The United States of America

1Bilateral trade relations

The United States of America（hereinafter referred to as the US） is the second largest trading partner of China in 2006. According to the China Customs， the bilateral trade between China and the US in 2006 reached US＄262.68 billion， up by 24.2％， among which China's export to the US was US＄203.47 billion， up by 24.9％， while China's import from the US was US＄59.21 billion， up by 21.8％. China had a surplus of US＄144.26 billion. China mainly exported to the US machinery and electronic products；footwear；furniture；automobiles and auto parts；toys；trunks and bags；plastics and products thereof；garments and other textile products；photo optical equipment； steel products and etc. China mainly imported from the US electronic integrated circuits & micro assemble parts；aircraft，powered；spacecraft & launch vehicles； cotton， not carded or combed； soybeans， whether or not broken； automatic data-process machines； waste and scrap of paper or paperboard；parts of balloons etc，aircraft，spacecraft etc； turbojets，turbo-propellers & other gas turbines， parts and etc.

According to the Ministry of Commerce（hereinafter referred to as MOFCOM）， by the end of 2006， the accumulated turnover of engineering contracts completed by Chinese companies in the US had reached US＄3.57 billion， and the volume of completed labor service contracts had reached US＄2 billion.

According to MOFCOM， China's total non-financial foreign direct investment （FDI）， approved by or filed with MOFCOM，reached US＄130 millions in 2006. US investors invested in 3205 projects in China in 2006， with a total contractual investment of US＄12.04 billion and an actual utilization of US＄2.87 billion. By the end of 2006， US investors had invested in a total of 52，211 FDI projects in China with a contractual investment of US＄124.16 billion and an actual utilization of US＄53.96 billion.

2Overview of trade and investment regime

The US legal system governing trade consists of tariff and customs laws， import and export administration laws， trade remedy laws， security concern based trade legislation， and domestic laws stipulated in order to implement foreign trade agreements. The US Department of Commerce（DOC） is the key agency in the federal government responsible for trade administration and export promotion.

2.1Trade regime and its developments

2.1.1Tariff system

2.1.1.1Amendments to HS

The US is a contracting party to the International Convention for Harmonized Commodity Description and Coding System（HS）. Under the Omnibus Trade and Competitiveness Act of 1988， the US President is authorized to amend the Harmonized Tariff Schedule of the United States（HTSUS） based on investigations and suggestion of the US International Trade Commission（ITC） in order to comply with its obligations under the HS Convention. The World Customs Organization（WCO）adopted amendments to the HS Convention in June 2004， which affect 83 chapters and more than 240 headings throughout the nomenclature. These changes are intended to update the nomenclature or clarify the classification of particular goods. ITC proposed final modifications to HTSUS in April 2006， and these modifications are to take effect on January 1 2007.

2.1.1.2Rapid progress on bilateral free trade agreements

In recent years， the US has stepped up efforts in its bilateral free trade agreement（FTA） negotiations. In the period from January to December of 2006， the US signed bilateral FTAs with Oman， Malaysia and Peru， making its total number of bilateral FTAs reaching 10. In addition， the US is now negotiating FTAs with Panama， Thailand， South Korea， the Southern African Customs Union， and the United Arab Emirates.

2.1.2Import administration

The US Customs and Border Protection（CBP） started deploying the Automated Commercial Environment（ACE） in October 2003 to replace the current Automated Commercial System as a part of its modernization plan. In early 2005， ACE was tested at the port of Blaine and Washington. By September 2006， ACE had been used in 49 ports of the US， and will become fully operational in all US ports by 2009. ACE has three features. First，the system connects CBP，the trade community，and participating government agencies by providing a single， centralized， online access point for communications and information related to cargo shipments. Second， the system makes periodic payments available. Importers and brokers can use the system

to make monthly payment to the Customs and CBP，and no longer have to pay duties and fees on a transaction per transaction basis. Third， the eManifest feature is available. At all ACE land border ports， carriers can submit e manifests electronically detailing shipment， carrier， and other information. Carriers may file e Manifests in advance to raise customs clearance efficiency. In 2007， CBP will begin to make the filing of e Manifests mandatory， in a phased approach. Notices that detail which ports will become mandatory and on what dates will be provided at a minimum of 90 days before a mandatory policy is implemented.

2.1.3Export administration

On July 6， 2006， the US Bureau of Industry and Security（BIS） of DOC issued Proposed Rules intending to amend the current Export Administration Regulations （EAR） in an effort to strengthen control on exports to China which would make a material contribution to the military capability of PRC. According to the Proposed Rules， the revisions focus on three areas：

2.1.3.1Revision of licensing review policy and license requirements

Section 742.4（b）（7） of the current EAR states a product list subject to control for national security reasons， i.e. the Commerce Control List（CCL）. This rule proposes a new section， Section 744.21 in the EAR to implement a new control on exports to China of certain CCL items that otherwise do not require a license to China when the exporter has knowledge that such items are destined for military end use in China or is informed that such items are destined for such an end use. Applications to export， reexport， or transfer items controlled pursuant to proposed section 744.21 would be reviewed on a case by case basis to determine whether the export， reexport， or transfer would make a material contribution to the military capabilities of China and would result in advancing China's military activities contrary to the national security interests of the US. The proposed rule defines military end use to mean： incorporation into， or use for the production， design， development， maintenance， operation， installation， or deployment， repair， overhaul， or refurbishing of items described on the U.S.Munitions List（USML）； described on the International Munitions List（IML）； or listed under Export Control Classification Numbers（ECCNs） ending in "A018" on CCL. According to the proposed new Section 744.21，items for a military end use subject to licensing review include 47 items from nine categories such as materials， chemicals， microorganisms， toxins， computers， avionics， and etc.

In addition， it is also set forth in the proposed Section 744.21 to review license applications for items controlled for chemical and biological proliferation and nuclear nonproliferation when those items are destined to China.

2.1.3.2Revision of end user certificate requirements

To strengthen implementation of the 2004 end use visit understanding between China and the U.S., the rule proposes to amend Section 748.10 of the EAR by expanding the requirement for End User Certificates. Exporters of all items on CCL that require a license to China and exceed a total value of US $5，000 per single ECCN entry， not merely those exports controlled for national security reasons， would be required to obtain an End User Certificate issued by the Chinese Ministry of Commerce. However， the proposed new requirement does not apply to computer exports. End User Certificates will continue to be required for all computer exports to China. The rule also proposes to eliminate the requirement that exporters submit PRC End User Certificates to BIS as required support documentation provided with the license application. Instead，this rule would require exporters to include the serial number of the PRC End User Certificate in an appropriate field of the license application， and to retain the PRC End User Certificate for a period of 5 years.

2.1.3.3New Authorization Validated End User（VEU）

The rule proposes to establish a new authorization for validated end users that would allow the export， re export， and transfer of eligible items to specified end users in an eligible destination， including China. BIS proposes to evaluate prospective validated end users on the basis of a range of specific factors， which include the party s record of exclusive engagement in civil end use activities； the party s compliance with U.S.export controls； the party s capability to comply with the requirements for VEU； the party s agreement to on site compliance reviews by representatives of the United States Government； and the party s relationships with U.S and foreign companies. In addition， the proposed rule would provide a list of eligible items identified by ECCN and a description of how each item would be used by the eligible end user in an eligible destination. Finally， exporters and re exporters who use authorization VEU would be required to comply with record keeping and reporting requirements， and submit annual reports to BIS.

The Proposed Rules is now closed for public comments. BIS is currently reviewing these comments and will make necessary revisions after the review.

2.1.4The Generalized System of Preferences（GSP）

The GSP program was instituted on January 1， 1976， and authorized under the Trade Act of 1974 for a ten year period. It has been renewed periodically since

then， most recently in August 2002， when President Bush signed legislation that reauthorized the GSP program through December 31， 2006. To help the Congress s deliberation of whether to renew the GSP program， the Administration conducted a first review of the program. The Trade Policy Staff Committee（TPSC） issued a notice on October 6， 2005 to seek public comments on how long the Congress should reauthorize the GSP program and whether products from certain beneficiary countries have become competitive enough to graduate from GSP. TPSC started the second phase of its review in August 2006 and asked the Office of the United States Trade Representative（USTR） to solicit public comments. The purpose of the review is to determine if the GSP program is implemented in consistency with the statutory criteria so that more countries can develop their economies and gain benefits by trading with the US under GSP. The relevant statutory criteria include： 1） certain beneficiaries level of economic development； 2） the extent to which they have expanded exports under the program； and 3） their competitiveness both globally and relative to GSP eligible imports. The review will determine whether 13 beneficiary countries including Argentina， Brazil， Croatia， India， Indonesia， Kazakhstan， the Philippines， Romania， Russia， South Africa， Thailand， Turkey，and Venezuela should graduate from GSP and whether any of the 83 existing competitive need limitation（CNL） waivers now enjoyed by products such as peanuts and pesticide from 19 beneficiary countries including Argentina， Brazil and Russia should no longer be warranted. At present， these products enjoying CNL waivers can enter the US market duty free， not limited by a market share cap or annual import level. On December 20， 2006， President Bush signed legislation again that continued the GSP program until December 31， 2008. While reauthorizing the program for all current beneficiaries， the legislation includes new statutory thresholds to graduate products that have reached a level of competitiveness. If a GSP eligible product from a specific country has an annual trade level in the previous calendar year that exceeds 150 percent of the annual trade cap or comprises 75 percent of all U.S， the President should revoke any existing CNL waiver that has been in effect for at least five years.

2.1.5Trade remedy system

On August 17 2006， President Bush signed the Pension Protection Act of 2006. In Sec 1632， the Act provides for a suspension of new shipper review provision. This bill suspends from April 1， 2006 through June 30， 2009 the option for new shippers to bond for estimated antidumping and countervailing duties（AD/CVD）. Importers must submit a cash deposit to cover the total estimated AD/CVD for merchandise exported by a new shipper. This cash deposit provision， however， excludes new shippers from Canada and Mexico.

On October 19，2006，the US DOC published a notice revising three methodologies in anti dumping proceedings involving non market economy（NME） countries. The revision for Market Economy Inputs and Expected Non Market Economy

Wages went into effect on the day of publication while the revision for Duty Drawback requested public comments.

