1103.29.410	Rye pellets	20%
1103.29.500	Pellets of other cereal grains	17%
1104.11.010	Rolled or flaked barley	20%
1104.19.111	Rolled or flaked wheat	25%
1104.19.121	Rolled or flaked rye	20%
1104.19.210	Rolled or flaked maize	21.3%
1104.19.250	Rolled or flaked rice	25%
1104.19.300	Rolled or flaked cereal grains	17%
1104.21.010	Barley otherwise worked (hulled, pearled, sliced or kibbled)	20%
1104.23.090	Maize above worked	18%
1104.29.111	Wheat above worked	25%
1104.29.121	Rye above worked	20%
1104.29.250	Rice above worked	25%
1104.29.300	Other above worked grains	17%
1104.30.000	Germ of cereals	17%
1105.10~20	Flour, meal, flakes and pellets of potatoes	20%
1106.20	Flour and powder of dried leguminous vegetables	25%
1106.20.200	Flour and powder of other dried leguminous vegetables	21.3%

Tariff Item	Product description	Tariff Rate
1106.30	Flour and powder of products of Chapter 8	25%
1108.11.010	Wheat starch	25%
1108.12	Maize starch	25%
1108.13	Potato starch	25%
1108.14	Manioc starch	25%
1108.19	Other starches	25%
1108.20.010	Inulin	25%
1301.10.100	Lac and other refined Lac	17%
1302.19.120	Other vegetable saps and extracts	16.5%
1517.10.000	Margarine, excluding liquid margarine	29.8%
16.02	Prepared or preserved meat, meat offal or blood with mince of pork, beef	21.3%
1701.11.110	Raw cane sugar	35.3*
1701.91	Cane or beet sugar containing added flavouring or colouring matter	39.98*
1701.99	other sugar	39.98*
1702.20	Maple sugar and maple syrup	17.5% or 13.5*~20.8*
1702.30~40	Glucose and glucose syrup	21.3%~29.8% or 23*
1702.60~90	Other fructose and fructose syrup	21.3%~29.8% or23*
17.04	Sugar confectionery not containing cocoa, including white chocolate	24%、25%
1806.10	Cocoa powder, containing added sugar or other sweetening matter	15%~29.8%
1806.20~90	Other food preparations containing cocoa	21.3%~29.8%
1901.10	Preparations of cereals or diary products for infant use, put up for retail sale	13.6%~25%
1901.20~90	Mixes and dough for the preparation of baker's wares	12%~25%
1902	Spaghetti	not exceeding 3.8%
1904	Prepared foods obtained by the swelling or roasting of cereals or cereal products (subject to government procurement)	19.2%~25%
1905	Biscuits and other bakers' wares	6%~34%
2001.90.130	Maize prepared or preserved by vinegar or acetic acid	16.8%
2002.90	Tomato paste	16%
2004.90~ 2005.90	Vegetables prepared or preserved (mixture, peas, beans shelled)	23.8%
20.06	Vegetables, fruit preserved by sugar (drained or crystallized)	12.6%~18%
20.07	Jams, fruit jellies, fruit pastes	not exceeding 34%

Tariff Item	Product description	Tariff Rate
20.08	Fruit, nuts and other edible parts of plants prepared or preserved otherwise	not exceeding 46.8%
20.09	Fruit or vegetable juices (orange, apple, grapefruit, pineapple juices and mixture of juices)	23%~34%或 23*
2101.12.237	Preparations with a basis of extracts of coffee	29.8%+1159*
2101.20.237	Preparations with a basis of tea	29.8%+1159*
2103.20	Tomato ketchup and other tomato sauces	17%~21.3%
21.05	Ice-cream	21%~29.8%
21.06	Other food preparations	not exceeding 9.8%+1159*
2204.10~29	Wine	not exceeding 5%或 125*
2204.30	Other grape must	23%~29.8% or 23*
22.05	Vermouth and other wines	19.1% or 9.3 yen/liter
22.06	Other fermented beverages	not exceeding 29.8% or 23*
22.07	Undenatured ethyl alcohol and denatured ethyl alcohol	27.2%
2208.60	Vodka	16%
2402.10.000	Cigar	16%
2403.10.100	Smoking tobacco	29.8%
3503.00.020.3	Certain gelatin	17%
3505.10~20	Dextrins and other modified starches and glues thereof	21.3% or 25.5*
3809.10	Finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs of a kind used in the textile, paper, leather, or like industries with a basis of amylaceous substances	21.3% or 25.5*
4104.10.110	Tanned hides of bovine	60%
4104.10.122	Tanned hides of bovine (others)	30%
4104.21~ 4106.20	Leather of bovine and equine animals, sheep or lambs exceeding import quota	30%
4109.00.010	Coloured leather	20%~28%
4202	Leather cases	not exceeding 16%
4203	Certain leather clothing and articles	16~18%
5810	Embroidery clothing	15.8%
6401.10~92	Ski-boots water proof	27%
6402.12	Ski-boots (others)	27%
6403.12	Ski-boots (sport use)	27%
6403.20~6405	Footwear exceeding quota	30% or 4300yen/pair
9113.90.110	Watch straps, bands, bracelets and parts thereof (with fur or precious metals)	16%

*refers to yen/kg

Saudi Arabia

1. Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Saudi Arabia in 2003 reached US$7.34 billion, up by 43.8%, among which China's export to Saudi Arabia was US$2.15 billion, up by 28.5%, while China's import from Saudi Arabia was US$5.19 billion, up by 51.2%. China had a deficit of US$3.04 billion. The major products exported from China to Saudi Arabia included clothing and accessories, machinery and equipment, knitted garments, yarn and products thereof, embroidered clothing, electric and electronic products, metal product, non-woven clothing, battery, footwear, etc. The major imported products of China from Saudi Arabia included crude oil, liquefied petroleum gas, primary plastics, glycol, primary polyethylene, iron ore and refined ore, steel, steel plates, styrene, primary polypropylene, etc.

According to MOFCOM, the turnover of completed engineering contracts by the Chinese companies in Saudi Arabia reached US$34.85 million in 2003, and the volume of the newly signed contracts was US$180 million. The volume of completed labour service cooperation contracts was US$12.60 million, and that of the newly signed labour service cooperation contracts was US$3.97 million. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in Saudi Arabia was US$190 million, with that of all the contracts signed US$690 million, and the volume of the completed labour service contracts had reached US$70.45 million, with that of the total contracts signed US$91.61 million.

According to MOFCOM, 1 Chinese-funded non-financial firm was set up in Saudi Arabia in 2003, with a contractual investment of US$0.98 million from Chinese investors. By the end of 2003, there were accumulatively 5 Chinese-funded enterprises set up in Saudi Arabia with a total contractual investment of US$5.41 million from Chinese investors.

According to MOFCOM, Saudi Arabian investors invested in 8 projects in China in 2003, with a contractual investment of US$19.23 million and an actual utilization of US$3.55 million. By the end of 2003, Saudi Arabian investors had accumulatively invested in 35 FDI projects in China with a contractual volume of US$82.64 million and an actual utilization volume of US$61.10 million.

The China-Saudi Arabia Economic, Trade, Investment and Technology Cooperation Agreement was signed in November, 1992, and the bilateral Agreement on Promotion and Mutual Protection of Investment and the Memorandum of Understanding on Science and Technology Cooperation were signed in February, 1996.

2. Introduction to the Saudi Arabian trade regime

2.1. Trade administration

2.1.1. Tariff policy

Currently, the average tariff of Saudi Arabia stands at 5%. Saudi Arabia offers naught tariffs on certain products, such as meat products, chilled or frozen meat, coffee, tea, barley, maize, rice, milk of infant formula, and machinery, equipments, raw materials, hospital daily necessities and medicines imported by local or foreign-funded companies in the country. Certain imports are subject to a duty of 20%, including sugar, cigarette, steel material, cement, furniture and detergent. Except the abovementioned, most of other products are subject to a duty of 5%. Moreover, import tariff on agricultural products in Saudi Arabia are subject to seasonal adjustment.

Saudi Arabia implements the Harmonized Tariff Law of the Gulf Cooperation Council Members as of March, 2003. According to the law, products produced in one member of the Gulf Cooperation Council shall be exempted from import tariff when entering the market of any other members so long as they have the accompanying certificate of origin or certified documents.

2.1.2. Import/export administration

Saudi Arabia applies a free trade to ordinary products. However, products in violation of Islamism are forbidden to import, such as products with labels or markings bearing Saudi Arabian national flag or words of Allah. Saudi Arabia forbids imports from foreign companies that maintain cooperation with Israel.

