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Enhancing Market Openness through Regulatory Reform in the People's Republic of China

Malory Greene

Charles Tsai

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**TRADE AND AGRICULTURE DIRECTORATE
TRADE COMMITTEE**

Working Party of the Trade Committee

**ENHANCING MARKET OPENNESS THROUGH REGULATORY REFORM IN THE PEOPLE'S
REPUBLIC OF CHINA**

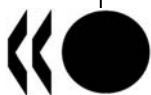
OECD Trade Policy Working Paper No. 83

by Malory Greene and Charles Tsai

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ABSTRACT

This study analyses the People's Republic of China's trade policy environment with a focus on trade-related regulations and their role in supporting China's market openness. It examines in particular to what extent China's trade regulations comply with the principles of transparency and non-discrimination and facilitate foreign trade operations and international competition. The report proposes a series of policy recommendations to make China's regulatory framework more market-oriented and trade-and-investment friendly. The study is complemented with a business survey of OECD member country enterprises and Chinese firms. The survey assesses government influence on the investment climate through the impact of their policies on the costs, risks and barriers to competition facing firms. The main report and the business survey conclude that transparency plays a critical role in the development of a healthy business environment by reducing regulatory impediments.

Keywords: investment, China, Trade Policy, Market Openness, Investment, Transparency, Non-Discrimination, Trade Restrictiveness, Conformity Assessment, Competition Principles, Intellectual Property Rights, Standards, Regulatory Reform, Trade Reform

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The business survey was drafted by Laura Munro and Malory Greene. Frano Ilicic designed the survey database and compiled the results. The OECD Secretariat worked closely with Dirk Manske at BIAC and its China Task Force to design and distribute the Survey to OECD member country business associations. The main report and the business survey were carried out as part of the wider programme of co-operation on regulatory reform between the OECD and the People's Republic of China.

The Working Party of the OECD Trade Committee discussed this report and agreed to make the findings more widely available through declassification under its responsibility. The study is available on the OECD website in English: <http://www.oecd.org/trade>.

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ACRONYMS AND ABBREVIATIONS

ANSI	American National Standards Institute
AQSIQ	Administration for Quality Supervision Inspection and Quarantine
BRIICS	Brazil, Russia, India, Indonesia, China and South Africa
CAS	China Association for Standardisation
Catalogue	The Catalogue for the Guidance of Foreign Invested Industries
CCC	China Compulsory Certification
CCIC	China Certification & Inspection Group
CIRC	China Insurance Regulatory Commission
CIQ	China State Administration for Entry-Exit Inspection and Quarantine
CNCA	China National Regulatory Commission for Certification and Accreditation
CNAB	China National Accreditation Board for Certifiers
CNAL	China National Accreditation Board for Laboratories
CNAS	China National Accreditation Service for Conformity Assessment
CNAT	China National Auditor & Training Accreditation Board
CNIS	China National Institute of Standardisation
CQC	China Quality Certification Centre
EU	European Union
FDI	Foreign Direct Investment
FIE	Foreign-Invested Enterprise
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services (a WTO agreement)
Gazette	<i>China Foreign Trade and Economic Co-operation Gazette</i>
GDP	Gross Domestic Product
GPA	Agreement on Government Procurement (a WTO agreement)
IAF	International Accreditation Forum
IEC	International Electrotechnical Commission
IMD	International Institute of Management Development (Switzerland-based)
IPR	Intellectual Property Rights
ISO	International Organisation for Standardisation
IT	Information Technology
JCCT	U.S.-China Joint Commission on Commerce and Trade
Measures	<i>Measures on the China WTO Notification and Enquiry Centre</i>
MFN	Most Favoured Nation
MII	Ministry of Information Industry
MofCOM	Ministry of Commerce
MOF	Ministry of Finance
MOFTEC	Ministry of Foreign Trade and Economic Co-operation
MRA	Mutual Recognition Agreement
NBSC	National Bureau of Statistics of China
NDRC	National Development and Reform Commission
NPC	National People's Congress
NT	National Treatment
OECD	Organisation for Economic Co-operation and Development
PASC	Pacific-Asia Standards Congress
Provisional Regulation	<i>Provisional Regulation on Administrative Transparency</i>
QTSB	State Quality and Technical Supervision Bureau
R&D	Research and Development
RIA	Regulatory Impact Assessments
RTA	Regional Trading Arrangement
SAC	Standardisation Administration of China
SAIC	State Administration for Industry and Commerce

SCOLA	State Council's Office for Legislation Affairs
SME	Small and medium-sized enterprises
SOE	State Owned Enterprises
SPC	The Standards Press of China
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures (WTO Agreement)
TBT Agreement	Agreement on Technical Barriers to Trade (WTO Agreement)
TRIPS	Trade in Intellectual Property Rights
UNCTAD	United National Conference on Trade and Development
VAT	Value Added Tax
WTO	World Trade Organisation

ENHANCING MARKET OPENNESS THROUGH REGULATORY REFORM IN THE PEOPLE'S REPUBLIC OF CHINA

Introduction and Executive Summary

The main objective of the OECD regulatory reform programme is to assess domestic regulatory frameworks and suggest improvements for enhancing economic growth, competition, innovation and market openness. Country reviews of regulatory reform adopt a multidisciplinary approach and addresses the government's capacity to manage the regulatory reform agenda, macroeconomic aspects of regulatory reform, the enforcement of competition policy, the support of market openness, and the regulatory framework in some selected sectors (in the case of the People's Republic of China, health and infrastructure services and the power sector). The OECD has played a key role in promoting regulatory reform by carrying out assessments of the policies and practices of more than 20 member countries and the Russian Federation. The People's Republic of China ("China") will be the second non-member country to benefit from this OECD programme.

The OECD reviews of regulatory reform include one chapter on regulatory reform in support of market openness. Examining market openness principles is important because it assesses a country's ability to reap the benefits of globalisation and international competition by eliminating or minimising the trade distorting impact of border as well as behind-the-border measures. Improving a country's economic efficiency and competitiveness depends to a great extent on the capacity of a country to integrate foreign trade and investment perspectives into regulations and regulatory practices. From a market openness perspective, regulatory reform is in the interest of the domestic economy but yields significant benefits for national and foreign stakeholders alike. High quality regulation can be achieved without compromising market openness, and open market policies can be enhanced through strong regulatory underpinnings. The chapter on market openness thus examines to what extent domestic regulations directly or indirectly distort or facilitate international competition, and suggests possible improvements in the domestic regulatory framework to promote international trade and investment liberalisation.

This study analyses China's progress in developing and implementing trade-related regulations and proposes policy recommendations to make it more market-oriented and trade-and-investment friendly. After an overview of China's trade environment and recent trade policy developments, the study examines China's trade-related regulations in light of the six efficient regulation principles that trade policy makers identify as essential to ensuring genuine market openness. These principles refer to the two basic international trade disciplines of transparency and non-discrimination, stress the need to avoid unnecessary trade restrictiveness, recommend the use and recognition of internationally harmonised measures¹, encourage streamlining conformity assessment procedures, and finally urge countries to apply competition principles from a market openness perspective.

With its 2001 WTO accession, China has locked in much of its trade liberalisation commitments. The focus is now on "second generation" trade-related reforms – tackling border and domestic regulatory barriers. **Transparency** is perhaps one of the most important criteria for the continuous development of a healthy business environment in China. Improving conditions of transparency in the dissemination of

¹ See paragraph 99 for the definition of "internationally harmonised measures" applied throughout this review.

information can be found in China's evolving legal and regulatory framework. The *Legislation Law* has provided an important foundation for enhancing transparency throughout the Chinese regulatory system in that it requires the publication of legislation prior to implementation, and specifically provides for public consultations.

Progress in **transparency**:

- China has drawn up more than 280 transparency-related laws and regulations, including the adoption of its first nationwide government information disclosure system on *Regulations of the People's Republic of China on Open Government Information* which took effect on 1 May 2008.
- The Ministry of Commerce (MofCOM) publishes the *Foreign Trade and Economic Co-operation Gazette* (Gazette) dedicated to publishing all trade related laws and regulations. The Ministry should be commended for the Gazette as it comes close to being a single source of all trade and investment related regulations.
- China has made significant strides in e-Government. Government ministries and bodies have established Internet websites to make legislative acts available to WTO Members, the business community and the general public. Many such websites also contain information in English. Such transparency is also evident at the provincial and local levels with governments and many cities with websites.
- Progress in developing a regulatory culture for public consultations can be seen in the procedural transparency practices now applied by MofCOM which regularly engages foreign and domestic enterprises when drafting new laws and regulations. MofCOM has often been noted for providing adequate time-periods for meaningful consultations and incorporating relevant comments within final texts.

Challenges:

- The Gazette does not currently contain *all* new trade- and investment-related legislation. The diversity of publications which contain new legislation – despite efforts by MofCOM to consolidate all trade related laws within a single publication – results in a regulatory environment where new laws including those that affect trade and investment are published, but do not necessarily increase transparency.
- Full information on laws and regulations is often available only in Chinese. And if such information is available in English, it is rarely as complete as the Chinese versions.
- China's general law on transparency, while requiring public consultations, does not contain provisions for *mandatory notice* and comment practices as recommended by international best practices. Time-periods for consultations are often insufficient to allow for comments to be adequately taken into account in the final texts.
- An efficient appeals system is not yet in place.

Recommendations:

- MofCOM should be provided sufficient authority to receive all trade- and investment-related measures for publication in the Gazette.
- Make mandatory the provision of complete draft legislation texts – as opposed to summary provisions – prior to public consultations. This would enable foreign input to reduce the possibility that final legislation contains unforeseen impacts on market openness.
- Require the provision of sufficient time-periods for public consultations that are adequate for comments to be taken into consideration within the final drafts of new legislation.

- Implement a standardised and general regulatory process allowing for foreign enterprises to lodge appeals that would enable misinterpretations of rules and regulations to be corrected, thus reducing regulatory uncertainty and enhancing transparency.
- It is important to maintain efforts towards improving the domestic system of appeals and to ensuring that rules and regulations are clearly defined. It is also critical to continue institution building for an integrated and well-functioning system of appeals with attention to market openness principles. These actions would significantly enhance the overall quality of China's regulatory system.

China's economy has gradually reoriented itself outwards towards greater international trade and investment. This process has benefited greatly from WTO commitments that have locked in initial domestic reforms in the area of **non-discrimination**.

Progress in **non-discrimination**:

- China's efforts to reduce discrimination between domestic and foreign enterprises are apparent in the recent restructuring of regulatory institutions, notably through the creation of MofCOM and the Administration for Quality Supervision Inspection and Quarantine (AQSIQ). The new institutions have created a basis for, and have in-fact, improved the quality of non-discrimination in domestic regulatory processes.
- Trade and investment liberalisation has burnished the attractiveness of China's business environment, which has boosted inward foreign direct investment (FDI). Since joining the WTO, a growing number of industrial sectors have been opened to foreign investors.
- Many services sectors are increasingly open to foreign and private entities and trading rights have been extended to most entities.

Challenges:

- Since 2006, a number of explicitly discriminatory measures were introduced — especially on cross border mergers and acquisitions — that can be seen as erecting barriers to the operation of foreign firms.
- China continues to implement industrial policy interventions.

Recommendations:

- Continue to improve the general and sectoral regulatory framework and eliminate explicit discriminatory restrictions affecting foreign traders and investors, in particular the limitations on the level of foreign ownership in some sectors, and reconsider the screening requirements for cross border merger and acquisition transactions.
- Strengthen training for regulators at the sub-national level on the principles of good regulatory practice including the value of non-discriminatory regulatory practices. Such an effort would enhance overall quality in the administration of regulations and particularly improve market openness.
- Pursue a strategy to harmonise federal and regional trade policy and regulation and ensure its unified implementation throughout China.
- Reconsider the list of restricted and prohibited investment sectors for FDI.

Even when regulations are applied in a non-discriminatory manner, market openness can still deviate from its optimal level if regulatory measures are more restrictive *vis-à-vis* trade and investment than is

necessary to achieve their intended policy goals. Chinese officials are well aware that **unnecessarily** burdensome regulations can **restrict trade**. Efforts at the national level to reduce unnecessarily burdensome regulations have been noteworthy.

