Brazil

1The overview of Sino　Brazilian trade and investment

According to the statistics from the Chinese Customs, the total bilateral trade volume between China and Brazil reached 20.3 billion US dollars, up by 37%, among which China　s export to Brazil was US＄7.38 billion, up by 52.9%; while China　s import from Brazil was US＄ 12.92 billion, up by 29.3%. China　s trade deficit with Brazil was US＄5.54 billion. China　s main exports to Brazil were mechanical parts, integrated circus 1. microelectronic modular assembly, automatic data processors and their parts, transformer、static converter, induction coil, cable telephone, telegraph equipment, yarn and textile products, and instruments. The main imports from Brazil included soy beans, iron sand and its ore concentrate, crude oil, sodium hudroxide wood pulp or sulfate wood pulp, feather, timber and soybean oil.

According to the Ministry of Commerce(hereinafter referred to as MOFCOM), by the end of 2006, the accumulated turnover of engineering contracts completed by Chinese companies in Brazil had reached US＄540 million, and the volume of completed labor service contracts had reached US＄19.11 million.

According to MOFCOM, China　s total non　financial foreign direct investment(FDI), approved by or filed with MOFCOM, reached US＄9.75 million in 2006. Brazil investors invested in 27 projects in China in 2006, with a total contractual investment of US＄100 million and an actual utilization of US＄55.6 million. By the end of 2006, Brazil investors had invested in a total of 411 FDI projects in China with a contractual investment of US＄630 million and an actual utilization of US＄200 million.

2Major reforms in trade and investment regulations

2.1The Trade regulatory system and its development

There is not a comprehensive trade law in Brazil. Its main import measures have been included in the Import Regulations while export measures in the Export Regulations.

2.1.1The tariff system

In 1994, according to the No. 22/94 resolution of the common market commission, the member states of the Southern Common Market stipulated a common tariff standard to the external markets. Currently, except the 35% tariff for auto industry and a limited number of country specific exceptions, the Common External Tariff(CET) for most products regulated by the common tariff system ranges from 0—20% with the average tariff at 11%.

In 2006, the average tariff in Brazil was 10.6%. According to the CMC38/05 resolution, before December 31, 2008, each member state of the CMC can exempt 100 products(with the 8 digit tariff number) from the tariff regulation of the CMC with the adjustment to be made every six months and no more than 20% of the exemptible products to be adjusted.

According to the CMC 39/05 resolution, special tariff will be applicable to the information and communication products(BIT). The average tariff of the 398 BIT products with the eight digit tariff number will be 1.326%. The average tariff for 10 products in the category of automatic data processing equipment and parts, hubs、carrier communication equipment of cable telephone and cable digital communication equipment will be at 12%. The tariff of most of the rest 88 products will be zero. The Brazilian Foreign Trade Commission decided respectively on February 24, March 20, May 5, June 9 and August 25 in 2006 to bring the tariff of certain imported IT products to 2% from the original rate ranging from 12%—18%.

According to the No.15 decree issued by the Brazilian Foreign Trade Commission, the average tariff of the commodities(the materials for industrial manufacturing) under the 1,199 eight digit tariff number was 10.65%. In 2006, the Brazilian Foreign Trade Commission stipulated on February 24, March 21, May 5, June 9, July 5, July 27 and August 25 respectively that the import tariff of certain commodities should be brought down to 2% from the original rate ranging from 14%—20%. In addition, the Brazilian Foreign Trade Commission decided on August 9, 2006 that the import tariff of some product parts would be reduced to 2% from the original rate ranging from 14%—20%.

From January 1, 2006, Brazil started to exempt the completed industrial products tariff that was originally imposed on some capital goods and IT products. These products are:(1) farming tractors, steam boiler spares, steam turbine spares, pump spares, non electrothermal furnaces used at works or laboratories, machines for manufacturing leather products and machinery used in metallurgy, coking and foundry,(2) software of the original CD or DVD copies for information processing machines(with VA products and other software excluded)(3) invoice making machines.

2.1.2Import administration

The majority of imports to Brazil are subject to import licensing, which includes automatic and non automatic import licensing.