2.1.5.1Market Economy Inputs

In antidumping proceedings involving NME countries，DOC calculates normal value by valuing the NME producer s factors of production， to the extent possible， using prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. When a portion of the input is purchased from a market economy supplier and the remainder from a non market economy supplier， and the volume of the market economy input as a share of total purchases from all sources is “meaningful”， and such market economy input purchases also constitute arms length，bona fide sales，and are not dumped or subsidized， DOC will normally use the price paid for the input sourced from market economy suppliers to value all of the input. But the term “meaningful” used is not defined in the old rules and is interpreted by DOC on a case by case basis. The revised rule has set a clear threshold for “meaningful”. When the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33％ of the total volume of the input purchased from all sources during the period，DOC will use the weighted average market economy purchase price to value the entire input， unless case specific facts provide adequate grounds to rebut the Department s presumption. Alternatively， when the volume of an NME firm s purchases from market economy suppliers as a percentage of its total volume of purchases during the period of review is below 33％， but where these purchases are otherwise valid and meet the Department s existing conditions（bona fide，not dumped or subsidized，for example），DOC will weight average the weighted average market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases. The new methodology is applied to anti dumping investigations and reviews initiated after October 19， 2006.

2.1.5.2Expected Non Market Economy Wages

When determining the normal wage rate of NME countries， DOC does not use a surrogate wage rate from a surrogate country at a comparable economic level. Instead， after analyzing the wage data for over 50 market economy countries published in Chapter 5 of the International Labor Organization s（“ILO”） Yearbook of Labor Statistics，DOC uses regression analysis to estimate the wage rate for NME countries on the basis of inflation rate and per capita gross national income of NME countries， and make necessary adjustments. Such estimated wage rate is used for all anti dumping investigations against one country. According to the revised methodology，when estimating the wage rate of NME countries，DOC will，

if conditions allow， expand the basket of countries upon which the regression is based to include all countries for which data are available to ensure accuracy and fairness of the estimate. When using ILO Yearbook of Labor Statistics， DOC will rely on “earnings” including wages and bonuses， not merely “wages”. DOC will only consider ILO wage data collected in recent two years， instead of recent six years to reflect the latest wage level. In addition， each year， the Department s annual calculation of expected NME wage rates will be subject to public notice prior to the adoption of the resulting expected NME wage rates for use in antidumping proceedings. But comment will be requested only with regard to potential clerical errors in the Department s calculation in light of its stated revised methodology.

2.1.5.3Duty Drawback

According to the current rule， when establishing export price and constructed export price， DOC should add the amount of any import duties imposed by the country of exportation which have been rebated， or which have not been collected， if the party can establish that the import duty paid and the rebate payment are directly linked to， and there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the manufactured product. The revision proposes that DOC should allocate the total amount of duty drawback received across all exports that may have incorporated the duty paid input in question， regardless of destination. But if the foreign producer can directly trace particular imported duty paid inputs through the subsequent production process and into particular finished goods that are exported to the United States， this part of draw back need not be allocated， permitting an adjustment to export price and constructed export price for all duty drawback received.

2.1.6Reorganization of relevant entities

USTR and DOC are the key entities to administer US trade policies. USTR announced in March 2006 the establishment of a China Enforcement Task Force within USTR， which is made up of veteran USTR staffers specializing in intellectual property rights， industrial policies， services， agriculture， investment， WTO affairs and others. The Task Force is responsible for collecting information， overseeing China’s enforcement of international agreements， and preparing and handling potential WTO cases between China and the US. In June of 2006， a new Intellectual Property office was created to handle IPR issues previously covered in the Office of Services， Investment and Intellectual Property. This office will lead efforts by USTR in intellectual property protection， with a special focus on priority countries， including China and Russia.

2.2Investment administration and its developments

2.2.1Investment reporting system

The International Investment and Trade in Services Survey Act provides for the collection of information by the Federal Government on foreign investment in the US for analytical and statistical purposes. Foreign investment is required to report to respective competent government authorities， with medium and long term portfolio inward investment reporting to the Department of the Treasury. As to other general foreign direct investment， if a foreign investor has 10％ or more voting rights in an US enterprise， including real estate held not exclusively for personal use， an initial direct investment survey report must be filed with the Bureau of Economic Analysis（BEA） of DOC within 45 days after the direct investment transaction occurs. An exemption may be claimed if the new US affiliate has no more than US＄3 million in total assets and owns less than 200 acres of US land immediately after being established. In addition， according to the Agricultural Foreign Investment Disclosure Act， any foreign person involved in a transaction of agricultural land shall submit to the Department of Agriculture a report of personal and transaction information not later than 90 or 180 days after the date of such effective date. In addition to initial reports of investment activities， foreign investors in the US also need to provide BEA with quarterly balance sheets， annual financial reports and benchmark survey reports of foreign investment in the US taken every five years.

2.2.2Investment review

The US House of Representatives and the Senate passed two separate bills respectively in July 2006， the National Security Foreign Investment Reform and Strengthened Transparency Act of 2006 and the Foreign Investment and National Security Review Act of 2006 to amend the Exon Florio Amendment which currently governs review of foreign investment in the US. The two bills both require reforms of the Committee on Foreign Investments in the United States（CFIUS） and strengthened reviews of foreign direct investment in the US， but focus on different aspects as to how to reform and to what extent to strengthen the review. Both bills agree that the Department of the Treasury be the competent authorities of CFIUS. The House s bill proposed to add two Vice Chairpersons to CFIUS， the Secretary of Homeland Security and the Secretary of Commerce. The Senate s Bill proposed to add a new Vice Chairperson， the Secretary of Defense. With regard to reviewing process， both bills require that any transaction involving foreign governments controlling ownership receive a special 45 day investigation. The Senate s bill is even more stringent in other aspects， for example， authorizing CFIUS to prolong the former 30 day review to 60 days， asking CFIUS to present a detailed report to

the Congress and the Administration， and asking the Administration to rank other countries on their compliance with arms export controls.

2.2.3The Sarbanes Oxley Act

Beginning from July 15，2006，all foreign companies listed in the US were required to implement the Sarbanes Oxley Act of 2002（also known as the Public Company Accounting Reform and Investor Protection Act of 2002）. The objective of the Act is stated as to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws. The Act has strengthened regulation on the accounting profession and corporate behavior as well as the senior management of public companies. The highlights of the Act include strengthening supervision over the audit of public companies； improving independence of audit by rotating partners and prohibiting auditing firms from providing consulting services； imposing restrictions on the senior management of public companies； improving corporate governance； tightening reporting responsibility； strengthening disclosure of financial reports； establishing criminal responsibility for the senior management and executive staff； and enhancing senior management accountability to financial reporting.

2.3Trade and investment related systems and their developments

President Bush signed the Stop Counterfeiting in Manufactured Goods Act in March 2006 to strengthen efforts to combat the counterfeiting of goods. The Act has amended Section 2320 of title 18， United States Code to （1） strengthen laws against trading counterfeit labels and prevent counterfeiters from attaching labels and packages to fake products in order to cheat consumers；and（2）strengthen penalties for counterfeiters by requiring courts to order the destruction of all counterfeit products seized， imposing severe penalties on transporting， transferring， or otherwise disposing of counterfeit goods， services or marks for purposes of commercial advantage or private financial gain and requiring convicted counterfeiters to turn over their profits and any equipment used in their operations.

2.4Measures for specific products

2.4.1Technical regulations

2.4.1.1Appliance labeling rules for suspended ceiling fans

The US Federal Trade Commission（FTC） issued appliance labeling rules for suspended ceiling fan on June 23， 2006 as required by the Energy Policy Act of 2005. The new labeling rule requires ceiling fan manufacturers to disclose the following information： the fan s airflow at high speed； the fan s power consumption in watts； and the fan s airflow efficiency at high speed. For fans that are 49 inches or more， the label must display the information： “Compare： 49” to 60 “ceiling fans have airflow efficiencies ranging from approximately to cubic feet per minute per watt at high speed.” A similar explanation is required for fans between 36 inches and 48 inches. The labeling rule also requires a range of airflow efficiencies at high speed. At the bottom of the label， there should be a Money Saving Tip： Turn off fan when leaving room. The label should be affixed to the product packaging. To obtain this energy efficiency information， manufacturers will have to test their fans pursuant to procedures still under development by the US Department of Energy. The Rule also requires manufacturers to submit reports to FTC including such information as high speed airflow， power consumption， and airflow efficiency for fans of different sizes.

2.4.1.2Final rule on countries of origin label for socks

FTC has issued a final rule amending the Rules and Regulations under the Textile Fiber Products Identification Act（Textile Rules） to reflect the specific requirements for the disclosure of country of origin of socks contained in the Miscellaneous Trade and Technical Corrections Act of 2004. Effective from March 3， 2006， the following requirements will be applicable to socks included within HTSUS 6111.20.60（babies cotton knitted socks）， 6111.30.50（babies knitted socks of synthetic fibres）， 6111.90.50（babies knitted socks of artificial fibres）， 6115.92.90（cotton knitted socks， not containing lace or net）， 6115.93.90（synthetic fibre knitted socks， not containing lace or net）， and 6115.99.18（artificial fibre knitted socks， not containing lace or net）： the country of origin label must always be placed on the front of the package； if size information for the product also appears on the front of the package， the country of origin marking must be adjacent to the size information for the product； if no size information appears on the package or if the size information appears on the back of the package， the country of origin marking must still be placed on the front of the package； the country of origin marking must be set forth in a manner that is clearly legible， conspicuous， and readily accessible to the consumer， and must be as indelible or permanent as the nature of the article or package will permit； and for socks that are not fully enclosed in a package， but are banded together by a label or hangtag， the country of origin marking must be placed on the front of the label or tag.

The final rule has provided for some exceptions. Socks included in a package that also contains other types of goods are excepted from these requirements， but such packages of multiple items must comply with other relevant subsections of the Textile

Rules.