Saudi Arabia applies agent system to foreign trade. Foreign trade companies must designate a Saudi Arabian company as its agent before opening bank account in Saudi banks, conducting business or bidding for construction projects.

2.1.3. Foreign exchange administration

SAMA acts as the Saudi central bank and is responsible for the supervision over the investment, settlement, deposit and credit business of commercial banks.

Saudi Arabia promulgated the Counter Money Laundry Law in 2003, which strengthens the supervision over banks and other financial institutes. Severe examination is conducted over the transfer of foreign exchange and private savings.

2.2. Investment administration

Foreign investment is forbidden to enter such sectors as military and security projects, printing, mass media, upper stream petroleum sector and real assets. According to Foreign Investment Law promulgated in April, 2000, Saudi Arabia allows the establishment of wholly foreign-owned enterprises, and foreign investment enterprises

may enjoy such incentives as tax holiday. The profit tax for foreign-funded enterprises is 20%.

2.3. Competent authorities

The Saudi Arabian cabinet was restructured in March, 2003. The former Ministry of Commerce incorporated with the former Ministry of Industry and Electricity into the Ministry of Industry and Commerce, which is responsible for foreign trade. The mandate of the new ministry in the area of trade affairs includes the formulation and implementation of trade policies, laying down trade laws and regulations, bilateral and multilateral negotiations on economic and trade issues with other countries and international organizations, settlement of trade disputes and other existing issues, the administration over local business organizations such as the national chamber of commerce and the instruction to and supervision over commercial activities in the country.

The inspection institutes and other research organizations under the Ministry of Industry and Commerce are responsible for inspecting imports of normal products. For example, the Research Center of Fisal Kingdom Hospital is responsible for testing soya sauce and fishery products.

3. Barriers to trade

3.1. Tariff barriers

In August 1998, the Ministry of Trade suddenly decided to levy import duty of US$5.9 per square meter on silk fabric exported by China's Silk Import and Export Company, which was much higher than the average tariff of US$0.2 on fiber products. In May 2000, Saudi Arabia decided to impose a tariff of 20% on sugar that used to be 0%. The above measures constitute barriers to trade. The Chinese side is concerned over the continuing existence of the measures.

3.2. Sanitary and phytosanitary measures

The relevant laws in Saudi Arabia provide that the import of agricultural and animal products be inspected and quarantined by the Inspection and Quarantine Institute for Agricultural and Animal Products affiliated to the Ministry of Agriculture. Quite often the Ministry of Agriculture will follow the measures taken by other countries to ban the imports of agricultural and animal products as well as food from disease-infected counties/regions or countries/regions that fail to meet certain sanitary standards.

In April and September 2002, when EU announced that chloramphenicol residues detected in honey imported from China surpassed the maximum residue limit, and that carcinogenic substances had been detected in fishery produce imported from China, Saudi Arabia imposed bans on import of products of animal and plant origin, such as honey, sea produce and Soya sauce, from China and South-east Asian countries.

Chinese industry complained that the EU standards were not internationally recognized, and that there were many problems unfolded in the implementation. Therefore, it was unjustified for Saudi Arabian government to follow the EU decision and implement import bans without due risk assessment. The Chinese industry strongly urges the Saudi Arabian government to reassess the risk of abovementioned products imported from China based on their own tests.

Thailand

1. Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Thailand in 2003 reached US$12.66 billion, up by 47.9%, among which China's export to Thailand was US$3.83 billion, up by 29.4%, while China's import from Thailand was US$8.83 billion, up by 57.6%. China had a deficit of US$5 billion. China mainly exported electric and electronic products, electronic technologies, diodes and similar semiconductors, yarn and products thereof, steel, machinery and equipment, processed oil, gasoline, etc. The major imported products of China from Thailand included electric and electronic products, electronic technologies, diodes and similar semiconductors, integrated circuits and micro-electronic components, crude oil, primary plastics, natural rubber, steel, etc.

According to MOFCOM, the turnover of completed engineering contracts by the Chinese companies in Thailand reached US$114.1 million in 2003, and the volume of the newly signed contracts was US$116.1 million. The volume of completed labour service cooperation contracts was US$9.72 million, and that of the newly signed labour service cooperation contracts was US$45.81 million. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in Thailand was US$1.33 billion, with that of all the contracts signed US$2.26 billion, and the volume of the completed labour service contracts had reached US$98.16 million, with that of the total contracts signed US$193.13 million.

According to MOFCOM, 11 Chinese-funded non-financial enterprises were set up in Thailand in 2003, with a contractual investment of US$49.13 million from Chinese investors. By the end of 2003, there were accumulatively 245 Chinese-funded enterprises set up in Thailand with a total contractual investment of US$263.84 million from Chinese investors.

According to MOFCOM, Thailand investors invested in 194 projects in China in 2003, with a contractual investment of US$610 million and an actual utilization of US$170 million. By the end of 2003, Thailand investors had accumulatively invested in 3375 FDI projects in China with a contractual volume of US$6.32 billion and an actual utilization volume of US$2.52 billion.

2. Introduction to the Thai trade administration regime

2.1 Thai legislation on trade and investment

Thai legislation related with trade and investment promotion mainly includes the Law on Import and Export of Goods, Tariff Law, Law on Export Commodity Standards, Law on Plant Detention, Law on Anti-dumping and Countervailing Against Imports, Law on Foreign Operating Enterprises, Investment Promotion Law, Foreign Economic Law, Law of Counter Trade, Law on Commercial Associations,

Competition Law, etc..

2.2. Trade administration

The free import policy is in place in Thailand. Any importer able to issue the letter of credit (C/l) can conduct import business. Thai Ministry of Business, Ministry of Health, Ministry of Industry and Ministry of Agriculture apply import ban, tariff quota and import license to the imports of certain products. Products subject to import ban mainly include those related with public health and national security. Tariff quota is applied to 23 agricultural produces such as longan, but it is not applied to imports from ASEAN members. There are two approaches to import licensing administration, namely import licensing applied to ordinary products and that applied to special products such as textile products. The Industrial Standard Research Institute affiliated to the Ministry of Industry is responsible for the formulation and implementation of standards.

The Thai economy is export oriented. Apart from products subject to export licensing, quota, export ban or other restrictive measures, most of the products can export freely to other countries.

Thai implements the foreign exchange regime of free convertibility. There in no restriction o the payment and reception of foreign exchange needed in normal trade.

2.3. Investment administration

Thai legislation provides that any natural or legal person without Thai nationality shall enjoy the same rights and liabilities of a Thai company when conducting business in Thailand unless otherwise stipulated in laws. According the Law on Foreign Operating Enterprises promulgated in 19999, the economic sectors of Thailand are divided into three categories. Foreigners are forbidden to do business in the first category for special reasons, and the category involves such sectors as agriculture, animal husbandry, forestry, media, etc.. The second category involves with sectors related to national security, or to possible negative impact on local arts, culture, customs and local craftsmanship, or to possible damages to natural resources or environment such as weapon and components production, distribution and maintenance, domestic transportation and avian transportation. Foreign investment in the sector shall seek business license from the competent Thai government agencies. The third category related to those sectors that Thai industry is not as competitive as foreign investors such as rice mill, rice powder and other plant powder production, aquaculture, lime production, accounting service, legal service and food services. Foreign investment in the area shall seek the approval from the Commission for Foreign Operating Enterprises and the Business license signed by the Director-General of the Department for Business Registration.

2.4. Competent authorities

The major competent authorities responsible for trade and investment affairs include the Ministry of Business, the State Investment Promotion Committee and the Department of Customs. The Ministry of Business is responsible for the formulation and implementation of policies concerning foreign trade administration and export promotion, The State investment Promotion Committee is responsible for the formulation and implementation of policies and plans concerning foreign and domestic investment promotion, the examination and approval of and follow-up monitoring on encouraged investment projects, as well as providing consultation and one-stop comprehensive investment services for foreign investors. The Department for Technology and Economic Cooperation formerly affiliated to the Prime Minister's Office (incorporated into the Ministry of Foreign Affairs as of March, 2003), Department of Economics affiliated to the Ministry of Foreign Affairs and the Overseas Employment Management Office affiliated to the Department of Labour of the Ministry of Labour are responsible for administration over certain trade and investment affairs.

The Thai Central Bank is responsible for foreign exchange administration and authorizes commercial banks to conduct business concerning the payment and reception of foreign exchange.

3. Barriers to trade

3.1. Tariff and tariff administrative measures

The current average tariff of Thailand is 17%. However, high tariff and tariff quotas applied to certain sectors prevent the entrance of certain Chinese products with competitiveness into the Thai market.