The automatic licensing is administered upon those non trade restrictive imports. The submission of license application and the customs declaration can be made at the same time. The process is simple and the license, if approved, will be issued automatically. Non automatic licensing is administered upon those commodities or imports that are under the control of the Government. The products that are subject to non automatic import licensing include: products that should be quarantined or should be tested by special quality control measures; high tech products and products that will exert a major impact on the local industries along with the products that are under the strict control of the government like defense products. The application for non automatic license is complicated, requiring various documents and certificates to be counter signed by the authorities concerned. The application form shall generally be submitted before shipment, or before customs declaration in some cases. The Secretariat of Foreign Trade(DECEX) under the Ministry of Development, Industry and Foreign Trade is responsible for examination of the application for non automatic import licenses. In general, the validity of non automatic import licenses is 60 days. The non automatic licensing is under the direct administration of the Secretariat of Foreign Trade(DECEX) under the Ministry of Development, Industry and Foreign Trade. After receiving the applications of the import and the documents forwarded by the Brazilian banks, the Secretariat of Foreign Trade(DECEX) under the Ministry of Development, Industry and Foreign Trade will check and examine the information and documents provided by the importers. Then these documents will be forwarded via the web of Brazilian foreign trade to the departments and scientific institutions concerned for counter sign. The counter sign is conducted through the web, which facilitates the applicants tracking the approval procedures. After the counter sign, based upon the opinion of all the departments concerned and the status quo of Brazil s foreign trade, the Secretariat of Foreign Trade(DECEX) under the Ministry of Development, Industry and Foreign Trade will examine and approve the non automatic license. If approved, the result will be forwarded without delay via the web of Brazil s foreign trade to the Brazilian Customs.

In 2006, Brazil altered some parts of the decree SECEX14 which was enacted on November 17, 2004 and announced the alteration concerning the import licensing on “The Official Bulletin”.

On April 17, 2006, Brazil issued the No.7 Decree, stipulating that within a year upon the announcement of the decree, Brazil will impose a 40,000 ton quota on imported sartin. The decree further explained that within the 6 months after the decree taking effect, the quota would be 20,000 ton. The unused quota can be allocated to the remaining 6 months. The executive office of foreign trade and the special agricultural secretariat were responsible for the issue of supplementary remarks concerned with the decree, specifying the standards of quota allocation.

2.1.3Export administration

The Brazilian government stipulated that from 2006, small exporters with an export volume within US ＄20,000 will be allowed to proceed export formalities through “the registration system for simplified export procedures”.

Brazil employs licensing system on export products. In 2006, Brazil stipulated that 1,649 products under the 10 digit tariff number should apply for export license. They mainly included: some live animals and plants(including nuts and fruits), certain mineral fuel, mineral oil and distilled products, some products in chemical and other relative industries(such as inorganic acid and non metallic organic oxide, non metallic halid, radioactive element, radioactive isotope and their compound);certain types of organic chemical elements(including polyyne sulfuration, nitration and nitrosification ramification, natural or synthetic alkaloid, arsoniumsalt, ether, ester, and their ramifications; certain amide, oxo compound and amide); some medicines, wood and timber products, nuclear reactors, boiler, machinery and mechanical parts, vehicles and their parts, aircraft, aeroplanes and their parts, weapons, ammunition and their accessories.

2.1.4Trade Remedy System

The responsibilities that fall upon the Secretariat of Trade Protection(DECEX) under the Ministry of Development, Industry and Foreign Trade are as follows: investigating into the cases of dumping and subsidies, offering advice on the implementation of the safeguard measures concerning antidumping investigation and subsidies, participating in the discussions of the WTO on the measures and implementation of the trade protection agreement, attending international negotiations on trade protections and investigating into the cases of the third country imposing trade protection measures against Brazilian exporters and offering assistance and support to other governmental departments in protecting the interest of the Brazilian exporters.

2.2The investment administrative system and its development

In Brazil, the laws and regulations concerning investment are: The Foreign Capital Law, the Labour Law, etc. The Foreign Capital Law 4131/1962 is a major law governing foreign investment in Brazil. The 55762/1965 decree is the supplementary specification of the Foreign Investment Law.

Foreign investors must complete registration through the Brazilian Central Bank s RDE IED registration system within 30 days of making investment. In Brazil, the areas that forbid or restrict foreign investment are: activities concerning nuclear development, newspaper, television, the ownership and management of radio communication web, health service, border trade, postal and telecommunication services, domestic licensed aviation service and space industry.