2.4.1.3Interim rule on major food allergen labeling in alcoholic beverages

The Alcohol and Tobacco Tax and Trade Bureau（TTB） of the US Department of the Treasury issued a notice on July 26， 2006， announcing the implementation of an interim rule on Major Food Allergen Labeling for Wines，Distilled Spirits，and Malt Beverages. Pursuant to the interim rule，importers，producers and bottlers of wines，distilled spirits， and malt beverages may make voluntary labeling to tell if their products contain milk， egg， fish， crustacean shellfish， tree nuts， wheat， peanuts， and soybeans， or any food ingredient that contains protein derived from one of these eight foods or food groups. TTB has also proposed mandatory major food allergen labeling for alcohol beverage products as required by the Federal Alcohol Administration Act and requested public comments.

2.4.1.4New Flammability Standard for Mattresses

The U.S. Consumer Product Safety Commission（CPSC） issued a notice in 2006，announcing the implementation of a new mandatory flammability standard， 16 CFR Part 1633 for mattresses and mattress and foundation sets（“mattress sets”） from July 1， 2007. This federal standard has established two test criteria to measure the spread of flames on mattress or mattress set. In the test using a pair of gas burners， the mattress or mattress set must not exceed a peak heat release rate of 200 kW at any time during the 30 minute test，and the total heat release for the first 10 minutes of the test must not exceed 15 megajoules（“MJ”）. All mattresses for sale in the US will have to meet this standard.

2.4.1.5Proposed rulemaking on labeling requirements for portable generators

The US Consumer Product Safety Commission（CPSC） issued a notice of proposed rulemaking on labeling requirements for portable generators on August 30， 2006. CPSC proposed to require manufacturers to label portable generators with performance and technical data related to performance and safety. The warning label would inform purchasers that： “Using a generator indoors will kill you in minutes；” “Exhaust contains carbon monoxide， a poison gas you cannot see or smell；” “Never use in the home or in partly enclosed areas such as garages；” “Only use outdoors and far from open windows， doors， and vents.” The warning label would also include pictograms. The Commission believes that providing this labeling information will help reduce risks to consumers.

2.4.1.6New act on certification and energy testing procedure for machinery and

electronic equipment

As directed by the Energy Policy Act of 2005（EPACT 2005）， the US Department of Energy（DOE） proposed rules to provide for new energy efficiency and water conservation test procedures for various commercial and industrial equipment. It has announced rules to adopt testing and sampling procedures for products including ceiling fans； ceiling fan light kits； dehumidifiers； medium base compact fluorescent lamps； torchieres； unit heaters； automatic commercial ice makers； commercial prerinse spray valves； illuminated exit signs； traffic signal modules and pedestrian modules； refrigerated bottled or canned beverage vending machines； commercial package air conditioning and heating equipment； commercial refrigerators， freezers； battery charges and external power supplies.

The proposed rule also requires manufacturer of commercial or industrial equipment to provide product conformity statements and certification reports. One conformity statement is required from manufactures to state that their products conform to relevant energy saving requirements. The certification reports must illustrate the energy efficiency， energy consumption or water consumption of every product affected. Distribution transformers， regulated by energy saving rules， are also subject to certification requirements for manufacturers. The rule is now pending for approval.

2.4.2Sanitary and phytosanitary measures（SPS）

2.4.2.1Rule to restrict importation into the US of certain live fish， fertilized eggs， and gametes that are susceptible to spring viremia of carp

Effective on October 30， 2006， the US began to restrict the importation into the United States of live fish， fertilized eggs， and gametes of fish species that are susceptible to spring viremia of carp（SVC）. Importers of SVC susceptible species must obtain an import permit and a health certificate from the shipment s region of origin certifying that the live fish， fertilized eggs， or gametes originated in an SVC free region. In addition， these goods have to be imported through designated ports of entry and meeting containment requirements for shipments that are in transit through the United States.

2.4.2.2New rules allowing the importation of Chinese fragrant pears

On January 9， 2006， the US Animal and Plant Health Inspection Service（APHIS） amended its regulations governing the import of fruits and vegetables， allowing the importation of fragrant pears from China provided they meet a series of strict requirements. As one of the conditions， the pears would have to be grown in a production site surrounding the city of Korla in Xinjiang Province that is registered

with the General Administration of Quality Supervision， Inspection and Quarantine of PRC. The pears would be subject to inspections and APHIS could prohibit the importation of the pears if pests are detected. The exportation could resume if an investigation is conducted and appropriate remedial action has been taken. In addition，fragrant pears would have to be packed in insect proof containers that are labeled in accordance with the regulations and safeguarded from pest infestation during transport to the US.

2.4.2.3China added to list of countries eligible to export processed poultry to the U.S.

The Food Safety and Inspection Service（FSIS） of the U.S. Department of Agriculture issued a notice on April 24， 2006 to add China to a list of countries eligible to export processed poultry to the US. The rule took effect on May 24， 2006.

The final rule will allow export from China of processed poultry products derived from poultry raised in the U.S.and slaughtered in FSIS inspected establishments or raised and slaughtered in other countries eligible to export poultry to the U.S.This rule does not make China eligible to export processed poultry products to the U.S.that are derived from birds of Chinese origin slaughtered in China’s domestic establishments.

Certified establishments in China must have procedures in place to ensure that products produced for domestic use are processed at separate times from those produced for export to the U.S.FSIS， through on site reviews， will verify that establishments certified by the government of China are meeting all U.S.requirements. All processed poultry products exported to the U.S.from China will be subject to FSIS re inspection procedures at ports of entry. These procedures include examinations for product defects； laboratory analyses that will detect any chemical residues or microbiological contamination； proper certification； transportation damage； labeling； general condition； and accurate count.

2.4.2.4Full Enforcement for wood packaging material regulations

APHIS， in cooperation with CBP， will begin enforcing the third and final phase of the wood packaging material（WPM） regulation on July 5， 2006. All WPM， such as pallets， crates， boxes and pieces of wood used to support or brace cargo， must meet import requirements and be free of timber pests before entering or transiting through the United States. All WPM entering or transiting through the United States must be either heat treated or fumigated with methyl bromide as outlined in the International Standards for Phytosanitary Measures：Guidelines for Regulating Wood Packaging Material in International Trade（ISPM 15）. The WPM must also be marked with an approved international logo， certifying it has been appropriately treated. The regulation， however， does not apply to the following list of WPM： worked wood items； wine crates for vintage year prior to 2006； manufactured wood， such as fiberboard， plywood， polywood， strandboard， whisky and wine barrels， and

veneers； loose wood packing materials（such as excelsior， wood wool， sawdust，and wood shavings）； WPM made from Canadian or US origin wood（or both） used for trade between Canada and the US.

Any unmarked WPM or any marked WPM that is found to be infested with a live wood boring pest of the families Cerambycidae（longhorned beetle）， Buprestidae （wood boring beetles）， Siricidae（woodwasps）， Curculionidae（weevils） and etc. will be required to be re exported immediately. Shipments containing WPM that violate the rule may be allowed entry only if the CBP port director determines that it is feasible to separate the cargo from the noncompliant WPM. An arrangement to have the noncompliant WPM exported from the United States is required before the cargo can be released to the consignee. All costs associated with the reexportation are the responsibility of the importer or party of interest.

2.4.2.5Proposed amendments to import regulations on fruits and vegetables

APHIS made an announcement on April 26， 2006 to amend its import regulations on fruits and vegetables， also known as its Q56 Regulations. The amendments include substantive and non substantive changes. For non substantive changes，the rule would consolidate into one place the requirements of general applicability， eliminate redundant and outdated requirements such as of treatment schedules for imported fruits and vegetables， update terms， and update regulations. Substantive changes to the regulations include：

（1） Establishing a “notice based” process to replace the rulemaking based system for import request and for the approval of pest free areas. Currently，APHIS conducts a pest risk analysis for each import request，which is published in the Federal Register for public comment. The public comments are considered， and if appropriate， a final rule to authorize the imports is prepared. The whole process takes 18 months to 3 years. The proposed new “notice based process” would still require a pest risk analysis. However， if the risk analysis shows that the commodity s risk can be sufficiently mitigated by one or more of four designated phytosanitary measures， the commodity will be eligible for a more streamlined approval process. Under the streamlined process， the pest risk analysis will be published in the Federal Register for public comment for 60 days. APHIS will publish a notice in the Federal Register to announce the issuing of import permits for the commodity. APHIS is proposing a similar “notice based” process for the approval of pest free areas.

（2） Providing for the issuance of special use permits for fruits and vegetables. The amendments propose to allow the importation of small lots of fruits and vegetables for special events， such as trade shows， and for scientific research under strict conditions approved by the APHIS Administrator.
The proposed amendments are pending for approval.

2.4.2.6Proposed amendments to import rules on animal byproducts

APHIS announced on August 17， 2006 to amend the regulations governing the importation of animal byproducts to require that untanned swine hides and skins from regions with African swine fever and bird trophies from regions with exotic Newcastle disease go directly to an approved establishment upon importation into the United States.

3Barriers to trade

3.1Tariffs and tariff administrative measures

3.1.1Tariff peak

At 1.4％ in 2006， the average applied tariff rate in the United States is relatively low. However， the US imposes high tariffs on certain products， which constitute tariff peaks， including textiles and garments， footwear， certain food and agricultural products， leather products， rubber products， ceramic products， and travelware. For example， the average tariff rate for Chapter 61 and Chapter 62 of HTSUS is over 11％， 8 times that of the average applied rate. Among it， the duty rate for trousers of artificial fibers and ski suit of man made fiber is 28.52％ while that for T shirts of man made fibers and sweaters and vests are as high as 32％.

Within one specific product classification， such as footwear or ceramic products， usually lower tariff rates are applied to high priced products，and higher tariff rates to low priced products. Take products under a single tariff heading as an example. Footwear with outer soles and uppers of rubber or plastics， valued over ＄3 but not over ＄6.50 per pair is imposed a 90 cent specific duty and 37.3％ ad valorem duty， while footwear with outer soles and uppers of rubber or plastics， valued over ＄6.5 but not over ＄12 per pair is imposed a 90 cent specific duty and 20％ ad valorem duty. Trunks， suitcases， vanity cases， attache cases， briefcases， school satchels and similar containers with outer surface of leather， of composition leather， or of patent leather are imposed a tariff rate of 8％， while those with outer surface of plastics 20％. The tariff rate for drinking glasses，other than of glass ceramics：of lead crystal， valued not over ＄1 each is 15％， while that for drinking glasses， other than of glass ceramics： of lead crystal， valued over ＄3 but not over ＄5 each is 7.3％， and for same products valued over ＄5 is 3％. These items are not only the major items that China export to the US， but are also the necessities in the US. Such tariff structure has weakened the competitiveness of Chinese products and hindered their export to the US market.

