The European Union

1.Bilateral trade and investment

In 2006, the European Union(EU) retained its position as China s top trading partner and was also the third largest investor in China, while China was the second largest trading partner of the EU(after the United States). According to China Customs, the bilateral trade volume between China and the EU in 2006 topped US $ 280.48 billion, up 29.1% over the preceding year, among which China s exports to the EU jumped by 32.1% to arrive at US $ 189.85 billion, whereas China s imports from the EU totaled US $ 90.63 billion, an increase of 23.1% year on year. China ran a surplus of US $ 99.22 billion in its trade with the EU. China mainly exported to the EU electrical appliances, electronic products, machinery, wool and textile products, knitwear, toys, furniture, footwear, optical and photographic equipment, leather products, bags and cases, iron and steel products, plastics, and organic chemicals. China s imports from the EU included, among others, machinery, electrical appliances, electronic products, aircraft, automobiles and auto parts, optical, photographic and medical equipment, plastics, organic chemicals, iron and steel products, copper and copper products.

According to the figures released by China s Ministry of Commerce(MOFCOM), by the end of 2006, the accumulative turnover of engineering contracts and labor service cooperation contracts completed by Chinese firms in the EU had stood at US $ 4.92 billion and US $ 1.3 billion respectively.

Upon the approval or on the record of MOFCOM, China s non financial direct investment in the EU hit US $ 130 million in 2006. The EU invested in a total number of 2,770 projects in China in 2006, with a contract investment of US $ 10.66 billion and an actual utilization of US $ 5.41 billion. By the end of 2006, the EU had accumulatively invested in 25,450 foreign direct investment(FDI) projects in China, with a committed contractual investment of US $ 98.03 billion and an actual invested capital of US $ 53.19 billion.

2.EU s trade and investment regime

The process of economic integration in the European Community(EC) began in the 1950s. In July 1968, a customs union was established among the EC members. Their move towards a Single European Common Market was basically completed in 1993. Euro(EUR), Europe s single common currency, was officially launched on 1 January 1999, marking the establishment of the European Economic and Monetary Union among the members of the EU.

On 1 May 2004, the EU was expanded to comprise 25 members, with full

membership extended to 10 countries, namely, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. On 1 January 2007, Romania and Bulgaria became members of the EU, increasing its membership to 27 countries. In addition, the EU has entered into accession negotiations with Croatia and Turkey.

In October 2004, the Heads of State or Government of the 25 EU Members States signed in Rome the Treaty establishing a Constitution for Europe, a decisive step towards ever closer European integration based on a Constitution. However, the proposed Constitution was rejected by the people of France and the Netherlands in a referendum on 29 May and on 1 June 2005 respectively. At the EU summit meeting in mid June 2005, leaders of the EU Member States decided to suspend the ratification process of the Constitutional Treaty and to extend the deadline for its ratification. By December 2006, 16 EU Member States have ratified the Treaty: Lithuania, Hungary, Slovenia, Spain, Italy, Greece, Slovakia, Austria, Germany and Finland.

The EU has gradually developed and improved a wide range of common policies during the process of integration over the past five decades, and among them, those closely related to trade include the Common Commercial Policy, the Common Agricultural Policy, the Common Fisheries Policy, and the Common Consumer Protection policy.

2.1Trade administration regime and its recent developments

2.1.1Tariff administration

The EU adopts a common customs tariff policy, implementing uniform tariff rates and tariff administration. Council Regulation(EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff lies at the foundation of the EU tariff administration. The EU publishes as a Commission Regulation every year an amended tariff rates schedule. On 17 October 2006, the EU released Commission Regulation(EC) No 1549/2006 amending Annex I to Council Regulation(EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, effective as from 1 January 2007. The mean tariff rate of the EU currently stands at 4.2%, with a simple average tariff rate of 4.0% for non agricultural products.

The EU promulgated Council Regulation(EC) No 426/2006 on 9 March 2006, Commission Regulation(EC) No 949/2006 on 27 June 2006, and Commission Regulation(EC) No 996/2006 on 29 June 2006. The above three Regulations, which took effect as of 1 January, 27 June and 1 July 2006 respectively, partly amended Council Regulation(EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, involving tariff rates for certain waste oils for recycling, meat and edible meat offal, salted, in brine and raw sugar respectively. On 20 December 2006, the EU released Council Regulation(EC) No 1930/2006 amending Annex I to Regulation(EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. According to this recent revision,

sterile surgical or dental adhesion and appliances for ostomy use formerly classified in different chapters of the Combined Nomenclature(CN) are to be classified in Chapter 30 of the CN, and after 1 January 2007, these products, originally subject to a 6.5% rate of duty, are extended a suspension of duties for an indefinite period.

The EU published Commission Regulation(EC) No 215/2006 on 8 February 2006 and Commission Regulation(EC) No 402/2006 on 8 March 2006, both of which amended Regulation(EEC) No 2454/93 laying down provisions for the implementation of Council Regulation(EEC) No 2913/92 establishing the Community Customs Code. The two Commission Regulations, which entered into force as of 19 May 2006 and 1 June 2006 respectively, provide for specific rules for the determination of customs value of perishable goods and specific methods to be used for determining the net weight of fresh bananas. On 18 December 2006, the EU released Commission Regulation(EC) No 1875/2006 amending Regulation(EEC) No 2454/93 laying down provisions for the implementation of Council Regulation(EEC) No 2913/92 establishing the Community Customs Code. This amendment is designed to introduce a number of measures to tighten security for goods leaving or entering the customs territory of the EU, for example, the analysis and electronic exchange of risk information concerning imports and exports of EU members under a common risk management framework, and the granting of the status of authorized economic operator to reliable economic operators who meet certain criteria and who are to benefit from simplifications provided for under the customs rules and/or facilitations with regard to customs controls.

After accession to the EU of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, the EU adjusted its customs concessions and customs quotas accordingly. On 20 March 2006, the EU released Council Regulation(EC) No 838/2006, announcing the implementation of its agreement with China concerning its customs modifications.

On 9 January 2007, the European Commission passed a proposal, announcing the cuts in import tariff rates for unwrought non alloyed aluminum in two phases. As of 1 January 2007, the rate will be reduced from 6% to 3%; as from 1 January 2009, the rate will be bound at zero. At present, the bill is yet to be ratified by the EU Member States.

2.1.2Import administration

Council Regulation(EC) No 3285/94 of 22 December 1994 on the common rules for imports and Council Regulation(EC) No 519/94 of 7 March 1994 on common rules for imports from certain countries serve as the major EU legal framework for import administration. Council Regulation(EC) No 520/94 of 7 March 1994 establishing a Community procedure for administering quantitative quotas and Commission Regulation(EC) No 738/94 of 30 March 1994 laying down certain rules for the implementation of Council Regulation(EC) No 520/94 provide a legal basis for the uniform import quota regime in the EU, including the allocation of import quotas,

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

On 1 February 2006, the EU published Commission Regulation(EC) No 179/2006 introducing a system of import licenses for apples imported from third countries. The Regulation requires that importers of apples submit import license applications to the competent authorities in any EU Member States, lodge with their applications a security of EUR 15 per tonne, and guarantee compliance with the commitment to import during the term of validity of the import license.

In the light of perceived threat of injury of steel imports to EU steel producers, the EU released on 18 December 2006 Commission Regulation(EC) No 1915/2006 continuing prior Community surveillance of imports of certain iron and steel products originating in certain third countries. The Regulation extends prior surveillance over imports of steel products from 31 December 2006 to 31 December 2009. In order to minimize unnecessary restraints and not disturb excessively the activities of companies close to the borders, the Regulation provides that imports whose net weight does not exceed 2,500 kilograms be excluded from the scope of prior surveillance.

2.1.3Export administration

Council Regulation(EEC) No 2603/69 of 20 December 1969 establishing common rules for exports and Council Regulation(EEC) No 3911/92 of 9 December 1992 on the export of cultural goods contain legal provisions for the EU to administer exports. The EU only subjects a very small number of products to tight export controls. In June 2000, the EU published Council Regulation(EC) No 1334/2000 setting up a Community regime for the control of exports of dual use items and technology, which strengthens export controls over invisible products such as software and technology and the transmission of software and technology by means of electronic media, fax and telephone.

On 27 February 2006, the EU promulgated Council Regulation(EC) No 394/2006 amending and updating Regulation(EC) No 1334/2000 setting up a Community regime for the control of exports of dual use items and technology. To fulfill international obligations of the EU and its Member States for the non proliferation of nuclear weapons, the EU updated the list of dual use items and technology annexed in the Regulation(EC) No 1334/2000, according to the changes made by international organizations such as Australia Group(AG), Missile Technology Control Regime(MTCR) and Nuclear Suppliers Group(NSG) in the export control rules for conventional weapons and dual use items and technology and according to the spirit of international conventions such as Wassenaar Agreement.

On 19 December 2006, the European Commission presented a proposal to the Council

of the European Union(formerly known as the Council of Ministers) on setting up a Community regime for the control of exports of dual use items and technology, intended to replace the export control regime that was put in place in 2000. The proposal represents a major revision of existing regime of controlling exports of dual use items and technologies, which aims to (1) strengthen EU security through a more effective control regime of dual use exports against the backdrop of the enlargement of the EU to 27 member countries,(2) improve surveillance environment and enhance the international competitiveness of the EU dual use items, and (3) cooperate more closely with countries outside the EU to toughen control of the export of dual use items and technologies. Currently, the European Council is deliberating the proposal.

2.1.4Generalized System of Preferences

The Generalized System of Preferences(GSP) of the EU is implemented by means of Council Regulations following cycles of ten years. The old GSP scheme expired at the end of 2005. On 27 June 2005, the EU published Council Regulation(EC) No 980/2005, which went into effect on 1 January 2006 and made significant revisions to Council Regulation(EC) No 2501/2001 applying a scheme of generalized tariff preferences for the period from 1 January 2002 to 31 December 2004. The features of the new GSP scheme are summarized as follows:

Firstly, the new scheme reduces the number of GSP arrangement categories from five to three. The second GSP arrangement category, i.e., the special incentive arrangement for sustainable development and good governance(known also as “GSP plus” or “GSP+” incentive), has already applied as from 1 July 2005. The other two GSP arrangement categories are the general arrangement and the special arrangement for the least developed countries(LDCs) also known as the “Everything But Arms”(EBA) initiative.

Under the general GSP arrangement, sensitive products benefit from a tariff reduction of 3.5 percentage points on the most favored nation(MFN) rates, while non sensitive products enjoy duty free access to the EU market. The “GSP plus” arrangement waivers all import duties on goods originating in the beneficiary countries. However, to be eligible for “GSP plus” arrangement, the beneficiary should, among the many other conditions, be an especially vulnerable low income country highly dependent on foreign trade of a very limited number of products. The EBA arrangement grants duty free access to imports of all products from the world s 50 poorest countries, except arms and munitions.

Secondly, the new scheme expands the range of products covered by the GSP. The coverage under the general GSP arrangement has increased from about 6,900 products to about 7,200 products in the new scheme, the new additions coming mostly from the agriculture and fishery sectors.

Thirdly, the new scheme provides a simpler mechanism for “graduation”(exclusion

from the GSP). The old criteria(share of GSP imports, development index and export specialization index) have been replaced with a single straightforward criterion: share of the Community market expressed as a share of exports from GSP countries. This share would be 15%, with 12.5% for textiles and clothing respectively.

According to the new GSP scheme, the EU will assess in 2008 the market share of GSP imports to determine whether a particular product can be graduated from the scheme, except in the case of textiles and clothing which will be reviewed annually to closely monitor the possibility of sharp increases in textile and clothing exports.