High tariff is applied to imported products in competition with the locally produced products, including agricultural produces, automobiles and components thereof, alcoholic beverage, chemical fibre and certain electronic products. At present, the average tariff applied to agricultural produces and process food is 29.3%, and the highest is 55%. The tariffs applied to many fresh and processed foods are between 30% to 40%. Import duty for motorcycles is 70%.

According to the WTO Agreement on Agriculture, Thailand applied tariff quotas to 23 agricultural produces, namely longan, coconut pulp, milk, butter, potatoes, onion, garlic, coconut, coffee, tea, dried capsicum, maize, rice, bean, onion seeds, bean oil, bean cake, sugar cane, coconut oil, palm oil, instant coffee, local tobacco slices, silk. Additional import duty is levied on outside MFN quota maize for animal feed. Low tariff rates are applied to in-quota imports of the products, and high tariff rates are applied to off quota imports. For example, the tariff quota assigned to garlic import in only 64.6 tons. The in-quota rate is 27%, while the off-quota rate is 57%. In March, 2003, the Thai government committed to importing 480 tons of silk, and the in-quota tariff is 20% while the off-quota rate is as high as 290%.

In June, 2003, the Chinese and Thai government signed the Agreement between the Government of the People's Republic of China and the Government of the Kingdom of Thailand on Accelerated Tariff Elimination under the Early Harvest Programme of the Framework Agreement on Comprehensive Economic Cooperation between China and ASEAN. According to the agreement, zero rate is applied to bilateral trade in vegetables and fruit as of October 1, 2003, covering products in 188 tariff lines, among which 108 related to vegetable products, 80 to fruit products. However, the coverage of the agreement does not include those produces such as potato, onion and garlic that China has competitiveness. The Chinese side will watch closely on the implementation of the tariff concession, and it is hoped that Thailand will open as soon as possible the market for agricultural produces currently subject to tariff quotas according to the commitments in the agreement.

3.2. Import restrictions

The Bureau for Food and Drug Administration, Ministry of Health, stipulates that import licensing administration is applied to imports of food, drugs and certain medical equipment. Import license for food shall be renewed every 3 years, and recertification is required for each renewal, as well as the stamping at the Commercial Councilor's Office of the Chinese Embassy to Thailand. Additional charges should be paid when the relevant documents have reached the Bureau. Import license for drugs shall be renewed every year, and the same amount of fees shall be paid. The above requirement poses great burden to Chinese exporting enterprises.

3.3. Customs barriers

After China's accession to the WTO, the former one-stop import license administered by the Department of Foreign Trade was changed. In obtaining a license for silk imports, the importer shall apply to the Ministry of Agriculture for examination and approval, and then get the license at the Department of Foreign Trade. In March, 2003, the Thai Ministry of Business promulgated a new decree, stipulating that the state trading company affiliated to the Ministry of Agriculture be in charge of the management of import quota for silk; however, the company refuses any application on the ground that with the absence of relevant procedures, it cannot conduct examination and approval. The adjustment severely restricts the export of Chinese silk to Thailand.

3.4. Technical barriers to trade

The various requirements concerning standards, inspections, labels and certifications constitute a kind of trade barriers to China's export to Thailand.

3.4.1. Food and drugs

The Bureau of Food and Drug Administration under the Thai Ministry of Health requires that all imported food, drugs and certain medical equipment meet the relevant

standards, inspections, marking and certification requirements. The imported products shall have markings in the Thai language, showing the product name, weight or volume of content, date of production and invalidation, and the marking shall be approved by the Bureau of Food and Drug Administration under the Thai Ministry of Health.

In March, 2003, the Thai Ministry of Health stipulated that all imported food and cosmetics be registered. For registration, importer shall present the Certificate of Free Sale issued by the government of the exporting country, and the certificate shall be stamped by the Commercial Councilor's Office of the Chinese Embassy to Thailand. The registration of certain food needs information concerning processing method and ingredients.

The above provisions incur a lot of unreasonable burden to the Chinese exporting companies.

3.4.2. Emission standard for motorcycles

Motorcycle emission standard came into force in 2000. As there is a lack of transparency in its implementation, Chinese motorcycle manufacturers find it difficult to establish production base in or export their motorcycles to Thailand. The standard in fact impedes the export of motorcycle from China to Thailand. The Chinese side is concerned over the transparency of the implementation of the said standard.

3.5. Sanitary and phytosanitary measures

Thailand takes very strict inspection and quarantine measures on agricultural produces imported from China.

In March, 2003, the Thai Ministry of Agriculture announced without prior notification to conduct batch by batch inspection on agricultural produces imported from China, which led to the fact that apples, peas, mushroom and agaric stayed in large quantity at the Thai harbours. The issue was settled after the negotiations initiated by the Chinese side. The Chinese side considers that the Thai side fails to follow the WTO SPS Agreement by not giving the Chinese side prior notification about the measures to be take and by not granting any transitional period. The practice actually disturbs the bilateral normal trade in agricultural produces.

In April, 2003, the Thai Ministry of Agriculture banned the import of dawn and feather products from China on the ground of the so-called "suspected avian influenza". The import ban has brought serious losses to Chinese exporters. During the negotiations, the Chinese side clearly pointed out that the research by WHO and other international research institutes reveals that avian influenza could not pose any threat to animal husbandry, that the Thai import ban on the ground of suspected avian influencer was a disguised measure against avian influenza, and the measure lacked sufficient scientific support. After several negotiations, the Thai government lifted the

ban in July, 2003. The Chinese side is seriously concerned over the abuse of SPS measures by the Thai side to establish obstacles for the export of Chinese agricultural produces.

3.6. Government procurement

Thailand is not yet a signatory to the WTO Agreement on Government Procurement. The series of restrictions set by the Thai government in its government procurement tenders against foreign bidder lead to the fact that Chinese companies either cannot go for bidding or find it difficult to win. For example, the tender invitation documents often stipulate that foreign products be refused. The government agencies in charge of the procurement change the bidder's qualification requirement from time to time, and they are entitled to accept or refuse at any time part or all of the bidding. The technical requirements are even subject to changes during the bidding procedure. Thus the government agencies in charge control to a larger extent the result of the biding. Bidders have no right to complaint about the tendering procedure. The Chinese companies complain that the above practices pose them in an unfavourable position in the bidding.

According to the Law of Counter Trade promulgated in May, 2000, foreign winners of a government procurement contract exceeding 300 million bahts (US$7.3 million) must buy back Thai agricultural produces in barter trade at a value no less than 50% of the value of the government procurement contract. The provision increases the operational cost the winning foreign companies. In October, 2003, one Chinese winner signed a government procurement contract with a Thai government agency. The contract stipulates that the Chinese company buy back Thai agricultural produces worth 60% of the value of the contract, that the Thai produces be sold on the Chinese market, and that the Chinese company buy the Thai produces before the Thai side purchases Chinese products.

The Chinese side is concerned over the above practices. It is hoped that the competent Thai authorities will create a fair and level playground for foreign participation in the Thai government procurement.

3.7. Barriers to trade in services

3.7.1. Legal service

It is stipulated that foreign participation in Thai lawyer's offices shall not be more than 49%. Foreign citizens shall not be certified practitioner.

3.7.2. Financial service

The current Thai legislation does not allow foreign-funded banks to increase the number of branches in Thailand. Foreign funded-banks are forbidden to use the electronic network of the Thai local commercial banks. There are extra terms for

subsidiaries in Thailand of foreign banks to apply for the commercial bank license. For example, investment in shareholding right by foreign banks shall not exceed 25% of the actual capital return.

3.7.3. Construction and engineering projects

It is stipulated that foreign companies shall not participate in the building and/or contract to build civil constructions. The building company shall be registered in Thailand, and that is to have commercial presence in Thailand. Ceilings are set for charges of foreign construction companies.

There are restrictions on the managerial staff brought in the foreign contractors. It is stipulated that companied with a registered capital exceeding 100 million bahts employ at least 4 local workers for employing one foreign manager, and that those with a registered capital less than 100 million bahts employ at least 5 local workers for employing one foreign manager. The import of ordinary worker is subject to severe restrictions. Foreign contractors are subject to strict market access requirements in terms of their performance.

India

1. Bilateral trade relations

India was the largest trading partner of China in South Asia. According to the China Customs, the bilateral trade volume between China and India in 2003 reached US$7.59 billion, up by 53.6%, among which China's export to India was US$3.34 billion, up by 25.2%, while China's import from India was US$4.25 billion, up by 87%. China had a surplus of US$0.91 billion. China mainly exported coal, machinery and equipment, electric and electronic products, charcoal and semi-charcoal, hi-tech products, electronic technologies, diodes and similar semiconductors, yar and products thereof, battery, etc. The major imported products of China from India included iron ore and refined ore, steel, iron and steel plate, chromium ore and refined ore, alumina, primary plastics, primary polyethylene, primary polypropylene, manganese ore and refined ore, machinery and equipment, etc.