3.1.2Tariff escalation

The US still has a serious problem of tariff escalation. The duty rates escalate with the level of processing for certain finished products or semi finished products. Take products under a single tariff heading as an example. The duty rate for live bovine animals is free, while that for meat of bovine animals, fresh or chilled, carcasses and half carcasses is 26.4%. The duty rate for precious stones and semi precious stones, unworked is free per carat, while that for stones and semi precious stones cut but not set or roughly shaped is escalated to 10.5% per carat. The duty rate for non retail use non twisted spin eurelon 6 single yarn is free, while that for unbleached or bleached pure nylon fabric is 13.6%, and T shirts, singlets, tank tops and similar garments, knitted or crocheted, of man made fibers 32%. Such a tariff structure has considerably hindered China's export of higher value added products such as semi finished or finished products to the US, and has undermined the interests of Chinese enterprises.

3.1.3Tariff quotas

The US maintains tariff quotas on imports of certain agricultural products in order to control the quantities of import and protect the interests of domestic producers. Products subject to tariff quotas in fiscal year 2006 included milk and dairy products, infant formula, animal feeds containing milk or milk derivatives, sugar and sugar containing products, peanuts, peanut oil and peanut jam, sweetened cocoa powder, chocolate and chocolate crumb, ice cream, mutton, beef, cotton, and etc. High tariffs are imposed on products exceeding the established quota. For instance, the average tariff rate for in quota nonfat dried milk is 2.2%, while that for off quota is 52.6%.

3.2Import restrictions

The US maintains an import licensing system on products such as fish, wild animals, narcotics, alcoholic beverages, natural gas, and tobacco on the grounds of national security, consumer health, public morality and environmental concerns. In addition, under Section 232 of the Trade Expansion Act of 1962, the US DOC is authorized to self initiate an investigation or commence an investigation at the petition of interested parties on the effects of imports that threaten to impair national security, and submit a report to the President for him to determine if it is necessary to make adjustment of imports. Since the criteria for determining effect of imports on the national security is not clearly established, and the proof of injury requirement for interested parties petitioning for an investigation is easy to meet, the threshold for initiating Section 232 investigation is very low. China understands that a country has the right to take actions in multilateral or bilateral trade in order to protect its national security. However, these actions should be taken with due diligence to avoid being

used as means to protect one s domestic industries and to restrict foreign competition. China expresses concerns on the development of this policy and its use.

In addition， the US introduced the Steel Import Monitoring and Analysis（SIMA） system on 2002， which now covers all basic steel mill products into its list of monitored items. All importers of steel products are required to obtain a license from DOC prior to completing their customs import summary documentation. The data collected on the licenses are made available to the public weekly after the DOC review. The purpose is to provide statistical data on steel imports entering the United States 7 weeks earlier than is otherwise publicly available. The System is now valid until March 21， 2009. Since SIMA provides timely information， US steel industry and trade associations will be able to speed up the application for investigations of steel imports in the future. In addition， it is very likely that foreign steel exporters will face more U.S. investigations because of the broad coverage of steel products monitored.

3.3Barriers to customs procedures

3.3.1Irrational customs clearance requirements for certain products

The US Customs require that exporters should provide additional documents and information on goods waiting for customs clearance. For certain products， such as items of textiles， clothing or footwear， detailed and complicated information is required， sometimes involving confidential processing information， such as polish and types of dye. When the exterior of a clothing article is made of more than one material， information must be provided on the respective weight， value and surface area of each material. These requirements are usually quite beyond that necessary for normal customs clearance. The formalities are not only complicated but also costly， and have constituted barriers to exporters， particularly to small exporters.

In addition， the liquidation period has been extended up to 210 days， during which the US Customs may still request additional information necessary to establish the classification of the products and the country of origin. The US Customs may extend the liquidation period beyond 210 days without giving a detailed explanation. In some cases a minor problem or error with the invoice is sufficient. As apparel articles often have a short life span（e.g. fashion items must be sold within two to three months） and have to be marketed immediately， if the importer is not able to re deliver the goods upon Customs request for final tariff determination， Customs will apply a penalty as high as 100％ of the value of the goods.

3.3.2Clearance problems created by anti terrorism measures

After September 11 Terrorist Attacks， the US government has taken a series of measures against terrorist activities. The US promulgated the Public Health Security and Bio terrorism Preparedness and Response Act（hereinafter referred to as Bio terrorism Act） in 2002， and four supporting regulations later including the Prior Notice of Imported Food Shipments in order to enforce the Act. The Container Security Initiative（CSI） was launched and the Advance Manifest Regulation（known as the 24 hour regulation） was issued in the same year. In 2003， the Customs Trade Partnership against Terrorism（C TPAT） was launched. As a joint government business initiative，C TPAT aims to build cooperative relationships that strengthen overall supply chain and border security. Participating businesses are asked to establish a security framework according to specific C TPAT Security Guidelines covering manufacturing， production， warehousing， cargo handling facilities and cargo transportation. These measures have in reality slowed down customs clearance， increased cost for exporters and uncertainty in the export market. According to FDA statistics， by the end of 2006， 1701 shipments from China had been denied entry to the US market. Although the figure was lower than that of the same period in 2005， goods from China still ranked the first among refused shipments. Moreover， when implementing these measures， CBP tends to treat domestic and foreign businesses differently and discriminate against foreign businesses， thus in reality creating distorting effect on trade. While China recognizes the efforts by the US to fight against terrorism， it hopes that the US will treat domestic and foreign businesses equally and minimize the impact on trade.

3.4Technical barriers to trade

Faced with complicated technical barriers when entering the US market， foreign products must meet various technical regulations for consumer protection and environmental protection. The complicated system of technical standards and governing laws has particularly created stringent market access barriers. For example，machinery equipment must conform to both UL Certification and standards set by state governments， special regulations of city governments and other product safety standards required by insurance companies. Electronic products must meet technical regulations and product standards required at various levels， including the county and city，industry，state and federal. Different states usually have conflicting additional regulations for agricultural and food imports. State standards are usually not consistent with one another and do not use international standards. Many states have very different environmental protection standards from the federal government. Although a number of US standards claim to be technically equal to international standards， the US rarely adopts directly international standards， with some even contrary to international standards. For example， in the US， there are many different standards on electric and electronic products， which are very different from the standards set by International Electrotechnical Commission （IEC） in inflammability and testing methods. “Third party” assessment is commonly used in the US. All electric and electronic products must pass “third party” assessment in

order to enter the US market. Communication equipment must receive on going inspection and assessment in its development and production. Although the Federal Communications Commission（FCC）have eased up control，third party assessment is still required for wireless equipment. There are 2700 state and city level governments in the US making regulations asking for safety certification of products. These requirements usually lack consistency and some lack transparency.

3.4.1Labeling

3.4.1.1Labeling

Complicated labeling requirements by the US have imposed irrational burdens on imports. For example，the American Automobile Labeling Act（AALA）requires that vehicles must have labels specifying their percentage value of U.S./Canadian parts content and the country of assembly. These requirements can affect consumers purchase decision and lead them to select vehicles made in the US and Canada， thus creating unfair treatment to products from other countries. This has created obstacles for normal international trade and is in violation of Article 2 of the Agreement on Technical Barriers to Trade of the WTO（known as the TBT Agreement）.

The US Federal Trade Commission（FTC） requires that manufacturers of certain household electric appliances should make annual energy cost estimate of their products according to the national average energy consumption cost publicized by the Department of Energy， and provide this information on the labels. However， in order to make an estimate of annual energy cost， one needs information such as the number of usages and power load at the time of usage， which can be very different at different hours. Therefore， it is very difficult to make such estimates. Manufacturers have to make frequent changes to their product labels， thus incurring extra costs. The US has also imposed very complicated labeling requirements for textile and leather products， asking that country of origin labels be affixed to products retail packages， and all textile items exported to the US be labeled with generic names， percentages by weight of the constituent fibers present in the wool product if the content of other fiber is over 5%， the total weight of the wool product and importer information as required by the Wool Products Labeling Act of 1939.

3.4.1.2Country of origin label for fish and shellfish

According to the 2002 Farm Bill of the US， country of origin labels are required for farm raised fish and shellfish， and wild fish and shellfish， including fillets， steaks， nuggets， and other flesh from wild or farm raised fish and shellfish （processed food items excluded）. Products for sale must be labeled with information

including country of origin and production steps. Only when the product is derived exclusively from fish or shellfish hatched， raised， harvested， and processed in the United States， or derived exclusively from fish or shellfish either harvested in the waters of the United States or by a U.S. flagged vessel and not substantially transformed abroad， can the item be labeled at retail as “United States country of origin”. If an imported product has not been substantially transformed in the US， it must retain the importing country it declared to the US Customs as country of origin. Imported products substantially transformed in the United States or aboard a U.S. flagged vessel should be labeled at retail as “Imported from country X， processed in the United States.” If a product has changed its identity after being processed in one country， that country should be labeled as its country of origin.

It is the view of China that such country of origin labeling requirements are unduly complicated， not necessary and have no relevance to food safety. Under current Codex Alimentarius Commission（Codex）standards，country of origin labeling is required if the omission of such labeling may mislead or deceive consumers. The above mentioned requirements of the US are of no use to issues of food safety， human or animal health， and are unable to establish the necessity for such measures to avoid misleading or deceiving consumers. Therefore， it is the view of China that such measures are not consistent with the TBT Agreement. Their implementation can only create extra burdens on exporters and are more than necessary to restrict trade.

3.4.1.3Labeling rules for electric appliances

The appliance labeling rules for suspended ceiling fan issued by FTC on June 23， 2006 pursuant to the Energy Policy Act of 2005 require that fan s airflow efficiency should be labeled. China expresses its concern over this labeling rule. It is the view of China that the labeling requirements in the rules are overly complicated and items requiring labeling are more than necessary， which will create extra burden on exporters and hinder trade.