Progress in **avoidance of unnecessary trade restrictiveness**:

- Efforts at the national level to reduce administrative burdens or “red tape” have yielded significant results to date.
- The implementation of the *Administrative Permission Law* provided an important example of addressing the administrative oversight and discretion that reduces unnecessary restrictiveness in regulations.
- In 2006, China moved up 15 positions on the World Bank’s ease of doing business, ranking higher than other large developing and transition economies.

Challenges:

- Officials continue to hold broad regulatory discretion when applying a variety of laws and measures. The result is regulatory uncertainty which reduces the confidence of investors considering large and long-term investments within the domestic economy.
- Challenges remain to further advancing reform beyond the wealthier coastal provinces.
- China does not yet have institutions established to review regulatory quality such as regulatory impact assessments (RIAs).
- China’s customs management is facing tremendous pressures with the rapid growth of its foreign trade.

Recommendations:

- Consider applying a review similar to that which accompanied the *Administrative Permission Law*, including a provision for non-discriminatory application, in selected sectors where FDI is substantial and likely to be significant.
- Consider, on a pilot basis, providing the State Council’s Office for Legislation Affairs with the analytical capacity and financial resources to conduct RIAs in co-operation with MofCOM over a pre-defined selection of impending economic draft legislation.
- Pursue regular monitoring of the impact regulatory measures have on the business environment. Continue to foster the awareness of authorities at different levels and responsible agencies of the primary objective of adopted regulatory measures. See to ensure that regulations continue to be systematically applied not only immediately after their introduction but also in the longer term.
- Continue custom reforms, including streamlining and simplifying customs regulations to avoid diverging interpretations by local customs officers; ensure adequate financing, training and technical equipment of customs administration.

The application of different standards and regulations for like products in different countries confronts firms wishing to engage in international trade with significant and sometimes prohibitive costs. There have been strong and persistent calls from the international business community for reform to reduce the costs created by regulatory divergence. One way to achieve this is to promote **harmonisation of domestic towards international standards** where they effectively address domestic regulatory objectives.

Progress in **harmonisation towards international standards:**

- China is increasing its participation in international standards setting bodies, such as the International Organisation for Standardisation. This has resulted in the increasing harmonisation of Chinese standards setting practices with international standards.
- China has aligned over 30% of standards at the national level to international standards. In the review of national standards initiated in April 2004, a large number of standards were abolished and 44% were indicated for revision.
- The *Standardisation Law* is also currently being revised to better support harmonisation of domestic standards.

Challenges:

- Uncertainties exist that China may continue to develop domestic standards that diverge from established international standards.
- Uncertainties remain on when the revision of the Standardisation Law will be complete.

Recommendations:

- Consider including in the revised *Standardisation Law* a provision to guarantee that foreign enterprises will be able to participate in domestic standards setting activities.
- Include a provision within the *Standardisation Law* requiring harmonisation towards international standards as the basis for interventions to harmonise conflicting standards at the national, sectoral, local and enterprise level. Such a provision would facilitate foreign imports *and* support the ability of locally produced goods to be exported internationally.
- Require that the 44% of national standards designated for revision under the recent review be harmonised internationally wherever practicable.
- Develop domestic capacities for accredited certification bodies and allow foreign-owned conformity assessment bodies to operate in China where they qualify.

Streamlining conformity assessment procedures and upgrading conformity assessment capacity not only facilitates the operation of foreign enterprises, but is indispensable if domestic producers are to continue upgrading their export capacities, particularly in more technologically sophisticated goods. China has significantly rationalised its institutions dealing with conformity assessment.

Progress in **streamlining conformity assessment procedures:**

- In March 2006, a new accreditation body called the China National Accreditation Service for Conformity Assessment was established. This new body is responsible for the accreditation of certification and inspection bodies and labs that issue the China Compulsory Certification (CCC) mark.

Challenges:

- Capacity remains limited in relation to the demand for testing. Only Chinese conformity assessment bodies are allowed to conduct assessments and there are no generally applied measures providing for third party testing outside China.

- The insufficient number of accredited domestic conformity assessment bodies continues to result in long delays for testing and certification.
- The introduction of the CCC mark has been marked in practice by inconsistent application as well as duplicative testing requirements.

Recommendations:

- Further developing domestic capacity to accredit certification bodies and allow foreign-owned conformity assessment bodies to operate in China where they qualify.
- Promote the practice of recognising the equivalence of conformity assessment procedures performed in other countries, whether unilaterally (following assessment accompanied by surveillance) or by entering into mutual recognition agreements.

An effective **competition policy** regime will be a critical component of ongoing institutional and regulatory reforms to govern the increasing role of the market in China. The quality of market openness will be crucial to its effectiveness in contributing to economic reform in new sectors. Following 13 years of deliberation, the Standing Committee of the National People's Congress passed the *Anti-Monopoly Law*, which took effect on 1 August 2008.

Progress in **competition principles**:

- After 13 years of deliberation, China now has an *Anti-Monopoly Law*.

Challenges:

- Special attention to market principles is merited when applying the *Anti-monopoly Law* under circumstances involving state-owned enterprises (SOEs). This is particularly the case as the Law contains provisions apparently linking competition policy enforcement to non-competition goals, which may create significant regulatory discretion when applying competition policy in relation to SOEs, and prevent the development of competitive markets that will stimulate and advance economic reform, particularly in new sectors of the domestic economy undergoing liberalisation.

Recommendations:

- Integrating market openness as a consideration within the application of the *Anti-monopoly Law* by the new Anti-monopoly Enforcement Authority. Reinforce the participation of antimonopoly authorities in elaborating trade policy.
- Clearly define the relationship and respective responsibilities of the competition authorities and existing or future sectoral regulatory authorities, to limit the risk of inconsistent approaches on competition issues, and avoid potential uncertainty for business.

In conjunction with this study, the Secretariat worked closely with the Business and Industry Advisory Committee (BIAC) to the OECD and its China Task Force to survey the business community on the specific regulatory barriers they faced in China. Together, a survey was designed and distributed to OECD member country business associations (in English) as well as one Chinese business association (in Chinese) in the latter part of 2007. Close to 150 responses were received and are included in the annex to this report. Some of the results have been used in the analysis throughout the report.

1. The Economic and Policy Environment

1. China is a large and rapidly growing economy that has benefited substantially from international trade and investment. Economic reforms beginning in 1978 under Deng Xiaoping have gradually introduced a market sector within a centrally planned economy, and leveraged international trade and investment to support this process. Often described by Chinese policymakers as “*mo zhe shi tou guo he*”, or “crossing the river by feeling for stones under foot,” China’s piecemeal process of economic reform over the past thirty years has yielded significant results in economic growth and integration into the global economy. Indeed, during the period 1979-2006, China’s GDP grew at an average rate of 9.7% *per annum*, and its integration into the world trading system has been considerable: its share in world goods trade has increased from less than 1% in 1979 to almost 7.6% in 2006. Total exports and imports increased from USD 509 billion in 2001 to USD 1 760 billion in 2006.² In 2005 China became the third largest trading nation after the United States and Germany. Inward foreign direct investment (FDI) grew from essentially zero in 1979 to USD 72.4 billion³ in 2006, thus ranking China behind only the United Kingdom and the U.S. as the third largest recipient of FDI in the world.

2. One of the most significant changes over the past thirty years is the emergence of China’s private sector. In the late 1970s, state-owned enterprises (SOEs) represented 80% of manufacturing output in China. By 2004, state-controlled enterprises (some of which with privately held shares) represented 35% of gross industrial output.⁴ In contrast, the contribution of private enterprises to GDP more than tripled in the period 1999-2004.⁵ When the contribution of foreign-invested enterprises (FIEs) is combined with that of private domestic enterprises, the private sector comprised 48% or nearly half of Chinese GDP in 2004.⁶ A more recent estimate places the contribution of private sector accounts as high as 70% of GDP in 2005.⁷ China has reduced the role of SOEs in most economic sectors save those deemed as having strategic importance. As of 2006, 80% of the assets controlled by SOEs were concentrated in eight “strategic sectors” such as petroleum, natural gas, telecommunications services, power and air transport.⁸

3. China’s accession to the WTO on 11 December 2001 symbolised its ongoing integration into the world economy by providing more secure and predictable market access both for China and its trading partners. WTO accession entailed obligations to implement a spectrum of reforms to broaden the adoption of market-based economic and trade policies. WTO obligations have been important to China not only in terms of locking in existing reforms, but in supporting domestic policymakers when advancing behind-the-border reforms to enhance the quality of existing market liberalisations. WTO obligations have and continue to underpin systemic institutional and regulatory reforms across the administrative bodies governing the Chinese economy.

² UN ComTrade Database (2007).

³ MofCOM website.

⁴ Reform of SOEs has included allowing private holdings of stakes in SOEs in many cases without the government necessarily giving up “control” in the running of the “state-controlled”. EIU (2006b), p. 44.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Business Week (2005).

⁸ Xinhua News Agency (2006b).

1.1 Trade policy developments

4. China's opening to world trade over the past thirty years is one of the more impressive aspects of its economic reform and structural change. China moved from autarky (self-sufficiency) to a more open economy through a gradual and highly managed transition. China began its gradual market opening by allowing export processing on a small scale. As early as 1978, the country began to allow firms in Hong Kong to offer export-processing contracts to workshops in Guangdong province. Initially, export processing was largely restricted to a few authorised special export-processing zones along China's southern coast, but by the mid-1980s it became more widespread. There was intense competition among localities to attract export-processing investments. These special export-processing zones allowed China to rapidly exploit its comparative advantage in low-wage labour.

5. As manufacturers were drawn into world markets, export processing grew substantially, facilitated by currency appreciation in neighbouring Asian countries. With greater incentives to fragment production in search of lower wage labour, investments also increased in China. The result was that this previously closed economy was increasingly integrated into East Asia's dynamic production chains. By the mid-1980s, China had a clear, two-tiered export regime: a very open export processing segment and a domestic sector that was afforded high levels of protection. In particular, the latter could not enjoy duty-free imports. High levels of protection through tariffs and multilayered non-tariff barriers sheltered the domestic market.

6. When China applied to join the GATT in 1986, it was essentially a centrally planned economy with an opaque trading regime, high tariffs and a plethora of non-tariff barriers. Its main trading partners were socialist countries such as the USSR and Yugoslavia. It was not until 1992 when China declared its intention to establish a "socialist market economy" that it began to lower tariffs. At this time China unilaterally began to make substantial tariff cuts. As Table 1 shows, the reduction of tariffs during the 1990s has resulted in China being perhaps one of the most open developing countries to join the WTO in 2001. The simple average Chinese tariff rate was reduced from 42.26% in 1992 to 15.92% in 2001. After accession, the average tariff dropped to 9.82%. Beyond the increase in market access for its trading partners, this reduction has spurred major efficiency and productivity improvements in China.