According to MOFCOM, the turnover of completed engineering contracts by the Chinese companies in India reached US$ 84.85 million in 2003, and the volume of the newly signed contracts was US$ 291 million. The volume of completed labour service cooperation contracts was US$1.45 million, and that of the newly signed labour service cooperation contracts was US$2.61 million. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in India was US$279.81 million, with that of all the contracts signed US$1.33 billion, and the volume of the completed labour service contracts had reached US$22.72 million, with that of the total contracts signed US$14.74 million.

According to MOFCOM, no Chinese-funded non-financial enterprise was set up in India in 2003. By the end of 2003, there were accumulatively 15 Chinese-funded enterprises set up in India with a total investment of US$37.20 million from both sides, among which US$20.63 million was from Chinese investors.

According to MOFCOM, India investors invested in 30 projects in China in 2003, with a contractual volume of US$46.70 million and an actual utilization of US$15.93 million. By the end of 2003, India investors had accumulatively invested in 101 FDI projects in China with a contractual volume of US$234.65 million and an actual utilization volume of US$79.13 million.

2. Introduction to the Indian trade regime

2.1. Legislation on trade and investment

The Indian legislation on trade and investment mainly includes the Law on Custom and Tariff, the Regulation of Custom Valuation, the Law on Animal Imports, the Law on Drugs and Cosmetics, the Regulation of Anti-dumping, the Regulation on Countervailing, etc..

2.2. Trade administration

Trading right registration system is applied in India. Products subject to import and export are divided into three groups, namely products prohibited to import or/and export, products whose import and/or export is restricted, products whose import and/or export is subject to ordinary administration. Import/export license administration is applied to products whose import and/or export is restricted. The trade in certain products, such as petroleum, rice, wheat, high quality iron ore, etc., can only be operated by a few state-owned trading companies by the Indian government. All trading companies can do trade in products subject to ordinary administration.

2.3. Competent authorities for trade

The Indian competent authority for foreign trade administration is the Ministry of Commerce and Industry. There are two main departments within the ministry, namely the Department of Commerce and the Department of Industry. Trade administration falls within the competence of the Department for Trade, which is responsible for the development of international trade policy, international business policy, export and import policy and government procurement policy, as well as relevant administration and implementation. The Directorate-General of Foreign Trade affiliated to the Department of Trade is in charge of certain specific management on foreign trade. The Anti-dumping Bureau affiliated to the Department for Trade is in charge of anti-dumping investigation. Institutions affiliated to the Directorate for Trade policy are responsible for responding to anti-dumping allegations against Indian export firms initiated by foreign countries.

The Indian Customs is responsible for tariff levying and monitoring the import and export business of firms.

The Indian Reserve Bank is responsible for the management of and supervision over the use of foreign exchange by enterprises, and the commercial banks for the payment and reception of foreign exchange of enterprises.

In addition, India’s chambers of commerce provide various services to enterprises and coordinate the relations between enterprises and the government as well as among enterprises. They have played an important role in developing India’s foreign trade.

3. Barriers to trade

3.1. Tariff and tariff administrative measures

3.1.1. Tariff peak

High tariffs (refer to Table XII) are imposed on certain import products. Though tariff peaks for the fiscal year of 2003-2004 were lowered from 30% to 25%, the downturn

adjustment did not cover most of the agricultural produces, and instead, the tariffs for agricultural produces were raised. For example, quantitative restriction on import of garlic was eliminated as of January, 2003, and the import tariff was raised from 30% to 100% which is the ceiling for bound tariff. The high import tariffs, particularly on household electric apparatus, motorcycles and components thereof and garlic impede the entrance of the relevant Chinese products into the Indian market.

Table XII: Indian Tariff Peaks

Products	HS Code	Tariff Rate %
Undenatured ethyl alcohol	220710	166
Undenatured ethyl alcohol	220820－220890	166
Raisins	080620	105
Vehicles	870310－870390	105
Coffee	090111－090190	100
Garlic	20019010	100
Tea	090210－090240	100
Rice	100610，100620，100640	80
Sunflower seed oil	151211	75
Spices (pepper, cloves, cardamoms)	090411-090420	70
Gloves (of leather)	0907	70
Poppy seed	120791	70
Natural rubber	400100	70
Palm oil	151110、151190	65
Sugar	1701	60
Maize, grain sorghum	100510、1007、	50
Millet	100820	50
Apple	080810	50
Soya-bean oil	1507	45
Citrus, lemon	080510、080550	40
Fresh grape	08061	40

In addition, an additional duty of 16% (also called offset tax, similar to its domestic goods tax) is levied on 92 categories of imported products according to their respective retail price rather than their import prices. The formula for the amount of duty is: tax=16%* (CIF + basic import duty).

3.1.2. Tariff quota

Tariff quota administration is applied to the import of certain products. There is a great difference between the in-quota and off-quota tariff. Products subject to tariff quota in the fiscal year of 2003-2004 included milk powder, maize, unrefined sunflower seed oil and sunflower seed oil, refined colza oil, mustard oil in the fiscal year from 2001 to 2002. The import quota for milk powder was 10,000 MT, and the

in-quota tariff rate was 15%, while the out-of-quota tariff rate was 60%. The import quota for maize was 400,000 MT, and the in-quota tariff was 15%, while the out-of-quota tariff was 60%. The in-quota tariff rates for unrefined sunflower seed, refined sunflower seed oil, and refined colza oil, and mustard oil were 50% and 45% respectively, while the out-of-quota tariff rates were 75% and 85% respectively. The amount of import quota of maize was decided by the Agriculture and Processed Food Development Agency. All the import quota of maize was allocated to state-owned trading companies.

The Directorate-General for Foreign Trade (hereinafter referred to as DGFT) is responsible for the allocation of quotas. The allocation procedure is very complicated. Prior to the importation, the Indian importers should submit their import application to DGFT headquarters in Delhi, and the Import and Export Promotion Committee under DGFT will then decide the amount approved to import. There are strict qualification requirements on granting quotas and proscribed time limits on transaction. In addition, quotas are allocated to the large state owned companies with import performance. Thus, many of the quotas are wasted. The practice in fact impedes the importation of the products concerned.

3.1.3. Optional tariff

Out of the 5114 lines of India's 6-digit MFN standard customs tariffs, *ad valorem* duty is applied to 4841 lines, optional duty (either *ad valorem* or specific duty) applied to 271 lines and specific duty applied to 2 tariff line. As there are no clear provisions in the Indian legislation, the Indian customs is entitled to choose the higher one of the specific duty and *ad valorem* duty. Products subject to optional duty are mainly textiles and clothing (refer to Table XIII). The fact that a lot of tariff lines are subject to optional tariff increases the risks of exporters and affects the export of the relevant Chinese products to India.

Table XIII: Products Subject to Optional Duty

(Rs=Rupee, P=Piece)

Product description	6-digit code	Specific duty	*ad valorem* duty
Wool clothes for male	610110	30%	Rs.700/P
Cotton clothes for female	610220	30%	Rs.425/P
Cotton jacket for female	610441	30%	Rs.225/P
Cotton shirt for male	610510	30%	Rs.83/P
Cotton underpants for male	610711	30%	Rs.24/P
Cotton coat for male	620112	30%	Rs.385/P
Wool coat for female	620291	30%	Rs.220/P
Wool suit for male	620311	30%	Rs.1, 100/P
Silk shawl	621410	30%	Rs.390/P
Silk tie	621510	30%	Rs.55/P

3.1.4. Customs valuation

The Indian Customs implements customs valuation on imports of edible oil as of 2002. Since then, the Customs raises twice the valuated price for edible oil, and the taxable price takes the higher of the customs pricing and transaction price. As the transaction price is usually lower than the price set by the customs, the price set in customs valuation actually serves a means to control the import the relevant products.

3.2. Barriers in customs procedures

There are no clear provisions in the Indian laws and regulations on withdrawal of imported cargos. In practice, the Indian customs authorities usually require the exporter who applies for withdrawal to present no-objection certificate/letter signed by the intended importer. However, importers concerned are usually reluctant to sign a certificate/letter of this kind, and as a result, exporters concerned cannot collect their cargos in a comfortable way. Chinese enterprises suffer great loss thereof.