In 2006， the US filed 61 TBT notifications with the WTO， 6 of which are proposed amendments to product labeling， covering products such as food， pharmaceuticals， cosmetics， containers， and product added with mercury. China will closely watch the developments of these proposed amendments.

3.4.2Energy Star Program

As directed by the Energy Policy Act of 2005（EPACT 2005）， the US Department of Energy（DOE） proposed rules to provide for new energy efficiency for products including fluorescent lamp ballasts； ceiling fans and ceiling fan light kits； illuminated exit signs；torchieres；low voltage dry type distribution transformers；

traffic signal modules and pedestrian modules； unit heaters； medium base compact fluorescent lamps； dehumidifiers； commercial prerinse spray valves； mercury vapor lamp ballasts；commercial package air conditioning and heating equipment； commercial refrigerators， freezers and refrigerator freezers； automatic commercial ice makers； and commercial clothes washers. The rules will amend the minimum energy efficiency for products and expand the Energy Star program to promote energy efficiency. According to this action by the US， products will have to meet energy efficiency standards during 2006 and 2010， with some such as illuminated exit signs required to meet the standard by January 1， 2006 and others such as commercial refrigerators at latest by 2010.

It is the view of China that （1） While the US requires illuminated exit signs and fluorescent lamps meet the Energy Star standards， it does not state whether the importation， sale and use of these products require Energy Star certificates and which organizations are authorized to provide Energy Star certification.（2） No rational explanation is provided as to why the capability of reversible fan action is required for ceiling fans.（3） The requirement that “Ceiling fan light kits shall be packaged with screw based lamps to fill all screw base sockets” is not necessary， and will increase production costs， particularly long distance transportation costs for manufacturers.（4） The requirement that medium base compact fluorescent lamps shall meet minimum initial efficacy prescribed by the August 9， 2001 version of the ENERGY STAR Program Requirements and the testing requirement for lumen maintenance are inconsistent with IEC 60969， and are in violation of the principles of TBT Agreement.（5） The rule that prohibits the manufacture or importation of mercury vapor lamp ballasts beginning from January 1， 2008 is ungrounded.（6） Cooling capacity required for commercial package air conditioning is not expressed in international measurement system. In 2006， China exported to the US US＄4.167 billion worth of products subject to the Energy Star Program. Therefore， China attaches great attention to this energy conservation plan and hopes that while aiming for environmental protection and energy conservation， the US should comply with its obligations under the TBT Agreement of the WTO and avoid creating unnecessary obstacles to international trade.

3.4.3Amendment of Hazard Communication Standard（HCS）

The Occupational Safety and Health Administration（OSHA） of the US Department of Labor （ DOL ） announced proposed amendments to existing Hazard Communication Standard（HCS） in September 2006 to implement the Globally Harmonized System of Classification and Labeling of Chemicals（GHS）. China recognizes that the GHS has been adopted by the United Nations， and there is an international goal for as many countries as possible to implement the GHS by 2008. The action by the US is therefore in line with its international obligations. However， once GHS is implemented，classification of chemicals will need to be re examined and new labels and safety data sheets（SDS） be made in line with new requirements.

At present， except the SDS developed by International Program on Chemical Safety （IPCS） for over 1，300 chemicals， many other chemicals do not have complete safety data. It is time consuming and costly to test and obtain safety data. Therefore， China hopes that the US will provide certain exemptions to chemicals covered by GHS，directly use available safety data and establish a shared data testing system to avoid redundant testing， and provide a reasonable grace period in order to avoid creating new obstacles to trade.

3.5Sanitary and phytosanitary（SPS） measures

In 2006， the US filed 297 SPS measure notifications with the WTO， taking up the most of the total the WTO received in the year.

3.5.1Food inspection and quarantine

3.5.1.1Inspection and quarantine for agricultural products

When FDA selects samples of imported agricultural products for inspection， no clear time frame and procedures are provided，which often leads to delayed release of food or feed imports due to the time consuming sampling and inspection by FDA laboratories. Costs such as refrigeration and storage incurred in the delay are borne by exporters. Such practices usually cause severe losses to perishable food and constitute discrimination against foreign products. Moreover， the US also requires that new non manufactured agricultural products must obtain import license and fresh fruits receive strict inspection. It takes years for a new item to be included into the approved list after the submission of application. Same requirements are needed for other agricultural products from the same production area with same phytosanitary risks. For hardy nursery stock， the US requires that growing plantations must be inspected two years prior to the entry into the US.

3.5.1.2Automatic detention on imports

Section 801（a） of the Federal Food， Drug， and Cosmetic Act（hereinafter referred to as Section 801（a）） authorizes the FDA to place automatic detention on imports posing potential hazards. The system of automatic detention can， to a certain extent，help to ensure quality and safety of imports into the US. It is deemed， however， by China that the system is irrational in the following aspects. First， sampling for the purpose of automatic detention does not stress representation of the samples. Inspection conclusions made by the FDA or its recognized laboratories are final and

request for re inspection is usually denied even if inspection organizations in exporting countries do not agree with the conclusion. Secondly， automatic detention can be placed on a certain product from all other countries， or on part of or all producers of a certain product from a certain country， and can be maintained as long as the FDA considers the shipments do not meet required standards， which consequently has a huge adverse impact on the sales and production of businesses affected. Thirdly， costs incurred as a result of automatic detention are fully borne by importers， thus greatly increasing exporters costs as well.

Generally speaking， the US inspection and quarantine procedures are unduly complicated and are based on inadequate scientific grounds. The overuse of inspection and quarantine and even discriminatory measures have increased the cost of importing relevant products， prolonged customs clearance， restrained normal trade and violated Article 5.4 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures， which provides that “member should， when determining the appropriate level of sanitary or phytosanitary protection， take into account the objective of minimizing negative trade effects”.

3.5.2Import of fragrant pears

The US Animal and Plant Health Inspection Service（APHIS） amended its regulations governing the import of fruits and vegetables in January 2006， allowing the importation of fragrant pears from China under certain conditions. China welcomes the move by the US to ease import control， but still thinks that the remaining stringent quarantine requirements will considerably increase Chinese exporters costs.

3.5.3Chemical residue tolerance

The US maintains extremely strict inspections on tolerance of residues of pesticide， veterinary medicinal products and heavy metal in agricultural products. In 2006， the US amended the residue tolerance and added new requirements for 43 pesticides including fenarimol， imazalil， oryzalin， sodium acifluorfen， bifenazate， and endosulfan， involving meat， vegetables and coffee， etc. Many of these residue tolerances are inconsistent with international standards. For example， the tolerance for residues of fenarimol in bovine kidney is lowered from 0.1 ppm to 0.01 ppm， and the tolerance for the combined residues of fenarimol and its metabolites in or on grapes is lowered from 0.2 ppm to 0.1 ppm. However， according to Codex standards， the maximum residue limit of fenarimol is 0.02 ppm in bovine kidneys， and 0.3 ppm in grapes. In 2006， US＄440 million worth Chinese products were affected by these pesticide residues limit standards. China hopes that when establishing tolerances for pesticide residues， the US should use international

standards as basis and take into account technical realities of developing countries in order not to distort these standards to barriers to international trade.

3.5.4Amendments to import regulations on fruits and vegetables

The US issued a notice on May 9， 2006 to propose an amendment to Q56 Regulations of APHIS on the import regulations of fruits and vegetables. If the proposed amendment is approved， structural changes will happen to import regulations on fruits and vegetables， and new procedures for approving import of new items will be established. China will closely watch the development of this legislation， and hopes that the making of the new regulation will be open and transparent on the basis of scientific grounds， in line with relevant WTO rules and not creating restrictions to imports.

3.6Trade remedies

By the end of 2006，the US had initiated a total of 117 anti dumping investigations against Chinese products， of which 3 were initiated in 2006 against Chinese polyester staple fiber， coated free sheet paper and activated carbon with a total value of US＄230 million. In addition， one anti circumvention investigation was initiated against tissue paper products. In 2006， the US imposed anti dumping duties on artist canvas and lined paper. Although there were fewer cases of anti dumping investigations against Chinese products than the previous year， unfair practices by US investigating authorities remain in place.

3.6.1Problems in antidumping investigations against Chinese products

3.6.1.1Continued refusal of China’s full market economy status

China continues to be treated as a non market economy（NME） country in anti dumping investigations. As a result， Chinese exporters receive unfair treatment in responding to anti dumping investigations. In the anti dumping case against Chinese lined paper initiated in 2005， DOC conducted a review of China’s NME status from the aspects of the extent of currency convertibility， the extent to which wage rates are determined by free bargaining； the extent to which foreign investments are permitted； the extent of government ownership or control of the means of production； the extent of government control over the allocation of resources and over the price and output decisions of enterprises； and other factors. In the initial ruling and the final ruling， DOC refused requests by Chinese enterprises involved and determined that China remained a NME country. China expresses regret over the decision by DOC and calls for the US to recognize the achievements China

has made in its construction of market economy system， treat Chinese enterprises request in a fair and objective manner， and grant Chinese enterprises fair treatment.

3.6.1.2Market Oriented Industry（MOI） and surrogate country

3.6.1.2.1Market Oriented Industry（MOI）

According to relevant US laws， in antidumping investigations， if the respondent company can prove that its industry meets three standards for Market Oriented Industry（MOI）， DOC shall adopt the cost data of this respondent company or its industry in calculation of production cost and dumping margin， rather than adopting a Surrogate Country approach. DOC has developed over stringent standards at its discretion and has provided no specific rules on the procedures of application and on the qualifications for applicants， failing to provide clear guide to responding enterprises and is in violation of provisions set forth in Paragraph 15 of China's WTO Accession Protocol. In practice， DOC refuses to grant MOI status to Chinese companies under various pretexts. So far， no Chinese respondent has yet won the MOI status.

3.6.1.2.2Selection of surrogate country and surrogate price for factors of production

To NME countries， DOC usually uses surrogate country data to determine the normal value and set dumping margins. This rule has given DOC great discretion. In practice， India， Pakistan， and Indonesia are usually used as candidates for surrogate country，and regardless of the nature of industry involved，India is usually a favorite choice because of the easy availability of information in India. As a result， on many occasions anti dumping cases against China have been expanded.