Table 1. China's Simple and Trade-Weighted Statutory Tariffs, 1992-2006

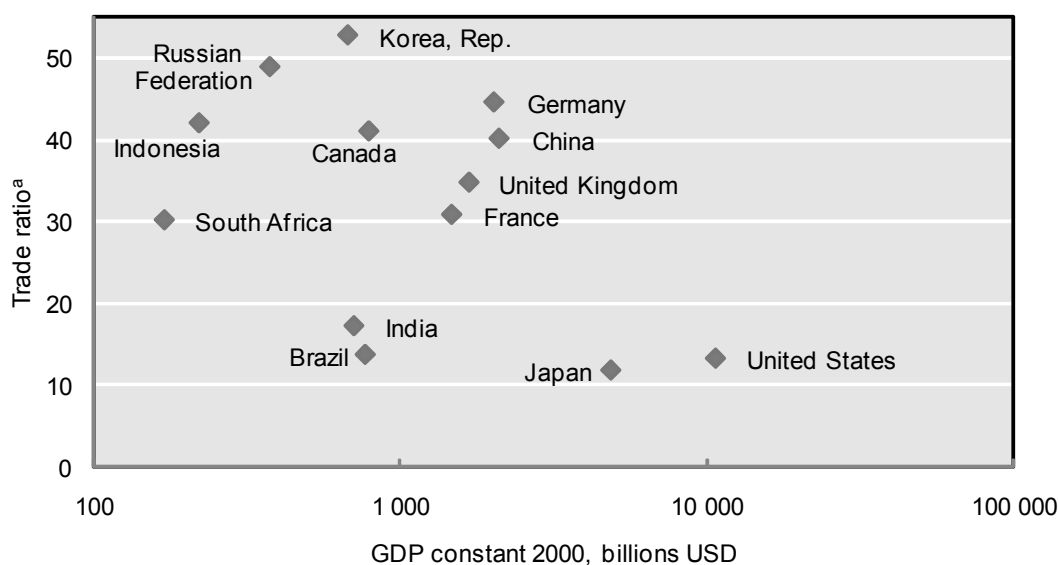
		Percentage				
		1992	2001	2004	2005	2006
Total Trade	Simple Average	42.07	15.88	10.51	9.80	9.82
	Weighted Average	32.17	14.11	5.96	4.90	4.39
Capital goods	Simple Average	27.19	13.79	8.26	8.06	7.86
	Weighted Average	26.65	11.73	4.19	3.93	3.18
Consumer goods	Simple Average	64.04	21.02	14.45	13.31	13.38
	Weighted Average	63.76	18.90	12.41	10.02	9.67
Intermediate goods	Simple Average	35.03	13.39	8.49	7.92	7.92
	Weighted Average	33.59	12.66	7.50	6.54	5.91
Raw materials	Simple Average	32.73	14.41	10.50	9.86	10.27
	Weighted Average	8.63	27.13	5.09	2.61	2.99

Source: UN Trans Database.

1.2 Trade openness

7. China's trade openness can be measured by the ratio of total exports and imports in GDP. This ratio is usually used as an indicator to measure a country's "openness" or "integration" in the world economy but is influenced by various endogenous factors, such as the size of the economy, distance from major or dynamic markets and variations in economic growth. China's trade turnover/GDP ratio is comparatively high in relation to the OECD as well as BRIIC economy averages.

Figure 1. Trade Ratios^{a, b} in BRIICS Countries and Selected OECD Countries, 2006^c



a) Average of exports and imports of goods and services as a share of GDP constant 2000 USD.

b) Logarithmic scale on the horizontal axis.

c) 2005 for Canada, Japan and United States.

Source: WDI.

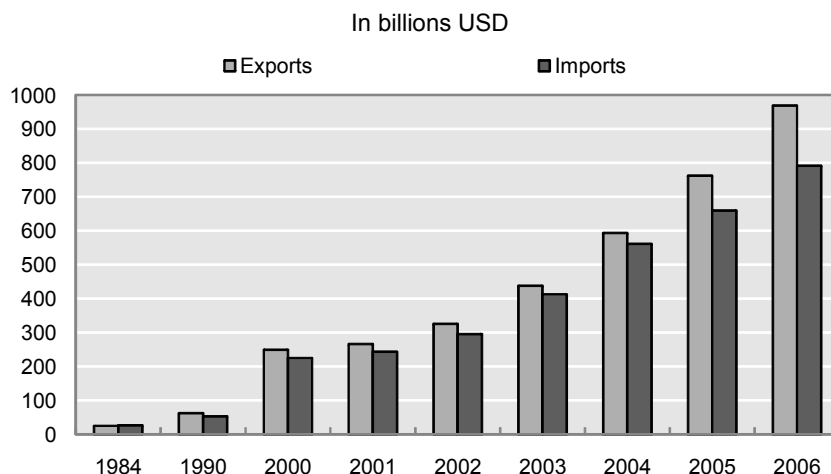
8. The expansion of China's international trade has been the key for its rising prominence in the world economy with average annual growth rates of trade three times world rates. Figure 2 tracks China's goods exports and imports over the past two decades showing a significant surge since its 2001 WTO accession with a trade surplus reaching over USD 177 billion in 2006. Externally, rapid and substantial year-on-year growth in exports is linked to global economic imbalances that appear unsustainable over the long run. The unsustainable nature of China's current trade surplus has received official recognition as a "prominent problem" by the then Chinese Minister of Commerce Bo Xilai, and he has made "reducing the trade surplus a 'top priority' of the year's [2007] foreign trade development."⁹

9. China's trade expansion reflects in part greater specialisation in production in the Asia region. China has emerged as the final processing and assembly platform for a large volume of exports originating from its Asian OECD neighbours but destined for markets in Europe and North America. Almost half of China's exports are part of this "triangular" pattern of trade. This has resulted in a shift in China's bilateral trade relationships that now show increasing trade surpluses with Europe and North America, and rising deficits with many Asian countries. China imported USD 42 billion more from ASEAN and Japan than it exported in 2006. Chinese exports to Europe and North America have grown in parallel over the past half-decade

⁹ CHINA Daily (2007).

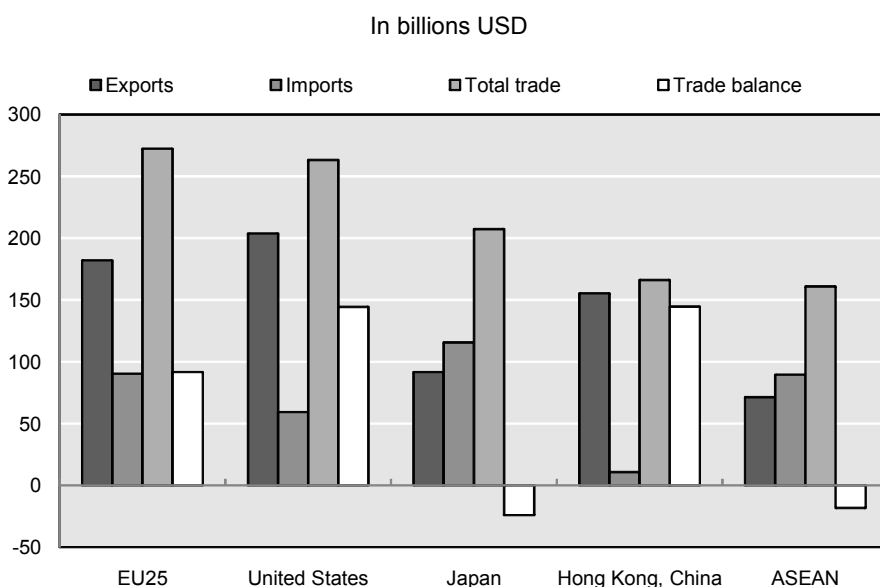
with North America receiving almost USD 22 billion more than Europe in 2006. China's imports from these two regions have not grown as quickly, but show that China imported USD 41 billion more from Europe than from North America (Figure 3).

Figure 2. China: Trend in Foreign Trade, Selected Years



Source: UN ComTrade Database (2007).

Figure 3. China's Top Trading Partners, 2006



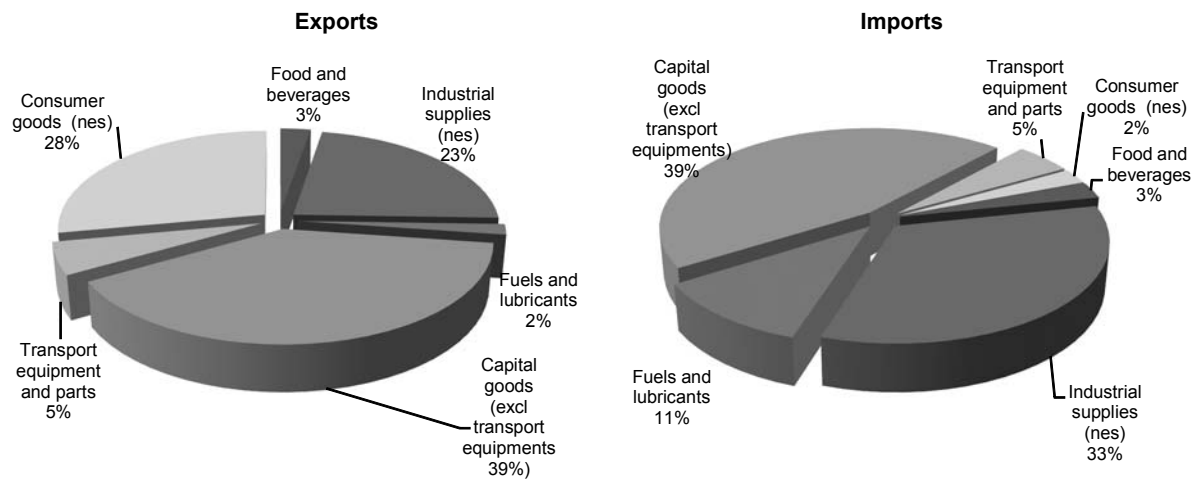
Note: ASEAN corresponds to Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

Source: UN ComTrade Database (2007).

10. China is a major driver of growth in the world economy boosting both global supply and demand with many of its industries completely integrated into global supply chains. China's processing activities have diversified over time from primarily labour-intensive, low technology goods to also include higher

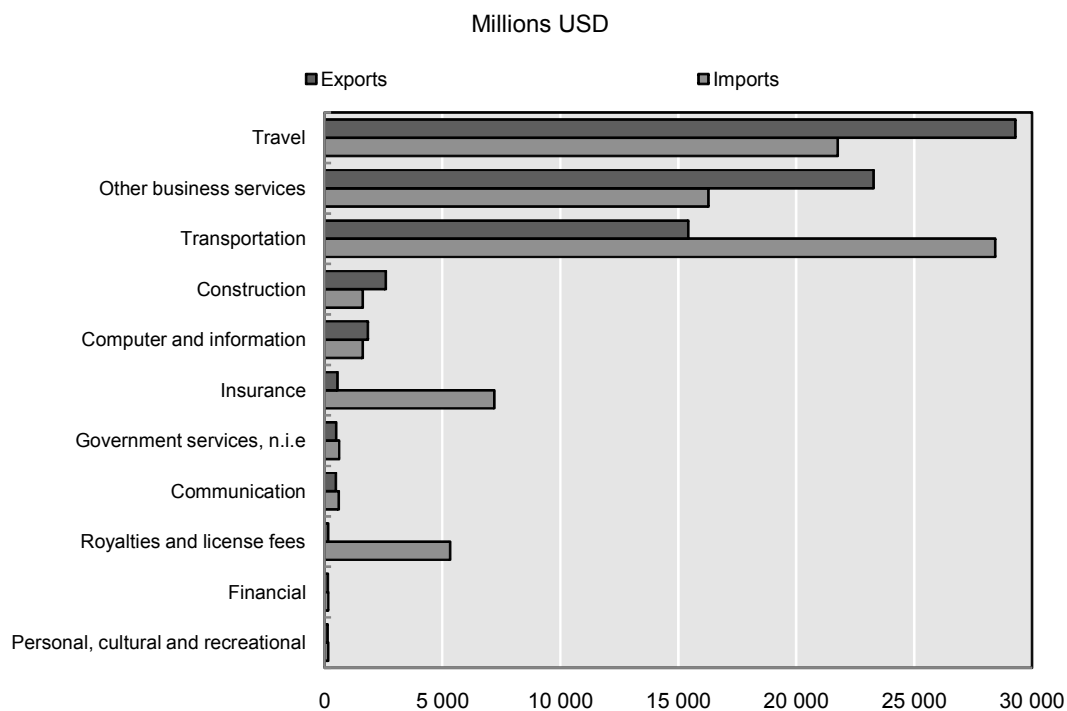
technology products. Although exports are still largely labour-intensive, China has expanded its range of exports over the last 15 years into complex, capital- and technology-intensive goods (Figure 4).¹⁰

Figure 4. China's Foreign Trade Product Structure, 2006



Source: UN ComTrade Database (2007).

Figure 5. China's Services Trade Composition, 2005



Note: Series shown on the chart are ordered by the value of exports in 2005.

Source: IMF Balance of Payments (2007).

¹⁰ For a detailed discussion, see M. Greene, *et al.* (2006).