All foreign investments in Brazilian financial institutions are subject to the approval of the Brazilian government. The government is responsible for judging if the investment is in line with the nation s interest. In general, foreign investments are not entitled to special preferential measures of the Brazilian government. The only exception is the reduction or exemption of customs tariff for imported capital goods for production.

According to the Brazilian law, the foreign employees in enterprises cannot exceed 33% of the total number of staff. Only when the shortage of professionals in Brazil occurs can enterprises employ a higher proportion of foreign staff. Foreigners who work in Brazil must acquire the visa issued by the Foreign Ministry of Brazil.

Since the Brazilian Monetary Commission enacted policies on the encouragement of foreign investment in the capital market, Brazil has been engaged in the completion and improvement of this policy. Brazil s encouragement measures include:(1) expanding the scope of qualified foreign investors to include not only the originally approved institutional investors but also any investors living in foreign countries.(2) Streamlining registration procedures by combining the registrations that had to be conducted respectively with the Securities Regulatory Commission for investment and the Federal Taxation Administration for legal entity into a single on line registration with the Securities Regulatory Commission only. As a result, the time needed has been shortened from the original 30 days to no more than 24 hour. In November 2005, the Brazilian government launched the online registration and started to sell government public bonds.(3) fixed return securities and unfixed return securities will be convertible and will no longer be regarded as out bound profit remittance.

2.3The administrative measures on trade and investment

2.3.1In 2006, Brazil issued new measures of foreign exchange management, allowing exporters and natural persons to deposit revenues from exports in financial institutions in foreign countries. The retention ratio will be set and adjusted by the National Monetary Commission. The initial ratio is approximately 30%; According to the new policy, the capital retained in foreign countries can only be used for fulfilling the obligations of the company, such as paying off the company s debts or purchasing the import of raw materials. In the meantime, the company should submit to the federal tax bureau the explanation on how the capital is used. The temporary financial circulation tax on foreign capital will be exempted, which by itself will save the cost of Brazilian exporter by 200 million Reals(approximately 80 million US dollars)each year. To be granted the right for paying profits and stock dividend in foreign countries, all foreign investment made in Brazilian before December 31, 2004 must register at the Central Bank of Brazil if this has not been performed before. US dollars will not be the only currency allowed to pay duty free products, Reals can be used at all frontiers, however, the purchase restriction will still be the amount equal to 500 US dollars.

2.3.2The Brazilian Foreign Trade Web will be the only approved registration system for foreign trade administration. Through the Foreign Trade Web, Administrative authorities like Secretariat of Brazilian Foreign Trade under the Ministry of Development, Industry and Foreign Trade, General Taxation Bureau under the Brazilian Treasury Ministry and the Brazilian Central Bank administrate all stages of the integrated management on import business from import license approval to the levy of tariff. All imports procedures must be conducted through the web. The Brazilian Foreign Trade Web offers links to importers, customs brokers, carriers, warehousing agencies and financial institutions in addition to administrative offices of foreign trade.

2.3.3The restructuring of Competent authorities

Foreign Trade Commission is the top foreign trade policy making body in Brazil. The Civil Affairs Office of the Brazilian Presidential Palace, Planning, Budget and Supply Department, the Ministry of Development, Industry and Foreign Trade, the Foreign Affairs Ministry are the major administrators governing the foreign trade sector. Ministry of Finance, the Ministry of Agriculture, and Ministry of Supply are partly involved in the administration of foreign trade. Subordinate to the Ministry of Finance, the Federal Taxation Administration is responsible for Brazil s customs affairs, including making and implementing customs policies, imposing duties, and conducting customs supervision.

The Brazilian Industry and Development Bureau is responsible for making policies in the regard of industrial development. Under the leadership and supervision of the Ministry of Development, Industry and Foreign Trade, this bureau is composed of the Approval Commission, the Inspection Commission and the Executive Body.

2.3.4In December 14, 2006, the president of Brazil signed the Law on Micro and Small Enterprise, which will make the policy of granting small enterprises favourable tax rates come into effect on July 1, 2007. The Law mandates that the governmental authorities should implement computerization for proceeding enterprise registrations. The time needed to process enterprise tax certificate should not exceed two days. It also stipulates that, in principle, it should take no longer than 15 days to launch a trading company. Currently, it takes approximately 39 days to complete the required formalities for opening a new company. The law has already been implemented in the States of Sao Paulo, Rio De Janeiro, Minas Gerais, Rio Grande do Sul, Paraná. Depending on the situations in different places, the remaining 21 states will also, with reference to the implementation of the above mentioned states, implement the law, offering favourable terms to small and medium sized enterprises.