3.6.1.3Separate rates policy

3.6.1.3.1Separate rates policy in violation of WTO Anti dumping Agreement

In anti dumping investigations against NME countries，DOC imposes a single anti dumping duty on all exporters involved in the case. However， an exporter is entitled to a separate rate if it is able to demonstrate that it meets certain conditions. DOC shall assign an individually calculated rate to the exporter on the basis of its exporting price， or a rate based upon the weighted average of the rates of the investigated companies. This separate rates policy of DOC in anti dumping proceedings is insistent with WTO rules. First， Article 6.1 of the Anti dumping Agreement of the WTO provides that investigating authorities should set separate dumping margins for each known exporter or producer of investigated products unless there are exceptions， which have noting to do with the factor of "NME". According

to current US practices， a respondent from NME countries is not automatically eligible for a separate rate， but under certain conditions. Secondly， WTO rules governing NME in anti dumping proceedings are only available in the note to Part 1， Article 6， Annex I of GATT and Paragraph 15 of China's WTO Accession Protocol，which talks about the issue of price comparability of NME countries in anti dumping investigations， i.e.， whether domestic prices in China or cost data of China shall be used as normal value to calculate dumping margins. These rules do not provide for the adoption of export prices. In addition to the discriminatory practice by US in using surrogate country price for the purpose of price comparability， separate rate practices have further hurt China's interests under the WTO agreements.

3.6.1.3.2Technical problems for separate rates policy

The US applied new separate rates application procedures and combination rates policy to China and other NME countries beginning from April 2005. Facts have demonstrated that this practice has created many technical problems. First， it has raised the threshold for Chinese companies to obtain separate rates， and has increased irrational burden on companies. For example， respondents are asked to fill in separate questionnaire and submit separate requests no matter whether they are related， co owned or foreign owned. Companies must provide original and translated copies of all documents， which must meet strict requirements of DOC. Secondly， DOC requires exporters to provide Form 7501 issued to US importers by US Customs on the entry of goods， thus shifting the responsibility of providing this document to Chinese exporters. Thirdly， some requirements are not in line with the real situations in China， putting Chinese companies at a loss as what to do. For example， it is required by DOC that the legal name of the company should be the same as shown on customs clearance documents. In reality， some Chinese companies often use company logo or trademark in clearance. It is also required that companies should provide business licenses with expiry date indicated， while some （particularly state owned） enterprises do not carry expiry date on their business licenses， and enterprises engaged in processing with provided materials even don t have a business license. It is required that companies provide documents for the appointment of management staff， while many small and medium sized enterprises in China， particularly family owned enterprises do not have a procedure for appointment. Fourth， the timeline is over tight， which actually deprives respondents the right to submit supplementary documents. DOC has set a strict timeline for the application of separate rates. China hopes that the US will ease up the timeline requirement so that Chinese companies can better respond to the investigation. Fifth， the combination rate practice has restricted the application of separate rates and has to a large extent hindered competition. It runs counter to market principle and constitutes another discrimination against China.

The above two policies have given DOC more discretion and have made it more difficult for responding companies to obtain separate rates. China hopes the US will

improve these practices in an effort to reduce unnecessary burden on Chinese companies.

3.6.1.4Zeroing

In accordance with the Tariff Act of 1930， DOC uses zeroing when setting the dumping margin. This methodology has been ruled by the WTO as a violation of the WTO Anti dumping Agreement. But the US has refused to remove zeroing in its anti dumping proceedings. In the anti dumping investigation against Chinese diamond saw blades，the US used zeroing，which has artificially raised the dumping margin and hurt the interests of companies involved. In March 2006， DOC asked for public comments on whether to remove zeroing. China expresses welcome to this move and hopes the US will correct this WTO violating action at an early date.

3.6.1.5Increased difficulty and cost for respondents due to new measures

The revision made by DOC in October 2006 on the methodology of calculating market economy input in factors of production is not consistent with its usual practices. In former anti dumping investigations，if the volume of market economy input accounts for 15％ 20％ of total purchases from all sources， DOC would normally use the price paid for the input sourced from market economy suppliers to value all of the input， i.e.， determining that the input is “meaningful”. In some cases， even 10％ is sufficient to be regarded as “meaningful”. DOC has now revised the share to 33％， much higher than the standards used in former practices. This move will further weaken the possibility for Chinese companies to obtain lower anti dumping duties.

Moreover， the imposition of cash deposit and the removal of anti dumping bond for new shippers will make it more difficult and costly for new shippers to export.

3.6.1.6Increased burden due to irrational double deposit requirement

Under rules of Bond Directive 99 3510 004 of US Customs， importers subject to anti dumping or countervailing cases must pay continuous bond as a general guarantee， and the minimum amounts are established at 10 percent of the duties， taxes and fees paid by the importer during the previous year. The US CBP made amendments to this Directive on July 9 2004 by considerably raising the amount of bonds. Under the new rules， for importers of specific products subject to anti dumping or countervailing cases， the continuous bond amount they have to pay are DOC rate at Order multiplied by value of imports of merchandise subject to the case by the importer during the previous year. If， at any time after DOC issues a preliminary affirmative determination， CBP detects sudden changes in declared

values， claimed country of origin， or declared classification， etc.， CBP will increase the importer s continuous bond using the following formula： DOC deposit rate in effect on date of entry x value of imports of merchandise subject to the case by the importer during the previous year. The continuous bonds for new shippers are DOC deposit rate in effect on date of entry multiplied by estimated annual import value of the goods subject to the case. CBP may adjust the rates used in the formulas set forth above to calculate different bond amounts as circumstances warrant to ensure collection of sufficient antidumping and countervailing duties.

At present， this rule is applied only to agricultural or aqua cultural products subject to anti dumping and countervailing cases. Since dumping rates tend to be higher for agricultural and aqua cultural products， this amendment has greatly increased the continuous bond amount. Importers have to maintain the continuous bonds until the final determination of anti dumping duties for affected products， a process that may take years in practice， and have to pay cash deposit equal to estimated dumping duties and dumping margins. Such double deposits have raised the cost of agricultural and aqua cultural imports to an extremely high level. Under this rule， the US has collected continuous bonds on warm water shrimps and prawns from six countries， including China. It is the view of China that the collection of such continuous bonds are not in line with WTO rules governing provincial measures and imposition of anti dumping duties. The US Court of International Court has made an initial decision to prohibit this practice. China hopes that the US will correct this WTO violating rule at an early date.

3.6.2Problems in anti circumvention case for petroleum wax candles

In October 2006，DOC published a notice of its affirmative final determination of the anti circumvention inquiry of petroleum wax candles from China. It has determined that mixed wax candles from China（candles composed of petroleum wax and over fifty percent or more palm and/or other vegetable oil based waxes） are later developed merchandise and should be subject to the Antidumping Duty Order on Petroleum Wax Candles from the People s Republic of China， and should be imposed the 108.3％ anti dumping duties. This determination has enlarged the scope of products subject to the anti dumping duties. The anti dumping investigation initiated in 1985 against petroleum wax candles targeted only candles made of petroleum wax， which was defined by ITC in its Final Determination as “those composed of over 50 percent petroleum wax”. Mixed candles ruled circumventing the Anti dumping Order are a totally different product from petroleum wax candles， and are not products with “minor alterations”， or “a significant alteration of the merchandise involving commercially significant changes”， or “later developed merchandise”. In addition， when US domestic industries petitioned for the anti dumping investigation， mixed products had been commercially available in the market， and do not constitute “significant technological advancement”. DOC had ruled that mixed candles would not be subject to anti dumping duties. The US Court of Appeals for the Federal Circuit has ruled

clearly that products excluded from initial investigations should not be included into anti dumping orders in follow up investigations. In this anti circumvention investigation, while DOC was aware that mixed candles had been available in the market, it still used criteria created by administrative bodies (commercial availability) to determine mixed candles as later developed merchandise. This discretionary determination with no transparency has violated the obligation of the US under WTO Anti dumping Agreement, and has amounted to abuse of anti circumvention rules. This is the first anti circumvention investigation initiated by the US against China. The arbitrary action by DOC in disregard of facts has set a very bad example. China hopes that the US will correct this WTO violating determination at an early date and grant fair treatment to Chinese enterprises.

3.6.3Problems in countervailing investigations against Chinese products

On November 21, 2006, at the petition of domestic industries, the US DOC initiated a combined anti dumping and countervailing duty(CVD) investigation on coated free sheet paper from China. This is the first CVD investigation launched by the US against China since China joined the WTO. The US DOC has all along refused to grant Market Economy status to China and treated China as a NME country in its anti dumping investigations against Chinese products. However, according to its anti dumping and countervailing practices over the past 20 years, DOC does not apply CVD law to NME countries, a policy that was ruled affirmative by the US Court of Appeals for the Federal Circuit in 1986 and has remained unchallenged since then. This CVD investigation initiated by DOC against coated free sheet paper from China is inconsistent with its long standing practices and court precedents, and is in violation of GATT 1994, the Anti dumping Agreement and the Countervailing Agreement of the WTO by imposing both anti dumping and countervailing duties on one product. It has constituted unfair treatment to Chinese products. As to the case per se, petitioners are unable to establish that there is a financial contribution to 13 alleged items of subsidies from which businesses have benefited and these subsidies are specific. Therefore, the initiation of the case doesn t comply with US domestic laws or WTO regulations.

To our regret, the US has decided to initiate the CVD investigation in disregard of China's concern expressed and proposals made on many occasions. The US has insisted on treating China as a NME country regardless of its enormous achievements in market economy reforms over the past 20 years. On one hand, it uses discriminatory "surrogate country" method in anti dumping investigations against Chinese products. On the other hand, it initiates CVD investigation against Chinese products. Such dual discriminations against Chinese products, in China's view, is neither consistent with WTO rules, nor with US domestic laws.

3.6.4Problems in product specific safeguard measures

Section 421 of the US Trade Act of 1974（hereinafter referred to as Section 421） sets forth regulations on procedures utilized and entities involved in implementing product specific safeguard measures against various Chinese products. It is deemed by China that Paragraph 16 of the Protocol on the Accession of the People s Republic of China to the WTO does not provide sufficiently detailed procedures and entities with regard to investigations related to product specific safeguard measures and enforcement thereof. Section 421 does not provide detailed regulations related to several important concepts and procedures relating to product specific safeguard measures. China hopes that the US will make necessary corrections， modifications and amendments to Section 421 so as to bring it in line with the corresponding and relevant WTO rules.