According to Council Regulation(EC) No 980/2005 of 27 June 2005 applying a scheme of generalized tariff preferences, products originating from China in 68 chapters and 15 tariff headings under Tariff Headings Nos.6 to 20 in the Harmonized Commodity Description and Coding System(HS) have, as from 1 January 2006, graduated from the EU GSP and no longer benefit from preferential tariff treatments from the EU. These products involve chemicals, plastics, rubber, metals and metal products, wood and articles of wood, textiles, footwear, machinery and mechanical appliances, and vehicles. Currently, of all the exports to the EU from China, only agricultural and mineral products are still placed in the GSP arrangement.

2.1.5Trade remedies

Major legislations in the EU governing trade remedies mainly include Council Regulation(EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, Council Regulation(EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community, Council Regulation(EC) No 3285/94 of 22 December 1994 on the common rules for imports and repealing Regulation(EC) No 518/94(namely, regulation on safeguard measures), and relevant amendment regulations.

The EU is currently contemplating amending its legislations regarding trade defense mechanism. On 6 December 2006, the EU published on its official website a Green Paper(COM(2006) 763 final) reviewing its trade remedy policies and seeking public opinions. The Green Paper falls into six themes: the role of trade defense in a changing global economy, the weighting of different EU interests in trade defense investigations, the launch and conduct of trade defense investigations, the form, timing and duration of trade defense measures, the transparency of trade defense investigations, and the institutional structure of trade defense investigations. And comments are invited from all interested parties on the questions raised in this Green Paper.

2.1.6Competent trade authorities and their changes

Currently, for the EU to formulate a common trade policy(including negotiations of bilateral, regional and multilateral trade agreements) vis vis non member

states, the European Commission should present a drafted proposal in the first place. The European Council(in some cases jointly with the European Parliament) makes a policy decision after consultations with the Article 133 Committee. When the European Commission drafts a proposal for Community trade policy, the Directorate General for Trade(DG Trade) will work closely with experts from designated departments of the EU Member States, while seeking opinions of various stakeholders, in particular, business circles and intermediary agents.

On 1 January 2007, the European Commission s DG Trade was restructured, currently with 9 Sections and 27 Departments. Five regional departments were newly added, namely, Trade Relations with the Far East, Trade Relations with the Americas, Trade Relations with Euromed and the Middle East, Trade Relations with Europe(non EU) and Central Asia, and Trade Relations with South Asia, Korea and ASEAN. The Department of Trade Relations with the Far East is in charge of EU China trade matters. In addition, a new Department of Industrial Sectors was set up, administering external trade in iron and steel, shipbuilding, chemicals, hard coke, automobiles, textiles and footwear. The number of departments under the Trade Defense Section has been increased from 5 to 6.

2.2Investment administration regime and its recent developments

The Treaty establishing the European Community provides that policy decisions on investment be kept within the competence of each of the Member States. The Treaty establishing a Constitution for Europe signed by the leaders of the 25 Member States in Rome in October 2004 made amendments concerning investment policies, integrating the administration of foreign direct investment(including foreign investment inflow and outflow), currently under the discretion of EU Member States, into the EU common commercial policy. When the Treaty establishing a Constitution for Europe is ratified, regulation on foreign investment will be transferred from the Member States to the EU, enabling the latter to formulate uniform legislations and to sign international agreements on foreign investment. Although the Treaty is yet to take effect, the general trend remains that the EU is increasingly powerful in deciding and exercising EU wide foreign investment policies.

On 6 February 2006, the European Commission issued a drafted directive promoting the liberalization of the EU financial service sectors. The proposed directive is designed to provide facilitations to cross border securities investment within the EU and foster competition between banks and stock exchanges in related areas. The envisioned directive provides that investment firms be entitled to cross border transactions within the EU and only subject to the supervision of the respective competent authorities of their home countries. On the other hand, the directive allows banks to provide their clients with services in securities transactions, thereby enabling banks to compete directly with stock exchanges in securities business. The directive also sets down new standards for trade transparency and consumer protection. The directive is to be reviewed by the European Parliament and the EU Securities Committee.

2.3Trade and investment related administration and its recent developments

2.3.1Common agricultural policy

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

On 20 February 2006, the EU published Council Regulation(EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation(EC) No 1290/2005 on the financing of the common agricultural policy. Pursuant to the Regulation, the EU agrees to a 36% cut in the guaranteed minimum sugar price within 4 years beginning from 1 July 2006, while providing compensation to sugar farmers for their losses incurred. The EU will also establish a Restructuring Fund to encourage sugar producers to switch to other crops. The EU estimates that following the reform in the EU sugar regime, the annual EU sugar production will fall to 6 to 7 million tonnes, thereby reducing the EU exports of sugar and increasing EU imports of sugar from least developed countries.

2.3.2Common fisheries policy

According to the common fisheries policy(CFP), the EU decided to extend, as of 1977, its common fishing waters to 200 miles from their coasts in the North Atlantic and the North Sea, which are subject to the unified administration of the EU. The EU Member States authorize the European Commission to negotiate fishing agreements with third parties. The CFP of the EU essentially took shape in 1983, regulating the distribution of fishing quotas among the EU Member States, the conservation of fishery resources and the marketing of aquaculture products.

On 19 June 2006, the EU approved its new fishing support program. According to the program, the EU will set up a European Fisheries Fund(EFF) with a budget of EUR 3.8 billion for the next 6 years(2007— 2013) to replace the Financial Instrument for Fisheries Guidance(FIFG), which expired at the end of 2006. The new fishing support program will help to modernize and restructure the EU fishing and aquaculture industry, increase the value that the sector adds to its products through investments in processing and bringing fish to the market, and encourage coastal regions to pursue fish farming and other activities to substitute for fishing.

To implement consistently and effectively the CFP of the EU, the EU published on 26 April 2005 Council Regulation(EC) No 768/2005 establishing a Community Fisheries Control Agency(CFCA). According to the Regulation, the CFCA is designed to coordinate fishing control and inspection among Member States.

2.3.3Common consumer protection policy

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

On 18 December 2006, the EU released Decision No 1926/2006/EC of the European Parliament and of the Council establishing a program of Community action in the field of consumer policy(2007—2013). The Decision confirms that the objectives of the EU action program in consumer protection policy are to improve, support and supervise consumer policies in the EU Member States, and to contribute to protecting the health, safety, and economic and legal interests of consumers, promoting their right to information and education and organizing themselves in order to safeguard their interests. The Decision provides in its annex a list of 11 joint actions and instruments to achieve the set objectives.

The program of Community action in the field of health and consumer protection(2007—2013) supplements and supports the policies of the EU Member States and helps to improve health and safety as well as protecting the economic interests of citizens. Health policy and consumer policy in the EU share three key objectives: protecting citizens from risks and threats which are beyond the control of individuals, increasing the capacity of citizens to take better decisions about their health and interests as consumers, incorporating health and consumer policy objectives into all policies.

2.3.4Policy on services in EU internal market

On 12 December 2006, the EU issued Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market. The Directive aims to remove barriers to the development of intra EU trade in service, establish a genuine common market for services within the EU, and boost the worldwide competitiveness and viability of EU service providers. It requires the Member States to ensure free access to and non discriminatory treatment in their services markets, dismantling the restrictions that cross border service providers should open branch offices in their places of operation and that they should pass through authorization procedures by the local authorities. However, the Directive includes a number of exclusions, for example, services such as financial services, private security services, notary services, education, healthcare services, and social services do not fall within

the scope of the Directive. The Directive adopts the rule of operating country, abandoning the much controversial rule of original country in the drafted proposal released in February 2006(i.e., cross border service providers only abide by the regulations of the country where their registered offices are located, and not those of the countries where they operate). The Directive demands that Member States bring into force the laws, regulations and administrative provisions to comply with the Directive before 28 December 2009.

2.3.5Intellectual property protection

Legal framework for the protection of intellectual property rights(IPR) varies in the EU Member States. Currently, the major legislation of the EU protecting and defending IPR related to international trade is Council Regulation(EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights. The Regulation lays down specific provisions regarding customs interventions against imports and exports suspected of violating IPR. According to the Regulation, customs protection of IPR covers trademarks, copyrights, patents, pant variety rights, designations of origin and geographic indications. IPR holders, authorized users, and representatives of right holders or authorized users are all entitled to lodge an application with the customs authorities for actions and measures against goods suspected of IPR offences. The Regulation went into force on 1 July 2004.

2.3.6Updating and improving the 1985 China EU Trade and Economic Cooperation Agreement

The Chinese and the EU leaders released in Helsinki, Finland on 9 September 2006 a Joint Statement of the Ninth China EU Summit, announcing that the two sides had agreed to launch negotiations on a Partnership and Cooperation Agreement(PCA) and to update the 1985 China EU Agreement on Trade and Economic Cooperation. On 7 December 2006, the 21st China EU Trade and Economic Joint Committee meeting was held in Beijing. The two sides exchanged views in a practical and business like manner on a wide range of issues such as improving the 1985 China EU Trade and Economic Cooperation Agreement, EU economic and trade policy paper towards China, strengthening intellectual property protection, China s market economy status, EU anti dumping investigation against China s footwear exports, auto parts disputes, intensifying department level dialogues, and the development of cooperation. At the end of the meeting, the two sides announced that they had reached eight point consensus in economic and trade relations between China and the EU.

2.3.7Deepening China EU customs cooperation

On the occasion of the Second Session of the Joint EU China Customs Cooperation Committee(JCCC) on 19 September 2006, China and EU arrived at an agreement on the launch of a pilot scheme creating “smart and secure trade lanes” to facilitate and

secure commercial exchanges between China and the EU. The two sides will give mutual recognition of each other s safety standards and authorizations of economic operators, and collaborate to improve information exchanges and risk assessment by means of the latest technologies aiming at ensuring smooth and prompt customs clearance. The pilot project initially involves the ports of Rotterdam(the Netherlands), Felixstowe(UK) and Shenzen(China). However, if it is met with success, the scheme could be gradually expanded to cover the entire EU.

2.4Product specific measures

2.4.1Technical regulations

2.4.1.1Directive on reuse, recycling and recovery of end of life vehicles
According to Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end of life vehicles, the EU Member States will adopt the necessary measures of their own accord to ensure that the following targets are attained: By 1 January 2006 at the latest, the reuse and recovery of end of life vehicles shall be increased to a minimum of 85% by an average weight per vehicle and year; the reuse and recyling of vehicle components shall be increased to a minimum of 80% by an average weight per vehicle and year. No later than 1 January 2015, the rate of reuse and recovery of end of life vehicles and the rate of reuse and recycling of vehicle components shall be increased to at least 95% and 85% respectively. It also provides that the Directive shall apply, as of 1 July 2002, to vehicles placed on the EU market after 1 July 2002, and as from 1 January 2007, to vehicles placed on the EU market before 1 July 2002, thereby implementing the Directive for all end of life vehicles in the EU Member States.

2.4.1.2Standards for ceramic articles intended to come into contact with foodstuffs
On 29 April 2005, the EU released Commission Directive 2005/31/EC amending Council Directive 84/500/EEC as regards a declaration of compliance and performance criteria of the analytical method for ceramic articles intended to come into contact with foodstuffs. The Directive requires that ceramic articles intended to be brought into contact with foodstuffs that are manufactured and sold in the EU shall be accompanied with a written declaration of compliance from the producer and the seller. The written declaration shall include the following information: the identity and address of the company that manufactures the finished ceramic article and of the importer who imports it into the EU, the identity of the ceramic article, the date of the declaration, and the declaration that the ceramic article meets the relevant requirements in the Directive and Regulation(EC) No 1935/2004. In addition, ceramic articles that comply with the migration limits of lead and cadmium shall, upon request, make available the results of the analysis carried out, the test conditions, and the name and address of the laboratory that performed the testing. As from 20 May 2007, the EU will prohibit the manufacture and importation of ceramic articles that do not comply with the Directive.