2.3.5On January 15, 2007, Vice president of Brazil signed a decree, allowing Brazil to open its reinsurance market. The decree eliminated the market dominance of Brazilian state owned companies in the reinsurance industry by allowing companies with headquarters both in Brazil and in foreign countries to be qualified reinsurance operators. However, in the mean time, to safeguard the interest of the Brazilian companies, the decree mandates that within three years of the enactment of the law, state owned Brazilian reinsurance companies and other Brazilian operators should enjoy a market share of 60% in the reinsurance industry in Brazil. This percentage will be reduced afterwards. The decree took effect one day after signing.

2.4Administrative measures on specific commodities

To restrict the import of garlic, the Brazilian Foreign Trade Commission decided on March 7, 2006 that the import tariff will be raised from 14% to 35%.

3Trade Barriers

3.1Tariff and tariff administrative measures

Despite Brazil s reduction of import tariff on certain types of commodities and food, the import tariff rates for bulky agricultural goods, dairy products, sugar and wine vinegar are still high. Tariff for some products even exceeded 20%.

3.2Import restrictions

The Brazilian Foreign Trade Commission stipulates that all the importers should register on its web. The registration procedures are complicated with a minimum capital requirement attached. The registration fee is required for each import application if it is submitted through this registration system.

The non automatic import licensing system governs a wide range of products, including 3,000 types of imports(with the eight digit tariff number). The approval procedures are complicated due to the fact that imports under different categories should be approved by 16 different departments and institutions, which has made it difficult for exporters to comprehend the non automatic licensing in Brazil. Although the Ministry of Development, Industry and Foreign Trade has publicized the product categories for non automatic licenses, the detailed information concerning the requirement for non automatic licenses and the reasons for declining non automatic license applications has not been made available.

Currently, among al the Chinese exports to Brazil, the products subject to non automatic licensing are: garlic, mushroom, the majority of chemical products, raw materials and completed products for pharmaceutical purposes, animal and plant products, tyres, textiles, glass products, porcelain container for household use, lockset, electric fans, electric calculators, magnets, motorcycles, bicycles, toys, pencils, etc.

3.3Barriers to customs procedures

According to the Brazilian Law, importers should sign a maritime transportation insurance contract with a Brazilian insurance company if the goods are imported by sea. The average insurance premium is 1.5% of the import price, which far exceeds the international standard of 0.3%, thus offsetting the advantage on the price of the imported goods.

3.4Technical barriers to trade

Currently, products under 68 categories are subject to compulsory licensing and 198 optional licensing. Brazil approves the inspection and certification by the institutions concerned in exporting countries.

In 2006, the technical trade measures issued by Brazil involves: angle iron, absolute ethyl alcohol fuel, aquiferous ethanol fuel, asphalt, asphaltic sand, asphalt stone, natural asphalt, petroleum asphalt, cementing compound made of mineral asphalt, quick drying painting asphalt, asphalt mix, machinery for filtered and purified water, freezing equipment, household air conditioner, etc.

On January 20, 2006, the Brazilian National Administrative Office of Petroleum, Natural Gas and Biofuel reported to the WTO the drafts of two technical regulations governing mineral products, which respectively set standards for the quality of absolute ethyl alcohol fuel, aquiferous ethanol fuel, asphalt, asphaltic sand, asphalt stone, natural asphalt, petroleum asphalt, cementing compound made of mineral asphalt, quick drying painting asphalt and asphalt mix.

On March 8, 2006, The Brazilian National Institute of Measuring, Standardization and Industrial Quality Control issued the draft of the No. 44 Decree governing the quality specifications for thermo compressed angle iron. The draft of technical regulation specified the quality standards of thermo compressed angle iron for power transmission tower, which included its chemical component, difference allowance of size, and surface defect. This regulation also covers products of non stainless steel like alloy steel, angle iron, proximate matter and parts.