3.7Government procurement

The Buy American Act of 1933 is the main legal authority governing government procurement. Many discriminatory provisions exist in this law， such as prohibiting certain public agencies from purchasing foreign products and services， applying special standards to local products， requiring preferential price terms for local suppliers， etc. The Buy American Act of 1933 restricts the purchase of supplies by government agencies to those defined as “domestic end products”， i.e. the article is manufactured in the United States， and the cost of domestic components exceeds 50％ of the cost of all the components. In making tenders， the bidder must show whether its products are domestic products or foreign products. The Act does not directly prohibit the purchase of foreign products by government agencies. It stipulates clearly， however， that in evaluating price offers， a 6％ margin should be added to foreign products. If the domestic competitor is a small business or a business located in a region with surplus labor force， the added margin considered is 12％. For purchases by the Defense Department the price difference must be of at least 50％. Such discriminatory provisions have constituted barriers for Chinese companies to obtain US government procurement contracts. China expresses its concern over this issue.

In addition， many other federal laws also contain requirements to buy American goods. These laws include various fund appropriation regulations， road and transportation laws enacted by the US General Services Administration（GSA）， the US National Aeronautics and Space Administration（NASA）， and the Tennessee Valley Authority（TVA）， as well as the Clean Water Act of 1997， the Rural Electrification Act of 1936， and the Rural Electrification Act of 1938. Many of these laws and regulations contain provisions governing financing for federal purchases from states or local areas， but are nevertheless exempt from the relevant GATT or WTO Government Procurement Agreement after the US submitted application to the WTO.

3.8Export restrictions

The US maintains a complicated export control system. The US DOC is authorized to regulate the export of dual use goods, technology, and services. The US Department of Defense is authorized to regulate the export of products, services and technological data for military use. In addition, the US Department of the Treasury implements its own export control rules on countries under embargo and on items forbidden for trade. The US has long maintained control over the export of products for military use or products with potential dual uses to China, and also over the export of high technology to China in high tech sectors, such as wireless products, chips, software, security products and radar. In fiscal year 2005, 44 applications for dual use product export to China were refused, making China the second refused destination in all applications. In several strategic economic dialogues and consultations between China and the US, China has raised this issue with the US as one of the important items for discussion.

3.8.1Proposed rules on export control

The US DOC published its proposed rule to strengthen control on exports to China in July 2006. The proposed amendment has increased items subject to export licenses to China, expanded on a unilateral basis the requirement for exporters to obtain PRC End User Certificates from MOFCOM, and starts to implement the new Authorization Validated End User（VEU） system.

This is the first effort by the US to establish clearly, in the form of rules, its principle of exercising “overall control” on products for military and civil uses. The purpose is to exercise strict controls on exports of sensitive dual use items to China for military use. It is the view of China that the newly added licensing review requirements for 47 items are too stringent. The expanded requirement for exporters to obtain PRC End User Certificates will increase end user visit requests from the US, making it more difficult for certain Chinese projects, and the threshold of US $ 5000 is unreasonably low. The new VEU system has stringent conditions, and may cause differential treatment to enterprises of different nature. Moreover, the new system requires a large amount of paperwork, and is difficult to implement when both MOFCOM and DOC are understaffed to handle these documents. The rule will increase business burdens on enterprises in two countries.

It is the view of China that the proposed new rule will increase uncertainty and cost in US trade with China. It will discourage bilateral trade between the two countries by imposing unreasonable barriers and attached preconditions. It is not in the interest of businesses from China and the US and will hurt the healthy development of trade between China and the US. US control on export of high tech products to China is

one of the major reasons for recent trade imbalance between China and the US. According to statistics from the US Census Bureau， exports to China accounted for only 4.67％ and 5.71％ respectively in 2004 and 2005 in total US exports of high and new tech products. However， US imports of high tech products from China accounted for 19.16％ and 22.79％ in 2004 and 2005. In 2003， the US had a deficit of US $ 21.09 billion in high tech trade with China， and the figure reached US $ 36.297 billion in 2004. While strengthening export control against China， the US has also restrained the growth of its high tech export. If the US wants to improve its trade imbalance with China， it should change its current move. China urges the US to take into China's concerns and take constructive measures to expand bilateral trade in high technology and promote the healthy development of economic and trade ties between the two countries.

3.8.2Export license administration and controlled list

DOC exercises control over the export and re export of US origin products through export licensing. DOC issues export licenses on the basis of export destinations levels of cooperation with the US and technological standards of products. Many of these established technological standards have become obsolete. For example， the standards used for the control over the export of computers have already fallen behind technological development， and have hindered the normal trade of technology between China and the US. In addition， obtaining an export license is a time consuming process in the US. According to Executive Order 12981， the average time needed for obtaining a license is three months， and can last from three months to half a year and sometimes even a year for exports to China， much more lengthy than in other countries， such as Germany and Japan， where 2 3 weeks or a month is enough. Besides， stringent conditions are usually attached to exports to China， such as follow up verification， and additional clause for end use or end user carried in commercial contracts. These have in fact increased the cost of exporting to China.

The US government also maintains control over the destinations and end users of export items through the use of the lists such as the Specially Designated Nationals List（SDN）， the Specially Designated Global Terrorists List（SDGT）， the Denied Persons List， the Debarred Parties List and the Embargoed Countries List. Export to countries， individuals， or organizations identified on the lists are prohibited or restricted. However， relevant US laws and regulations do not provide clear conditions for the identification of these organizations or individuals. In 2006， 57 new organizations or individuals were added to the Denied Persons List， with 18 from China， accounting for one third of the total.

3.8.3Sanctions

The US government often uses “proliferation of weapons” as the pretext to impose sanctions on foreign companies， particularly Chinese companies pursuant to its domestic laws. Out of 114 sanctions imposed by US Department of Defense on controlled items in the period from 2001 to 2004， 79 were against Chinese companies， nearly all imposed on the basis of non proliferation. Companies having links with the Chinese military are the main target of US control and sanctions. In June 2005， President Bush signed the Executive Order 13382， allowing severe economic sanctions to be imposed on entities or individuals providing support or services to weapons of massive destruction proliferators and their supporters. Under this Executive Order， the US Department of the Treasury， citing providing materials and technology to Iran for the use of missiles as a reason， declared in June 2006 to impose sanctions on 4 Chinese companies， prohibiting any business with American companies and individuals， blocking all their properties subject to US jurisdiction， and putting them on the list of entities supporting or serving weapons of massive destruction proliferators. This is the second sanction after the US government imposed one in 2004 on these four companies. In August 2006， the US Department of the Treasury took same action against Chinese subsidiaries of one of these four companies. In December 2006， the US State Department imposed sanctions on another three Chinese companies under the same pretext of proliferation to Iran and Syria. These measures have seriously hurt the reputation of relevant Chinese companies and caused huge economic losses to them.

It is held by China that the Chinese government has consistently pursued a responsible and committed attitude towards the issue of proliferation prevention， and has taken a series of effective measures to strengthen its export control. Unwarranted sanctions on Chinese companies by the US government invoking its domestic laws are in violation of WTO rules， and will not be beneficial to the bilateral cooperation in proliferation prevention. China expresses its dissatisfaction and opposition to these continuous sanctions by the US， and urges the US to promptly cease these actions.

3.9Subsidies

3.9.1Agricultural subsidies

The continued high level of agricultural subsidies in the US has remained a concern for other countries. Under the Farm Security and Rural Investment Act of 2002（FSRI 2002）， large amounts of subsidies have been provided to the US agriculture， violating the principle of reducing agricultural subsidies outlined in former laws on agriculture.

The US government， pursuant to FSRI 2002， has increased subsidies to promote export of wheat， wheat flour， rice， barley， eggs， vegetable oil， milk powder，

cheese and other agricultural products through Export Enhancement Programs，Dairy Export Incentive Programs and Export Credit Guarantee Programs. According to the budget for fiscal year 2007 issued by the US Department of Agriculture， a total of US＄63 million will be spent on Export Enhancement Programs and Dairy Export Incentive Programs， 2 times more than that in 2006. The budget for Dairy Export Incentive Programs will reach US＄35 million， while it was only US＄2 million in 2006. The total spending on Export Credit Guarantees， including Short term Guarantees（GSM 102）， Supplier Credit Guarantees and Facilities Financing Guarantees will increase by 2％ over the previous year. Direct Payments， Counter cyclical Payments， and sales subsidies are the major means of domestic support， whose total spending in 2005 reached US＄12.35 billion， up 34％ over the same period of 2004.

Although the US has amended its Export Credit Guarantee Program（GSM 102）， Intermediate Export Credit Guarantee Program（GSM 103） and Supplier Credit Guarantee Program（SCGP）， and has removed the Cotton Support Program（Step 2 program） in August 2006， these subsidies only take up a small share in the large amounts of trade distorting subsidies in the US. For example，step 2 only accounts for 2％ in the total subsidies to cotton. The US is one of the largest suppliers of agricultural products in the world， 80％ of cotton， 50％ of rice， 75％ of animal hides and skins， over 30％ of soybeans and corn produced in the US are for export. Its subsidy policy will distort international trade for agricultural products. FSRI 2002 will expire in 2007. The US has expressed intentions to reduce agricultural subsidies in making new agricultural laws. China will follow closely the development of US policies on agricultural subsidies.

3.9.2Other subsidies

In October 2004， the Job Creation Act of 2004 was passed in the US to implement the earlier WTO rulings on illegal export subsidies granted to domestic companies under the US Foreign Sales Corporation Act and the Extraterritorial Income Act. The Job Creation Act of 2004 has conditionally repealed the former tax breaks and， in order to compensate any losses thereby incurred by US domestic companies， has at the same time created a new tax deduction applicable to manufacturers. Since a transition relief is provided to tax breaks， the US hasn t properly implemented relevant WTO rulings. In addition， the Act has provided a large amount of tax favors to domestic manufacturers， and the favor has been unreasonably expanded to coverage of manufacturing sectors. China expresses great concern with regards to the potential impact this tax reduction program will have on Chinese manufacturers.