2.4.1.3Eco design requirements on energy using products

On 6 July 2005, the EU published Directive 2005/32/EC of the European Parliament and of the Council establishing a framework for the setting of eco design requirements for energy using products(EuP) and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council. The EuP Directive amends Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot water boilers fired with liquid or gaseous fuels, Directive 96/57/EC of the European Parliament and of the Council of 3 September 1996 on energy efficiency requirements for household electric refrigerators, freezers and combinations thereof, and Directive 2000/55/EC of the European Parliament and of the Council of 18 September 2000 on energy efficiency requirements for ballasts for fluorescent lighting. The EuP Directive requires manufacturers of energy using products to evaluate environmental impacts throughout their life cycles, including the consumption of raw materials, energy or other resources, the reuse of recyclable materials, the use of hazardous substances, emissions to air of volatile organic compounds, ozone depleting substances, persistent organic pollutants and heavy metals. Energy using products complying with the eco design requirements as laid down in the implementing measures to the Directive that is to be established separately should bear the “CE” marking in order to enable them to be placed on the market or put into service. The EuP Directive covers a wide spectrum of products, referring to products that, once put on the market and/or put into service, are dependent on energy input to work as intended, or products for the generation, transfer and measurement of such energy(excluding motor vehicles for transport), including parts dependent on energy input and intended to be incorporated into an energy using product sold as individual parts for end users. Energy input covers electricity, solid fuels, liquefied fuels and gaseous fuels.

Currently, the EU has already incorporated household hot water boilers, household electric refrigerators and ballasts for fluorescent lighting into the EuP Directive, and will adopt measures to cover other specific products. The Directive requires the EU Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 11 August 2007.

2.4.1.4Purity criteria for sunset yellow FCF and titanium dioxide

On 20 March 2006, the EU published Commission Directive 2006/33/EC amending Directive 95/45/EC as regards sunset yellow FCF(E110) and titanium dioxide(E171). The Directive provides amended purity criteria for E110 sunset yellow FCF and E171 titanium dioxide: It restricts the presence in E110 sunset yellow FCF of Sudan I(1 (phenylazo) 2 naphthalenol), an unauthorized color and undesirable substance in food, which may be formed as an impurity during the production of sunset yellow, and allows the use of the rutile form of E171 titanium dioxide. It is required that the EU Member States shall bring into force the laws, regulations and administrative provisions necessary to conform to the Directive by 10 April 2007 at the latest.

2.4.1.5Regulation protecting agricultural products and foodstuffs as traditional

specialities guaranteed

On 20 March 2006, the EU released Council Regulation(EC) No 509/2006 on agricultural products and foodstuffs as traditional specialities guaranteed. The Regulation lays down detailed rules for the certification and protection of agricultural products and foodstuffs with specific and traditional characteristics in the EU, including the application(including the application from third country applicants) for registration of a traditional speciality guaranteed and objections to the proposed registration. The Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union on 31 March 2006. However, Article 12(2) of the Regulation shall apply with effect from 1 May 2006: Where reference is made to a traditional speciality guaranteed on the labeling of an agricultural product or foodstuff produced within the Community, the registered name accompanied either by the Community symbol or the indication “traditional speciality guaranteed” shall appear thereon.

2.4.1.6Decision on exemptions for applications of lead

On 21 April 2006, the EU published Commission Decision 2006/310/EC amending, for the purposes of adapting to the technical progress, the Annex to Directive 2002/95/EC of the European Parliament and of the Council as regards exemptions for applications of lead. The Decision allows five exemptions from the prohibition for the use of lead:(1) lead in linear incandescent lamps with silicate coated tubes;(2) lead halide as radiant agent in High Intensity Discharge(HID) lamps used for professional reprography applications;(3) lead as activator in the fluorescent powder(1% lead by weight or less) of discharge lamps when used as sun tanning lamps containing phosphors such as BSP(BaSi2O5:Pb) as well as when used as speciality lamps for diazo printing reprography, lithography, insect traps, photochemical and curing processes containing phosphors such as SMS((Sr,Ba)2MgSi2O7:Pb);(4) lead with PbBiSn Hg and PbInSn Hg in specific compositions as main amalgam and with PbSn Hg as auxiliary amalgam in very compact Energy Saving Lamps(ESL);(5) lead oxide in glass used for bonding front and rear substrates of flat fluorescent lamps used for Liquid Crystal Displays(LCD).

2.4.1.7Decision on child resistant lighters

On 20 July 2006, the EU published in its Official Journal Commission Decision 2006/502/EC of 11 May 2006 requiring Member States to take measures to ensure that only lighters which are child resistant are placed on the market and to prohibit the placing on the market of novelty lighters. The Decision requires child resistant(CR) safety equipments for lighters and the ban on novelty lighters on the EU market. All lighters that resemble by any means to another object commonly recognized as appealing to or intended for use by children should be banned. This includes, but is not limited to, lighters the shape of which resembles cartoon characters, toys, food or beverages, or that play musical notes, or have flashing lights or moving objects or other entertaining features. Ten months after the notification of the CR Decision, the EU Member States should make the placing on the market of

lighters subject to the condition that they are child resistant and prohibit the placing on the market of novelty lighters. The CR Decision shall be applicable until 12 months from the date of its notification. On 1 December 2006, the European Commission released guidelines with the aim of facilitating the practical application of the CR Decision.

2.4.1.8Marketing standards for eggs

On 19 June 2006, the EU published Council Regulation(EC) No 1028/2006 on marketing standards for eggs, which contains basic requirements for the classification, indication and import controls of eggs. The Regulation provides for two quality classes of eggs: Class A(fresh eggs intended for direct human consumption) and Class B(eggs used by the food and non food industry). Class A eggs should also be graded by weight and marked with the producer code in order to enable the tracing of eggs and to identify the farming methods used, whereas Class B eggs shall only be delivered to the food or non food industry for use. For the import of eggs, the Regulation provides that:(1) If the European Commission finds that the marketing standards for eggs applicable in exporting third countries offer sufficient guarantee as to equivalence with the EU legislation, eggs imported from the countries concerned shall be marked with a distinguishing number equivalent to the producer code;(2) If sufficient guarantees as to equivalence of rules are not provided, imported eggs from the third country concerned shall bear a code permitting the identification of the country of origin and an indication that the farming method is “unspecified”; and(3) For Class A eggs imported from third countries, checks on compliance with the marketing standards shall be made at the time of customs clearance and prior to the release for free circulation, and Class B eggs imported from third countries shall be released for free circulation only after checking at the time of customs clearance that their final destination is the processing industry. The Regulation shall apply from 1 July 2007.

2.4.1.9Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment

As of 1 July 2006, Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment(RoHS) entered into force. The RoHS Directive provides that new electrical and electronic equipment(EEE) put on the EU market, excluding those in the list of exemptions, shall not contain six specified hazardous substance, namely, lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls(PBB) or polybrominated diphenyl ethers(PBDE). For the purposes of adapting to technical progress, the EU published on 12 October 2006 three Commission Decisions 2006/690/EC, 2006/691/EC and 2006/692/EC amending the Annex to Directive 2002/95/EC as regards exemptions for applications of lead in crystal glass, lead and cadmium, and hexavalent chromium. The three Commission Decisions add nine exemptions to the Annex to Directive 2002/95/EC, to be specific, eight exemptions for the applications of lead(including one exemption for the applications of lead and cadmium) and one exemption for the

applications of hexavalent chromium.

The RoHS Directive covers, in principle, all categories of energy using products(EuP), although mainly targeting those that use electricity, solid fuels, liquid fuels and gaseous fuels, for example, household appliances, IT and telecommunications equipment, consumer equipment, lighting equipment, electrical and electronic tools(with the exception of large scale stationary industrial tools), toys, leisure and sports equipment, medical devices(with the exception of all implanted and infected products), monitoring and control instruments, and automatic dispensers. The RoHS Directive affects the producers of component parts as well as manufacturers of finished products. The producers of components and parts should make available appropriate documentations regarding the relevant materials and energy consumption.

2.4.1.10Directive on prohibiting the use of certain substances in hair dyes

On 19 July 2006, the EU published Commission Directive 2006/65/EC amending Council Directive 76/768/EEC, concerning cosmetic products, for the purpose of adapting Annexes II and III thereto to technical progress. Following the recommendations of the Scientific Committee on Cosmetic Products and Non Food Products intended for Consumers(the SCCNFP), the Directive placed under a ban 22 categories of substances as hair dye cosmetic ingredients. It requires that no later than 1 September 2006, the Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive and that the Member States shall take all the necessary measures to ensure that by 1 December 2006 at the latest, no cosmetic products which fail to conform to the Directive are placed on the EU market.

2.4.1.11Protection measures against highly pathogenic avian influenza

On 25 July 2006, the EU released Commission Decision 2006/521/EC amending Decisions 2005/692/EC, 2005/733/EC and 2006/7/EC as regards certain protection measures in relation to highly pathogenic avian influenza. The Decision extends import restrictions on poultry products and untreated feathers from third countries. The period of application of Directive 2005/692/EC, originally scheduled to expire on 30 September 2006, is extended until 31 December 2007. Both slated to apply until 31 July 2006, application of Directives 2005/733/EC and 2006/7/EC is prolonged until 31 December 2006.

2.4.1.12Directive restricting the use of hazardous substances in batteries and accumulators

On 6 September 2006, the EU published Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC. The Directive strictly restricts the presence of cadmium in batteries and accumulators, with its maximum amount in all portable batteries and accumulators cut from the current 0.025% by weight to 0.002% by weight, while maintaining the limitation of mercury(0.0005% by weight). The maximum limit placed on the amount of cadmium does not apply to portable batteries

and accumulators intended for use in emergency and alarm systems, including emergency lighting, medical equipment or cordless power tools. In addition, the Directive requires all distributors of batteries and accumulators to take back waste batteries and accumulators. By 26 September 2009 at the latest, producers or third parties should establish collection systems and bear the costs of collection, treatment, recycling and disposal of waste batteries and accumulators. The EU Member States shall bring into force the Directive no later than September 2008.

2.4.1.13Directive banning the sale and use of perfluorooctane sulfonate

On 12 December 2006, the EU published Directive 2006/122/EC of the European Parliament and of the Council amending for the 30th time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations(perfluorooctane sulfonates, PFOS). The Directive puts PFOS in the list of dangerous substances. According to the Directive, unless authorized, PFOS may not be placed on the EU market or used as a substance in semi finished articles; the concentration of PFOS may not exceed 0.1% by mass in semi finished articles and 0.005% by mass in finished articles; for textiles or other coated materials, the amount of PFOS may not exceed 1μg/㎡ of the coated material. The Directive requires that the EU Member States shall adopt and publish, not later than 27 December 2007, the laws, regulations and administrative provisions necessary to comply with the Directive and they shall apply these measures on 27 June 2008.

2.4.1.14Directive restricting the sale and use of phthalates

On 14 December 2005, the EU published Directive 2005/84/EC of the European Parliament and of the Council amending for the 22nd time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations(phthalates in toys and childcare articles). According to the Directive, three specified phthalates(DEHP, DBP and BBP) shall not be used as substances or constituents in the preparations, at concentrations of greater than 0.1% by mass of the plasticized materials, in toys and childcare articles; three specified phthalates(DINP, DIDP and DNOP) shall not be used as substances or constituents in the preparations, at concentrations of greater than 0.1% by mass of the plasticized materials, in toys and childcare articles which can be placed in the mouth by children. The EU Member Countries shall, by 16 July 2006, adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive and they shall apply these measures from 16 January 2007.