3.5Sanitary Measures for Animals and Plants

Brazil requires strict quarantine measures for animals, plants, meat, fish, dairy products, processed food and beverages. The import of certain types of plants such as wheat for special purposes and tomato seeds is forbidden. Apples, pears, plums, nectarines, peaches, tangerine, strawberries and nuts must be inspected by the Plant Hygiene and Quarantine Bureau and acquire the plant hygiene certificate. The additional statements concerning fruit plantation, processing and transport are also needed. In addition, the Plant Hygiene and Quarantine Bureau must be informed of the import before shipment.

On January 10, 2006, The Brazilian Health Inspection and Supervision Administration released a category of approved food addictives entitled Food Addictive List, specifying the function types of food addictives, different types of approved food addictives and their scope and condition of use. Only the food addictives listed in the category can be used for food production. Moreover, their use must be in accordance with the scope and condition set by the relative regulations. The category didn t use the Food Law Commission s approved standards in the classification, use scope and conditions of addictives.

In 2006, The Brazilian Health Inspection and Supervision Administration amended the residue limit on 21 types of agricultural chemicals in a variety of agricultural products, some of which are not in line with the international standards or even surpass standards of developed countries. For example, Brazil s upper residue limit on mold inhibitor in melons is 0.01 mg/kg, while by the stipulation of the Food Law Commission, while its residue limit is 0.5 mg/kg in cucumbers, 2mg/kg in sweet melons. Another example is that residue limit of clethodim in melons is 0.05mg/kg by Brazilian standards; while it is 2 mg/kg in the USA.

On September 21, 2006, The Brazilian Health Inspection and Supervision Administration released the Draft Resolution on Food Packaging, Coating, Containers, Covers and Equipment, specifying the requirements for metal packaging, Coating, Containers, Covers for food and ingredients alongside requirements on production, transport, sales and storage of food processing equipment. If the ink, paint or enamel on the surface are not in immediate contact with food or consumers mouths, they will not be subject to the restrictions of the technical regulation. The resolution is supposed to take effect in May 2007.

In March 2006, Brazilian Agriculture Ministry issued three regulation drafts on fruits, which involve pears, apples, unshelled fresh or dried almonds. They also specified the standards and minimum quality requirements for the above mentioned products. Brazil didn t inform other WTO member states of the assessment period for the above mentioned regulations, neither did Brazil provide a transitional period.

3.6Trade Remedies

Since the first launch of anti dumping investigation against China, Brazil has conducted 31 anti dumping investigation into cases concerning 11 types of Chinese products including electric machinery, hardware, light industrial products, textiles, food, etc. Among all the cases, 11 were filed in 2006.

Brazil is one of countries that most frequently take advantage of the dispute solving mechanism to file trade lawsuits. In 2006 alone, Brazil launched 23 anti dumping investigations. Among them, 11 were against Chinese products and four were anti dumping investigation review of Chinese imports.

3.6.1Anti dumping

In 2006, Brazil conducted 11 anti dumping investigations against. The products concerned are: combs, amplifier, spectacle frames with or without glasses, sunglasses, Christmas trees, ornamental balls for Christmas, aluminum coated light sensing plate, iron, bicycle chains and spokes, SDS aiguilles, manually operated sliding wheels, etc. In 2006, Brazil also review anti dumping investigation on new bicycle tires, garlic, locks and desk fans that were made in China.

3.6.1.1Market Economy Status

In 2005, in the anti dumping reviews against Chinese products, the price of most products were still set with reference to a surrogate country. The details are as follows: lockage(Mexico), garlic(Argentina), SDS+ aiguilles(Germany), new bicycle tires(Argentina), manually operated sliding wheels(Japan), desk fans(Columbia), Christmas trees and ornamental balls(Argentina), sunglasses(Brazil set the price for Chinese sunglasses exported to Brazil with reference to the price of France made sunglasses exported to Finland.), Spectacle frames(Brazil set the price for Chinese frames exported to Brazil with reference to the price of Italy made glass frames exported to South Africa.). On September 28, 2006, in the official communiqué, Brazil announced the information on the anti dumping investigation into China made manually operated sliding wheels. In the anti dumping investigation, based upon the price of the same products imported into Chile from Japan, Brazil set the unit price of Chinese manually operated sliding wheels at 88.06 US dollars; while 12.44 US dollar/piece was regarded as the actual FOB price in China thus creating a disparity in price of 75.62 US dollars.

