South Africa

1Bilateral trade relations

South Africa is China’s largest trading partner in Africa. According to customs statistics released in China， the bilateral trade volume between the two countries totaled US＄9.856 billion in 2006，up 35.6％ over the previous year，among which China’s exports to South Africa arrived at US＄5.768 billion， an increase of 50.8％，whereas China’s imports from South Africa grew by 18.7％ to hit US＄4.088 billion. China had a trade surplus of US＄1.679 billion with South Africa. China mainly exported to South Africa electro mechanic products， garments and accessories， cereals and cereal powders， electric appliances and electronic products， textile yarn and related products. The major imports of China from South Africa were， among others， iron sand and iron fine ores， magnesium sand and magnesium fine ores， and paper pulp.

According to figures of China’s Ministry of Commerce（MOFCOM）， by the end of 2006， the accumulated turnover of the engineering contracts completed by Chinese businesses in South Africa amounted to US＄288 million， with that of all the accumulated volume of the completed labor service contracts reached US＄77.29 million.

According to figures of China’s Ministry of Commerce（MOFCOM），approved by or registered with MOFCOM in 2006， non financial enterprises direct investment in South Africa by Chinese amounted to US＄4.89 million. South African firms invested in 68 projects in China in 2006， with the contractual volume of investment running to US＄240 million， with an actual utilization of US＄94.81 million. By the end of 2006， South African companies had accumulatively invested in 556 FDI projects in China with a contractual investment of US＄1.01 billion and an actual invested capital of US＄400 million.

2Introduction to trade and investment regime

Legislation concerning import and export administration in South Africa is the International Trade Administration Act. The other related legislation includes the Customs and Excise Act， the Consumer Code and the Sales and Service Code.

The Department of Trade and Industry is the primary competent authorities governing foreign trade in South Africa. The International Trade Administration Commission （ITAC） carries out trade remedies investigations in the SACU region and is responsible for import and export administration， licensing administration， restructuring the tariff regimes， supervision of preferential industrial policies. Other governmental agencies relating to trade and investment administration include the South Africa Avenue Service and the Bureau of Standards.

The Southern African Customs Union came into existence in 2002， with the signature of the Customs Union Agreement between South Africa， Botswana， Lesotho， Namibia and Swaziland. It maintains the free interchange of goods between member countries. It provides for a common external tariff to non member countries.

2.1Trade administration development

2.1.1Tariff system

According to its WTO accession commitments， South Africa has significantly reduced its tariff. South Africa s average tariff stands at 5.8％ at present， with an average tariff of 9.1％ and 5.3％ for agricultural and non agricultural products respectively.

According to the International Trade Administration Act， South Africa released the Tariff Investigations Regulations in April 2006. The legislation stipulated the reduction or increase in the rate of a customs duty by SACU and whether the creation or removal of rebate or drawback provisions with regard to a custom duty. The International Trade Administration Commission is responsible for conducting investigations.

2.1.2Import administration

2.1.2.1Customs procedures

On October 1， 2006， to improve the Customs service， the South African Avenue Service adopted the format of the European customs declaration the single administrative document（SAD）. All imported goods must be presented to the customs through the SAD accompanied by pertinent documents.

Electronic Customs clearance is available in the Customs of some large ports in South Africa. The data for electronic clearance， which is exchanged with floppy disks， must meet the Customs classification requirements， attached with printed documents. With the cooperation of the port authorities， the Customs carried out electronic clearance on containerized imports s in some regions to speed customs clearance. The

Customs in South Africa is updating its technology and information system.

Besides， in coordination with the updating of the Harmonized Commodity Description and Coding System by the World Customs Organization（WCO） every four to six years， the Customs in South Africa made adjustments of tariff codes. The new Customs tariffs take effect as of January 2007.

In September 2006， China’s Customs Authority and the South African Revenue Services（SARS） signed the Agreement on Mutual Administrative Assistance in Customs Matters between China and South Africa， which stipulated the cooperation of the customs of both countries in combating smuggling. According to the agreement， both administrations reached a consensus on developing a new modern customs information system， and planned to develop an IT system for electronically exchanging trade data and to create a stronger legal basis for Customs cooperation in the administration of bilateral trade.