2.4.1.15Regulation for Registration, Evaluation, Authorization and Restriction of Chemicals

A new EU regulatory framework(Regulation(EC) No 1907/2006 of the European Parliament and of the Council) concerning the Registration, Evaluation, Authorization

and Restriction of Chemicals(REACH) was formally adopted on 18 December 2006 by the Council of Environment Ministers, following the vote in second reading of the European Parliament on 13 December 2006. REACH Regulation will enter into force on 1 June 2007. It will probably take about a year before all the necessary REACH mechanisms are put in place, and the complete REACH regulatory regime is expected to become fully operational in 2008.

REACH covers regulatory measures on chemical production, trade and safety. The aim is to provide a high level of protection of human health and the environment for sustainable social development, while maintaining and enhancing the competitiveness of the EU chemicals industry. To this end, the European Commission will set up a unified surveillance and governance system for chemicals to be completed by 2012. The ambitious REACH Regulation incorporates some 30,000 chemicals and related "downstream" products in textiles, light industrial articles and pharmaceuticals in the EU market into the management and monitoring procedures of registration, evaluation and authorization. According to the proposed EU timetable, producers and importers of chemical substances with a volume over 1,000 tonnes per year and per producer/importer should register them with a new EU Chemicals Agency within the next three years; chemical manufacturers and importers with a yearly volume between 100 to 1,000 tonnes should register within six years; chemical manufacturers and importers with an annul volume between 1 to 100 tonnes should register within eleven years. Chemicals from producers and importers who fail to register within the designated time shall not be marketed in the entire EU market. In the meantime, the REACH Regulation established stringent testing criteria for chemicals, the cost of which is to be borne by the producers. According to the EU estimates, testing fees for a chemical substance and for a new substance are around EUR 85,000 and EUR 570,000 respectively.

2.4.1.16Regulation on organic production and indication of agricultural products and foodstuffs

On 19 December 2006, the EU published Council Regulation(EC) No 1997/2006 amending Regulation(EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs. The Regulation covers unprocessed plant and livestock products, processed plant and livestock products intended for human consumption, live or unprocessed fishery and aquatic products, processed fishery and aquaculture products intended for human consumption, in addition to the definition and labeling of organic products and the certification of organic products imported from third countries. The Regulation shall apply from 1 January 2007.

2.4.1.17Directive restricting the sale and use of arsenic compounds

On 20 December 2006, the EU issued Commission Directive 2006/139/EC amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of arsenic compounds for the purpose of adapting its Annex I to technical progress. The Directive aims to adapt the rules in Directive 76/769/EEC as regards biocidal products containing arsenic compounds to the rules in Directive 98/8/EC and states that it is

necessary to clarify the rules concerning the first placing on the market of wood treated with arsenic compounds and the placing of such wood on the second hand market. As stipulated by the Directive, the EU Members States shall, no later than 30 June 2007, adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive and they shall apply those measures by 30 September 2007 at the latest.

2.4.2Sanitary and phytosanitary measures

2.4.2.1Rules on the hygiene of foodstuffs

As from 1 January 2006, the EU brought into force a new package of three food hygiene legislations(Hygiene Package), namely, Regulation(EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs, Regulation(EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin, and Regulation(EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organization of official controls on products of animal origin intended for human consumption, as well as Regulation(EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. Major provisions in the relevant EU Hygiene Package include:

(1) Regulation(EC) No 852/2004 lays down general rules for food business operators on the hygiene of foodstuffs, taking particular account of the following principles: primary responsibility for food safety rests with the food business operator; it is necessary to ensure food safety throughout the food chain, starting from the place of primary production and processing up to and including distribution and export; the application of Hazard Analysis and Critical Control Point(HACCP) principles should be extended, whenever feasible at any of the stages of food production; it is necessary to establish pathogen reduction targets and temperature controlled storage conditions for food; and it is necessary to ensure that imported foods are of at least the same hygiene standard as foods produced in the EU or are of an equivalent standard.

(2) Regulation(EC) No 853/2004 provides specific hygiene rules for food of animal origin, requiring that food business operators shall not use any substance other than potable water—or, when Regulation(EC) No 852/2004 or this Regulation permits its use, clean water—to remove surface contamination from products of animal origin; establishments handling products of animal origin must be approved by and registered with the EU Member States; products of animal origin must be labeled with a health or identification mark; and products of animal origin can only be imported from third countries from which such imports are permitted by the EU.

(3) Regulation(EC) No 854/2004 lays down specific rules for the organization of

official controls on products of animal origin intended for human consumption, requiring that the exercise of the rules on food controls by competent authorities in the EU Member States; approval for the registration of food business establishments and action in the case of non compliance, including restricting or prohibiting the placing on the market, restricting or prohibiting import; specific control measures in the annex on meat, bivalve mollusks, fishery products, raw milk and dairy products; and import procedures, for example, lists of third countries or parts of third countries from which specified products of animal origin are permitted.

(4) Regulation(EC) No 882/2004 states that the purpose of official controls is twofold: to prevent, eliminate or minimize safety risks which may arise, either directly or via the environment, for human beings and animals; and to guarantee fair trade in food and feed and the protection of consumers interests through the enforcement of the labeling requirements for food and feed. To this end, official controls on products from both EU Member States and exporting third countries are performed to ensure the verification of compliance with food and feed law, animal health and animal welfare rules in the EU.

According to these food hygiene legislations, food products from third countries must satisfy the new food standard before they can be placed on the EU market. The new legislations have introduced significant changes in three areas:(1) these legislations apply to all categories of food products, paying particular attention to food safety and separating food safety from food trade;(2) an integrated approach is adopted, covering the entire food supply chain(from farm to fork), and the inclusion of animal welfare requirements places a greater responsibility upon Chinese enterprises handling products of animal origin; and (3) retroactive force is established for food products, which must be recalled in the event of failure to comply with the food standard. Compared with previous food hygiene regulations in the EU, these three legislations have strengthened food safety control measures, raised the threshold of market access for food products, placed accountability upon food business operators, and set out detailed hygiene criteria for the entire food production process, requiring their compliance from primary production to sale or supply to the final consumers, particularly in the case of products of animal origin.

2.4.2.2Microbiological criteria for foodstuffs

On 1 January 2006, the EU put into effect Commission Regulation(EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs. The Regulation lays down stringent microbiological criteria for foodstuffs, including meat and edible meat offal; fish and crustaceans, mollusks and other aquatic invertebrates(excluding live fish); dairy produce; birds eggs; natural honey; edible vegetables; edible fruits and nuts; margarine; semi finished products of fish and crustaceans, mollusks and other aquatic invertebrates; semi finished products of cereals, flours, starches and dairy; semi finished vegetables, fruits and nuts; and semi finished edible mollusks.

2.4.2.3Maximum levels for dioxins in foodstuffs

On 3 February 2006, the EU published Commission Regulation(EC) No 199/2006 amending Regulation(EC) No 466/2001 setting maximum levels for certain contaminants in foodstuffs as regards dioxins and dioxin like polychlorinated biphenyls(PCBs). The Regulation sets maximum levels in foodstuffs applicable not only to dioxins, but also to furans and dioxin like PCBs. The food products covered in the Regulation include meat and meat products, liver of terrestrial animals and derived products thereof, fish and fishery products, milk and milk products, eggs and egg products, vegetable oils and fats, animal fats, marine oils, and any other foodstuffs derived from or containing the above said products intended for human consumption. The regulation ran into force as from 4 November 2006.

2.4.2.4Requirements on wood packing material in international trade

On 6 February 2006, the EU published Commission Directive 2006/14/EC amending Annex IV to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community. By this Directive, the application of the EU requirement that wood packing material imported from third countries be made from debarked round wood is postponed until 1 January 2009, to allow for sufficient time to review phytosanitary concern of the presence of bark on wood packing material in international trade.

2.4.2.5Approval of residue monitoring plans for products of animal origin submitted by China

On 7 March 2006, the EU released Commission Decision 2006/208/EC amending Decision 2004/432/EC on the approval of residue monitoring plans submitted by third countries in accordance with Council Directive 96/23/EC. According to the Decision, plans monitoring residues of veterinary medicines, pesticides and contaminants in food of animal origin presented by China have been approved only for ovine/caprine casings, swine casings, poultry, aquaculture, rabbit and honey. The Decision took effect from 17 March 2006.

2.4.2.6Regulation on quality criteria for primary smoke products

On 21 April 2006, the EU published Commission Regulation(EC) No 627/2006 implementing Regulation(EC) No 2065/2003 of the European Parliament and of the Council as regards quality criteria for validated analytical methods for sampling, identification and characterization of primary smoke products. The Regulation lays down provisions for quality criteria for primary products authorized for use as such in or on foods or for the production of smoke flavorings for use in or on foods. Only products evaluated and authorized by the European Food Safety Authority(EFSA) can be used. For the safety assessment, relevant enterprises and importers should submit all the necessary information regarding the chemical composition of primary products and a proposed validated method for sampling, identification and characterization of

primary products. The Regulation enters into force on the 20th day following that of its publication in the Official Journal of the European Union.

2.4.2.7Directives on maximum residue levels for pesticides

The EU published respectively on 7 June 2006 Commission Directive 2006/53/EC amending Council Directive 90/642/EEC and on 28 June 2006 Commission Directive 2006/59/EC amending Annexes to Council Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC. The two Directives amended the maximum residue levels of thirteen pesticides, namely, fenbutatin oxide, fenhexamid, cyazofamid, linuron, triadimephon/triadimenol, pymetrozine, pyraclostrobin, carbaryl, deltamethrin, endosulfan, fenithrothion, methidathion and oxamyl in and on vegetables, fruits, cereals, meat, animal oils and fats, milk and milk products, eggs and egg products. The EU Member States has put into force the two Directives as from 9 December 2006 and 30 December 2006 respectively, except for pyraclostrobin and oxamyl where they shall apply the maximum residue limits as of 21 April 2007 and 30 December 2007 respectively.

2.4.2.8Special conditions for certain food imports due to contamination risks by aflatoxins

On 12 July 2006, the EU issued Commission Decision 2006/504/EC on special conditions governing certain foodstuffs imported from certain third countries due to contamination risks of these products by aflatoxins. The Decision imposes special conditions on the import of certain foodstuffs, including peanuts and certain products derived from peanuts originating or consigned from China. The Decision has entered into force as from 1 October 2006.

2.4.2.9Maximum residue levels for cereals and certain products of plant and animal origin

On 12 July 2006, the EU published Commission Directive 2006/62/EC amending the Annexes to Council Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC as regards maximum residue levels for desmedipham, phenmedipham and chlorfenvinphos. The products covered by the Directive include cereals(1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008), products of animal origin(0201, 0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210), and products of plant origin including fruits and vegetables. The EU Member States shall adopt and publish, by 20 January 2008 at the latest, the laws, regulations and administrative measures necessary to comply with the Directive and shall apply those provisions from 21 January 2008.

2.4.2.10Maximum residue limits of veterinary medicinal products in foodstuffs of animal origin

On 12 July 2006, the EU released Commission Regulation(EC) No 1055/2006 amending Annexes I and III to Council Regulation(EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin, as regards flubendazole and

lasalocid. The Regulation extends the testing scope of maximum residue levels of flubendazole and lasalocid from organs of the poultry to the poultry species. The Regulation has entered into effect from 11 September 2006.

2.4.2.11Animal health conditions and certification requirements for imports of fish for ornamental purpose

On 20 September 2006, the EU published Commission Decision 2006/656/EC laying down the animal health conditions and certification requirements for imports of fish for ornamental purpose. The Decision amends Commission Decision 2003/858/EC of 21 November 2003 laying down the animal health conditions and certification requirements for imports of live fish, their eggs and gametes intended for farming, and live fish of aquaculture origin and products thereof intended for human consumption. The Decision shall apply to fish caught in the wild, imported for the purpose of being used as ornament fish; ornamental fish imported by transhippers and wholesalers; and ornamental fish imported into pet shops, garden centers, garden ponds, exhibition aquaria and similar businesses without direct contact with Community waters. The Decision shall apply six months after the date of its publication.