On November 24, 2006, Brazil released in its official communiqué the information on lodging anti dumping investigation against SDS+ aiguilles with Chinese origins. In this case, based upon the export quotation of Germany, Brazil set the price of the Chinese export at 10.57 US dollars per piece and the FOB price for Chinese export at 1.66 US dollars per piece. The price difference reached 8.90 US dollars/piece after statistical adjustment.

On December 14, 2006, Brazilian Ministry of Development, Industry and Foreign Trade decided to lodge anti dumping investigation review against fresh or frozen garlic with Chinese origin. During the investigation procession, the products concerned were levied an anti dumping tax of 0.48 US dollars. During the investigation review, ignoring China s market economy state, Brazil set the value of Chinese garlic at 9.39 US dollars per 10 kg and the actual FOB price at 4.94 US dollars/10kg, thus ruling that the anti dumping margin of Chinese garlic was as high as 90.1%.

In the case of anti dumping investigation of Christmas trees, with reference to Argentina, Brazil set the normal price at 32.68 US dollars per thousand trees and the export price to Brazil at 14.5 US dollars per thousand trees, creating a price disparity of 18.2 US dollars per thousand trees after statistical adjustment.

In the case of China made sunglasses, with reference to the export price of France made sunglasses to Finland, Brazil set the normal price of the Chinese sunglass export at 457.24 US dollars/kg FOB and the actual export price from China at 3.60 US dollars. After the statistical adjustment, the price disparity reached 453.64 US dollar/kg. In the anti dumping investigation into spectacle frames with or without glasses, based on the price of Italian export to South Africa, Brazil set the normal price of Chinese export at 560.97 US dollars/kg while ruling that, with the chosen statistics, the price of Chinese spectacle frames exported to Brazil was 8.83 US dollars/kg. The price difference was as big as 552.14 US dollars/kg.

Generally, the information released in the official Gazette can be summarized as follows:

1. According to Decree 1602 issued in 1995, Brazil still regarded China as a non market economy state and used the export price of a third country as the normal price of Chinese export.

2. The choices of substitutive countries were randomly made with reference to both

developing countries such as Columbia and Argentina and developed countries such as Japan, France and Germany. The labour cost in Japan, France and Germany is high and the cost for production materials is also higher than that in China. There was a departure from reality if the price of Chinese exports is settled with reference to export price in these developed countries. It was inaccurate and irresponsible to judge that Chinese export had posed harm to the Brazilian industries. This can be best manifested in the cases of sunglasses and spectacle frames with and without glasses.

3. Brazil made judgment on normal prices with no discretion. In the case of review on desk fans, the sales invoice in the domestic market and price quotation of a Columbian electronic appliance manufacturer called Grupo SEB were chosen as the statistic source. Based upon these documents, the average price of electronic desk fans in the domestic Columbian market was calculated. The normal value of Chinese desk fans was worked out after freight, insurance premium and import tax were added during statistical adjustment. In the case of China made SDS+ aiguilles, Brazil only referred to the price quotation of one single German company before setting the normal value of Chinese SDS+ aiguilles at 10.57 US dollars/piece. The decision was made without conducting analysis and comparison, thus lacking reliability and accuracy.

China and Brazil signed the Memorandum of Understanding and cooperation in Trade and Investment between People s Republic of China and Federal Republic of Brazil as early as in 2004. Brazil officially admitted China s market economy status in the memorandum but failed to amend the laws concerned, neither did Brazil rectify the mistakes in imposing anti dumping measures against China, all of which led to material damage to the legitimate interest of China.

3.6.1.2Other Unjustified Acts

After Brazil lodged the anti dumping investigation against products of Chinese origin, Brazil demanded that all the parties concerned should designate legal representatives to the Brazilian investigative body within 20 days after the release of the announcement. After the issued of investigation forms to the parties involved, the investigative body required the submission of the form in Portuguese within 40 days. If not written in Portuguese, the Portuguese version with the approval of the Brazilian Law must be attached. Within 40 days, the companies involved not only need to prepare documents but also the translated version approved by Brazil, the cost of which is tremendously high, thus increasing the cost for companies to respond to the suit.