2.1.2Import administration

Any company registered in South Africa s Department of Trade and Industry can engage in import trade， with no need to apply for special trading rights. In accordance with the International Trade Administration Act， certain special products are subject to licensing administration in South Africa. These products include shoes， waste products， certain agricultural products， petroleum and certain petrochemical products. Importers should be granted a license before importing any of these products and then make shipment overseas. The import license is issued by the Import and Export Administration Bureau and is to remain valid for 12 months.

In February 2006， in accordance with the Animal Disease Act， the Department of Agriculture stipulated that animal health administers are responsible for releasing import licenses and high grade licenses to the import of animals and related products. Each import license for single products is charged R105（around US＄15） while each high grade license for products of the same category is charged R850（around US＄122）

2.1.3Export administration

It is required that South African exporters be registered in the Customs House. The exporters of diamond should register in South African Diamond Commission. Besides， export licensing administration is imposed on strategic products， non regenerable resources， agricultural products， scrap metals and so on. Before an export license is granted， waste metals should first be made available to South African lower stream enterprises at a discounted rate of their export prices. The government can only issue export licenses if the lower stream enterprises do not respond to the offer or do not need the waste metals. The catalog of products coming under licensing is determined by the South African Minister of Trade and Industry and published on government bulletins. The export of ostrich and its breeding eggs is still prohibited.

To increase the added value of exports and create job opportunities， the South African government has decided to reduce the export of raw materials including gold， platinum， and chromium. At present， the South African enterprises have applied to the government for imposing export duties on chromium and decided to restrict the melting and processing of chromium to domestic regions and to export ferrochrome only.

2.1.4Trade remedies

The trade remedy measures South Africa has resorted to mainly include antidumping and countervailing investigations. So far， it has not conducted safeguard investigations.

The Antidumping and Countervailing Act consists of the Tariff and Trade Commission Act， the Circular No.91 of 1964: Tariff and Internal Duty Act， and the Tariff and Trade Commission Guidelines. The laws concerning safeguard measures include the Normal Safeguard Act and the Agricultural Safeguard Act issued respectively in 2004 and 2005.

2.1.5Other related systems

In February 2006， the Reserves Bank in South Africa amended the Foreign Exchange Control Act， canceling its foreign exchange control under the current account. However， to guard against financial fraud and money laundering， South African banks have， as required by the Financial Intelligence Center Act， tightened their monitoring over the funds of their clients.

In 2005， South Africa subjected transit Chinese nationals to visas. After the Chinese Foreign Ministry took up the matter with South Africa s Department of Internal Affairs， the South African government has decided that it lifted visa restrictions on transit Chinese passport holders as of July 2006. Transit via South Africa only requires the legitimate visa of the third country.

On September 1， 2006， the Department of Trade and Industry（DTI） has declared to make amendments of the Trademark Act， the Patent Act and the Design Act. According to the amendment， registering fees for trademarks， patents and designs and are raised， and changes in other terms and conditions are made.

2.1.6Adjustment of other authorities

According to the National Credit Act issued in 2005， the National Credit Regulator and was set up on June 1， 2006. The administration is responsible for inspecting and supervising currency and credit suppliers， currency and credit offices and debt advisors. The National Credit Law serves as standardizing the currency and credit market and promoting competition and sustainability of the market. It aims to protect consumers， prevent vicious crediting from increasing， and supervise interest and spending. The law concerns all types of consumption crediting， including bank loan， credit cards and mortgage trade and so on.

2.2Investment administration development

Laws concerning investment in South Africa include the Export Credit and Foreign Investments and Re insurance Act， the Credit Agreement， and the Foreign Exchange Control Amnesty and Amendment of Taxation Laws Act. Other laws related to foreign investment include the Corporation Act， the Income Tax Act， the Financial Institution（Investment Funds） Act， and the Labor Act， the Competition Act， and the Environment Act.