In 2002, the Customs House in Bombay published a gazette, requesting importers to give, in the customs declaration document, detailed description of products when applying for the importation of 100 sensitive products of 22 categories. Otherwise, the port service center shall not accept the application. According to the gazette, importers of such agricultural products as garlic, almond and fruit juice as well as processed food shall state the other features of the imported products, i.e., dry or wet, in addition to the place of origin and grade of the products. Importers of such consumer products as chocolate and chewing gum shall claim the brand of the products. Importers of certain sensitive chemicals shall indicate the manufacturer and the end-user in addition to the grade and specification of the products concerned in the customs clearance documents.

India eliminated the quantitative restrictions on 69 of the above 100 products in the fiscal year of 2003-2004. However, the customs declaration document fails to provide space for importers to fill in the newly-required information, and neither could the customs management system accept the information, and consequently, importers have to write on a piece of blank paper attached, which makes customs clearance procedure very complicated.

3.3. Technical barriers to trade

3.3.1. Drug registration

The implementation details of the Law on Drug and Cosmetics stipulates that as of April, 2003, foreign drugs including both the material drugs and final drugs not enter the Indian market unless they have obtained the Indian registration certificate, and the registration certificate be renewed very 3 years. The Indian Ministry of Health charges manufacturers US$1500 for each of the drugs applying for registration and US$1000 for the registration of each drug. Foreign drug manufacturers shall pay the Indian Drug Bureau US$5000 as inspection fee for them to inspect the manufacturing

facilities in the exporting countries. In addition, fees shall be paid for obtain each import license and testing on each drug.

In the actual operation, some Chinese pharmaceutical companies, having handed in all the required documents and paid the relevant registration fees, failed to receive registration certificate issued by the competent Indian authorities within the stipulated time. Certain other Chinese companies, having got their drugs registered, failed to receive import licenses issued by the competent Indian authorities within the stipulated time. The above situation increases the business risk of Chinese exporters, and the practice restricts to certain extent the Chinese export to India. The Chinese side is concerned over the transparency issue in the implementation of the registration requirement.

3.3.2. BIS marking

It has become a compulsory requirement to have BIS marking designed by the Indian Standard Bureau on 135 products mainly including milk powder of infant formula, cement, household electric apparatus, gas tank, antisepsis treated food, additives, multifunctional batter, plastic milk bottle, X-ray equipment for medical uses and stainless steel plate. In addition, information on the name and address of the importer, name of the product, production date and maximum retail price shall be provided on the marking.

In April, 2003, the Indian Ministry of Commerce and Industry promulgated a decree, stipulating that the number of products subject to BIS marking increased from 135 to 159. Foreign producers of the 159 products or trading companies must apply to BIS for registration and shall make the inspection agency believe that prior to be authorized to have BIS marking on their product, the foreign producers have already satisfied the safety and quality standards as required by the Indian authorities.

3.3.3. Product information

The Indian Directorate-General for foreign trade promulgated announcements in November, 2000, and January, 2001, respectively, requiring that all imported products for retail meet the provisions in the Regulation on Measurement in terms of their production, packaging and selling, and that the following information be provided: the name of the product, net weight, dates of production, packaging and importation, maximum retail price (including all taxes, transportation fees, commissions, advertisement fee, goods collecting fee and packaging fee). In addition, the date of importation concerning food shall be earlier than 60% of the total period of validity.

It is stipulated that imported cosmetics be accompanied by invoice or report, showing the name and quantity of the each piece of the batch of the imported cosmetics as well as the name and address of the manufacturer. A declaration shall be submitted to the head of the customs signed by either the producer, or the agent to the producer, or importer or the agent of the importer, stating that the batch of cosmetics complies with

the requirements listed in Chapter 3 of the Drug and Cosmetic Act and its implementing details.

3.4. Sanitary and phytosanitary measures

Pursuant to the Plant, Fruit and Seed Act, the Indian Ministry of Agriculture requires, as of May, 2001, that importers of grains, beans, timber, dried and fresh fruit, spices, cotton, plant for medical uses and all other agricultural products for consumption shall, at least 30 days prior to importation, apply for special permit with the ministry. It is required to examine the plant disease situation in the exporting country, on the basis of which evaluation be given on the impact of diseases on the batch of goods subject to import. Finally, the government agencies shall decide whether to allow the import of such batch of agricultural produce considering such factors as the spreading of diseases in the country of origin and the impact on Indian export of the diseases.

In July, 2001, the Indian Ministry of Agriculture promulgated the Announcement on Restricting the Imports of Animal Products, stipulating that import health certificate issued by the Ministry of Agriculture be presented to the customs upon the importation of products subject to restriction. The restriction covers mainly various meat and products thereof, egg and egg powder, milk and milk products, bovine and ovine embryo, pet food of animal origin. It is also stipulated that importers fill A or B application form and file 3 copies to the Department for Animal and Diary Products Trade, Ministry of Agriculture, depending on means of transportation either by land and sea or by air. It is provided that the importation of animal products by sea or air should go through the customs in Delhi, Bombay, Calcutta and Chennai where there are animal quarantine and certification institutes.

3.5. Trade remedies

By the end of 2003, India has initiated 71 anti-dumping investigations, 1 safeguard investigation involving and 1 product-specific safeguard investigation against Chinese products. It has become one of the developing countries initiating most of the trade remedy investigations against Chinese products. In 2002, India initiated 16 anti-dumping investigations involving Chinese products affecting an export volume of US$64 million. In 2003, India initiated 6 anti-dumping investigations involving Chinese products affecting an export volume of US$28.3 million.

India refuses to take China as a market economy in its anti-dumping investigations. The Anti-dumping Law promulgated in 1999 gives no list of countries taken as market economy. The law was amended twice in 2001 and 2002, and the amendments provide standards to take a country as non market economy and grant individual company market economy treatment. However, with the absence of procedure provisions for companies to apply for market economy status and without any questionnaires on market economy delivered by the investigation authority, Chinese companies find no way to defend for their market economy status in the anti-dumping investigations. Thus, they will not be granted with the market economy status. After

several negotiations initiated by the Chinese side, the competent Indian authority as of January, 2003, formally requires the Chinese responding companies to reply 15-20 questions and field inspections are conducted to decide whether to grand the Chinese responding companies the market economy status. In 2003, the Indian inspectors conducted market economy inspection in 7 newly initiated and 2 review cases.

Currently, Indian authority is deciding on whether to grant Chinese responding companies market economy status according to the 2000 and 2001 amendments to the Law on Anti-dumping.

The Indian government amended its anti-dumping legislation on November 30, 2003. The criteria and rights of the Indian Director-General for Anti-dumping Affairs in deciding if a country is a market economy are added, and the criteria and rights are that when a country of non-market economy, in the process of an anti-dumping investigation, has been, in the official announcement, recognized or decided to be recognized as a market economy by a WTO member according to the evaluation following certain criteria, the Indian Director-General for Anti-dumping Affairs may take the non market economy as a market economy in the Indian anti-dumping investigation accordingly.

Though market economy status was granted to Chinese responding companies in individual anti-dumping investigations, China has not yet been recognized as a full market economy. Indian investigators enjoy a lot of discretion in the investigations, which may lead to the discretionary determination.

3.6. Subsidies

India provides indirect subsidies to export through various export promotion programmes, i.e. the Export Promotion for Capital Goods (EPCG), DEPB, Tax Exemption Programme, Export Promotion Programme for Diamonds and Jewries. Tax holidays are enjoyed by export-oriented enterprises established in export processing zones, special zones for agricultural products export and special economic zones. EPCG provides that a preferential tariff of 5% be provided to imported capital gods to be used in the production of products intended for export. Some countries consider that India provides export subsidies through DEPB, and that EPCG is not inconsistence with WTO TRIMs Agreement, and consultations have been required.

Indonesia

1. Bilateral trade relations

According to the China Customs, the bilateral trade between China and Indonesia in 2003 reached US$10.23 billion, up by 28.9%, among which China's export to Indonesia was US$4.48 billion, up by 30.8%, while China's import from Indonesia was US$5.75 billion, up by 27.5%. China had a deficit of US$1.27 billion. China mainly exported grains and grain powder, machinery and equipment, corn, crude oil, processed oil, gasoline, electric and electronic products, textile and yarn products, hi-tech products, etc. The major imported products of China from Indonesia included petroleum, processed oil, other fuels, pulp, machinery and equipment, electric and electronic products, edible oil, coal, paper and paper board, palm oil, etc..

According to the MOFCOM, the turnover of completed engineering contracts by the Chinese companies in Indonesia reached US$140 million in 2003, and the volume of the newly signed contracts was US$280 million. The volume of completed labour service cooperation contracts was US$20 million, and that of the newly signed labour service cooperation contracts was US$30 million. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in Indonesia was US$570 million, with that of all the contracts signed US$1.07 billion, and the volume of the completed labour service contracts had reached US$170 million, with that of the total contracts signed US$220 million.