11. China's achievements in services trade stand in sharp contrast with those in goods trade reflecting both structural and institutional imbalances. The opening up of trade and FDI in manufactured goods has spurred the emergence of a large private sector but in services, there still exist high levels of public ownership and important regulatory barriers. China's services trade is still relatively small, accounting for less than 10% of its total trade and a little over 3% of total world services trade.¹¹ The Chinese Government does see the large potential in promoting its services trade. For the first time in March 2006, China emphasised in its 11th Five-Year Plan (2006-2010) the development of the services sector, stating that the underdevelopment of the sector has had a negative impact on the overall structure of industry, job opportunities and competitiveness and the overall efficiency of its economy.¹² News releases from the MofCOM indicate a goal of concentrating development efforts in sectors such as travel, transportation, insurance, construction, consultancy and IT-related services (see Figure 5 for the sectoral composition of services trade) with a target annual growth rate of 20%. In 2006, services trade volume stood at USD 191.75 billion with the aim to reach USD 400 billion by 2010.¹³

1.3 Institutional reform

12. As part of China's 2001 WTO accession and its further integration into the multilateral trading system, the country committed to adopt more market based economic and trade policy reforms. In order to implement these reforms, China streamlined its bureaucracy and re-organised its major trade-related institutions. Although China's highest executive body – the State Council – has carried out five large-scale institutional reforms over the past 20 years,¹⁴ the 2003 reform put in place the necessary institutions for implementing a more market based policy agenda. In March 2003, the First Session of the 10th National People's Congress approved the State Council's Institutional Restructuring Plan. The Plan reduced the number of ministry-level departments from 29 to 28, created two new departments and restructured five old departments. As a result, several major agencies were formed, including MofCOM (see Box 1). Aiming to integrate China's domestic and foreign trade policy into one ministry, the former Ministry of Foreign Trade and Economic Co-operation and the State Economic and Trade Commission were dismantled and their work incorporated into the new MofCOM.

13. An iterative process of reforming economic policy and then the economic institutions, which carry them out, has come to be the hallmark of the gradualist approach to economic reform in China. Current institutional reforms indicate that China is increasingly orienting its domestic economy to facilitate continued integration with the global economy. China's institutional architecture has historically been characterised by the separation of regulatory institutions handling domestic versus international regulation, even in identical fields of regulation. China's recent institutional reforms, however, have merged institutions once divided by domestic and international work-streams, particularly when they had similar regulatory functions. The mergers that established the Administration for Quality Supervision Inspection and Quarantine (AQSIQ – which will be further discussed in the section *Transparency in the field of technical regulations and standards*) in 2001 and MofCOM reflect this trend in consolidating economic agencies along functional lines. Such consolidation, along the lines followed by many OECD countries, should strengthen China's regulatory capacity to participate in the global economy.

¹¹ IMF Balance of Payments Statistics (2007).

¹² China Internet Information Centre (2006).

¹³ MofCOM (2007).

¹⁴ These reforms are included in documents entitled “*Decision on the Institutional Reform of the State Council*” passed by the 5th National People's Congress on 8 March 1982; the 7th National People's Congress on 9 April 1988; the 8th National People's Congress on 22 March 1993; the 9th National People's Congress on 10 March 1998; and the 10th National People's Congress on 10 March 2003.

14. As is the case with most economies, trade policies in China are oriented towards serving overall national economic objectives. Thus a review of national economic policy objectives is a useful first step in understanding how the development of foreign economic policy will be shaped as domestic economic reforms unfold. National economic policy objectives identified by Chinese economic policymakers as part of its 11th Five-Year Plan include:

- Reducing regional and urban-rural inequality;
- Increasing the efficiency of the economy by reducing natural resource consumption per unit of output;
- Limiting investment (including foreign) in highly polluting industries while supporting investments in cleaner industries;
- Increasing the level of value added in Chinese production;
- Continuing the reform of SOEs – including those related to services;¹⁵ and
- Addressing the large and growing economic imbalances between China and the rest of the world.

Although the underlying policies highlighted above are generally focused on domestic economic objectives, the sheer scale of China's economic relationship with the outside world means that policy regimes established to support domestic economic objectives would inevitably impact China's foreign trade and investment partners.

Box 1. Summary of Ministry of Commerce Institutional Responsibilities

Drafting policies and laws: To draft development strategies, guidelines, policies, laws and regulations for domestic and international trade, economic co-operation and foreign investment.

Domestic trade and distribution: To foster growth of urban and rural markets; to promote restructuring of the commercial distribution sector and the improvement of chain store operations, modern logistics and e-commerce.

Market operation: To research and formulate policies for regulating the market operation and distribution order, breaking up market monopolies and regional blocks; to set up and improve an integrated, open, competitive and orderly market system; and to monitor and analyse market activities and commodity supply and demand.

Commodities import and export: To study and devise measures for the regulation of import and export commodities and compile a catalogue; to organise the implementation of import and export quota plans, decide on quota quantity and issue licenses; to draft and implement import and export commodity quota tendering policies.

Technology trade: To formulate and execute policies concerning trade in technology, state import and export control, and policies encouraging the export of technologies; and to promote standardisation in import and export trade.

International relations: To propose and implement multilateral and bilateral economic and trade co-operation policies; to conduct economic and trade negotiations; to undertake multilateral and bilateral negotiations, trade policy reviews, resolution of national level disputes, and reporting and consulting work on behalf of China within the WTO.

Anti-dumping, anti-subsidy and safeguards: To organise and coordinate the work pertaining to antidumping, countervailing and safeguard measures.

Foreign direct investment (FDI) in China: To provide macro guidance concerning FDI into China; to draft and implement investment policy and reform plans; and to participate in the formulation of mid-term and long-term planning and development strategies for foreign investment utilisation.

Source: Ministry of Commerce website, www.english.mofcom.gov.cn/mission/mission.html.

¹⁵ *Ibid.*

15. For the same reasons that the process of preparing for and implementing WTO obligations has been a cornerstone of economic and institutional reform over the past decade, many potential synergies exist between the national economic objectives highlighted above, and reinforcing market openness across the Chinese economic policy and regulatory framework. Considering and assessing market openness in terms of the six efficient regulation principles developed by the Trade Committee of the OECD (elaborated in next section) supports the ability of policymakers to enhance the openness of their regulatory regimes towards foreign trade and investment, and are independent of new trade liberalisations.

16. OECD experience suggests that enhancing market openness in the design of policies created to address specified policy objectives increase both their efficiency and their efficacy. For instance, many of impediments holding back trade and investment into China's central and western regions are the result of departures from market openness principles. Addressing such departures would greatly enhance the participation of foreign *as well as* domestic enterprises in directing trade and investment to support economic growth in these regions. Similarly, enhancing the protection of intellectual property rights (IPR) might increase the willingness of enterprises to bring the more advanced and cleaner technologies to China thereby increasing the environmental efficiency of China's manufacturing industries.¹⁶ Reducing regulatory restrictions (as opposed to scheduling new liberalisations) on the participation of foreign investment within the environmental sector would hasten the uptake of the most advanced environmental technologies while reducing their cost *via* increased competition among domestic and foreign suppliers. Foreign investment and technology is explicitly welcomed as part of the ongoing process of reforming SOEs.¹⁷ Currently, reform of SOEs is characterised by a policy of "retaining the large and setting free the small", thus allowing market forces including foreign enterprises to participate in the reform of smaller SOEs while reserving privatisation of larger ones for future consideration. While this approach is in continuity with the gradualist approach, the degree market openness reflected in the regulatory infrastructure governing this reform will have significant implications on the extent to which FIEs are able to contribute to this process. Improving the quality of market openness in regulatory systems even in the absence of new trade liberalisations or privatisation may have very large beneficial effects, when viewed in term of attaining the objectives of economic reforms.

2. The Policy Framework for Market Openness: The Six Efficient Regulation Principles

17. With the expansion of economic globalisation and the fall of traditional barriers to trade, the complementarities of market openness and regulatory reform are increasingly important. Trade and investment liberalisation can be an important factor in successful regulatory reform, while regulatory reform can play a strong role in ensuring that liberalised conditions for trade and investment bring the expected benefits in terms of economic performance. When designed and implemented properly, regulatory reform establishes domestic regulatory environments that improve efficiency and increase the flow of international trade and investment. Good regulation encourages productivity gains, investment and innovation, job creation, and boosts growth and competitiveness. The prospect of these domestic benefits is the basic and indispensable rationale behind regulatory reform.

18. An important step to ensure that regulations do not unnecessarily reduce market openness is by building efficient regulation principles into domestic regulatory processes for social and economic regulations, as well as for administrative practices. Trade policy makers have identified six principles as key to market-oriented, trade and investment friendly regulation. They reflect the basic principles underpinning the multilateral trading system. The OECD's six efficient regulatory principles for market openness are: (i) transparency and openness of decision making processes; (ii) non-discrimination; (iii) avoidance of unnecessary trade restrictiveness; (iv) use of internationally harmonised measures; (v)

¹⁶ OECD (2005a), p. 459-6.

¹⁷ WTO (2006b), p. 6.

streamlining conformity assessment procedures; and (vi) application of competition principles from a market openness perspective (see Box 2). This paper looks at China's market openness from the perspective of its regulatory infrastructure.

Box 2. The OECD Efficient Regulation Principles for Market Openness

To ensure that regulations do not contradict and reduce market openness, "efficient regulation" principles should be built into the domestic regulatory process and practices. Trade policy makers have identified these principles as key to market-oriented trade and investment-friendly regulations. They reflect the basic principles underpinning the multilateral trading system.

Transparency and openness of decision making: Foreign firms, individuals and investors seeking access to a market must have adequate information on new and revised regulations so that they can base their decisions on accurate assessment of potential costs, risks and market opportunities.

Non-discrimination: Non-discrimination means equality of competitive opportunities between like products and services irrespective of country of origin.

Avoidance of unnecessary trade restrictiveness: Governments should use regulations that are not more trade restrictive than necessary to fulfill legitimate objectives.

Use of internationally harmonised measures: Compliance with different standards and regulations for like products can burden firms engaged in international trade with significant costs. When appropriate and feasible, internationally harmonised measures should be used as the basis of domestic regulations.

Streamlining conformity assessment procedures: When internationally harmonised measures are not possible, necessary or desirable, recognising the equivalence of trading partners' regulatory measures or the results of conformity assessment performed in other countries can reduce the negative effects of cross-country disparities in regulations and duplicative conformity assessment systems.

Application of competition principles from a market openness perspective: Market access can be reduced by regulatory action ignoring anti-competitive conduct or by failure to correct anti-competitive practices, particularly by incumbent firms which are normally also domestic.

Source: OECD (2002), "Integrating Market Openness into the Regulatory Process: Emerging Patterns in OECD countries" [TD/TC/WP(2002)25/FINAL], 17 February 2003.

2.1. Transparency and openness of decision making

19. Transparency in domestic regulatory processes is a fundamental determinant of market openness for both domestic and foreign participants. It is important for market participants to fully understand the regulatory environment in which they are operating to have opportunities to contribute to regulatory decision-making processes, thus supporting the quality and effectiveness of market access.¹⁸ In order to ensure international market openness, the process of creating, enforcing, reviewing or reforming regulations needs to be transparent and open to foreign firms and individuals seeking access to a market, or expanding activities in that market.

20. From an economic point of view, transparency is essential for market participants in several respects. Transparency in the sense of information availability offers market participants a clear picture of the rules by which the market operates, enabling them to base their production and investment decisions on an accurate assessment of potential costs, risks and market opportunities. It is also a safeguard in favour of equality in competitive opportunities for market participants and thus enhances the security and predictability of the market. Such transparency can be achieved through a variety of means, including systematic publication of proposed rules prior to entry into force and use of electronic means to share information, such as *via* the Internet. Transparency of decision making further refers to dialogue between

¹⁸ For descriptions of OECD's six efficient regulation principles, this paper draws from P. Czaga (2004).

regulators and affected parties, which should offer well-timed opportunities for public comment, and rigorous mechanisms for ensuring that such comments are given due consideration prior to the adoption of a final regulation. Market participants wishing to voice concerns about the application of existing regulations should have appropriate access to appeal procedures. Such dialogue allows market forces to become part of the regulatory process thus facilitating the avoidance of trade frictions.