The Department of Trade and Industry（DTI） is the main department responsible for investment administration. Other departments related to investment administration include the South Africa Avenue Service， the National Economic Development and Labor Council and the Board for Regional Industrial Development.

2.2.1Income tax and investment provisions

South Africa has adopted the policy of taxation according to residence. According to the agreements with other countries on the avoidance of double taxation， non residents in South Africa are still subject to taxation on their earnings in South Africa. The South African taxation categories fall into two broad types: direct taxation and indirect taxation. The former includes four taxes such as income tax and capital earnings tax whereas the latter covers eight taxes such as value added tax， consumption and import tax. The South African corporate income tax currently stands at 30％ and value added tax at 14％. The rate of excise duties is 10％ except that office equipment and motorcycles have a duty at 5％； specific excise duties are levied on tobacco and tobacco products， alcoholic and nonalcoholic beverages.

South Africa places no restrictions upon stock investment by foreign investors.

Foreign investors buying stocks of publicly listed companies in South Africa should confirm that authorized dealers endorse “Non resident” on stock certificates so that stock returns such as dividends could be remitted home in the future. Generally speaking， no restriction is imposed upon the remittance abroad of investment earnings by non residents.

2.2.2Investment promotion measures

South Africa has adopted a series of national programs to promote investment， esp. foreign investment. Current investment promotion measures include the skill support program， industrial development area scheme， foreign investment grant， critical infrastructure program and power price fixing development program， which encourage investors with subsidies， tax reduction and exemption respectively.

In 2006， South Africa has made adjustments of some investment promotion measures. In August 2006， the Department of Trade and Industry（DTI） suspended the Small and Medium Enterprise Development Program. Moreover， in September， DTI suspended the export promotion measures in the car industry development scheme.

2.3Changes in trade investment laws and regulations

In 2006，in view of the preparatory work for South Africa s engagement in the non agricultural market access（NAMA） negotiations， the International Trade Administration Commission of South Africa（ITAC） planned to reduce the tariffs on parts of industrial products and parts of agricultural products in light of the WTO bound tariff rates. The industrial products include nine categories of products such as yarns， shoes and apparatus for television. Agricultural products include 37 categories such as frozen vegetables， sweet biscuits and opium extracts. Moreover， in 2006， South Africa amended the Customs and Excises Act， exempted and reduced tariffs on parts of sweet， stainless steel， and iron and steel products as well as increasing the import tariffs on parts of tools and sweets.

In October 2006， in terms of the Perishable Products Export Control Act， 1983， the South African Perishable Products Export Control Board decided to impose export inspection levies ranging from 28.65 cents to 57.30 cents per container in a consignment of grapes， pome fruits and stone fruits exports.

In addition， the Small Business Tax Amnesty and Amendment of Taxation Laws Act took effect as of August 1， 2006. According to the act， small businesses whose carrying on does not exceed R10 million（around US＄1.25 million） every year are exempt from taxation， including income tax， value added tax and pay tax.

3Barriers to trade

3.1Tariff barriers

In spite of tariff reforms， South Africa s tariff schedule remains complex and can create uncertainty for foreign exports to the country. Moreover， South Africa imposes relatively high import tariffs on sweet products， mutton， milk and maize to support the development of its own industries.

3.2Import restrictions

3.2.1Import Procedures

According to the South African gazettes， imports such as waste products are subject to the approval from the relevant departments and the licensing from the Import and Export Administration Bureau under South Africa s Department of Trade and Industry. Importers often have to face frequent delays in getting licenses issued， which adversely affects their normal export to the country.

3.2.2Restrictions on the import of textiles

In June 2006， the Chinese administration and South African administration signed the Memorandum of Understanding on the Promotion of Trade and Economic Technological Cooperation between the People s Republic of China and South Africa. The South African Department of Trade and Industry declared that 31 categories of textiles including cotton products， curtains， knitting trousers and so on from China would be subject to import quotas from January 1， 2007 to December 31， 2008. Moreover， South Africa undertook to waive the use of Article 16 of the Protocol on China’s Accession to the WTO and Paragraph 242 of the Working Group s Report on China’s WTO Accession， and carryout its commitment of recognizing the market economy status of Chinese enterprises.