According to MOFCOM, 6 Chinese-funded non-financial enterprises were set up in Indonesia in 2003, with a total contractual investment of US$10 from Chinese investors. By the end of 2003, there were accumulatively 65 Chinese-funded enterprises set up in Indonesia with a total contractual investment of US$170 million from Chinese investors.

According to MOFCOM, Indonesian investors invested in 143 projects in China in 2003, with a contractual investment of US$630 million and an actual utilization of US$150 million. By the end of 2003, Indonesian investors had accumulatively invested in 1079 FDI projects in China with a contractual volume of US$2.58 billion and an actual utilization volume of US$1.27 billion.

2. Introduction to the Indonesian trade regime

2.1. Trade administration

The Indonesian government requires that all importers register with the Ministry of Industry and Trade (hereinafter referred to as MIT) and obtain a license. Indonesian importers are classified into 6 groups, namely grade-one comprehensive importer, grade-two comprehensive importer, designated imported, production importer, importer/producer and private agent. Importers have to register in accordance with the respective criteria established for the 6 groups.

Imports are subject to classified administration. Indonesia forbids the import of books, magazines, Chinese newspaper, tape, video tape, colour copy-machine. Certain products are subject to import quota and license administration. At present, products under 141 tariff lines are subject to import license. Special licensing regime is applied to the imports of alcoholics, lubricants, explosives and specified dangerous chemicals. Furthermore, imports of live animals, pets and animal products including leather for industrial use shall obtain SPP from the Indonesian Ministry of Agriculture and the Islamic Certification issued by the Islamic organization in the exporting country accredited by MUI.

Regarding export administration, the Indonesia exporters shall get registered with MIT and obtain license for operation. Except engaged in manufacturing, foreign-funded enterprises in general cannot conduct export trade. Export products are divided into three groups in Indonesia, namely products whose export shall only be conducted by registered exporters, those whose export needs approval (special permit) of MIT, and those whose export is forbidden. Certain products are subject to export duties.

2.2. Competent authorities

MIT is the competent authority for trade administration, and its competences mainly include the formulation of policies concerning macro-administration and adjustment of foreign trade, participating in the formulation of trade related legislation, classifying export and import products into different administrative system, import/export license examination and approval, import monitoring with other government agencies, participating in settlement of trade disputes and anti-dumping affairs, as well as export promotion.

3. Barriers to trade

3.1. Tariff and tariff administrative measures

In the market access negotiations of the Uruguay Round, Indonesia committed to bounding the tariff of 94.6% of its products. Products not subject to bounded tariff include certain agricultural products, automobiles, iron and steel products and certain chemicals. The current average tariff of Indonesia is 7.3%. There are tariff peak, and import tariff for cigarettes and alcoholics is 170%, crude sugar 20% and refined sugar 25%.

Tariff escalation is obvious in certain sectors. For example, import tariff for components of motorcycles is 5%-10%, for complete sets of components is 25% and for the assembled vehicle is 35% for those below 250cc and 60% for those between 250cc and 500cc.

The Indonesian Customs applies check prices to imported food instead of actual

transaction prices provided on the import contracts, and this leads to the fact that the tariff applied to import food is 5% higher than the nominal tariff.

The Indonesia Customs requires that importers of motorcycles provide clear evidences for pricing, and that those fails to do so shall pay a deposit of $600. The requirement increases the burdens of importers. Furthermore, regardless of the average contract prices for motorcycles at 100cc and 110cc made in mainland China, the Indonesian Customs, taking as its reference the prices of Taiwan made vehicles, sets a benchmark of $600 for mainland China made vehicles. The discriminative measure restricts the export of Chinese motorcycles to Indonesia.

3.2. Import restriction

The Regulation on Sugar Import System promulgated by MIT provides that only authorized sugar producers in Java conduct sugar imports, and that sugar imports are forbidden when the price of sugar is less than 3100 guilder/kg on the Indonesian market.

The Indonesian government only authorized 3 registered imports to conduct imports of alcoholics, and the imports are subject to quantitative restriction.

MIT issued the Decree of the Director-general for Foreign Trade in March 2002, requiring special import permit on a number of products, including maize, rice, bean, cane sugar in solid form, beet sugar or sugar of chemical processing, 79 textile product, 5 footwear and components thereof, 20 electric and electronic products and 2 toys for children.

MIT promulgated the new Regulation on Administration over Textile Imports (732/MPP/KEP/70/2002) in October 2002, restricting the imports of textile products for non-manufacturing purposes. It is provided that only manufacturers of textile products can import raw materials and accessories for their own production. The requirement restricts the exports to Indonesia of Chinese non-bleached cotton fabrics and embroidered accessories.

3.3. Barriers in custom clearance

It is required that imports of electronic products, textile products, footwear and toy be subject to pre-shipment inspection, which increase the burden of exporters.

Chinese companies complain that customs clearance procedure seems longer for Chinese products, which leads to the damage of perishable products such as certain food and medicines, and that the untimely customs clearance of certain components leads to the failure to complete production plans and the missing of sales opportunities. All these impede the export of the relevant Chinese products to Indonesia.

3.4. Technical barriers to trade

The Indonesian Law of Food Labeling comes into force in 2003, which provides that all markings on consumer products shall be in no other languages than Indonesian. The requirement affects the sales of certain food products in Indonesia, which constitutes an unjustified obstacle to trade.

3.5. Sanitary and phytosanitary measures

The Indonesian Law on Consumer Protection comes into force as of July, 2000, requiring that imported food be registered with BPOM. Information concerning ingredients and processing method shall be provided for registration. The Chinese companies concern about commercial secret protection in the process of registration.

The Indonesian Ministry of Agriculture suspended the imports of leather of Chinese origin as of October 31, 2003, on the ground that the Chinese government had never notified the Indonesian authorities the situation of animal diseases in China. The Chinese government has been disclosing information about animal disease situation in China. The Chinese Ministry of Agriculture issues on monthly basis China Animal Epidemics Bulletin, which has been provided to embassies of foreign countries in Bejing, and the Bulletin can be found on the website of the Chinese Ministry of Agriculture. Furthermore, the leather products exported to Indonesia from China are mainly made from processed leather. The processing method reveals that those products cannot constitute a threat to animal health. Additional copies of the monthly Bulletin in the past two years are delivered to the Indonesian side. The Chinese side had several discussion with the Indonesian Ministry of Agricultural, expressing the willingness to ensure that the Indonesian side obtain information about animal epidemics in China in a more steady way and the hope that the Indonesian side lifts the suspension on imports of Chinese leather products as soon as possible after assessing the animal epidemics situation in China and apply different quarantine measures to imports of hide and leather. The Indonesian side agrees to study the monthly Bulletin and insists that an inspection team be sent to China.

A Chinese company in its pilot project succeeded in planting hybrid rice with its Indonesian partner. However, the company complains about its difficulties in exporting hybrid rice seeds to Indonesia for commercial operation. The Indonesian Bureau of Plant Quarantine, Ministry of Agriculture, continues to delay the issue of the import permit for the said hybrid rice seed on the basis of rice disease prevention. The Chinese side on various occasions invites the Indonesian side to check the production of the hybrid rice seed and the relevant quarantine and provides information about the hazardous bio-organism in China of the Indonesian concern. However, there is not yet a reply from the Indonesian side.

3.6. Government procurement

Indonesia is not yet a signatory to the WTO Agreement on Government Procurement. The procedures for government procurement are provided in various domestic

legislations. It is required that foreign companies participating in government-invested infrastructure construction projects and procurement projects purchase Indonesian products at the same value.

3.7. Barriers to trade in service

3.7.1. Financial sector

Foreign banks to open branches in Indonesia are required to have a minimum registered capital of 3 trillion guilder (about US$300 million). Financial companies with foreign participation shall pay two time of capital reserve as that of domestic companies. Foreign insurance companies can set up joint-ventures in Indonesia. All insurance policies shall be issued by Indonesian insurance companies or joint ventures unless the insurant is a wholly foreign funded entity or the required insurance cannot be provided by Indonesian companies.

3.7.2. Distribution

Indonesia forbids foreign companies to conduct retail, but they are allowed to open supermarkets or shopping mall in large cities.

3.7.3. Legal service

Legal practitioners in Indonesia must be Indonesian citizens graduated from Indonesian universities or from universities recognized by the Indonesian government. Foreign lawyers can only provide legal consulting service at the approval of the Indonesian Ministry of Justice and Human Rights. Foreign law firms must set up partnership with Indonesia law firms before getting access to the Indonesian market.

