Kenya

1Bilateral trade relations

According to the China Customs， the bilateral trade volume between China and Kenya in 2006 reached US＄650 million， up by 36.1％， among which China's export to Kenya was US＄620 million， up by 36.0％， while China's import from Kenya was US＄20 million，up by 38.3％. China's trade surplus with Kenya stood at US＄600 million. China mainly exported medicine， footwear and headwear， textiles and clothing，batteries，industrial and farming tools，office supplies，daily commodities， etc. The major imported products of China from Kenya included ore， textile raw materials， coffee， tea and tea products， leather， etc.

According to the Ministry of Commerce， the turnover of completed engineering contracts by Chinese companies in Kenya reached US＄870 million in 2006， and the volume of completed labor service cooperation contracts was US＄22.88 million.

Kenya invested 2 projects in China in 2006， with a contractual volume of US＄3.21 million and an actual utilization of US＄3 million.

2Introduction to trade and investment regime

The trade related regime in Kenya is mainly manifested in the East African Customs Management Act， the Customs and Excise Act， the Value Added Tax Act， the Export Processing Zones Act， the Standards Act， the Customs Tariff Act， etc. The investment related regime is manifested in the Foreign Investment Protection Act， the Trade Licensing Act， the Investment Promotion Act and etc. Governmental departments regulating business and investment in Kenya include the Ministry of Trade and Industry， the Ministry of Finance， the Investment Authority， Customs， etc. These departments are responsible for supervision and management of the legislation and implementation of trade and investment related regime.

2.1Trade regime and its development

2.1.1Tariff system

In 2006， the East African Community Customs Union established by Kenya， Uganda and Zambia continues to carry out a uniform three band tariff，namely，0％ on raw materials and capital goods， 10％ on semi processed and intermediate goods， 25％ on finished goods. At present， the average MFN tariff adopted by the East African Community is around 12.9％.

Member States of the East African Community reviewed the East African Customs Management Act and Common External Tariff in May， 2005. Tariff on certain commodities were adjusted: Tariff on LPG， coal， medicine， etc. were lowered to 0. Import tariff on rag was lowered to 45％ or US＄0.3/kg. Tariff on some motor vehicles were up to 25％. 99.8％ of tariff in the East African Community adopts ad valorem tariff， while the others are compound duty. There are no non seasonal tariff， variable tariff and tariff quotas. To encourage the development of local processing industry， Kenya imposes a tariff rate of 25％ on exports of fur and scrap metal.

To promote the development of telecommunication industry in Kenya， Kenya declared in February 2006 that all the computer spare parts are entitled to duty exemptions. On July 1， 2006， Kenya enacted the 2006/2007 Fiscal Budget， in which certain tariff related policies and tariff rates were adjusted. Bicycle CKDs， energy saving bulbs， solar equipments and related accessories（including batteries using solar energy）， filter paper， car oil and gas strainer， wires of stainless steel， nickle bars， nickle stick， nickle mould and nickle wires are free of import duty. Motorcycle CKDs and aluminium foil customs duty are reduced from 25％ to 10％. To protect local manufacturers， duty on imported floor covering and mats are increased from 10％ to 25％， while imported matches will now attract 50％ customs duty， up from 35％.

2.1.2Import administration

According to the Customs and Excise Act， prohibited and restricted imports in Kenya are classified into 3 categories: 1. Prohibited Imports 2. Restricted Imports and the importation thereof， save in accordance with any conditions regulating their importation， is prohibited. 3. The goods can be imported as long as they conform to the criteria of technology， inspection and quarantine， health， environment etc. Kenyan Ministry of Trade and Industry may， by order published in the Gazette， amend prohibited imports and restricted imports. Apart from three above mentioned categories of goods， all other goods can be imported freely.

On June 15， 2006， Kenya enacted the Trade Licensing Act（Repeals and Amendments） Bill. The Bill cancelled import license on cotton， cereals， hide， skin， leather， etc.

The Government of Kenya imposes 2.75％ of service charge on imports. Kenya Plant Health Inspectorate Service levies 1％ of service charge on imports of agricultural products.

2.1.3Export administration

In 2006， the Government of Kenya continues to carry out the Economic Recovery Strategy for Wealth and Employment Creation 2003 2007. Various incentives were adopted to promote international trade， such as the Export Processing Zones program，Manufacturing under Bond，and duty exemptions，aiming at boosting the exports of manufacturing departments. All these incentives， more or less， reduce or exempt import duties or VAT for export enterprises when importing raw materials and machinery for production， thus effectively promoting exports of manufacturing industry.

On June 15， 2006， Kenya enacted the Trade Licensing Act（Repeals and Amendments） Bill. The Bill cancelled import license on cotton， cereals， hide， skin， leather， meat， etc.

The government of Kenya accepted the application by Kenyan Battery Manufacturers Association in June， 2006， and declared a ban on export of battery raw material，lead dross， to Asia.