3.6.2Safeguard measures

Since 1996, Brazil started to impose safeguard measures on toy imports. Seven years after its implementation, on December 31, 2003, the Brazilian Government decided to extend its validity period by one year to the end of 2004. When the validity expired, Brazil decided to extend it by another one year and a half. From January 1, 2005 to June 30 2006, apart from the 20% Southern Common Market Tariff on imported toys, Brazil levied another additional tariff of 8%. After the expiry of the approved WTO rules, which stipulated developing country s 10 year maximum duration of trade protectionism, Brazil still safeguards the toy industry proposing trade protective measures. Currently, Brazilian enterprises are not able to provide the domestic consumers with toys of same quality that are priced at 5—10 Reals（approximately 2—4 dollars）, which not only led to harm to Chinese toy exporters but also, to a greater extent, the Brazilian consumers.

In 2006, the Chinese and Brazilian governments held negotiations on the trade issues of the toy sector. On behalf of China s toy industry, the Chinese Chamber of Commerce on Import and Export of Light Industrial Products and Handicrafts teamed with China Toy Association negotiated with the representative of the Brazilian toy industry Brazilian Toy Association. The outcomes of the negotiation are as follows:

1. China and Brazil signed Protocol of Statistics Cooperation between the Ministry of Commerce of People s Republic of China and the Ministry of Development, Industry and Foreign Trade of the Federal Republic of Brazil. According to the Memorandum signed at the beginning of 2006.The establishment of a coordinating group of statistics will be approved and work group meetings will be held on a regular basis.

2. China and Brazil representatives of toy industry signed Sino Brazilian Agreement on Trade specifications in Toy Sector. According the agreement, based on the findings of the statistic work group, the toy associations in both countries will make mutual decisions on the capital quota of China s toy export to Brazil.

3.6.3Special Safeguard Measures

In 2005, the Brazilian President signed two bills of special safeguard measures against Chinese products. The special safeguard measure against Chinese textiles is to be valid until 31 December 2008, and that against other Chinese commodities valid until 11 December 2013. According to the bills, the Brazilian government shall process the application for special safeguard measures filed by enterprises or industries within 30 days by negotiating with relevant Chinese parties with a view to reaching agreements on avoiding or mitigating injuries possibly caused to related Brazilian sectors. If the negotiations lead to no agreements, Brazil is to conduct investigations. On February 9 2006, the Chinese and Brazilian government reached an agreement in Beijing on the restrictions of increase for Chinese textile export to Brazil. The agreement covers 76 types of products under 8 major categories, which amount to 60% of the total export from China to Brazil. The agreement will be valid for 3 three years, taking effect on April 3,2006, expiring on December 31, 2008. The eight categories involved are: silk, synthetic fibre, synthetic fibre cloth, velvet, T shirt, pullover, cardigan, overcoat, jacket and embroidery.

3.7Government procurement

In Brazil, Law 8666(1993), which covers most government procurement other than informatics and telecommunications, requires non discriminatory treatment for all bidders. However, the law s implementing regulations allow consideration of non price factors giving preferences to certain goods produced in Brazil and stipulating local content requirements for eligibility for fiscal benefits. Decree 1070(1997), which regulates the procurement of information technology goods and services, requires federal agencies and parastatal entities to give preferences to locally produced computer products based on a complicated and nontransparent price/technology matrix.

In addition, the Brazilian government, non profit hospitals and other departments are inclined to favour the nontransparent practice of purchasing products manufactured in Brazil in government outsourcing. Limitations on foreign capital participation in procurement bids reportedly impair access for potential foreign service providers in the energy and construction sectors.

3.8Export subsidies

1. The Government of Brazil offers a variety of tax, tariff, and financing incentives to encourage production for export and the use of Brazilian made inputs in domestic production. To support the expansion of Brazilian companies and the development of modern business strategies, Brazil s National Bank for Economic and Social Development(BNDES) provides favourable financing services for companies that purchase or lease new machineries as an incentive for the purchase of domestic facilities and machinery.

2. Preferential policies like providing production loans to family farms and offering extension on pay off period of loans are the main faming subsidies in Brazil.

3.9Barriers to trade in services

3.9.1Audio visual services

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

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

3.9.2Banking and other financial services

Brazil has not yet ratified the Financial Service Agreement Under the WTO. Brazil is potential South America s largest insurance market. However, foreign investors are not allowed hold the majority of shares in solely Brazil funded banks, the insurance industry or other financial institutions, nor are they allowed to hold over 1/3 of the shared with voting entitlement unless it is special approved by the President of Brazil with a view to safeguarding the national interest. Before 2006, Brazil maintained a government owned reinsurance monopoly through the Brazil Reinsurance Institute. If Brazilian shipping companies wish to effect marine insurance with foreign insurers, they must submit information to IRB indicating that the foreign insurance policy is less expensive than that offered by Brazilian insurers.