3.7.4. Accounting service

It is stipulated that all registered accountants be Indonesian citizen. Foreign accounting firms must set up partnership with Indonesia accounting firms before getting access to the Indonesian market. Foreign accountants and auditors can only provide consulting services, and they are not allowed to sign on accounting/auditing report.

3.7.5. Audio-visual sector

Foreign film and audio-visual distributors are not allowed to set up branches or subsidiaries in Indonesia. The Indonesian Film Law provides that the importation and distribution of foreign film be conducted by domestically funded Indonesian companies.

3.7.6. Transportation

Foreign participation is forbidden in domestic public transportation such as taxi, bus and marine transportation; however, foreign participation is allowed in ocean transportation.

3.7.7. Construction sector

Foreign consultants working for government-funded projects can only collect fees at the stipulated rate. Foreign companies can participate as subcontractor or consultant in projects that Indonesian companies are not able to complete independently. Foreign companies must set up joint-ventures with Indonesian companies before participating in government-invested projects.

3.7.8. Telecommunication

Foreign investors can set up telecommunication companies in joint-venture, but the foreign participation in a joint venture shall not be more than 35%.

3.7.9. Medical service

Medical service market is generally not open to foreign investors.

3.8. Intellectual property right protection

Piracy of softwares, audio-visual products and books is rather serious in Indonesia. Infringement of drug patents appears from time to time. Quite a few of famous Chinese products find that their trademark or design has been registered by squatting when the products have not yet or just entered the Indonesian market, i.e. such trademarks for medicines as Tong Ren Tang, Zhang Zhou Pian Zai Huang, Yuan Nan Bai Yao, and such machineries as Jiang Dong diesel engine series and Phoenix bicycles. The Chinese side is concerned about the inadequate protection over the intellectual property rights of Chinese famous products in Indonesia.

Furthermore, the Indonesian Patent Law provides that patent application be filed when the production of the new products be realized in Indonesia.

3.9. Others

Chinese complain that additional expenses are incurred when applying for business license and approvals. Employees of Chinese companies in Indonesia encounter extraordinary delay in their visa and long-term working permit application, as well as entry/exit inspection.

The Chinese side is concerned over the practice of ‘arresting prior to suing’ applied to tax evaders and tax back-payers by the Indonesia taxation authorities.

4. Barriers to investment

4.1. Barriers to business operation

Article 5, Chapter 3, the Regulation on Commercial Institutions, provides that when employing staff, wholesalers can employ no more than 10 foreign employees as experts or managerial staff, and that no less than 3 local Indonesian shall be employed for the employment of one foreign employee. Foreign employee must be university graduates or hold the same academic degree and have at least 3-year's working experience in the technical field he/she is to be employed for. Article 7 of the same chapter provides that retailers can employ no more than 3 foreign employees, subject to the same qualification requirements as above mentioned. In addition, each foreigner working in Indonesia shall pay US$100 monthly as DPKK, and the payment is required on all sectors.

In August, 2003, the Indonesian Ministry of Education claimed that about 30,000 foreigners currently working or studying would take a test on their Indonesian language level. Those who fail cannot get the working permit. The requirement poses a kind of restriction on foreign companies operating in Indonesia.

Indonesia conducts currently the Economic Need Test on the domestic market for professionals and managerial staff. The measure taken as a means to restrict and ban the use of foreign employees by the Indonesian government is considered violates WTO rule in the views of many WTO members.

4.2. Barriers to the withdrawal of investment

Article 7 of the Investment Regulation promulgated in 1994 provides that wholly foreign-funded firms shall remise part of its share holding rights to Indonesian residents either within 15 years of its establishment by direct transactions ro through the security market.

Viet Nam

1. Bilateral trade relations

According to the China Customs, the bilateral trade volume between China and Viet Nam in 2003 reached US$4.63 billion, up by 42%, among which China's export to Viet Nam was US$3.18 billion, up by 47.9%, while China's import from Viet Nam was US$1.45 billion, up by 30.5%. China had a surplus of US$1.73 billion. China mainly exported processed oil, gasoline, diesel, grains and grain powder, machinery and equipment, maize, textile products, clothing and accessories, steel, vegetables, etc.. The major imported products of China from Viet Nam included petroleum, coal, iron ore, fresh and dried fruit, nuts, chromium ore, machinery and equipment, bananas, natural rubber, electric and electronic products, manganese ore, etc..

According to MOFCOM, the turnover of completed engineering contracts by the Chinese companies in Viet Nam reached US$160 million in 2003, and the volume of the newly signed contracts was US$340 million. The volume of completed labour service cooperation contracts was US$30 million, and that of the newly signed labour service cooperation contracts was US$20 million. By the end of 2003, the accumulated turnover of engineering contracts completed by the Chinese companies in Viet Nam was US$820 million, with that of all the contracts signed US$1.41 billion, and the volume of the completed labour service contracts had reached US$160 million, with that of the total contracts signed US$200 million.

According to MOFCOM, 17 Chinese-funded non-financial enterprises were set up in Viet Nam in 2003, with an investment of US$8.17 million was from Chinese investors. By the end of 2003, there were accumulatively 90 Chinese-funded enterprises set up in Viet Nam with a total contractual investment of US$93.14 million from Chinese investors.

According to MOFCOM, Vietnamese investors invested in 16 projects in China in 2003, with a contractual investment of US$16.56 million and an actual utilization of US$3.31 million. By the end of 2003, Vietnamese investors had accumulatively invested in 400 FDI projects in China with a contractual volume of US$390 million and an actual utilization volume of US$90 million.

2. Introduction to the Vietnamese trade regime

2.1. Trade administration

The Vietnamese government manages foreign trade by governmental documents. The Vietnamese government promulgates documents giving macro-guidance to foreign trade administration. The Ministry of Trade promulgates the implementing details and regulations on the management of specific products according to government decisions. The Ministry of Finance is responsible for the formulation of tariff regulations for import and export. Other competent authorities such as the Ministries

of Industry, Agriculture and Health are responsible for the promulgation of lists of commodities subject to administration in their respective sectors as well as administrative measures.

2.1.1. Tariff policy

The new Vietnamese tariff regulations came into forces as of September 1, 2003. The new tariff regulation classifies import products into 10721 tariff lines according to HS code, and 4209 tariff lines are added. Import duties for 195 products are raised, and those for other 106 products are lowered. The current average tariff rate of Viet Nam is 14%.

2.1.2. Classified administration on imports and exports

The Vietnamese Premier promulgated the Decision on Import and Export Administration for the period between 2001 and 2005 on April 4, 2001, which provides that classified administration be applied to imported/exported products. The main categories include products whose export/import is forbidden, whose export/import is subject to license administration of the Ministry of Trade or the other specialized administration.

2.1.3. Customs pricing system

Customs pricing system is applied to imported products. There are mainly two means of administration. One is that import duty is levied according the list of import products whose pricing is subject to the state administration and the minimum prices thereof. The list includes 8 groups of products such as various beverage, tire, bricks for construction, washing pottery, plate glass, engines, electric fans, motorcycle and components thereof,, automobiles, whose import duties are collected according to the prices set in the list. The other is that import duty is levied according the list of import products whose pricing is not subject to the state administration. The list covers most of the remaining products, and the list sets different prices for the same product according to the places of origin. The prices set for products of Chinese origin are generally 70% of those with their places of origin in developed countries; however, there are some set at the same level as those from other countries. According to the regulation, when the transaction price provided in the contract is higher than 80% of the set price for the product while the transaction satisfies the relevant settlement provisions, the import duty can be levied on the basis of the contractual price, and when the contractual price is lower than 80% of the set price, the import duty shall be levied on the basis of the set price.

In 2003, the Vietnamese customs modified the second means of administration. If a trading company is able to obtain valid proof from authoritative agents proving the reasonableness of its pricing or evidence from enterprises proving that the transaction price is close to the price on domestic market, import duty may be collected according to the transaction price.

2.2. Investment regime

Viet Nam promulgated the amended the Implementation Details for the Law on Foreign Investment in Viet Nam on March 19, 2003, which further liberalizes its control over foreign investment. The major amendments includes: wholly foreign-owned enterprises may cooperate with each other in Viet Nam or set up new wholly foreign-owned enterprise with foreign partners; foreign-invested enterprises engaged in the manufacturing of machinery, electric power, electronic components shall be exempted from import duties on the raw materials, capital goods and spare parts imported for their own uses for 5 years as of the date of production; the proportion of foreign participation by way of technology transfer shall be decided among the interested parties; foreign invested enterprises may employ directly Vietnamese workers without the recommendation of the
Vietnamese labour services. In addition, the amended Implementation Detail adjusts the sectors subject to special incentives, incentives, restrictions and prohibition.