21. Regulatory transparency, that is equal access to information on the legal and regulatory framework, is a pre-requisite for effective competition. It is essential to all market participants, but particularly to foreign operators coping with additional obstacles such as language barriers and country specific business practices. Regulatory transparency has three main aspects: (i) access to information on existing regulations, (ii) openness to the rulemaking process through public consultation prior to the adoption of final regulations, and (iii) the possibility of market participants to access appropriate appeal procedures. In addition, transparency is essential for ensuring international competition in two specific areas: (iv) technical regulations and (v) government procurement.

2.1.1 Information dissemination

22. The first aspect of transparency is easy and open access to information. Every firm operating in the market should have information about regulations, procedures, and other measures that affect its interests and indicate the conditions, constraints and risks that firms will encounter in the market. Having all this information reduces uncertainties over applicable requirements, helps companies to better foresee the costs and returns of their trading activities and investments. Access to information is particularly relevant for foreign firms and new market entrants as they are often unfamiliar with the local regulatory environment, and at times the economic, political, social and cultural environments.

23. In its efforts to ensure transparency in terms of information dissemination, China has committed to publish and make readily available all laws, regulations and other measures concerning trade in goods and services. China has gone a step further than many WTO members in terms of its transparency commitments by establishing an enquiry point (discussed below). The enquiry point is responsible for addressing requests for clarification of laws and regulations affecting trade and to providing all laws and regulations in Chinese as well as one official WTO language. Since 1987, China has drawn up more than 280 transparency related laws and regulations.¹⁹ Although not trade specific, the Chinese government recently made significant efforts to increase transparency by adopting its first nationwide government information disclosure system on 24 April 2007 – which took effect on 1 May 2008 – with the *Regulations of the People's Republic of China on Open Government Information* (OGI Regulations).²⁰ The OGI Regulations put forward two ways of assessing government information. First is dissemination by government agencies, on their own initiative and second, disclosure in response to requests for information within 15-30 business days. Importantly, the OGI Regulations will apply not only to the central but also to the provincial, country and township levels of government. Its success, however, will depend on the quality by which the OGI Regulations are implemented and enforced.

Publications

24. The *Legislation Law*, which came into effect in July 2000, requires that all laws and regulations except those enacted by the National People's Congress (NPC) be published prior to their coming into force. This legal guarantee of transparency was an important step in the development of transparency in the area of publications. In 2002, the State Council issued the *Notice on how to handle notification, enquiry and review after entry into WTO issued by the office of State Council*. New laws and regulations of the

¹⁹ WTO (2006d), p. 37.

²⁰ See J. P. Horsely (2007).

People's Republic of China can be found on its official website in Chinese, www.gov.cn, and are often available in English, www.english.gov.cn. The General Office of the State Council has designated China *Foreign Trade and Economic Co-operation Gazette* (Gazette); issued by MofCOM as the publication dedicated to publishing all trade related laws and regulations. The State Council stipulated that the Gazette would appear on a regular basis and be readily available to individuals and enterprises.²¹ It is available on the Ministry's official website at: www.mofcom.gov.cn.

25. By March 2006, the State Council issued a notice directing all central, provincial and local government entities to send all trade related measures to MofCOM for publication in the Gazette.²² MofCOM has sought to make the Gazette a single source for trade and investment related regulations. However, research suggests that although most laws and regulations affecting trade and investment are published in some format, they are not always published in the Gazette. In April 2006 at the U.S.-China Joint Commission on Commerce and Trade (JCCT), the Chinese authorities agreed to publish all laws, regulations and other measures of all government ministries and agencies at all levels pertaining to or affecting trade in goods, services, IPR and the foreign exchange regime in the Gazette.²³

26. Indications are that within the past year, other ministries are increasingly publishing their laws and regulations in the Gazette. However, one source claims that many ministries still fail to publish their final policies and MofCOM has no administrative powers to enforce compliance.²⁴ Even with the availability of information from other on line sources (such as www.Chinaonline.com and www.sinolaw.com in English and www.sohu.com in Chinese), a consolidated and comprehensive journal is still needed.

27. Information on the General Administration of Customs in China can be found in the quarterly publication, *China Customs* published on the website: www.customs.gov.cn. Additional, information can also be found in the *Chinese Statistical Yearbook* published on the website: www.stats.gov.cn. Data on regulatory measures concerning foreign exchange is available at the website of State Administration of Foreign Exchange: www.safe.gov.cn, where an email (safe-info@mail.safe.gov.cn) is provided to allow for more detailed inquiries.

28. A predictable policy environment and simplified procedures are perhaps the two fundamental components of transparency. In the OECD business survey, foreign firms from OECD member countries were asked questions on issues of transparency and predictability of laws and economic policies. Even with significant progress in improving transparency since WTO accession, the survey indicated there were still problems with up to date information on existing policies. More than 55% of the respondents indicated that medium to serious problems existed (Annex Table 7). When asked about information on changes in regulations, the results showed similarly that almost 59% of the foreign firms reported medium to serious problems (Annex Table 8).

Notification, enquiry and translation

29. As part of its commitments under the WTO, China agreed to establish an enquiry point to provide trade related information and authoritative replies on the interpretation of Chinese laws and regulations relating to trade. On 1 January 2002, the former Ministry of Foreign Trade and Economic Co-operation issued the *Measures on China WTO notification and enquiry centre* (Measures) to provide WTO members, enterprises, individuals and the public with information about the laws, regulations and other measures

²¹ MofCOM (2002a and b).

²² USTR (2008).

²³ JCCT (2006).

²⁴ USFCS (2007), p. 116.

pertaining to or affecting trade.²⁵ China's *WTO Notification and Enquiry Centre*²⁶ was subsequently established as a bureau under the supervision of MofCOM to take charge of notification and enquiry. The Measures require that replies to requests for information should generally be provided within 30 days. In exceptional cases, replies may be provided within 45 days with a prior notice of the delay and a written explanation of the reasons for the delay. The Measures also indicate that replies shall be complete and represent the authoritative view of the Chinese government. Little information was available on the effectiveness of the enquiry point at the time this report is being prepared; however, one source indicates that foreign enterprises have had difficulty obtaining replies from the enquiry point in at least one of the official WTO languages (English, French and Spanish).²⁷

30. China made a strong commitment to translating all laws, regulations and other measures concerning trade into at least one of the official WTO languages²⁸ as part of its WTO accession commitments. As early as 2006, 96% of Central Government institutions and most of the local governments have launched their respective official websites;²⁹ however, the amount of information available on the websites varies significantly, particularly at the local level. An OECD study published in 2005 indicates that Chinese officials are well aware that their websites may be used from outside China. It found that 53.6% of Chinese government websites had English versions, 10.4% had Japanese versions and that 22.3% had traditional Chinese character versions that are used in Chinese Taipei and Hong Kong, China.³⁰

2.1.2 Consultation mechanisms

31. A second fundamental aspect of transparency refers to the openness of the regulation-making process, in particular, providing an opportunity for all stakeholders to participate in formal or informal consultations. Consultations and the equality of access to them have important effects on the quality and enforceability of regulations in general, on the efficiency of economic activities, and on the level of market openness.

32. The Chinese government is seeking to support the consultation process with pronouncements at higher political levels and experimentation in limited circumstances. In March 2006, Wu Bangguo, Chairman of the NPC's Standing Committee in his annual report to the Standing Committee of the 10th National People's Congress reinforced the need for public consultation. He stated that China would further promote democratic principles in its legislation by increasingly soliciting public opinion. "We will continue to publish draft laws, to solicit suggestions and to hold increased public hearings on bills which the public care about the most."³¹ One example has been the draft *Law on Property Rights*. Appearing in print media and the Internet on July 2005, the draft law received 6 515 suggestions in the first 16 days³² and had received a total of 10 000 comments by March 2006. A year later in March 2007, China's National People's Congress adopted the law which came into effect on 1 October 2007.

²⁵ WTO Notification and Enquiry Center of the Chinese Government (2002).

²⁶ Contact details are: MOFCOM Enquiry Center, Mr Mu Zhonghe, Department of WTO Affairs, Tel: 86-10-6519-7341, Fax: 86-10-6519-7340, Email: muzhonghe@mofcom.gov.cn.

²⁷ USFCS (2007), p. 116.

²⁸ WTO (2001), pp. 69-70.

²⁹ WTO (2006b), p. 12.

³⁰ OECD (2005a), p. 155.

³¹ China News (2006).

³² China News, (2005).

33. The text of the *Legislation Law*, which was adopted in March 2000, included procedural allowances for consultations that support transparency in the rulemaking process. Article 34 of the *Legislation Law* sets mandatory requirements for lawmakers to seek public comment and consultation.

“For a bill which has been put on the agenda of the session of the Standing Committee, the relevant special committee and the office of operation of the Standing Committee shall hear the opinions of the concerned constituents. In gathering opinions, various methods may be adopted, such as panel discussions, feasibility studies, meetings, hearings, etc.”³³

The Article continues by requiring that the Standing Committee of the NPC shall distribute the draft law to the relevant agencies, organisations and experts for comments, and shall prepare a collection of the comments for submission to the Legislative Committee and the relevant special committees. Although certain procedures for consultations are required under this law, further clarification on the definition of the term “concerned constituents” and the meaning of the phrase “hear the opinions” would enhance the ability of the legislation to create transparency. Similarly, explicitly defining foreign enterprises as potential concerned constituencies and requiring lawmakers to reflect the outcomes of consultations with them in finalised laws are areas where changes would strengthen market openness.

34. Provisions of draft legislation with adequate time for meaningful consultations with all relevant stakeholders are the cornerstones of a predictable regulatory environment that is conducive to large and long term investments, which maximise overall welfare. Indications exist that China has made progress in the transparency of its rule-making process. In specifically allowing for public consultations on draft legislation, the *Legislation Law* has advanced this area of reform. Consolidating the benefits of transparency in the rule-making process will require further that consultations are mandatory for all relevant stakeholders and that draft laws similarly be made available prior to consultations. The current approach of providing “guidance” or “opinions” to select stakeholders³⁴ has meant that lawmakers are not implementing laws with input from all relevant stakeholders. As a result, not all interested stakeholders (often foreign ones) are able to provide relevant information to lawmakers on how legislation can be improved. This is particularly the case when foreign enterprises are not provided with draft legislation for review in instances where domestic stakeholders have had access to draft legislation.³⁵

35. China has demonstrated an increased commitment to regulatory transparency. Recent studies notes that foreign businesses have had the opportunity to comment on the draft *Labour Contract Law*, the *Anti-Monopoly Law* as well as many industry-specific regulations.³⁶ Although foreign enterprises are sometimes included among the “concerned constituents”, they tend to be treated less favourably than domestic counterparts. The study further indicates that authorities often circulate drafts to academics, individuals and some of the affected companies, but often exclude foreign firms. Summaries of provisions rather than the full drafts of the laws are released, little information is provided on time frames for written comments or, if timeframes are included, they are much shorter than international standards.³⁷

36. Similarly, foreign enterprises were not consulted or provided draft legislation for consideration in a recent case concerning new regulations on cross-border mergers and acquisitions.³⁸ The MofCOM posted

³³ Article 34 of *Legislation Law*, www.novexc.com/legislat_law_00.html.

³⁴ USFCS (2007), p. 116.

³⁵ *Ibid.*

³⁶ American Chamber of Commerce (2007), p.18 and European Union Chamber of Commerce in China (2007), p. 11.

³⁷ *Ibid.*, American Chamber of Commerce (2007)

³⁸ OECD (2006b).

in Chinese on its web site³⁹ a new set of *Regulations on the Acquisition of Domestic Enterprises by Foreign Investors* (2006 Regulations) to take effect on 8 September 2006. The 2006 Regulation had been posted only one month earlier and there appears to have been no notification to the relevant external parties concerned and no opportunity to submit comments.⁴⁰

37. This lack of consultation is also evident in the OECD survey on the business environment in China. Foreign firms were asked about the adequacy of consultation with business entities prior to introducing new laws or economic policies. The results showed that over 70% of the firms surveyed found there were medium to serious problems (Annex Table 10). When asked specifically about access to information on legislation regarding mergers and acquisitions, over 56% of the respondents reported difficulties (Annex Table 16).