3.3.Technical trade barriers

3.3.1.Compulsory technical laws

In 2006， South Africa issued three compulsory technical laws and sales administration laws， which stipulated a rise in the property index， safety requirements and standards for non pressure kerosene stoves and heaters， and stricter requirements for circuit breaker sets with the alternating current not exceeding 1，000 volt of rated voltage or 1，500 volt of direct current. Compared with the previous standards，relatively great changes were made in the compulsory standards，which placed higher safety requirements for mechanical and electrical products， adversely affecting the export of Chinese mechanical and electrical products to South Africa. Besides， modifications of circuit breaker index are made twice a year， which creates uncertainty to the export of foreign industries related products to the country.

3.3.2Package Classification for agricultural products

The South African government places stringent provisions for the classified labeling of parts of agricultural products sold in South Africa， which include the calculating，labeling and quantity fixing requirements for prior packing， general rules for goods delivery and sales， voluntary classification and labeling requirement for sheep， cows， pigs， goats sold in South Africa as well as grading， packing， labeling requirements for sorghum syrup. The compulsory classification and labeling provisions for the above products add production processes and operation costs to foreign related enterprises. China is watching with concern the enforcement of the above regulations.

3.3.3Standards for portland cement

As the South African government has currently increased the investment in infrastructure， speeding up the economic growth， the demand for cement is on the increase in South Africa. The South African government stipulates certification identification is only available to ordinary Portland cement imports complying with South African Bureau of Standards（SABS） s marking standards SANS50 197/1 and SANS50 197/2. Cements with no certification identification are not allowed to be sold in South Africa. The Chinese side believes the regulation on certification adds market access costs to Chinese enterprises in South Africa， thereby adversely affecting the normal trade among enterprises.

3.4Sanitary and phytosanitary measures

South Africa places strict import control on agricultural and poultry products and prohibits the import of radiation processed meat. The fruits exports to South Africa such as apples， cherries， and pears are subject to strict quarantine. The Chinese government believes food radiation processing is a kind of normal sterilization technique. Many studies show food radiation exposure is safe. South Africa s prohibition on radiation processed meat imports has no scientific basis， thereby adversely affecting the normal trade.

To prevent the bird flu outbreaks， South Africa currently prohibits the import of all birds and related products， for which the Chinese government has expressed understanding. However， it lacks scientific basis that South Africa extend the restrictions to nations with no bird flu outbreaks. The Chinese government hopes the South African government can evaluate the safety of Chinese exports in question according to the actual inspection and test results and lift the restrictions as early as possible.

3.5Trade remedies

South Africa is among the countries that most frequently subject Chinese exports to anti dumping investigations. During recent two years， with the deepening of the cooperation and communication between China’s Ministry of Commerce and the South African International Trade and Administration Commission， both sides have conducted fruitful consultations and achieved encouraging results on the matters of carrying out the commitments of recognizing China’s market economy status， determination of the causal relationship between dumping and injury， the conclusiveness of evidence of injury to South African industries， and public interest.

By the end of December 2006， the South African authorities initiated 37 anti dumping investigations on Chinese exports， one of which involved glass fiber staple mats. In 2006， the South African International Trade and Administration Commission terminated anti dumping investigations on products such as toughened glass， polystyrene， and glass fiber staple mats on the ground that there was no causal relationship between dumping and market injury and the quantity of imports was less than 3％. South Africa gave four Chinese enterprises meeting the lawsuit market economy status， but the pneumatic tires of more than ten Chinese enterprises were still imposed 3％ to 22.3％ anti dumping duties. In 2006，South Africa also initiated anti dumping sunset review on garlic of Chinese origin and made the final adjudication of continue imposing anti dumping duties. Besides， South Africa offered four Chinese enterprises meeting the lawsuit market economy status， but the pneumatic tires of more than ten Chinese enterprises were still levied 3％ to 22.3％ anti dumping tariffs. The Chinese side believes that Chinese enterprises export of such products to South Africa involved in the lawsuit during the period of investigation was not particularly large. However， these measures discourage to a large extent Chinese enterprises from continuing and expanding their export of the above products to South Africa. The Chinese government hopes the South African government will comply with the agreement signed between China and South Africa， undertake the commitments of waiving the use of Article 16 of the Protocol on Accession of China to the WTO and in Paragraph 242 of the Working Group s Report on China’s WTO Accession， and of recognizing China’s market economy status.