2.4.2.12Directive on purity criteria of sweeteners in foodstuffs

On 8 December 2006, the EU published Commission Directive 2006/128/EC amending and correcting Directive 95/31/EC laying down specific criteria of purity concerning sweeteners for use in foodstuffs. Taking account of the norms as drafted by the Joint FAO /WHO Expert Committee on Food Additives(JECFA), the Directive adopts specific purity criteria for E 968 erythritol and amends the definition of E 965(ii) maltitol syrup set out in Directive 95/31/EC by including its new production method. The EU Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 February 2008 at the latest.

2.4.2.13Directive on purity criteria of food additives

On 8 December 2006, the EU published Commission Directive 2006/129/EC amending and correcting Directive 96/77/EC laying down specific purity criteria on food additives other than colors and sweeteners. The Directive decides to withdraw the purity criteria for E 216 propyl p hydroxybenzoate and E 217 sodium propyl p hydroxybenzoate which are no longer permitted for use as food additives, to adopt the specific purity criteria for E 319 tertiary butylhydroquinone(TBHQ), E 426 soybean hemicellulose, E 462 ethyl cellulose, E 586 4 hexylresorcinol, E 1204 pullulan and E 1452 starch aluminium octenyl succinate, to amend the level of sulphated ash in the purity criteria for E 472c citric acid esters of mono and diglycerides of fatty acids in order to cover partially or wholly neutralised products, to require that E 559 aluminium silicate be produced from raw kaolinitic clay which is free from unacceptable dioxin contamination, and to restrict the presence of dioxin in the raw kaolinitic clay to the lowest possible level. According to the Directive, the EU

Member States are required to adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive by 15 February 2008 at the latest.

2.4.2.14Directive on the mandatory labeling of certain ingredients in foodstuffs

On 22 December 2006, the EU issued Commission Directive 2006/142/EC amending Annex IIIa of Directive 2000/13/EC of the European Parliament and of the Council listing the ingredients which must under all circumstances appear on the labeling of foodstuffs. Noting the cases of severe allergic reactions from lupin and its product and from mollusks and their products, the Directive adds lupin, mollusks, and products thereof to the list of allergy causing ingredients that must under all circumstances appear on the labeling of foodstuffs. The EU Member States shall, by 23 December 2007 at the latest, adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive, and shall, as from 23 December 2008, prohibit the sale of foodstuffs in the EU market which fail to comply with the Directive.

2.4.2.15Manufacturing practice for materials and articles intended to come into contact with food

On 22 December 2006, the EU released Commission Regulation(EC) No 2023/2006 on good manufacturing practice for materials and articles intended to come into contact with food. The Regulation sets down certain obligations on business operators producing materials and articles intended to be brought into contact with food, requiring them to establish, implement and ensure adherence to general and detailed rules on good manufacturing practice(GMP), including quality assurance system, quality control system and record documentation system. The Regulation shall apply from 1 August 2008.

3.Barriers to trade

3.1Tariff and tariff administrative measures

3.1.1Tariff peaks

In 2006, the EU still maintained a number of tariff peaks in items such as meat and meat products, fish and fish products, vegetables and vegetable products, fruits and fruit products, foodstuffs, beverages, tobacco, textiles, footwear and motor vehicles. For example, the customs tariff rates for certain fish products, motor vehicles and tobacco products were over 20%, 22% and 74.9% respectively. China s priority exports to the EU such as footwear, vegetables, fruits, fish, foodstuffs, tobacco and bicycles came under high trariff rates in the EU. The practice on the part of the EU to protect its own uncompetitive industries through the imposition of tariff peaks has not only obstructed fair competition of the relevant industries, but also affected the development of normal bilateral trade.

3.1.2Seasonal duties

The EU imposes seasonal duties on certain fruits, vegetables and horticultural products in various forms such as ad valorem duty, compound duty and mixed duty, and publishes standard import value for such products as fruits and vegetables, which is subject to frequent modifications. Such a practice has led to complicated duties and unstable rates, which created uncertainty to Chinese enterprises exporting their products to the EU.

3.1.3Additional duties

In addition to an ad valorem duty, the EU levies an additional duty on certain sugar products, cocoa, bisuits, bread and potatoes, depending on the agricultural contents of their composition(e.g., anhydrous milk fat, milk protein, sucrose and starch). The EU publishes annually specific rules on the collection of additional duties. The practice of basing the imposition of customs tariff duties on the agricultural content of products adds great uncertainties to exporters.

3.2Import restrictions

On 25 July 2006, the EU published Commission Decision 2006/521/EC amending Decisions 2005/692/EC, 2005/733/EC and 2006/7/EC as regards certain protection measures in relation to highly pathogenic avian influenza. The Decision extends import restrictions against poultry products and unprocessed feathers entering the EU from third countries. China hopes that the EU will, according to the developments of the epidemic, assess the risks associated with avian influenza in a more objective and timely fashion and eliminate the import restrictions as rapidly as possible.

The EU released on 18 December 2006 Commission Regulation(EC) No 1915/2006, which extends prior Community surveillance over certain imports of iron and steel products originating in certain third countries until 31 December 2009. The EU introduced prior Community surveillance over iron and steel imports on 1 January 2002. The Regulation makes a particular reference to China, stating that since 2003, China s market has been the key driver of the very important increase in the demand for steel products and that it can be anticipated this trend of decreasing imports and increasing exports in China will continue, thereby releasing into the world market important increased quantities of steel products looking for a new market. The Chinese side hopes that the EU will notify China of its trade surveillance statistics in a timely way and not adopt restrictive measures on relevant Chinese exports.

3.3Barriers to customs clearance

Although the 27 EU Member States apply the same Community Customs Code and its implementing rules, national customs authorities are still left with a great leeway in a number of key areas of customs administration. This gives rise to disparate and inconsistent customs administration in the EU Member States. First, there are

differences not only in the customs classification and valuation of goods, but also in the procedures for such classification and valuation, including the provision of binding tariff information to importers. Second, customs clearance procedures for imports and exports vary significantly from one Member State to the other, for example, the use of computerized customs process in some Member States but not in others, different requirements among Member States for certificate of origin, different criteria for the inspection of goods, different licensing requirements for the importation of foodstuffs, and different procedures for processing express delivery shipments. Third, variances also exist in the procedures for reviewing entry statements after goods are released into the EU market. In addition, there are discrepancies in the penalties applicable in the case of failure to comply with the customs rules and in the procedures regarding the imposition of such penalties. Finally, record keeping requirements also differ to certain extent.

The differing and incoherent administration of customs measures among the EU Member States adds unpredictability to the Chinese exporting firms.

3.4Technical barriers to trade

3.4.1Directive on traditional herbal medicinal products

On 31 March 2004, the EU published Directive 2004/24/EC of the European Parliament and of the Council amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use. According to the Directive, a traditional herbal medicinal product can be authorized to be placed on the EU market, only when it has been demonstrated to the effect that it has been in medicinal use for at least 30 years in the EU or for at least 30 years outside the EU, including at least 15 years in the EU. The Directive also requires that traditional herbal medicinal products entering the EU be manufactured under the EU good manufacturing practice(GMP) guidelines and comply with quality standard in European Pharmacopoeia. The EU importers should apply for a license for their traditional herbal medicinal imports.

The afore mentioned provisions seemingly afford traditional herbal medicinal products from China an opportunity to enter the EU market, but they actually constitute a barrier to market access. Many Chinese herbal products can be used as food additives, non medicinal products and tonic foods. The EU puts raw materials of traditional Chinese herbal medicines, herbal beverages and patented herbal medicines all in the category of traditional herbal medicinal products, which are regulated under medicinal legislation and subject to harsh requirements for market access, thereby severely restricting the export of relevant products. China is very concerned with the negative impact that the Directive may have upon the export of traditional herbal medicinal products from China.

3.4.2Directive on eco design requirements for energy using products

On 6 July 2005, the EU published Directive 2005/32/EC of the European Parliament

and of the Council establishing a framework for the setting of eco design requirements for energy using products(EuP). The EuP Directive requires manufacturers to undertake environmental impact assessment for the entire life cycle of energy using products. Energy using products shall be evaluated according to the implementing regulations to be established separately by the European Commission according to the Directive, and if approved, shall be labeled with a CE marking. Currently, the European Commission is reviewing a wide array of products such as hot water boilers, television sets, display screens, external power supply equipment, and battery chargers so as to formulate implementing measures for the eco design requirements for energy using products, including their raw materials, methods of production, conditions of use(including their energy consumption), product life, waste treatment and possibilities of recycling.

There are enormous difficulties in terms of both technology and capital for enterprises in developing countries to implement environmental impact assessment for energy using products from the stage of product design up to the end of life of the product. China is gravely concerned with the adverse effects of the EuP Directive. In addition, the EuP Directive leaves the specific product categories targeted and the relevant product properties to the Implementing Rules, which will, to some extent, result in the arbitrariness in the selection of products to be targeted and create technical uncertainties for both producers and exporters. The Chinese side has already expressed to the EU that China hopes that the EU will clarify as soon as possible the scope of products to which the Directive applies and the procedures for certification of the related products.

3.4.3Proposal for a Council Regulation on compulsory origin marking

The European Commission presented a proposal on 16 December 2005 for a Council Regulation on the indication of the country of origin of certain products imported from third countries. The proposed Regulation requires that the country of origin be marked on certain products imported from third countries such as feather, footwear, textiles and garments, ceramics, glassware, jewelry, furniture, brooms, brushes and dusters(excluding certain foodstuffs, fish and other aquatic products). In consequence, the envisaged Regulation covers a great many priority exports from China to the EU. If the proposal is adopted by the European Council, the Chinese exports covered will be required to bear a mark indicating their origin “Made in China”. Currently, the proposal has not gone through the European Council.

The proposed Regulation on compulsory origin marking only applies to products exported from third countries and does not cover products of the same categories produced inside the EU. In addition, the products affected come mostly from developing countries and accordingly amounts to a discriminatory treatment of products from developing countries. Such being the case, China is highly concerned with the proposal.

3.4.4Regulation on agricultural products and foodstuffs as traditional specialities

guaranteed

On 20 March 2006, the EU published Council Regulation(EC) No 509/2006, which sets out rules for the recognition and protection of agricultural products and foodstuffs having specific and traditional characteristics in the EU. However, the definition and determination of "traditional specialities guaranteed" is not precisely elucidated in the Regulation, which may confuse producers. In addition, according to the Regulation, traditional specialities guaranteed may be recognized for only nine categories of foodstuffs, which prevents foodstuffs in other categories from applying for such recognition and certification in the EU, despite their inherent traditional character, thereby leading to unfair conditions of competition. The Regulation also fails to provide specific procedures of application for registration for products from a third country, which will make it difficult to those applicants. China invites the EU to clarify the application procedures of traditional specialities guaranteed for products imported into the EU.

3.4.5Proposal for a Directive on restricting the sale of certain measuring devices containing mercury

On 11 April 2006, the EU notified the WTO of its Proposal for a Directive of the European Parliament and of the Council amending Council Directive 76/769/EEC relating to restrictions on the marketing of certain measuring devices containing mercury. To contribute to a high level of protection of human health and the environment, the Proposal suggests introducing a ban on the distribution of mercury containing measuring devices such as thermometers, barometers and sphygmomanometers. China believes that the proposed restrictions on the use of mercury in measuring devices are too broad, while exemptions from the ban are not clearly defined. Currently, around two thirds of the measuring equipment on the EU market intended for sale to the general public comes from China, India and Japan. China is highly concerned with the adverse effect the envisaged Directive may have on Chinese exports.