38. There are examples where the government is trying to improve consultations with the relevant parties. The *Provisional Regulation on Administrative Transparency* (Provisional Regulation) applied by MofCOM is a useful example already operating within the Chinese regulatory system. The Provisional Regulation requires the ministry to release drafts of rules that may affect non-government interests for a minimum 10-day comment period and to take public comments into consideration when the draft regulations are finalised. The rules also describe the channels to be used to disseminate the drafts and the publication deadlines for each channel. The Provisional Regulation may be a case in which WTO accession has supported beneficial domestic regulatory reform as it is substantively related to the 2002 State Council *Notice on how to handle the notification, enquiry and review work after entry into WTO issued by the office of State Council* (Notice). The Notice mandated that a reasonable period of time should be granted to collect comments and suggestions after the publication and before the enforcement of the laws, administrative regulations and other measures involving or affecting trade (except those involving national security, the foreign exchange rate and monetary policies and those measures, the publication of which, would obstruct their enforcement).

39. The Ministry of Commerce has issued several key drafts for public comment, including the 2004 amended *Foreign Trade Law*. Mr. Shang Ming, the Director-General of the Treaty and Law Department of MofCOM, noted that the ministry solicited widely the opinions of domestic experts, scholars and institutions during the drafting process of the revised *Foreign Trade Law*. These included commercial branches of foreign organisations, economic representative institutions and FIEs in China.⁴¹ Many of the comments on the draft from foreign interests have been incorporated into the final law. In a similar example, the consultation process applied in the preparation of China's *Anti-monopoly Law* has been commended both for the transparency of the process, as drafts had been provided to relevant stakeholders including foreign ones throughout the process, and for the fact that the comments had been reflected in the subsequent drafts.⁴²

40. Important signs of the Chinese government's own efforts to review transparency can be found in a State Council report published in early 2006 which presented an evaluation of government websites.^{43,44} The findings of the study notably support the reform of transparency regulations in the direction of the

³⁹ MofCOM (2008), Invest in China website, www.fdi.gov.cn.

⁴⁰ See OECD (2006d), pp. 2 & 4.

⁴¹ The first amendment of the *Foreign Trade Law* was completed on 6 April 2004, www.gddoftec.gov.cn/wjmx/Detail.asp?ID=2629.

⁴² USFCS (2006), p. 155.

⁴³

⁴⁴ CCID Consulting Co. (2006).

Provisional Regulation applied by MofCOM. This study and the updated information from the WTO's Trade Policy Review of China reported that by end 2006, of the 76 agencies under the State Council, including ministries, public institutions, offices and administrations, 73 agencies had official websites. For local government, all 31 provincial governments and 323 of 333 city governments had websites.⁴⁵ The study further found that the websites provided facilities for public feedback through suggestions boxes, contact points for relevant officials and public opinion surveys. However, little information was available regarding the responsiveness of the government to such feedback. Indeed the study highlighted the need for mechanisms to ensure that suggestions and opinions can be assessed and responded to in a timely and accountable fashion.⁴⁶

2.1.3 Appeal procedures

41. A third important aspect of transparency is the openness of appeal procedures. Market participants with concerns about the application of existing regulations often find it important to have appropriate access to appeal procedures. Regulations are better accepted and work more efficiently if both domestic and foreign economic actors have access to remedies when they are confronted with overly burdensome or unclear regulatory requirements or unsatisfactory results. These remedies can be included in formal legislation, or they might be part of effective informal channels for lodging and advancing complaints that are open to domestic and foreign parties. In either case there should be clearly defined time limits for appeals processes, and adequate explanations, for example when requests are denied.

42. Systematic and transparent procedures for appeals remain an important instrument of transparency as they allow misinterpretations of laws and regulations to be reviewed and corrected. A smoothly operating appeals system clarifies the meaning of laws by reducing the uncertainty created when instances of misinterpretations are left unchallenged. A culture traditionally more supportive of mediation over legal outcomes resulting from adversarial approaches, China's legal system continues to place heavy emphasis on mediated outcomes. Today, it remains the case that more than half of legal cases are resolved through mediated outcomes, although it is unclear if challenges to administrative actions are included in this figure.⁴⁷

43. The "Regulatory Reform and Management" chapter of the OECD publication *Governance in China* indicated that efforts have been made to strengthen the process of judicial review in China and improvement is likely to continue "incrementally". Hurdles to substantial improvements in the short run stem from a culture and history that leave China today with the interconnected difficulties of insufficiently qualified judges, pervasive corruption and significant limitations on judicial independence.⁴⁸ As part of its WTO accession commitments, China agreed to establish "tribunals" in which appeals could be made regarding administrative decisions and interpretations of trade related laws and regulations,⁴⁹ but no data on the operation of tribunals was available at the time this report was being prepared.⁵⁰ The *WTO Report of the Secretariat* prepared for the Trade Policy Review conducted on China in 2006 indicated that in the case of appeals regarding administrative procedures, parties are able to make appeals to higher courts. Where an appeal has been made to the people's court of second instance, the decision is final. Only in

⁴⁵ WTO (2008b), p.30

⁴⁶ CCID Consulting Co. (2006).

⁴⁷ WTO (2006d), p. 33.

⁴⁸ OECD (2005a), p. 296.

⁴⁹ WTO (2001), pp. 14-15 and 75.

⁵⁰ USTR (2006), p. 159.

cases where the relevant procuratorate considers that the decision is in error is there a possibility for a retrial at the same level as in the previous case.⁵¹

44. In the OECD business survey, several questions were asked regarding the legal rights of foreign firms to contest Chinese administrative decisions. When asked about access to appeal and arbitration, almost two-thirds of the surveyed firms noted that there were serious to medium problems (Annex Table 12). The OECD foreign firms were asked questions about access to appeal and arbitration procedures, whether rules and proceedings were clear and transparent and if appeal and arbitration procedures were rapid and effective. Over 70% of surveyed firms indicated that problems existed with the manner in which rules and proceedings were conducted both in terms of uniformity and impartiality (Annex Table 14).

2.1.4 Transparency in the field of technical regulations and standards⁵²

45. Transparency in the field of technical regulations and standards is essential for firms facing diverging national product regulations. Transparency reduces uncertainty over applicable requirements and thereby facilitates access to domestic markets. Best practice in transparent regulatory regimes entails not only access to information, but transparency in the standards setting process. The area of standards development is one in which the ability of all stakeholders, including foreign ones, to contribute to the process will lead to the adoption of standards that are both effective in attaining regulatory objectives and are efficient in the manner that they do so. Significant efforts to restructure the standards related bodies in China have fostered more coherent institutional relationships and contributed to transparency in the field of technical regulations and standards.

46. Prior to China's entry into the WTO, the country's regulatory system for standards and conformity assessment was fractured. There existed different schemes, product catalogues, charges and technical requirements run by different organisations. Such regulatory divergence in technical regulations and standards made the system opaque and created obstacles to domestic and international trade alike. In anticipation of its WTO accession, China undertook significant institutional restructuring and regulatory reforms to enhance the coordination and transparency of its standards and technical regulations framework. Regimes were put into place to address problems that foreign companies had encountered in locating relevant regulations and understanding how they would be implemented. Steps were also taken to overcome poor coordination among the numerous regulators in China. The intended result was to unify technical regulations, standards and conformity assessment procedures; create one compulsory product catalogue and mark; and standardise charges. By enhancing transparency at the systemic level, regulatory uncertainty was to be reduced both for domestic and foreign enterprises.

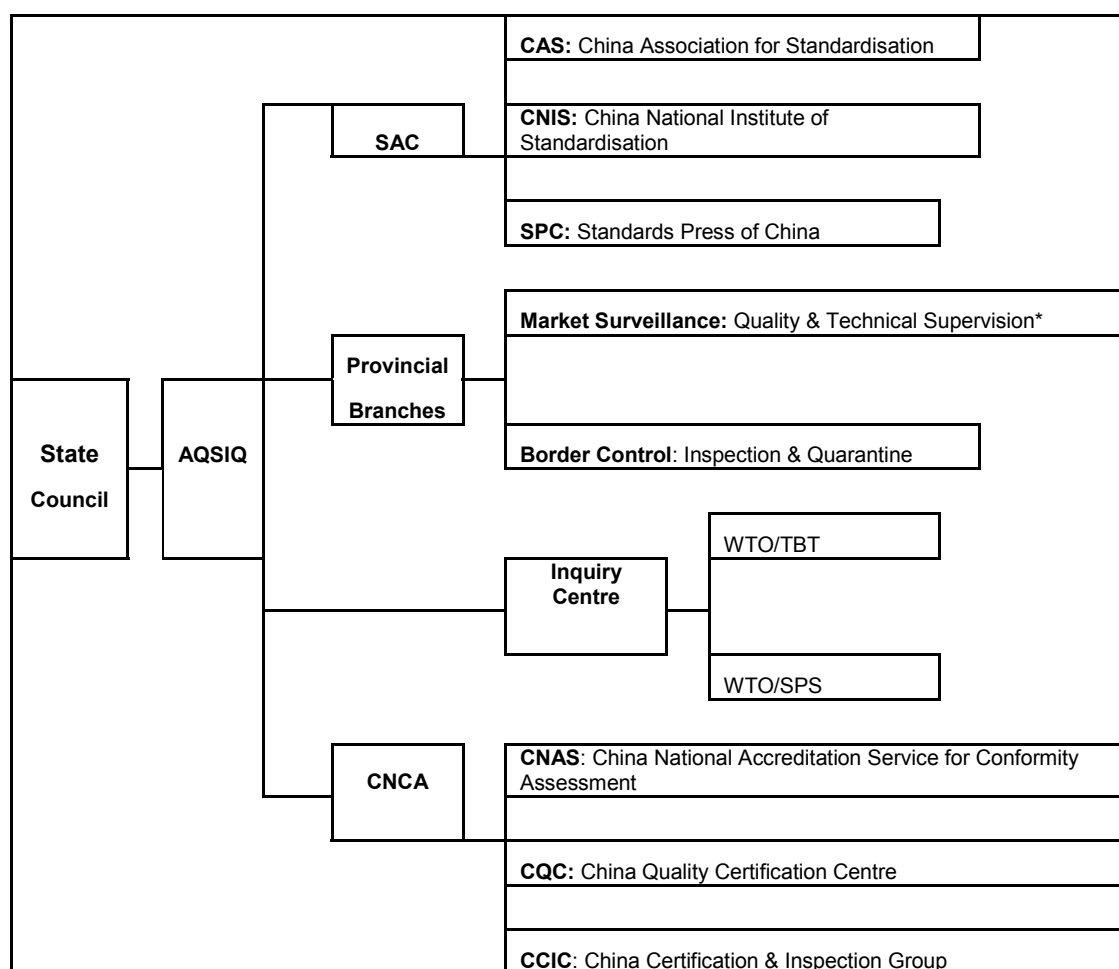
47. In 2001, China began to take steps to address problems associated with its multiplicity of standards setting and conformity assessment bodies. In April, the State Council merged the former State Administration for Entry-Exit Inspection and Quarantine (CIQ) and the State Quality and Technical Supervision Bureau (QTSB) into a new ministerial-level agency: the Administration for Quality Supervision Inspection and Quarantine (AQSIQ). The merger was designed to eliminate discriminatory treatment of imports and requirements for multiple testing (see Diagram 1). AQSIQ's administrative authority is broad. It manages China's standards and conformity assessment regulatory structure, enforces compliance with certification requirements, and conducts quality entry-exit inspections for commodities. AQSIQ reviews and approves China Compulsory Certification (CCC) product catalogue issued jointly with China Certification & Accreditation Administration (CNCA).

⁵¹ WTO (2006d), p. 33.