2.2.1. Sectors where foreign investment is subject to restriction

2.2.1.1. Sectors where foreign investors are allowed only by means of cooperative operation: establishment of public telecommunication network to provide telecommunication services, domestic and international postage service, publication and media, radio and TV operation.

2.2.1.2. Sectors where foreign investors are allowed only by means of cooperative operation or join-operation: exploitation and processing of petroleum and rare ore; avian, railway and marine transportation; public passenger transportation; harbour and airport construction; operation of marine and avian transportation; cultural service; tree planting; production of explosives for industrial uses; tourism; consulting services.

2.2.2. Sectors where foreign investment is prohibited

Sectors where foreign investment is prohibited include: projects damaging national security, national defense and public interests; projects damaging Vietnamese historical relics, culture, tradition and customs; projects damaging ecological environment; projects treating imported toxic wastes; projects for toxic chemicals or using toxic substances banned by international conventions.

2.3. Competent authorities

The Ministry of Trade is the competent authority for foreign trade administration, and it is responsible for the formulation of foreign trade development strategy, the study on international and domestic market and making proposals thereof, delivering guidance to the development of export structure, drafting and promulgating legislation on foreign trade, quota management and distribution, approving the trading rights of

special trading companies or manufacturing firms, supervising the implementation of foreign trade policies, etc... The Ministry of Industry, the Ministry of Agriculture and Rural Development, the Ministry of Fisheries, the National Bank, the Ministry of Posts and Telematics, the Ministry of Culture and Information and the Ministry of Health approve the trading rights involving import and export of products whose administration falls within their respective competences. The Vietnamese National Bank controls foreign exchange.

3. Barriers to trade

3.1. Tariff and tariff administrative measures

Viet Nam maintains high import tariff on certain agricultural produces and electric and electronic products which are able to be produced domestically. Tariff rates on those products are usually kept above 30%. For example, the rate for vegetables is 30%, fruit 40%, tea 50%, agricultural machinery 30%.

Though there are great demand for such agricultural produces as potatoes, garlic, tomatoes, eggs and fruit of temperate zone, it is now difficult for them to get access to the Vietnamese market because of the high tariff. Currently, the main channel through which Chinese agricultural produces gain access to the Vietnamese market is the border market, but the quantity is severely limited.

In July, 2003, the Vietnamese Customhouse stipulated that the taxable price for dye materials of Chinese origin be raised from US$1.4/kg to US$24/kg. The pricing severely goes against the actual production cost and export price of the relevant Chinese products, which nearly stops the export of the relevant Chinese products to Viet Nam, and this severely damages the interest of the Chinese industry. After negotiation, the Vietnamese side adjusted the custom pricing for Chinese dye materials to US$2/kg in October, 2003.

Chinese companies complain about the pricing for motorcycle engines. The export price of Chinese motorcycle engines to Viet Nam is normally no more than US$135/engine; however, the Vietnamese customhouse levies import duty according to the set price of US$225/engine. The taxable price is the same as those of Japanese origin. The pricing raises the import tariff on motorcycle engines of Chinese origin in a disguised form, and it impedes the normal export of motorcycle engines from China to Viet Nam. The Chinese side expresses its concerns over the issue.

3.2. Import restriction

Vietnam has taken since the end of 2001 a series of measures against motorcycle imports, including the ban on imports of whole-set motorcycles and 23 components and the very high tariff applied to imports of motorcycle components. The above mentioned measures resulted in the actual stagnancy of the export of motorcycle from China to Vietnam since the first quarter of 2002. According to the China Customs, the

export of motorcycle from China to Viet Nam in 2001 reached US$425 million, the export volume decreased to US$50.37 million in 2002, and it further decreased to US$6.1 million in 2003.

In addition, Viet Nam removes quota administration over motorcycle components imported by domestic-invested motor assembly companies, while maintains quota administration over foreign-invested motor assembly companies on the basis of their approved production volume. The measure restricts the export of motorcycle components from China to Viet Nam.

3.3. Government procurement

During the government procurement for vehicles for public transportation in early 2003, Viet Nam only accepts domestic bidders.

In the tender invitation for large medical equipment and construction equipment, the invitation letter clearly excludes products made in China, including foreign brands made in China. For example, it is written in the documents inviting tenders for large medical equipment organized by the Vietnamese Ministry of Health, "Prior to technical assessment, subcontractors shall meet the following basis requirements: the equipment (CT scanner) shall obtain a certificate of origin issued by any country other than China."

3.4. Barriers to trade in services

3.4.1. Tender invitation for engineering projects

It is required in tender invitations that foreign bidder are approved to participate in the bidding unless it runs for bidding jointly with local firms or commits to sub-contracting the project to local firms. The foreign winner of a tender shall give priority to Vietnamese technicians and worker in the choice of employees, and the foreign winner can only send a few technicians and managerial staff to the project for management. In addition, priority should be given to the Vietnamese local market regarding the purchase of raw materials and machinery necessary to the construction.

3.4.2. Financial sector

The provision that foreign banks shall by no means conduct savings business restricts their credit business.

3.4.3. Aviation sector

In the civil aviation sector, it is required that paying a visit abroad, employees of government institutions and state-owned enterprises shall not take flights of foreign airlines when a Vietnamese airline is available.

3.5. Protection of intellectual property right

Increasing number of Chinese products are pirated on the Vietnamese market. The Vietnamese government fails to provide sufficient protection on Chinese right holders. One Chinese company filed on November 25, 2002, an application with the Industrial Copyright Bureau, Ministry of Science, Technology and Environment, for the registration of the trademark "San Feng". According the Vietnamese provisions, the competent authority for trademark registration shall reply the applicant within 9 months in written form; however, there was no reply by the end of December, 2003. Currently, there are a lot of pirated products using the trademark of "San Feng" on the Vietnamese market, which damages the legal interests of the Chinese enterprise.

3.6. Other barriers

The competent authorities for trade administration interfere in trade activities by promulgating various official resolutions, decisions and notices, which makes the trade policies unforeseeable, and this disturbs the normal business of Chinese companies in Vietnam. For example, the frequent adjustment of import tariff on components of machinery and equipment and sharp raise of import tariff severely affect the operation of Chinese-funded enterprises engaged in assembly business in Viet Nam.

Chinese companies complain that policy incentives are promised when the Vietnamese government invites foreign investment, but the competent Vietnamese authorities usually fail to keep those promises after the Chinese companies have made the investment. The practice affects the business decisions of Chinese enterprises in Viet Nam.

4. Barriers to investment

4.1. Barriers to investment access

In the automobile sector, it is provided that no more foreign-invested project engaged in automobile assembling be approved unless all its products are export-oriented. However, the Vietnamese domestic-funded enterprises are not subject to the restriction.

Chinese companies complain about the complicated and lengthy application procedures for investment. In 2003, one Chinese company would like to further explore the Vietnamese market by investing in the center exhibiting high-quality Chinese products; however, the application was not approved by the Vietnamese authorities. The Chinese side initiated the negotiation, and the Vietnamese side expressed that investment in the said sector should be approved by the Prime Minister, and that it was difficult to approve the project unless the Chinese investor increased the investment.

The Implementing Details for the Law on Foreign Investment provides that foreign investment is encouraged in projects engaging in the proving, exploitation and processing of mineral resources. However, Chinese investment in the above mentioned areas encounters the following difficulties from time to time: there is a complicated and lengthy examination and approving procedure for the exploration of mineral resources, going step by step from the Ministry of Planning and Investment, to the competent sector ministry and finally to the Prime Minister for approval; it is difficult for foreign-invested companies to apply for the exploitation of mineral mines; and the provision of mineral mine resources cannot be guaranteed. In front of these issues, foreign-invested companies cannot conduct normal business.

4.2. Barriers to investment operation

In Viet Nam, the production and the assembling volume of motorcycles is not decided by the market and the enterprises themselves; instead, it is decided by the government. The Vietnamese government directly interferes with enterprise production. It is provided that enterprises producing main machine of motorcycle manufacture more than 20% of the motorcycle components including main frame, and that enterprises producing engines for motorcycle manufacture at lease one of the 8 components of an engine.

A dual price system is applied to the prices of flight ticket, water, electricity, post fees and hotel fess. Charges on foreign-funded enterprises and foreigners are higher than on local residents, sometimes several or even dozens time higher. For example, the price of electricity set for Vietnamese enterprises is 895 guilder/kw; however, that for foreign enterprises is 1020 guilder/kw and 1710 guilder/kw for peak hours. The above requirement unjustifiably increases the production cost of Chinese-funded enterprises in Viet Nam and puts them in a disadvantageous position in competition.