3.4.6Decision on child resistant lighters

On 20 July 2006, the EU published in its Official Journal Commission Decision 2006/502/EC of 11 May 2006 requiring Member States to take measures to ensure that as from 11 March 2007, only child resistant(CR) lighters may be put on the market. Shortly afterwards, the European Commission drafted Guidelines for the Application of the Commission Decision, and the relevant competent authorities of the Member States formulated Strategy for Market Surveillance on Child Resistant Lighters, providing specific and operational measures for implementing the Commission Decision. After China has taken up the matter with the EU over the years, the EU has finally removed in its Commission Decision the unreasonable requirement that lighters with an ex factory value under EUR 2 be equipped with child resistant mechanisms and instead based the safety requirement upon technical parameters. There are now no apparent points in the EU Commission Decision and its relevant guidelines that run counter to the WTO rules, and comments from Chinese enterprises have been adopted in the relevant EU measures. China appreciates the EU

response.

Currently, China is negotiating with the EU on its acceptance of test results and test reports issued by Chinese laboratories which have conducted tests on lighters against safety requirements.

3.4.7Regulation on marketing standards of eggs

On 19 June 2006, the EU released Council Regulation(EC) No 1028/2006 on marketing standards for eggs. The requirements in the Regulation on the indication of farming methods used for imported eggs do not have any sound scientific basis. According to the relevant WTO rules, regulations on product labeling and marking shall not be more trade restrictive than necessary to fulfill a legitimate objective. China expresses concern over the unfavorable impact of the labeling requirements on relevant Chinese exports.

3.4.8Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment

On 1 July 2006, the EU brought into force Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment(RoHS). The RoHS Directive applies to practically all the categoires of electrical and electronic equipment(EEE) for civilian use and directly affects the export of relevant Chinese products to the European market.

According to the RoHS Directive, the EU Member States may, according to their own national laws, adopt different measures to inspect electrical and electronic products placed on their markets and impose penalties applicable to non compliance with the RoHS Directive. However, the RoHS Directive only provides very general rules regarding how to determine the compliance of different kinds of products. Therefore, the varied implementing standards will cause a series of problems for the manufacturers. For example, it is likely that a particular product certified to have satisfied the relevant requirements in one EU Member State may be found to have failed to meet such requirements in another. The widely divergent inspection fees in different Member States may distort the exporting costs of the same product placed on the Community market. In addition, the RoHS Directive has been implemented in different ways in different Member States, with different enforcement authorities(including inspection and registration bodies) and different institutions drafting and publishing the implementing regulations, which makes the relevant product standards in the Member States inaccessible to the exporters. Chinese firms have complained that the test results for the same product in different Member States may be inconsistent.

China is watching with concern the implemention of the RoHS Directive. China hopes that the EU will establish detailed guidelines on the application of the RoHS Directive, draw up a list of exemptions based on sound scientific evidence, provide

reference experiement methods for certification, and grant techinical assistance to developing countries.

3.4.9Directive on the restriction of the use of hazardous substances in batteries and accumulators

On 6 September 2006, the EU published Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators. China appreciates the legislative objective of the EU to reduce the quantities of waste batteries and accumulators containing hazardous substances and to achieve a higher recollection and recycling rate for waste batteries and accumulators. However, the restriction on the use of hazardous substances is too harsh, while the scope of exemptions is not clearly delimited. In addition, the Directive does not provide a clear definition for “producer” and “third parties”, nor does it contain clear provisions on the rights and obligations on the part of importers or third country producers in the waste collection scheme. China hopes that the EU will lay down the responsibilities of producers of imports in the waste collection scheme in order to avoid discriminatory treatments and unnecessary costs of the imports.

3.4.10Regulation on the Registration, Evaluation, Authorization and Restriction of Chemicals

Following the vote in second reading of the European Parliament on 13 December 2006, Regulation(EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals(REACH) will run into effect as of 1 June 2007. Although REACH Regulation will contribute to the safety management of chemicals and the protection of human health and the environment, it contains a number of unreasonable and unjustifiable points. First, the registration procedures are too complicated and the testing costs too high, which will greatly increase the production costs of chemical manufacturers. Second, according to the REACH Regulation, only enterprises and individuals in the EU are entitled access to the data regarding the registration, evaluation, authorization and restrictions on the chemical compositions of chemicals and relevant downstream products. Such an exclusive provision accords differential treatments to EU and non EU producers. Third, the REACH Regulation does not lay down specific procedures for the evaluation and authorization of chemicals, which may result in the arbitrariness of relevant competent authorities. China will monitor closely the impact that the REACH Regulation may have on the international trade of chemicals and related downstream products. China hopes that the EU will take into sufficient account the gap between developed and developing countries in terms of technologies and funds and grant certain preferential treatments or transitional arrangements for developing countries.

3.4.11Regulation on organic production and indication of agricultural products and foodstuffs

On 19 December 2006, the EU published Council Regulation(EC) No 1997/2006 amending Regulation(EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs. The

Regulation revises the scope of products applicable and the requirements for their labeling and certification. China hopes that the EU will, based on fairness, publish as early as possible the list of inspection bodies in third countries recognized by the EU to issue such certification, specifying the standards that a particular inspection body adopts—the EU standards, the Codex Alimentarius Commission(CAC) standards or other standards. In addition, China suggests the EU to amend the Regulation, stipulating that a product detected to be genetically modified should not be labeled as an organic product.

3.5Sanitary and phytosanitary measures

3.5.1Rules on the hygiene of foodstuffs

As of 1 January 2006, the EU brought into force a package of three new legislations on the hygiene of foodstuffs and a regulation on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. The new food hygiene package strengthens inspection on food safety and raises the threshold of access to the EU food market. These new complicated food rules, particularly those rules on animal health and animal welfare, constitute a major barrier to trade in agricultural and farming products. China expresses great concern with the impact of the new food hygiene package on Chinese exporting businesses and hopes that the EU will relax its restrictions on Chinese products of animal origin.

3.5.2Approval of residue monitoring plans for products of animal origin submitted by China

Council Directive 1996/23/EC establishes that the EU Member States are prohibited from importing products of animal origin from third countries named in the Directive unless their residue monitoring plans for the chemical substances covered by the Directive are submitted to and approved by the European Commission.

On 7 March 2006, the EU released Commission Decision 2006/208/EC amending Decision 2004/432/EC on the approval of residue monitoring plans submitted by third countries in accordance with Council Directive 96/23/EC. According to the Decision, residue monitoring plans for foods of animal origin presented by China have been approved only for ovine/caprine casings, swine casings, poultry, aquaculture, rabbit and honey, which is not in line with China s efforts in formulating and implementing residue monitoring plans.

The Chinese government has already established adequate laws and regulations in this regard, and the Chinese export inspection and quarantine authorities have carried out their functions according to the relevant laws and regulations. China s residue monitoring plans are based not only on the relevant Chinese laws, regulations and administrative measures regarding the use of veterinary medicines, but also on the relevant rules and requirements of importing countries. China hopes that the EU will accept the certificate of inspection and quarantine issued by the competent Chinese authorities and approve China s residue monitoring plans for products of animal

origin on the basis of objective evaluation that accords with China s efforts made in this regard.

3.5.3Directive on food additives

On 8 December 2006, the EU published Commission Directive 2006/128/EC amending and correcting Directive 95/31/EC laying down specific criteria of purity concerning sweeteners for use in foodstuffs and Commission Directive 2006/129/EC amending and correcting Directive 96/77/EC laying down specific purity criteria on food additives other than colors and sweeteners. Currently, the EU legislations relating to food additives and flavorings are Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption and Council Directive 88/388/EEC of 22 June 1988 on the approximation of the laws of the Member States relating to flavorings for use in foodstuffs and to source materials for their production, while the EU legislations on enzyme and enzymic preparations have not been approximated and are found in many different laws at the EU level and of its Member States. There are wide variations between the EU legislations and the international standards as laid down by the Codex Alimentarius Commission(CAC) as regards the categorization of food additives, the scope of foodstuffs applicable, and the terms of conditions for their use. In practice, these disparities have made it difficult for exporters to adopt appropriate food standards and hamper the free movement of relevant food products. The afore mentioned EU Directives provide the establishment of re evaluation procedures for authorized food additives, the drawing up of a list of authorized enzyme and labeling requirements, and the establishment of evaluation and authorization procedures for flavorings used in foodstuffs. Deeply concerned with the possible trade restrictive impact of these EU Directives, China hopes that the EU will base its specific purity criteria for food additives upon relevant international standards so as not to impede normal trade in foodstuffs.

3.5.4Directive on the mandatory labeling of certain ingredients in foodstuffs

On 22 December 2006, the EU issued Commission Directive 2006/142/EC amending Annex IIIa of Directive 2000/13/EC of the European Parliament and of the Council listing the ingredients which must under all circumstances appear on the labeling of foodstuffs. Noting the cases of severe allergic reactions from lupin and its product and from mollusks and their products, the Directive adds lupin, mollusks, and products thereof to the list of allergy causing ingredients that must under all circumstances appear on the labeling of foodstuffs. However, in a strict technical sense, proteins in various beans may cause allergic reactions. The Codex Alimentarius Commission(CAC) has already laid down detailed requirements for the compulsory labeling of allergy causing ingredients, which do not include lupin and its products. China hopes that the EU will bring its Directive on the labeling of allergy causing substances in line with the relevant CAC requirements and take account of the production capacity and interest of small producers.

3.5.5Good manufacturing practice for materials and articles intended to come into contact with food

On 22 December 2006, the EU released Commission Regulation(EC) No 2023/2006 on good manufacturing practice for materials and articles intended to come into contact with food. The Regulation requires producers of materials and articles intended to be brought into contact with food to establish and implement rules on good manufacturing practice(GMP). China appreciates the legislative objective of the EU to protect human health and consumer interest. However, there are no international standards on GMP for materials and articles intended to come into contact with food. The Codex Alimentarius Commission(CAC) has only set down only one GMP code, namely, the Code of Practice for the Prevention and Reduction of Lead Contamination in Foods(CAC/RCP 56 2004), which only involves lead contamination and makes no mention of the establishment of GMP for materials and articles intended to come into contact with food. When attempting to establish a lead time regulation to protect human health, the EU should consider whether it would pose unnecessary obstacles to international trade and provide adequate evidence to demonstrate the necessity of such a regulation. China hopes that the EU will take into full account the developmental stage of developing countries such as China, provide a sufficiently long transitional period and grant differential and preferential treatments to developing countries.

3.6Trade remedy measures

3.6.1Unabated trade defense investigations against Chinese exports

By the end of 2006, the EU has launched a total number of 131 anti dumping investigations against Chinese exports. In 2006 alone, the EU initiated 12 new anti dumping investigations against Chinese products, 4 investigations more than the previous year and accounting for 34% of the total such EU investigations. In 2006, the EU adopted provisional anti dumping measures in 7 cases and made definitive rulings in 5 cases against Chinese products. By the end of 2006, the EU has 40 anti dumping measures in force against Chinese exports, which directly affect the export of relevant Chinese products to the EU, and 12 anti dumping investigations against Chinese products are pending, awaiting preliminary rulings, which create high unpredictability and export risks for relevant Chinese exports to the EU. In addition, the EU conducted 2 anti absorption investigations and 2 anti circumvention investigations against Chinese exports in 2006.

3.6.2Considerable obstacles to the EU recognition of China s market economy status

After the European Commission unveiled a preliminary assessment report of China s market economy status(MES) in June 2004, China and the EU have set up a technical working group to discuss issues relating to the EU recognition of China s status as a full market economy.