⁵² In accordance with established terminology in the WTO TBT Agreement, technical regulations are documents with which compliance is mandatory, while standards provide rules and guidelines for common and repeated use but compliance with them is not mandatory.

48. The significant efforts put into overhauling the standards regime have advanced institutional coherence and thus transparency. This process is ongoing and much scope exists to improve regulatory quality to meet the potential enabled by the new institutional relationships. The consolidation of two former agencies to create AQSIQ in the standards area resembles the creation of the MofCOM from two functionally similar organisations that were previously autonomous due to the historical division of labour between agencies dealing with international versus domestic affairs. The sheer number of agencies that are involved at different levels of government among which AQSIQ must coordinate activities, however, makes the product of this merger in the standards regime much more complex.

Diagram 1. China's Re-Organisation of Regulatory Agencies



* Also reports to local government.

Source: various Chinese government web sites.

49. Difficulties with coordination continue to prevent the reorganisation from yielding the full transparency benefits that it was intended to create. The sense that the reorganisation has taken place institutionally while not necessarily in operation is most evident in the case of China's notification of technical regulations and assessment procedures to the WTO. MofCOM has been designated as the single authority for making notifications on technical and SPS standards to the WTO. This was due to the long list of Chinese government ministries and agencies that are able to approve and promulgate technical

regulations.⁵³ Institutional reforms have been implemented to require domestic standards setting organisations to report all new standards to MofCOM. It has in-turn established under its authority the WTO/TBT National Notification and Authority and Enquiry Point both to notify new Chinese standards to the WTO and to receive comments on them from WTO members (see Box 3). Concerns remain that with the exception of AQSIQ and the Standardisation Administration of China (SAC), other standards setting agencies are not fulfilling their reporting requirements to MofCOM and thus the WTO.⁵⁴ To address this situation, an interagency committee chaired by AQSIQ was formed in 2003 to try to achieve better co-ordination for reporting new technical standards to MofCOM.⁵⁵

Box 3. The WTO/TBT National Notification and Authority and Enquiry Centre

To strengthen the transparency of its technical regulations, standards, and conformity assessment obligations in relation to the WTO Agreement on Technical Barriers to Trade (TBT) and Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), and facilitate the understanding of foreign firms regarding such procedures, Chinese authorities have established the WTO/TBT National Notification Authority & Enquiry Point of PRC (www.tbt-sps.gov.cn). The Enquiry Centre operates under the AQSIQ and liaises with the WTO TBT and WTO SPS committees in Geneva.

The Enquiry Centre serves three primary functions. The first is responding to TBT-related inquiries from other WTO members on China's standards and conformity assessment framework. Second, it represents China when submitting TBT-related inquiries to other WTO members and conducting research on international standards and technical regulations. When other countries issue technical standards or conformity assessment requirements, Chinese authorities may ask the Enquiry Centre to provide technical support through research and analysis to determine whether the standards are scientifically based and reasonable. Third, the Enquiry Center also serves as the clearinghouse for notifying the WTO of all new standards adopted within China (as required by the WTO) and is the repository for the catalogue of existing Chinese standards.

To advance transparency and understanding of TBT and SPS issues among Chinese regulators, the Enquiry Centre conducts training sessions on issues related to WTO obligations including inspection and quarantine. Using the train-the-trainer approach, the Enquiry Centre has trained employees from the AQSIQ, the State Council, associations and industry representatives.

Source: www.tbt-sps.gov.cn.

50. Increased effort to ensure that draft standards are complete enough for effective review and that adequate time is allowed for meaningful consultations on draft standards is elemental to reaping the benefits of transparency in the rulemaking process. The periods provided for comments by China on new draft standards after they have been notified to the WTO have sometimes been insufficient to allow for meaningful consultations.⁵⁶ Clear efforts have been made by China to move its standards regime towards international practice; however, foreign enterprises continue to experience difficulties attaining membership to private standards setting bodies in China. On occasions that foreign enterprises have been able to secure membership, it has been in a non-voting capacity and foreign firms have had to pay membership dues much higher than their domestic counterparts. Renewed effort to engage all stakeholders

⁵³ These include: MofCom, Ministry of Education, Commission of Science, Technology and Industry for National Defence, Ministry of Public Security, Ministry of Civil Affairs, Ministry of Land and Resources, Ministry of Construction, Ministry of Railways, Ministry of Communications, Ministry of Information Industry, Ministry of Commerce, Ministry of Agriculture, Ministry of Health, General Administration of Customs, State General Environmental Protection Administration, General Administration of Civil Aviation, State Administration of Radio, Film and Television, State Drug Administration and State Forestry Administration.

⁵⁴ USFCS (2006), p. 128.

⁵⁵ *Ibid*, p. 128.

⁵⁶ USTR (2006), p. 109.

within the standards setting process will be needed to improve transparency in China's standards setting process.

51. In a further move to restructure and increase transparency, China established a new accreditation body called China National Accreditation Service for Conformity Assessment (CNAS) in March 2006. In addition, China replaced the CCIB mark for imported products and the Great Wall mark for domestically produced goods with China Compulsory Certification (CCC) mark in August 2003. The establishment of the CCC was an important achievement in that it sought to remove the distinction between compulsory standards for products intended only for domestic use and those traded internationally. The CCC should thus reduce inconsistency and support more uniform quality product standards for Chinese consumers. To enhance the benefits of implementing the CCC mark, however, more effort should be directed both to clarifying the definition for products requiring this certification and to improving the consistency by which regulators identify such products.⁵⁷

2.1.5 Transparency in government procurement

52. Transparency of procedures and practices relating to government procurement is another critical determinant of market openness. Government procurement is an area not covered by WTO rules except for those members that join the WTO Government Procurement Agreement (GPA). WTO members joining the agreement are bound under the GPA to provide enterprises from other members of the GPA non-discriminatory access when bidding on government contracts above pre-specified thresholds. Possibly more important than opening domestic procurement markets to foreign bidders are the transparency provisions that must be applied once a WTO member becomes party to the GPA. Benefits of transparent government procurement procedures can be substantial given that government procurement can account for 15-20% of GDP in most countries.⁵⁸ China's WTO accession commitments contained a pledge to join the GPA as "soon as possible" and in February 2008, China presented the first draft of its schedule of commitments thus inaugurating its process of accession to the GPA.

53. Reforms of China's government procurement practices date at least as far back as 1980.⁵⁹ From the mid-1990s, the Chinese Government sought to bring its procurement practices in line with international practices using guidelines from the World Bank and Asian Development Bank to prepare initial drafts of procurement regulations.⁶⁰ The 1999 *Interim Method of Government Procurement* was the first national decree regulating government procurement of goods, construction and services; however, it still diverged from the GPA. In apparent anticipation of China's eventual accession to the GPA, the *Government Procurement Law*, which came into force in 2003, has been described as one that "attempts to follow the spirit of the GPA and incorporates provisions from the United Nations Model Law on Procurement of Goods."⁶¹ Article 1 of the government procurement law indicates that the objectives of the law are to:

- Regulate government procurement behaviour;
- Improve efficiency in the use of procurement funds;

⁵⁷ EUCCC (2007a), p. 12.

⁵⁸ WTO (2006d), p. 94.

⁵⁹ The *Temporary Provisions on the Initiation and Protection of Socialist Competition of October 1980* permitted using bidding on a trial basis. It was the first official document signalling ideological liberalisation of competition. Such bidding, for example, was initially used for vehicles, office supplies and later extended to engineering services and management information systems. (Wang 2000), p. 73.

⁶⁰ Chou (2006a), p. 434.

⁶¹ USTR (2006), p. 154.

- Safeguard the interests of the State and the public;
- Protect the legitimate rights and interests of the parties to government procurements; and
- Promote honest and clean government.⁶²

Importantly, the law removed the limitation on foreign suppliers participating in government procurement and prohibited unreasonable discrimination against any suppliers. It should be noted, however, that Article 10 of the same law exempts the construction services sector by establishing the principle that “[t]he government shall procure *domestic* goods, construction and services, except...” (emphasis added) in instances where one or a combination of three narrowly defined criteria are met. In efforts to increase transparency, Article 51 required government purchasers to reply within seven days to supplier’s complaints. Article 58 aligned the Law with the GPA’s Article XX guaranteeing aggrieved suppliers the right to file complaints in courts.⁶³

54. Rules on the publication of information are detailed and specify the media outlets on which procuring entities must make detailed information available. On 1 July 2000, the National Development and Reform Commission (NDRC)⁶⁴ indicated that the Ministry of Finance (MOF) government procurement website (www.ccg.gov.cn) and several newspapers were the official media for posting tender notices. In addition to this site, 31 provincial-level governments also set up similar websites. In 2004, MOF issued measures detailing rules on bidding procedures, publication of information and the handling of complaints. These rules apply to central government financed government procurements above a pre-designated threshold, which in 2004 was RMB 1.2 million. Significantly, MOF and local finance administrations provide facilities for appeals and are required to respond to complaints by bidding entities. At least ten such cases have been heard to date.⁶⁵ In cases where these responses are considered unsatisfactory, application can be made for administrative review or an administrative suit may be filed in court.

55. Unless a WTO member has joined the GPA, the WTO Agreements do not impose disciplines related to local content or technology transfer requirements in the area government procurement (as they do in other areas of trade). Improving application of parallel disciplines in the area of government procurement – or better yet acceding to the GPA – clearly advances market openness and its benefits. Measures recently adopted in December 2007 provide preferences to local procurement⁶⁶ and reports from within the international business community suggest that some awards of procurement contracts have been made contingent on technology transfer agreements. Such practices tarnish the attractiveness of the Chinese government procurement market to the most efficient and advanced providers of goods and services, and reduces their ability to support the modernisation of China’s government facilities and national

⁶² WTO (2006d), p. 95.

⁶³ Chou (2006a), p. 437.

⁶⁴ The NDRC is a department of the State Council formerly known as the State Planning Commission. It is a macro-economic regulatory agency with a mandate to develop national strategies for economic development.

⁶⁵ WTO (2006d), p. 97.

⁶⁶ These two measures are the *Administrative Measures on the Government Procurement of Imported Products* (relating to the government procurement of imported products) and *Administrative Measures for Government Procurement on Initial Procurement and Initial Procurement and Ordering of Indigenous Innovation Products* (relating to the government procurement of indigenous innovation products developed by domestic enterprises or research institutions). Both were adopted as implementing measures in support of China’s Medium-to-Long-Term Science and Technology Master Plan issued by the State Council in 2006. The NDRC is charged with developing regulations to implement this strategy, which includes preferences for the purchase of domestic goods. See USTR (2008).

infrastructure. Improving the market openness of China's government procurement market *vis-à-vis* world class providers of goods and services is an important way to strengthen the China's government capacity to provide a high quality regulatory environment and efficient infrastructure for growth. China's process of accession to the GPA represents a clear opportunity to leverage access to the sizable government procurement markets of GPA members, against domestic resistance to beneficial regulatory reforms for market openness in China's government procurement market.

56. Although MOF has made efforts to increase transparency, the information on the website and tender notices are available in Chinese only. Hence, foreign suppliers unfamiliar with the language are discriminated against. If and when China joins the GPA, the provision of information in one of the WTO's official languages (English, Spanish or French) should be encouraged. Although provincial websites have been set up, some lack the most basic information. This limits business opportunities for both domestic and foreign suppliers.⁶⁷ Perhaps one of the most pressing problems is the considerable discretion local officials use to carry out procurements without prior authorisation.⁶⁸ Not only does this hinder the government's ability to make appropriate budget forecasts for procurement, but it allows opportunities for corruption.

57. The OECD Business survey also confirms that foreign firms have difficulties relating to transparency in Chinese government procurement policies. Over 45% of the surveyed firms reported medium to serious problems with adequate or untimely information on rules and requirements of tender (Annex Table 31). When asked about the transparency of the tendering procedure over 40% indicated problems (Annex Table 32).