2.1.4Trade remedies

Section 125 and 126 in the Customs and Excise Act provide the legal basis for Kenya to take anti dumping and countervailing measures， yet no details have been stipulated. The Ministry of Finance is responsible for investigation and execution of anti dumping and countervailing measures in Kenya. So far there is no specific legislation covering safeguard measures. The investigation and execution of safeguard measures still adopts the method of One Discussion on Each Matter. Up till now，Kenya has never taken WTO trade remedies， such as anti dumping，countervailing， safeguard measures， etc.

According to the stipulations in the Protocol on the Establishment of the East African Customs Union， there was hereby established the East African Community Committee on Trade Remedies to handle joint investigation of anti dumping， countervailing and safeguard measures. So far， the East African Community has never taken trade remedies， such as anti dumping， countervailing and safeguard measures， either.

2.1.5Other relevant regimes

Up till now， Kenya has more than 4，000 technology standard， which are all compulsory. Among them， around 50％ adopt international standards. The relevant departments in Kenya remark they are separating standards， trying to turn compulsory standards into voluntary ones.

2.1.6Adjustment of relevant organizations

Kenya made adjustments of trade and investment related governmental organizations in 2005. The departments responsible for foreign trade and investment remained stable in 2006.

As a part of the privatization process of state owned enterprises in Kenya， Kenya passed the Privatization Law in 2005. The Privatization Commission was established accordingly in July， 2006. The responsibility of this Commission is to supervise and execute the relevant procedures of privatization of state owned enterprises， thus ensuring that privatization can be carried out fairly and openly.

According to the 2005 Public Procurement and Disposal Bill， Kenya set up the Public Procurement Oversight Authority on January 1， 2006.

2.2Changes in investment regime

In 2006， Kenya continues to adopt the policy that attracts foreign investment， further relaxing restrictions on investment.

At the end of 2005， Kenya revised Investment Promotion Act. The Act stipulates that the investor must apply to Kenya Investment Authority for investment certificates if he wants to enjoy investment preferential policies. The application is on the condition that the minimum amount of investment is no less than US＄100，000.

With regard to foreign ownership of companies， it is now permitted in Kenya that foreign ownership of companies listed on the Nairobi Stock Exchange is limited to 75％， and foreign brokerage and fund management firms must have minimum Kenyan ownership of 30％ and 51％， respectively.

2.3Measures on certain commodities

The Government of Kenya attached great importance to the stipulation of technology standards in 2006. Altogether， there were 62 national standards enacted by the Kenya

Bureau of Standards in 2006. Most of the technology standards were related to daily necessities and food， such as marking pens， facial tissues， baby food， etc.， most of which are our main exports to Kenya. In addition， the National Environment Management Authority in Kenya enacted the Environment Management and Coordination（Water Quality） Regulations and the Environment Management and Coordination（Waste Management） Regulation in December 2006， regulating standards for water quality and waste disposal.

The Department of Veterinary Services， Ministry of Livestock and Fisheries Development， Kenya， prohibited， in March 2006， imports of domestic and wild birds， hatching eggs， meat and meat products of domestic and wild birds， including products intended for animal feed or for agricultural and industrial use from Asia. It took effect upon the date of announcement.

3Barriers to trade

3.1Tariff and tariff administrative measures

3.1.1Tariff peak

In 2006， the overall tariff level in Kenya has no obvious change compared with that in 2005. It is still quite high. Existing commonly in all sectors， tariff peaks are mainly focused on 58 categories of sensitive products. High tariff rates between 35％ and 100％ exist in certain sectors， such as dairy， cereal and sugar. Tariff rates on certain textile， clothing and bedding are as high as 50％. China's main exports to Kenya，such as footwear and headwear，textile，daily commodities，etc. are levied 25％ to 75％ high tariff， thus hindering China's export of certain products to Kenya.

3.1.2Tariff escalation

The East African Common External Tariff explicitly stipulates that tariff on imports outside the East African Community is 0 on raw materials， 10％ on semi processed and intermediate goods，25％ on finished goods. As an important member state of the East African Community， tariff escalation is comparatively prominent in all industries， in particular， textile and clothing， which are China's main exports to Kenya. The Chinese side is very concerned about this issue.

3.2Export restrictions

Kenyan Battery Manufacturers Association applied to the Government of Kenya, claiming that some Asian countries headed by China and Indonesia imported a large amount of lead dross of waste battery from Kenya, and then exported lo cost battery made of those raw materials to Kenya. Great impact was exerted on Kenya battery manufacturing industry and many battery manufacturing enterprises were to go bankrupt. In June, 2006, the Government of Kenya accepted the application of this Association, declaring a ban on the export of lead dross, battery raw material to Asia. The Chinese side is very concerned about the consistency between Kenya s practice and WTO regulations.

3.3Barriers to customs procedures

The government of Kenya applies an import processing fee of 2.75% to all the imports. Upon access to the WTO, Kenya made its commitment that it will not impose any other fees in the process of imports. However, the import processing fee is still levied on imports. It is the hope of the Chinese Government that Kenya will honour its commitments upon the entry of the WTO and strictly implement the relevant stipulations under Article VIII of GATT1994.