Currently, China still faces many obstacles to the EU recognition of its MES. In respect of technical assessment, the EU, while believing that China has already

fulfilled one of the five assessment criteria for its full recognition of a MES, has constantly raised many new requirements for China in the other four technical criteria. Until January 2007, the EU has not updated its preliminary assessment report of China s MES issued in June 2004 and has failed to set a deadline for its updating. In addition, some Member States of the EU still resort to trade defense instruments for the protection of their domestic industries and oppose to grant China its requested status as a market economy.

3.6.3European Commission s harsh assessment of the technical criteria for market economy status

The EU has continued to deny China s status as a market economy, and used surrogate or analogue countries to determine the dumping margins of Chinese firms subject to anti dumping investigations. Although the EU has laid down in relevant anti dumping regulations five technical criteria for granting the request from individual Chinese companies of market economy treatment, these five criteria are too abstract and give too much discretion to the investigation authorities. Particularly in recent years, the European Commission has been overcritical in examining the request of market economy treatment filed by Chinese firms, and in total disregard of their explanations and counterpleas, often deny them such treatment based on certain minor trivialities. From 2004, the EU, without any apparent justifications, changes the deadline for the submission of requested information from the original 21 days to the current 15 days after the issuance date of the notice of initiation of anti dumping investigation, which makes it extremely difficult for Chinese respondent enterprises to complete in due time hundreds of pages of the questionnaire, negatively affects their enthusiasm to respond to the anti dumping charges and severely harms their interest.

3.6.4Failure of the EU anti dumping investigation authorities to automatically adopt the export prices of Chinese firms

According to Article 9.5 of the Basic Regulation, i.e., Council Regulation(EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, the EU anti dumping investigation authorities would directly adopt the export prices of Chinese respondent firms to determine the margins of dumping, when they have demonstrated to the effect that they have met the five EU technical criteria for market economy treatment. Pursuant to relevant provisions in the WTO Anti Dumping Agreement, the EU anti dumping investigation authorities shall, as laid down in Article 6.10, directly use the export prices of Chinese respondent firms to calculate a separate dumping margin for them, unless the EU anti dumping investigation authorities can demonstrate that special conditions as laid out in Articles 6.10.2 and 2.3 exist, and as a result, the export prices of Chinese respondent firms cease to apply. The automatic adoption of the export prices is the treatment entitled to the respondent firms, has nothing to do with whether or not the firms in question are granted market economy status, and applies to all the WTO members.

Moreover, unjustifiable practices of the EU anti dumping investigation authorities

in cases involving Chinese exports include, among others, the irrational sampling methods in determining market economy status for individual enterprises, arbitrariness in selecting surrogate or analogue countries, the untimely delivery of notice of initiation before the launch of anti dumping investigations, the inadequate disclosure of information, the automatic application of trade defense measures to all EU Member States after its recent enlargement, the over reliance upon the constructed normal value and the variances in calculation methodology, and the excessive use of imputed export prices.

3.6.5Anti dumping measures

3.6.5.1Anti dumping measures against leather shoes

On 7 July 2005, the EU announced the initiation of an anti dumping proceeding concerning imports of footwear with leather uppers from China and Vietnam. The investigation of dumping covered the period from April 2004 to March 2005. However, Chinese exports of footwear to the EU were subject to a quantitative quota until 2005. During the period targeted by the investigation, a total of 1,257 Chinese manufacturers and exporters exported footwear to the EU. According to the EU estimate, US $ 730 million worth of leather shoes would be affected. This is the largest anti dumping investigation in amount of money brought against China by the EU in recent years.

During the investigation, 163 Chinese firms responded to the EU investigation, accounting for 90% of China s total footwear exports to the EU. The European Commission sampled 13 Chinese respondent firms for its investigation. On 12 January 2006, the EU made its final decision, denying market economy treatment to all the 13 Chinese firms sampled in the investigation. On 23 February 2006, the EU announced that as from 7 April 2006, temporary anti dumping duties would be imposed on leather shoes originating in China. The EU s denial of market economy status to all Chinese respondent firms and its planned imposition of anti dumping duties are obviously biased and discriminatory, and go against the principle of fair trade. China has expressed strong dissatisfaction over the EU move.

On 23 March 2006, the European Commission formally approved the preliminary ruling of the anti dumping investigation against leather footwear, planning to levy provisional anti dumping duties on Chinese leather shoes from 7 April 2006. China has fully expressed its positions and concerns to the EU, the major points of which include: the lack of fairness and legitimacy of the EU decision on the market economy treatment of Chinese firms, the absence of legal and factual basis of the EU decision to impose an indiscriminate anti dumping duty on the entire Chinese industry of leather shoes, the unjustified selection of Brazil as the surrogate country for China, the lack of conclusive evidence in its determination of dumping and injury, the incompatibility of the adoption of anti dumping measures against Chinese imports with its own broader interest, the irrelevance of the charges and comments voiced in

public by the EU against Chinese footwear to the anti dumping investigation in question.

On 7 April 2006, the EU issued its preliminary ruling, rejecting the requests from all the Chinese respondent firms of market economy treatment and individual treatment, and imposing provisional countrywide anti dumping duties on Chinese leather shoes. The collection of anti dumping duties will be gradually phased in, namely, different tariff rates will apply at different stages: to be specific, a 4.8% rate for the period from 7 April until 1 June, 9.7% from 2 June until 13 July, 14.5% from 14 July until 14 September, and 19.4% from 15 September until 6 October.

In mid July 2006, the EU published its definitive ruling, granting market economy treatment to only one Chinese respondent firm sampled in the investigation, and imposing an anti dumping duty of 9.7% to be collected in a deferred manner. On 28 July 2006, the EU announced its supplementary final ruling, abolishing the deferred collection of duties and replacing it with an ad valorem anti dumping duty of 16.5% on Chinese exports. On 4 August 2006, the Anti Dumping Advisory Committee of the European Commission repealed the scheme.

After much debate, the EU approved on 5 October 2006 a proposal tabled by the European Commission, cutting the period during which the anti dumping measures shall be applied from the usual five years to just two years.

In the absence of legal and factual basis, the EU insisted on adopting anti dumping measures against leather footwear from China. Despite the modifications in its anti dumping measures, the Chinese enterprises are discontented at the EU decision to adopt anti dumping measures against Chinese leather shoes. The unfair and discriminatory practices in the anti dumping proceeding against Chinese leather shoe imports have incurred heavy losses to Chinese shoe making businesses and will bring about negative consequences for the production and development of the Chinese leather footwear sector.

The legal inadequacies as evidenced during the process of the initiation, investigation and ruling of this EU anti dumping proceeding, which do not comply with either the WTO rules or the EU legislations, have harmed the legitimate rights and interests of Chinese exporting producers involved. China will closely watch and monitor the developments in the EU anti dumping mechanism.

3.6.5.2Anti dumping measures against plastic bags

On 30 June 2005, the EU initiated an anti dumping investigation against plastic bags originating in China, which implicated products worth US $ 312.9 million(according to China Customs data) and 1,793 Chinese companies. Hundreds of Chinese firms responded to the investigation. On 29 September 2006, the EU issued its definitive ruling, awarding 7 respondents Chinese firms market economy treatment and imposing an anti dumping duty ranging from 4.8% to 12.8% on these Chinese

firms, a duty of 8.4% on other respondent cooperating Chinese firms and a rate of 28.8% on the non respondent Chinese firms not cooperating with the investigation.

In this case, the EU only issued a ruling for the Chinese firms sampled in its investigation, but without any examination and without any explanation, denied the claim for market economy treatment or individual treatment from nearly 100 un sampled respondent Chinese firms cooperating with the investigation. As a matter of fact, the WTO Anti Dumping Agreement allows the determination of anti dumping duties to be based on the methods of sampling and weighted average, but the ruling on market economy treatment and individual treatment has much to do with the specific situations of different enterprises and must be based on an adequate review of each and every enterprise.

3.7Barriers to trade in services

3.7.1Banking services

German legislation pertaining to banking activities provides that with the exception of the EU, US and Japanese banks, the capital of the head offices of foreign commercial banks do not count as the capital of their subsidiaries in Germany. In addition, Germany imposes harsh requirements on the qualifications of senior executives of the branch offices of foreign banks in Germany. It is provided that a senior executive shall be a natural person domiciled in Germany with at least one year working experience in Germany. Chinese funded banks in Germany complain that under such requirements, the general manager sent by the head office to its branch in Germany is barred from performing his duty for at least one year, which greatly affects the routine operation of Chinese funded banks in Germany.

In its banking regulations, the Netherlands requires that priority be given to the like domestic firms in the merger and acquisition of its domestic banks. Only under the circumstances that no like domestic companies have considered taking it over six months after the bank s announcement to sell, will foreign businesses have the eligibility to merge and acquire it. Furthermore, the merger and acquisition contract between the foreign business and the selling bank will not be legally binding until approved both by the original board of directors of the selling bank and by the trade committee of the Dutch Parliament.

Based on the type of banking services provided, the UK classifies banks into universal banks and wholesale(or limited purpose) banks. The latter only provides banking services to financial institutions. So far, no license of universal bank has been granted to any Chinese funded banks in the UK.

The Greek legislation provides that citizens of EU Member States should be in the majority of the board of directors of foreign funded banks in the country.

Italy provides differential treatment between non EU banks and domestic banks.

The establishment in Italy of the first branch of a bank from a country not a member of the EU is subject to the ratification of the Central Bank, the Ministry of Foreign Affairs and the Ministry of Economy of Italy. With regard to technical review, if the Italian regulatory authorities believe that the financial regulatory practice of a non EU country fails to meet the standards set out in the Italian legislation, they can reject the request of commercial banks from that particular country to set up branches in Italy. In addition, when settling a foreign exchange transaction exceeding EUR 12,500, banks and other financial institutions involved should apply for approval from Foreign Exchange Administration of Italy.

The aforesaid regulations have, to varying degrees, caused inconvenience to the normal operation of Chinese funded banks in relevant countries, over which the Chinese side expresses its concern.

3.7.2Professional services

Professional services include, inter alia, legal, accountancy, auditing and bookkeeping, taxation, architectural designing, civil engineering projects, integrated engineering projects, urban planning, medical and dental services. The EU imposes many restrictions on the supply of professional services from foreign businesses. For example, in respect of legal services in the EU, the areas open to foreign suppliers are consulting services regarding laws of the host country and public international laws, whereas in respect of taxation services, access to the EU market is provided only to the supply of taxation advice services, but does not involve other types of taxation services. Moreover, many entry barriers to services exist in the form of nationality and residence requirements, economic needs tests(ENTs), market access requirements for the contract service providers and so on.

3.8Sino EU intellectual property protection and cooperation

In July 2004, the Sino EU Working Group on Intellectual Property Rights was established. On 18 October 2005, the Working Group met in Beijing for its first session. On 6 June 2006, the second session of the Working Group was convened. On 9 September 2006, the leaders of China and the EU issued in Helsinki, Finland a Joint Statement of the Ninth China EU Summit, with both sides reiterating the importance of protecting intellectual property rights(IPR). In particular, both sides agreed on the need for appropriate deterrence against piracy and to the effective enforcement of IPR legislation. Both sides expressed their satisfaction over the communication and cooperation of the past year under the EU China IPR Dialogue and the IPR Working Group and stood ready to further the exchanges and cooperation in this field. Both sides also reiterated that they would strengthen the cooperation and exchanges in the field of geographical indications. The two sides recognized the importance of technology for their economic development and expressed the willingness to strengthen exchanges and cooperation on IPR protection in this area and support the contractual freedom between enterprises in the field of technology transfers under the condition of fairness, reason and non discrimination.