3.9.3Postal and telecommunication services

In the telecommunication sector, only companies registered in Brazil are allowed to offer mobile phone and satellite transmission service. The federal government of Brazil maintains a monopoly in the ordinary mail sector. The companies approved by the Brazilian government can operate express delivery in Brazil.

4Barriers to investment

4.1The World Bank and International Finance Corporation s Assessment of Brazil s investment environment

Standard & Pool s, an international credit rating institution gave Brazil s investment environment a credit ranking of speculative level(BB). Among the major emerging market economies, this ranking is in the low range, three levels lower than the investment level o(BBB).

In September 2006, the World Bank and the International Finance Corporation jointly released the 2007 Annual Report on World Trade Prospect, which pointed out that Brazil achieved no material improvement in its trade environment with a ranking at No.121 among all the 175 countries and regions assessed. In Sao Paulo, it takes 152 days for a limited liability company to start its operation after the completion of 17 formalities. This item by itself is ranked 149 among all the 155 major cities. To establish a warehouse in Brazil, 460 days and more than 19 procedures are needed(including applying for license and approval, publicizing the project as stipulated by the relative regulations, receiving inspection and waiting for the utility facilities to be completed) This is twice the average time needed in the South American region.

4.2On Brazil s taxation

Brazil s tax level is one of the highest in South America with taxes in 58 different categories, which is far more than that of the US and twice that of Mexico. Take import for example, the cost of import after taxation is often 1.8—2 times of its CIF price. Heavy taxation, the huge variety and complication of tax categories as well as the conflict and contradiction between one another has posed problems to foreign investors.

Brazil s taxation system is very complicated with federal tax, state tax(all together 44 types) and city tax according to the different administrative region and their weight in the total tax are 63.5%, 23.5 %and 13% respectively. The taxes are levied and administered at different level by the government. In addition, enterprises must also pay for various types of social expenditure.

In Brazil, taxes amount to 71.1% of the gross profit a year in a medium sized enterprise. It takes 2600 hours annually to pay taxes, which is 5 times the average level in Latin America and 13 time that of APEC member states.

4.3Others

Brazil does not allow foreign investors to invest in nuclear, health care, pension funds, ocean fishing and postal services areas. Foreigners residing outside Brazil are not allowed to purchase land in Brazil. Foreigners living in Brazil are subject to quantitative restrictions when buying land. Land at the Brazilian frontiers are not open for sales to foreigners. Foreign enterprises are allowed to buy farming land for purposes like faming, industrialization, but the purchase is subject to the approval of the agriculture department of the Brazilian government. Short loans within 90 days into Brazil are subject to a 5% financial trading tax. Loans for over 90 days can be exempted from this tax.

In the regard of investment entry, Brazil still sets restrictions in many areas on foreign investors. Exploration and mining of mineral resources is allowed only when the foreign investor is approved or authorized by the federal government and is in line with the Brazilian national interest. Meanwhile, it must be an enterprise established by a Brazilian or a company with its administrative organization and headquarters in Brazil. The government monopolizes the exploration, mining, refinery, import and export, marine and pipeline transportation of hydrocarbon. However, except for nuclear projects, the government approves these projects to be contracted by state owned or private companies.

In the regard of road transport, foreign capital is not allowed to exceed 20% of the voting shares. The foreign funded enterprise must be in the form of shareholding companies and can only issue bearer share. In railway transport, foreign investors can only have 20% of the non voting share if they were established in Brazil after November 7, 1980. Companies can operate railway transport only when the citizens from the seven member states of the International Railway Transport Agreement and the Latin America Integration Association hold half of the capital with voting rights in the company.

Foreign investors that have not set up corporate and representative offices, or don t exist in any commercial form are not allowed to invest in aviation. Brazil only allows a small amount of foreign capital in aviation enterprises. The shares held in civil aviation by foreign capital should not exceed 20%. Only Brazilian citizens and enterprises with offices and premises in Brazil are allowed to fly the Brazilian national flag.