In December 2006， the South African International Trade and Administration Commission accepted the application for conducting anti dumping investigations on critic acid of Chinese origin or Chinese imports. In January 2007， ITAC decided to initiate anti dumping sunset review on door locks and knobs and woven fabrics of Chinese origin or Chinese imports. China is watching with concern the enforcement of the above regulations.

3.6Government procurement

In the process of government procurement in South Africa， the principle of fairness and transparency is not always strictly enforced. During government procurement， South Africa restricts imported products and services which require local ingredients to support the development of its own industries. The Chinese government hopes South Africa enhances the principle of transparency in government procurement and provides a fairer competitive atmosphere for foreign enterprises.

3.7Intellectual property right protection

South Africa has made some progress in protecting the intellectual property rights of imports. However， problems such as counterfeit trademarks and copyright infringement still widely exist. The Chinese government hopes South Africa further punish the infringement on intellectual property rights and safeguard the related interests of Chinese products.

3.8Export restrictions

South Africa is the main producer and exporter of chromium in the world， which makes up 75％ of the world reserves. To increase the added value of its exports and create job opportunities， the South African government has decided to reduce the export of raw materials including gold， platinum， and chromium. South African enterprises have demanded that the government restrict the export of chromium to China and impose export tariffs on chromium. The Chinese side believes that the restriction on chromium export will result in the decrease of chromium supplies in the international market and the fluctuation of chromium prices. The Chinese government is watching with concern over it.

4Barriers to investment

4.1.Barriers to the access of investment

Since the racial segregation system in South Africa was abolished， to make more black investors involved in the main stream economy and help competent black business people compete better with western counterparts， the South African government issued the Broad Based Black Economy Empowerment Act in 2001. The act stipulated that 25％ of enterprises ownership be held by local black people and stipulated the proportion of local black people in the management， which means the ownership of foreign investment is restricted below 75％. South Africa formulated the act with a view to protecting the interest of black people， for which the Chinese side expressing understanding. However， the compulsory index may adversely affect the operation of foreign companies and restrict foreign investment in South Africa.

4.2.Barriers to investment operation

4.2.1.Restrictions on financing

According to the related laws， certain groups of South African companies are restricted in access to financing through local credit institutions， which include companies with 75％ or more of capital or assets held by foreign investors， companies with 75％ or more controlling sharing， or companies with 75％ or more business earnings distributed to non residents. The above measures have restricted foreign funded enterprises capacity to finance locally.

4.2.2Visa system

A grievance often voiced by many Chinese enterprises is South Africa s visa system. It often takes considerable time to be granted an entry visa， and the South African Embassy charges working visas applicants a deposit of 15，000 yuan， thus hindering the transfer of personnel on the part of Chinese funded enterprises in South Africa. The Chinese Foreign Ministry and the Chinese Embassy in South Africa have taken up the deposit matter with South Africa s Embassy in China and South Africa s

Department of Internal Affairs. China hopes the South African administration will resolve the matter as soon as possible.

4.2.3Other problems

A number of incidences involving criminal violence against Chinese business people and Chinese invested enterprises have occurred in South Africa over the past few years， which have considerably weakened the confidence of the Chinese business community in investing in South Africa. The Chinese side hopes that the South African government will take adequate measures to protect the interest of the Chinese people and enterprises doing business in South Africa.