3.4Technical barriers to trade

The technical regulations are not perfect enough in Kenya, lacking of explicit technology standards. Only around 50% of the technology standards and regulations conform to the international standards. The work of authorities as the Kenya Bureau of Standards, the Kenya Customs, etc. is lack of transparency. The Chinese exporters can not get information on technology standards and conformity assessment procedures from authorities in time.

3.4.1National standards

From January to December 2006, the Kenya Bureau of Standards enacted all together 62 national standards. Kenya declared enforcement of certain standards, such as standards for erasers, marking pens, shampoo, etc. However, these standards have no international standards to follow, and there is no sufficient scientific evidence to prove that relevant products may have comparatively serious influence on human lives or health, national security, environment, etc. It is lack of rationale to carry out these national standards compulsorily. Moreover, it is not in line with the legitimate objective stipulated in the WTO s Agreement on Technical

Barriers to Trade. Additionally， a good many of existing standards in Kenya differ from those international standards， thus exerting negative impacts on imports. The Chinese Government hopes that in the process of stipulating and executing technological regulations and standards， Kenya shall respect international standards and follow all principles of the WTO.

3.4.2Pre shipment inspection

As from 2005， pre inspection certification is required for goods to be imported into Kenya. All goods must demonstrate compliance with Kenya Standards or approved equivalents by evidence of a “Test Report or Certificate” from an ISO/IEC17025 accredited laboratory or recognized by the International Laboratory Accreditation Co operation（ILAC） or the International Federation of Inspection Agencies（IFIA）. Goods imported without the above mentioned certificates or reports would be held at the port of entry at the importer s expense until their quality is determined. This regulation has significantly affected the export of Chinese products to Kenya. According to the China Customs，China’s export to Kenya in 2005 was US ＄457 million， up by 31.0％， while China’s import from Kenya was US＄18 million， up by 4.0％. However， in November and December， 2005， China’s export to Kenya was US＄39.74 million and US＄35.13 respectively， down by 20.7％ and 6.73％. It is for the first time that Sino Kenya trade has negative growth， due to pre shipment inspection carried out by the Kenya Bureau of Standards. China hopes that Kenya can accept product certificates issued by Chinese product testing agencies according to the principle of mutual recognition under the WTO Agreement on Technical Barrier to Trade.

3.5Sanitary and phytosanitary measures

According to the Animal Diseases Act CAP 364， the Department of Veterinary Services in Kenya prohibited， as of March 8， 2006， imports of domestic and wild birds， hatching eggs， table eggs， meat and meat products of domestic and wild birds， including products intended for animal feed or for agricultural and industrial use from all Asian countries， Egypt， the Great Britain， Germany， Italy， etc. According to the International Animal Health Code 2000， imports of cooked meat products of domestic and wild birds are subject to additional sanitary attestation. The Chinese side considers such a prohibition of Kenya covers too large a territory without sufficient consideration of the current situation of animal and plant health in various countries. Its restriction exceeds the necessary limit. China hopes that Kenya shall abide by the principles of non affected and low risk areas stipulated in WTO/SPS， and take sanitary and phytosanitary measures on the basis of sufficient risk evaluation.

4Barriers to investment

The Government of Kenya relaxes its standards for foreign investment approval and simplifies procedures of approval in 2006， in the hope that Kenya can attract more foreign investment. However， starting a business takes an average of 54 days， compared to the world average of 48 days.

4.1National treatment

Kenya treats domestic and foreign funded enterprises differently. For instance， with regard to investment capital， a foreign funded enterprise needs US＄500，000， while a domestic enterprise only needs US＄65，000. As to tax， the corporate tax rate is 30％ for locally incorporated companies and 37.5％ for branches of foreign companies. Currently， Kenya is carrying out a new round reform of state owned enterprises， involving vital sectors as telecommunication， energy， railway， etc. According to the Privatization Act in Kenya， privatizations are to be open and competitive. Kenyans and foreigners are allowed to participate alike. However， for specific transactions， the Minister of Finance may limit participation to nationals or require minimum participation. The Chinese side is concerned about the consistency between the above mentioned measures and WTO national treatment.

4.2Restrictions on ownership

Foreign investment is confronted with restrictions on ownership in certain fields of investment， such as infrastructure construction like telecommunication， energy， etc， insurance and media. Foreign ownership of companies listed on the Nairobi Stock Exchange is limited to 75％， and foreign brokerage and fund management firms must have minimum Kenyan ownership of 30％ and 51％， respectively. All these restrictions on ownership directly affect the foreign investment in these fields.

4.3Restrictions on business areas

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

4.4Restrictions on products

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

4.5Restrictions on land use

In order to protect agricultural land， it is stipulated in Kenya that Presidential exemption is the channel through which foreign funded enterprises and foreigners can make agricultural land transactions with non citizens or a private company or cooperative any of whose member is a non citizen. However， there are no official procedures or published guidelines that investors can follow. Transitions of real estate with non citizens need approval from the Government in Kenya.