In October 2006, the European Commission released its first ever economic and trade policy paper towards China entitled “Competition and Partnership A Policy Paper on EU China Trade and Investment”. The paper asserts that inadequate protection of IPR in China represents a pressing challenge for EU firms trading with and investing in China and that China is by far the largest source of counterfeit and pirated products seized at the EU s borders.

There is no denying the fact that firmly committed to protecting and defending IPR, the Chinese government has taken substantial measures to enhance IPR protection and implementation. First, China attaches equal importance to the national strategy on IPR protection and the national strategy of independent innovation. Second, China has set up a Task Force for IPR Protection at the state level to better coordinate countrywide efforts in strengthening the protection of IPR. Third, China has enacted and improved a series of IPR related legislations, including the Patent Law, the Copyright Law and the Trademark Law. Fourth, China has toughened law enforcement, putting in place an IPR protection regime that integrates both administrative protection and judicial protection. China has established across the country 50 centers for receiving and handling complaints of IPR infringement, initiated a number of special campaigns to crack down on IPR offences, targeting counterfeit and pirated products in particular. Fifth, China has launched education campaigns to raise the awareness of the public of IPR protection and to urge consumers, businesses and the like to be an active participant in the IPR protection efforts. Sixth, China has actively engaged in international cooperation in the field of IPR protection and established dialogue mechanisms with the EU on the issue of IPR protection.

China hopes to intensify cooperation with the EU by giving fuller play to the role of China EU Dialogue Mechanism on IPR. On the other hand, China takes exception to the practice of maintaining technology monopoly by abusing IPR agreements and rules. IPR protection is a central priority for China, arising from its own need. China remains determined to combat counterfeiting and pirating activities. China will resolutely and sternly clamp down on counterfeit and pirated products, wherever they emanate from. At the same time, the Chinese side also hopes that the EU will accord due attention to the frequent infringements of Chinese trademarks in the EU. On issues of IPR related law enforcement, China hopes that the EU will refrain from making unsubstantiated criticisms in general terms, but inform China of specific cases of IPR violations so that China could crack down on counterfeiting and piracy more effectively. The two sides should exchange relevant information in a timely way and keep the communication channel easily accessible, thereby making the dialogue mechanism more results oriented and effective.

3.9Trade compensation following the accession of new members to the EU

On 1 January 2007, Bulgaria and Romania joined the EU. The EU common trade policy will automatically apply to these two countries. The accession of Bulgaria and Romania presents challenges as well as opportunities to the China EU economic and trade cooperation. On the one hand, after their accession to the EU, the customs

tariff rates in these two countries will be significantly cut, trade activities will be more rules based, market transparency and integration will be greatly improved, and their market will be more accessible to foreign businesses, all of which will facilitate bilateral trade development as well as economic and trade cooperation for Chinese enterprises in these two countries. However, on the other hand, because Bulgaria and Romania will adopt the EU common trade policy following their accession, China will incur certain economic and trade losses in regards of trade in goods(including tariff, quotas, anti dumping, anti subsidy and safeguard measures), trade in services, technical barriers to trade, sanitary and phytosanitary measures. China has formally asked the EU to open negotiations in bilateral trade compensation, requesting the EU to make compensatory arrangements for China in areas such as tariff, quotas, and anti dumping measures.

3.10Other barriers

3.10.1Visas

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

France imposes harsh requirements for the issuance of visas to employees sent by Chinese firms, and the visa application procedures are complicated and time consuming. The visa granted usually allows only one entry, valid for one year or even three months.

According to the Dutch Immigration Law, Chinese citizens wishing to visit the Netherlands for business purposes must apply for a business visa, which only allows for a stay of three months at most. Testimonial papers from Chinese companies and Dutch inviting firms must be presented upon the application of a business visa. The actual processing period for the issuance of a business visa usually takes one to two months.

Pursuant to relevant provisions in the Sino Italian Agreement for Economic Cooperation, each side should grant long term working visas to employees from the other country. However, the Italian government has for a long time issued visas valid for only three or six months to Chinese employees, thus compelling them to go back to China for visa application every three or six months.

Chinese employees find it difficult and complicated to obtain visas to Germany, and it usually takes six months to go through all the procedures, which adversely affects the sustained development of Chinese funded firms in Germany and the intention of the Chinese businesses to invest in Germany.

The procedures for the Chinese staff of Chinese invested companies in Lithuania to apply for visas and residence permits are very elaborate and tedious, sometimes

arbitrary and lacking transparency. It usually takes several months or even half a year for Lithuanian embassies to approve and grant a visa.

3.10.2Working permits

It is required in some EU Member States that a working permit should first be obtained before a foreign national could work in those countries, but the requirements for granting a working permit are very stringent.

For example, a Chinese citizen in the Netherlands wishing to work for a Dutch company must get a working permit in the first place. First of all, the prospective Dutch employer must report the vacancy to the Dutch Labor Bureau and run a recruitment advertisement in one or two national newspapers. All the qualified applicants for the job must be interviewed, and their application can be rejected only on sufficient grounds. A Chinese citizen can be granted a working permit, only when the candidate for the job cannot be found in the Netherlands or in other EU Member States. The Dutch employer and the Chinese candidate for the job must file an application for a working permit to the local Labor Bureau. The processing period of the application may run into eight or twelve months. However, if a Chinese citizen is to be employed by a branch or a subsidiary set up in the Netherlands by a Chinese or other foreign companies, the employment is deemed to be an internal transfer within an international company and the requirements for the issuance of a working permit will be relatively relaxed. The employer and the Chinese applicant for the vacancy will file a working permit application to the local Labor Bureau, which will examine the application and grant a working permit within three to six months.

3.10.3Residence permits

Upon arrival in France, business executives of Chinese invested companies in France often encounter unexpected requirements when applying for residence permits. The French authorities require the Chinese business people to submit various kinds of documentary papers, many of which are simply not required for staff sent from other countries. Such practices have in effect impeded the investment from Chinese businesses in the EU countries.

4.Barriers to investment

4.1Access restrictions

Some EU Member States restrict the market access to investment. Businesses from third countries are prohibited from investing in some fields, and investment of third country businesses in other fields is subject to the ratification of the governments of the EU Member States.

In France, only French nationals, nationals of the EU Members States or nationals of the countries with which France has signed bilateral agreements can invest in certain

sectors. These include privately run research institutions, insurance brokerages, casinos and gambling clubs, forwarding agencies, public market trading, audio video communications, commodity brokerages, tobacco retailing, beverage retailing, French language publishing firms, private security companies, telecommunications, theatrical and artistic performing companies, and pharmacists.

With the exception of investment from other EU Member States, Spain requires investment in the following fields to be licensed by the Directorate General of Trade Policy in the Ministry of Economy, including investment in "sensitive industries" such as casinos, television, radio broadcasting, air transport and national defense, investment by foreign governments and investment by enterprises directly or indirectly controlled by foreign governments, and investment by foreign state owned enterprises.

The articles of association of many Swedish corporations provide the clause of "restrictions on the ownership of foreigners", stipulating that at least 60% of the equity and 80% of the voting rights should be retained by Swedish nationals. In the absence of such a clause in the article of association, the company shall be deemed a foreign company. Foreign companies are not allowed to come into possession of Swedish natural resources such as mines, oil fields, farm lands, forests and water resources, neither can they have more than 20% of the voting rights of corporations in possession of the aforesaid natural resources. Foreign nationals cannot own vessels or airplanes registered in Sweden, operate Swedish domestic airlines, or hold shares of banks and military factories.

Industries subject to investment restrictions in the Czech Republic include mortgage banking, asset management companies, passenger airlines, passenger and freight road transport, bonds underwriting, and construction engineering service. For seven years after its accession to the EU, Czech bars foreign nationals from purchasing agricultural farmland in the country.

Hungary restricts foreign ownership to varying degrees in areas such as civil aviation, television and broadcasting. For ten years following its EU accession, Hungary will prohibit foreigners from purchasing its land.

In Poland, the establishment of foreign invested banks is subject to prior approval, and foreign investment in mine exploration and extraction, production and operation of ammunitions and military products, toll highways, radio broadcasting and television is subject to government licensing. Poland does not set any limits to foreign ownership in most industries. However, a 49% limit is set respectively for the cap on the ownership of non EU firms in television and radio broadcasting and the cap on foreign ownership in civil aviation. No foreign investment is currently allowed in casinos.

4.2Differential treatment

Only when a third country subsidiary has demonstrated to the effect that it is related, in a substantial and sustained way, to the economy of the Community, is it entitled to national treatment in the EU market, including the liberty to set up branch offices and the cross border supply of services within the Community. However, national treatment is not granted to its branch offices directly set up in the EU by the third country corporations.

In Germany, Ireland, Austria, Sweden and Finland, the purchase of land and in some instances the leases of land by alien citizens are subject to the approval of the local governments. In the EU Member States except Austria, Finland and Sweden, all the public utilities services, be they at the state or the local level, are allowed to be publicly monopolized or to accord exclusive right to private operators.

4.3Restrictions on alleged security grounds

On 30 December 2005, France issued Decree No. 2005 1739, amending its regulation on foreign financial relations and establishing a prior authorization regime for certain foreign investments. According to the Decree, investment in France and merger and acquisition of French businesses by third country companies in the following eleven strategic business sectors are subject to prior authorization. Only after an approval is granted can investment, merger and acquisition be effected.

These eleven sensitive areas identified by the Decree cover(1) businesses involved in the gambling industry,(2) regulated businesses providing private security services,(3) businesses involved in the research and development or the manufacture of means of fighting the illegal use of pathogens or toxic substances by terrorists and preventing the adverse health related consequences of such use,(4) businesses dealing with wire tapping and mail interception equipment,(5) businesses licensed to provide evaluation and certification services relating to the security of information technology systems and products,(6) businesses providing goods or services relating to the security of the information systems subject to the French National Defense Code,(7) businesses relating to dual use technologies and items subject to the export control of the EU,(8) businesses involved in providing cryptology goods and services subject to the French Act of Trust in Digital Economy,(9) activities of national defense businesses,(10) businesses involved in the research, development, production and trade in military or war materials subject to the French National Defense Code, and(11) businesses that have entered into a design or equipment supply contract with the French Defense Ministry.

Moreover, the French Senate put to vote and passed on 23 March 2006 the Public Offering of Takeover Act. According to the Act, in the event of foreign hostile takeover of a publicly traded company in France, the French company may issue stock warrants free of charge to strengthen the power of stockholders and to increase the value of corporate capital, thereby boosting the strength of the company to thwart the hostile bid.

German legislation provides that foreign investment in Germany should gain the approval of the relevant German industry federations. According to the regulations, foreign investment may not be approved, if it is likely to affect the development of the existing German enterprises. In addition, the approval for setting up a Chinese funded enterprise in Germany often takes considerable time. The lengthy approval process, the complicated procedures and the lack of transparency have affected the normal business operation of Chinese funded enterprises in Germany.

In Greece, laws governing taxation and investment are numerous and are subject to frequent changes. Take the investment promotion law and the taxation law for example over the past two decades, ten laws relating to investment promotion have been promulgated, averaging one such law every two years, and a new taxation law is published almost each year. Furthermore, it takes an average of 60 days for a foreign investment project to be examined and approved. And the Greek law provides that government examination and ratification could take as long as two years. The frequent legislative changes and the lengthy authorization procedures have added the investment risks to enterprises.

In the Czech Republic, it is required that non EU nationals should register a company(a legal entity) before they are entitled to purchase real estate in the country, whether for commercial or for residential purposes. However, exceptions apply to a permanent resident with a spouse of the Czech nationality. This means that a Chinese company must first set up a new company in Czech, if it wants to purchase land for investment purposes.

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