3.10Barriers to trade in services

A great number of restrictive measures exist in the US market for trade in services. Those measures stand as barriers for export of services to the US.

3.10.1Marine transportation and domestic water transportation

Marine transportation is one of the most protected sectors in the US. No significant policy or legislative changes have taken place with respect to maritime transport since 2004. The Merchant Marine Act of 1920 reserves cargo service between two points in the United States for ships that are registered and built in the United States and owned by a U.S. corporation， and on which 75％ of the employees are U.S. citizens. Foreign vessels are restricted in coastal and domestic transportation. However， the Jones Act does not prevent foreign companies from establishing shipping companies in the United States as long as they meet the requirements with respect to U.S. employees. Ownership by foreign individuals， companies or governments of shipping companies engaged in coastal and river transportation in the US is limited at 25％. If foreign ownership is over 25％， shipping companies will be denied rights to undertake coastal and river transportation. Domestic passenger services are subject to similar requirements under the Passenger Vessel Services Act of 1886.

The U.S.international maritime transport market is generally open to foreign competition. Under the Foreign Shipping Practices Act of 1988（FSPA）， however， the Federal Maritime Commission（FMC） is empowered to investigate and address conditions adversely affecting U.S.carriers in foreign trade. Under the Shipping Act of 1984， the FMC exercises special regulatory oversight on ocean common carriers operating in U.S. foreign trade that are owned or controlled by foreign governments. In May 2005， the FMC published an updated list of “controlled carriers” that included four controlled carriers from China. In addition， it is required that all items procured for or owned by U.S.military departments and defense agencies as well as US government financed transportation be carried exclusively on U.S. flag vessels. Unauthorized sale of US registered vessels to foreign carriers will break US laws and will be held legally accountable.

3.10.2Aviation

There have been no significant policies or legislative changes affecting the air transport sector since 2004. Market access restrictions remain in the form of U.S.ownership and control requirements for aircrafts. Any foreign ownership in a U.S.carrier is limited to a maximum of 25％ of voting shares. In addition， the president and 2/3 of the directors and managing officers must be U.S.citizens. The Fly America Act requires U.S.government financed transportation to be on U.S. flag air carriers， but grants authority for the United States to enter into bilateral or multilateral agreements to allow the provision of such services by foreign air carriers.

3.10.3Insurance

The U.S.insurance services sector is regulated primarily at the state level. Insurance companies， agents， and brokers must be licensed under the law of the state in which the risk they intend to insure is located， and are authorized to offer insurance services only in the state where they are licensed. In addition， in some states， for some types of insurance， insurers must submit rate filings to receive approval from state regulators for the premium rates they may charge. Each state has its own legal structure governing insurance， maintaining different requirements for registration， indemnity and business operation.

The U.S.insurance market is open to foreign direct investment through acquisition of an insurance company licensed in a given state. Market access for foreign companies can only be obtained through commercial existence in a given state. Minnesota， Mississippi， and Tennessee do not have a mechanism for licensing initial entry of a non U.S. insurance company as a subsidiary. However， if the company has been licensed in one U.S.state except the said three states， it will be accorded such rights in these three states. Thirteen states do not have a mechanism for licensing initial entry of a non U.S.insurance company as a branch. In practice such requirements often change， and have brought much inconvenience to investors in insurance.

In addition， foreign insurers are not granted national treatment in the requirements for registered capital， taxation and management fees.

3.11Irrational measures for intellectual property rights protection

Under Section 337 of the Tariff Act of 1930， ITC is authorized to conduct investigation into asserted infringement on US intellectual property rights and other unfair trade practices occurred in the importation of products into the US， and take remedies such as issuing general or specific exclusion orders or cease and desist orders. In recent years， US businesses have frequently used Section 337 investigations against Chinese products in order to curb China’s exports.

By the end of 2006， among all Section 337 investigations initiated by ITC， 58 were filed involving subject products from China. In 2006， 13 investigations were against Chinese businesses， accounting for 39.3％ of the total. Products involved were portable power stations and packaging therefore， voltage regulators， ink cartridges， foam footwear， L Lysine feed products， telecommunications or data communications networks， lighters， mobile telephone handsets， peripheral devices， inkjet ink supplies， engines， connection devices for modular compressed air conditioning units and digital multi meters.

In spite of the amendment to Section 337 in 1994， in China's view， no substantial changes have taken place. The amended Section 337 of the Tariff Act of 1930 remains inconsistent with Paragraph 3， Article 4 of GATT and relevant provisions of TRIPS， and continues to discriminate against imports in investigations. The inconsistencies are reflected in several aspects. Firstly， Section 337 has provided double remedies to US products by discriminating against foreign companies and violating national treatment principle. Secondly， the criteria for adoption of general exclusion order are unduly low and unclear， thus creating great uncertainty and arbitrariness that have irrationally hurt the interests of foreign exporters. Thirdly， certain Section 337 investigations only name country of origin of investigated products without naming investigated companies， which in fact has deprived involved foreign companies of the right to respond， and undermined the interests of involved foreign companies. Fourthly， the authorization by Section 337 to ITC to self initiate Section 337 investigation has insufficient grounds， and is inconsistent with TRIPS. China expresses great concern over this issue and the adverse impact thereof on China's normal trade with the US.

3.12Other barriers

The US has tightened its visa policy since September 11 terrorist attacks and asked for new requirements such as index finger scans， interviews， and security risk assessment. Due to the lack of visa officers， visa applications have become unduly time consuming. A Chinese application for US visa can take one month on average and 2 months at longest to process， 3 or 6 times longer than that needed for visa to Japan， Australia and EU member countries. Moreover， due to the lack of transparency in visa procedures and great discretion by visa officers， there is great uncertainty in visa application. Many eligible applicants have been refused and normal business visits to US hindered. Such measures have made it difficult for US companies to establish long term stable commercial links with Chinese companies and have injured Chinese companies interest as well as US Companies . According to a survey by the American Chamber of Commerce in China， 44％ respondents said their business were affected due to the problem of visa， and the lost business opportunities were estimated at US＄1 million to US＄10 million. 70％ of respondents said they didn t put meetings in the US for fear of visa problems.

China hopes that the US will improve its visa policy by increasing staff， raising visa issuance efficiency， transparency and predictability so as to ensure the normal commercial exchanges between the two countries.

4Barriers to investment

4.1Investment review out of national security concern

The Exon Florio Amendment authorizes the US President to investigate any merger，acquisition or take over that might threaten the national security of the US. The screening is carried out by the Committee on Foreign Investment in the United States（CFIUS）. The law has given no clear definition to “national security” and such investigations tend to be time consuming and costly in legal fees，thus constituting barriers to foreign investment. Moreover， if the President believes the transaction will threaten national security， he can take actions to suspend or prohibit the transaction. There are no provisions for judicial review or for compensation in the case of divestment. With heightened concerns for national security in the wake of September 11th， a noticeable expansion has occurred as to what constitutes a “national security” concern and there are louder calls for tighter review of foreign investment. The Senate and the House of Representatives are currently debating on this issue and have passed separate bills to strengthen the review of foreign investment. China will closely watch its development.

4.2Discriminations in taxation

Foreign branches in the US or any American corporation that has at least one 25％ foreign shareholder are required to maintain or create books and records relating to transactions with related parties. Documents must be stored at a place specified by the US tax authorities and an annual statement filed containing information about dealings with related parties. There are stiff penalties for non compliance with the provisions. These requirements are onerous. Although their purpose， the prevention of tax avoidance and evasion， is reasonable， they are burdensome and add to the complexity for foreign owned corporations of doing business in the US.

In addition， in many US States， state corporate income tax for foreign owned corporations is assessed on the basis of an apportionment of their total US profits. The formulae and factors for apportioning the profits are established by each individual state and there is no single common method. As a result a foreign company may have to pay tax on the same income in more than one state， giving rise to double taxation and reducing the competitiveness of foreign invested companies in the US.

4.3Restrictions on market access and investment

Foreign ownership is expressly restricted by US federal laws in certain sectors considered particularly sensitive， such as radio and TV broadcasting， domestic air，marine transportation and fishing. In addition，certain highly regulated sectors，such as banking， insurance， electric and gas， and communications， are subject to discretionary governmental action， especially on the state level. Foreign investment

therein is often subject to a higher level of scrutiny.

4.3.1Mineral leasing and energy development

Energy resources generally are regulated by both state and federal laws. Exploration and development of energy resources， as well as their refinery， wholesale and marketing are all operated by private companies， which obtain the right to development and production through public tender for leasing or selling. However， the Federal Mineral Lands Leasing Act allows mineral lands owned by the federal government to be leased only to US citizens and to corporations organized in the US. The latter may be foreign owned， but in general a greater than 10％ foreign ownership is allowed only to the extent the foreign owners country grants similar rights to US citizens that is， reciprocity is required. The Secretary of the Interior determines what countries do not provide reciprocal treatment.

Under the Mineral Leasing Act of 1920， mineral mining rights to mine coal， oil， oil shale and natural gas on land sold by the federal government are restricted to U.S. citizens， corporations and other U.S. entities. Also， for an alien to obtain an interest in a mineral lease held by a U.S. citizen， the Secretary of the Interior must approve any subleases or assignments of such leases.

4.3.2Power generation and utility services

The Atomic Energy Act prohibits foreign ownership or control of nuclear power facilities. Only U.S.corporations or partners of U.S. registered corporations may obtain licenses to own or operate hydroelectric power facilities and there is no limit on foreign ownership or control； however， applications where foreign ownership or control is involved are often more highly scrutinized. A company or utility under the jurisdiction of the Federal Energy Regulatory Commission（FERC） must file information annually concerning citizenship， ownership and control.

4.3.3Land and real estate

Foreign persons are allowed to invest in real estate in the US through buying， selling or leasing. There are special regulations，however，on investment in certain land. As restricted by US laws， land owned by US Land Administration is not allowed for sale to foreign person. Over 30 states， particularly those with extensive farming areas， have laws restricting foreign interests in real estate to different extents. Under the Foreign Investment in Real Property Tax Act of 1980（FIRPTA）， persons purchasing U.S.real property interests from foreign persons are required to withhold a

certain percent of the amount realized and turn it in to the tax authorities.