58. The Chinese government is aware of the problems in government procurement. In May 2006 as part of its efforts to continue financial reforms and promote government transparency, then Finance Minister Jin Renqing announced the government's intention to crack down on corruption in its USD 37.5 billion government procurement market. The Ministry also set up a telephone hotline for the public to report corruption and irregularities.⁶⁹ According to the study, the potential savings of a well-organised procurement system in China could be as large as 10-14% of the Chinese procurement costs.⁷⁰ Such cost savings together with the increasing openness of the economy to foreign trade and investment is spurring the Chinese government to harmonise its government procurement regulatory framework with international practices.

2.1.6 Summary remarks on transparency issues

59. Improving conditions of transparency in the dissemination of information can be found in China's evolving legal and regulatory framework. Areas for further improvement include procedural transparency and the development of more effective judicial appeals processes. Laws regarding transparency have been implemented or amended to require prompt publication of adopted laws and regulations and are now disseminated through a variety of official publications. Government ministries and bodies have set up Internet websites to make legislative acts available to WTO Members, the business community and the general public. Many such websites contain information in English. However, English counterparts are rarely as complete as the Chinese versions. The diversity of publications which contain new legislation –

⁶⁷ Chou (2006a), p. 434.

⁶⁸ "There Exists a Phenomenon in Government Procurement Where There Is Law But It Is Not Being Obeyed" [Zhengfu caigou cunzai you fa bu yi fa xianxiang jianguan gongzuo jidai jiaqiang], Xinhua (Online), 30 November 05. <政府采购存在有法不依现象 监管工作亟待加强 | news.xinhuanet.com> quoted in Congressional-Executive Commission on China (2006), p. 154.

⁶⁹ Xinhua News Agency (2006a).

⁷⁰ Chou (2006b) pp. 542-543.

despite efforts by MofCOM to consolidate all trade related laws within a single publication – results in a regulatory environment where new laws including those that affect trade are published, but do not necessarily result in increased transparency.

60. Progress in developing a regulatory culture for public consultations can be seen in the procedural transparency practices now applied by MofCOM which regularly engages foreign and domestic enterprises when drafting new laws and regulations. China's general law on transparency, while requiring public consultations, does not contain provisions for mandatory notice and comment practices as recommended by international best practices. Although MofCOM has been noted for providing adequate time-periods for meaningful consultations (and reflecting relevant comments within final texts), China's governmental institutions often provide insufficient consultation periods to allow comments to be adequately taken into account in final texts. It is important that China continue its efforts to improve its system of appeals and ensure the rules and regulations are clearly defined. It is also necessary to continue the necessary institution building for an integrated and well-functioning system of appeals with attention to market openness principles. These actions will enhance its contribution to the overall quality of China's regulatory system.

2.2 Measures to ensure non-discrimination

61. The application of the non-discrimination principles, Most Favoured Nation (MFN) and National Treatment (NT), in drafting and implementing regulations aims at providing equality of competitive opportunities between like goods and services irrespective of country of origin and thus at maximising efficient competition in the market. The application of the MFN principle means that all foreign producers and service providers seeking entry to the national market are given equal opportunities. The national treatment principle means that foreign producers and service providers are treated no less favourably than domestic producers and service providers. The extent to which these two core principles of the multilateral trading system are actively promoted when developing and applying regulations is a helpful gauge of a country's overall efforts to promote a trade and investment-friendly regulatory system.

62. When promoting market openness in a country's domestic regulatory frameworks, WTO rules require only the application of MFN and NT to other WTO members. To derive maximum benefit from market openness, however, OECD best practice supports applying these principles to all trade partners independent of WTO membership. Yet, integrating these two basic principles into relevant legislative acts is often insufficient. For the regulatory principle of non-discrimination to provide equal competitive opportunities for like-goods and services from all sources, both domestic and foreign, the regulators themselves must support them. This is particularly the case with China where significant administrative discretion exists throughout the regulatory system. In the domestic economy, ending discriminatory policies by governments at all levels is seen as an important tool for promoting producer efficiency, supporting the technological development of producer capacities and improving consumer welfare.

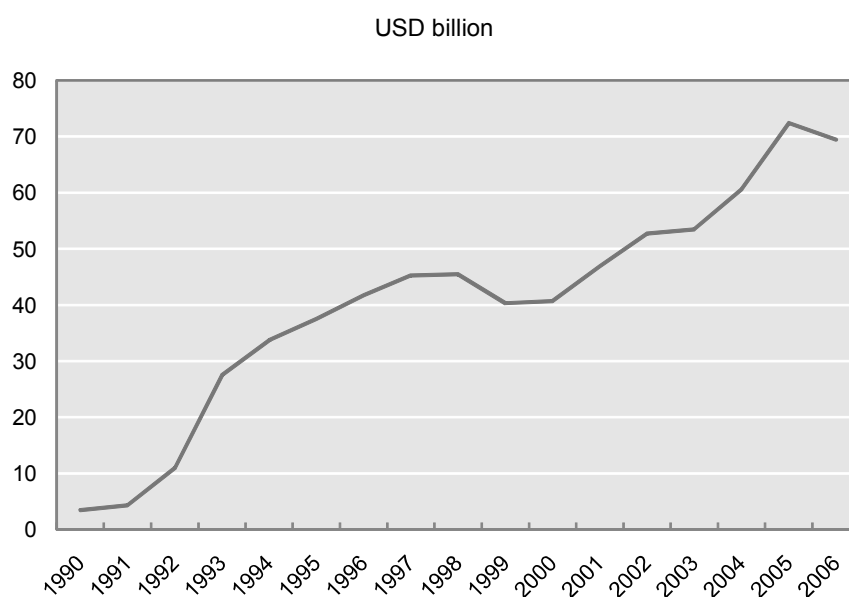
63. WTO disciplines have played a key role in removing discriminatory policies and supporting reform of discriminatory regulatory behaviour. While some discriminatory measures (*e.g.*, certain kinds of subsidies, some preferences in government procurement, restrictions affecting foreign investors and service providers, and preferential trade agreements) are permitted, they remain subject to WTO rules on transparency, non-discrimination and some other specific obligations. Enhancing attention to assessing and implementing measures and training regulators about the benefits of non-discrimination, would serve to further enhance the market openness of the Chinese regulatory environment to international trade and investment. One way to do this would be to establish the principle generally within the domestic legal framework. This review found no indication that such a general law or regulation exists within the Chinese legal system at this time.

64. The following sections review progress in non-discrimination by examining three areas of the Chinese regulatory system. The first looks at investment and restrictions on entry and operations of foreign firms. The second examines trading rights where significant improvements have been recorded. The third reviews preferential trading agreements.

2.2.1 Restrictions on entry and operations of foreign firms

65. China's trade and investment liberalisation over the past few decades has created an attractive business environment and has significantly impacted foreign direct investment (FDI) inflows (see Figure 6). FDI has grown from almost USD 3.5 billion in 1990 to over USD 70 billion in 2006. China is the third largest recipient of FDI in the world after the United States and United Kingdom and the single largest developing country recipient of FDI. On a *per capita* basis, however, China is diminutive in comparison to the United Kingdom and the United States and, by this measure, would likely not be the lead recipient of FDI among developing countries.⁷¹ This gap suggests that room exists for China's inward FDI to grow, particularly if institutional and regulatory reforms integrating the principles of market openness make the central and western provinces of China more attractive regulatory environments in which to invest.

Figure 6. Growth of FDI Inflows, 1990-2006



Source: MofCOM FDI Statistics.

66. One of the first steps taken by the Chinese government after accession to the WTO in December 2001 was to revise the *Catalogues for the Guidance of Foreign Investment Industries* previously issued in 1997. There are four catalogues: prohibited, restricted, permitted and encouraged. Only the prohibited, restricted and encouraged catalogues are published. All other investment projects are deemed permitted. Publication of a permitted catalogue would be difficult because of the large number of sectors that are open to foreign investment and the difficulty of specifying new sectors. The April 2002 revision attempted to relax China's investment restrictions in line with its WTO accession commitments. A further revised version of the Catalogues came into force on 1 January 2005. This version of the Catalogues made some detailed sectoral alterations in line with the country's evolving industrial policy, but did not on balance

⁷¹ UNCTAD (2006), pp. 299-301.

further liberalise China's foreign investment restrictions.⁷² The most recent revision to the Catalogues took effect on 1 December 2007, the main change then being a major expansion of the scope of encouraged industries.⁷³ In general, encouraged investments include those that use more advanced technology and are less-polluting. Investments in the restricted and prohibited categories generally are those that used dated technology over-exploit natural resources and harm the environment.⁷⁴ The prohibited catalogue is similar to the "closed list" adopted by many countries, except that in addition to the usual prohibitions in sectors such as defence, sectors such as local craft industries are also closed to foreign investment, for reasons that are not clear. A detailed analysis of successive revisions is in the OECD's three Investment Policy Reviews of China.⁷⁵

67. No information was available at the time this report is being written on whether domestic enterprises receive incentives similar to those received by FIEs when investing in the encouraged industries, however, it is likely that domestic enterprises are advantaged when investing in industries designated as restricted and prohibited under the Foreign Investment Catalogue. Incentives for foreign investment in encouraged industries may include the following:

- Investment under USD 500 million may be approved by provincial authorities and will not need further approvals from central government authorities;⁷⁶
- Enlarged scope of business approval, if it is engaged in the construction of and operation of infrastructure facilities, such as fuel and power, transport networks or waste disposal, that require a large amount of investment and a long pay-off period;
- Lower income tax;
- Lower value added tax (in the form of rebates);
- Duty free imports of capital equipment;
- The ability to borrow more (than comparable investments in non-encouraged industries); and
- Other incentives are also under consideration.⁷⁷

The key disadvantage of investing in restricted industries is that approvals are required by higher level authorities (NDRC and State Council) for investments above USD 50 million,⁷⁸ however, Chinese authorities indicate that this should lead neither to longer approval times or increased risk of non-approval.⁷⁹

68. While the government has repeatedly affirmed its commitment to further open the domestic market to foreign investment, China adopted a series of more restrictive foreign investment policies in 2006. In an effort to further clarify the investment regime, China introduced the *2003 Interim Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors* (Interim Provisions). In its *Investment*

⁷² OECD (2006a).

⁷³ OECD (2008).

⁷⁴ OECD (2008).

⁷⁵ OECD (2003a), OECD (2006a) and OECD (2008).

⁷⁶ USTR (2007), p. 135.

⁷⁷ OECD (2005a), p. 444.

⁷⁸ USTR (2005), p. 151.

⁷⁹ OECD (2005a), p. 444.

Policy Review of China,⁸⁰ the OECD analysed the Interim Provisions declaring that they were the most comprehensive set of regulations on cross-border Mergers and Acquisitions (M&A). Among the recommendations OECD called for were further relaxation of foreign ownership restrictions and increased regulatory transparency. However, in August 2006, the MofCOM introduced the *Regulations on the Acquisition of Domestic Enterprises by Foreign Firms* (2006 Regulations). Although the 2006 Regulations are commended for further opening toward cross-border M&A in line with international standards and increasing corporate transparency, they also introduced a new screening requirement.⁸¹ This requirement is necessary if the foreign investor obtains controlling rights of a Chinese firm that i) involves a major industry, ii) has or may have an impact on national economic security, and iii) may result in the transfer of famous trademarks or traditional Chinese brands. OECD research highlights that the new screening measures amount to “an *ex-post* restriction, which can substantially impede the stability of cross-border merger and acquisition transactions.”⁸²

69. Later in 2006, the NDRC announced its FDI policy for the 11th Five-Year Plan on 9 November. It was the first time such a document has been published. The NDRC said “This is an important measure taken by China in creating a stable and transparent foreign investment management system as well as a fair and predictable policy environment.”⁸³ The plan signalled an important shift from quantity to quality foreign investment, especially in higher-value added sectors. It also puts forward an industrial policy promoting the less developed regions in the west, central and north-eastern parts of China, and identifies industrial sectors and targets higher levels of technology. It advocates environmental protection and the efficient use of natural resources. However, some analysts see the plan as a means to erect more barriers to the operation of foreign firms. The plan states that emerging monopolies by FIEs are posing a potential threat to China’s economic security and that foreign businesses are harming Chinese enterprises’ capacity for independent innovation.⁸⁴ Because of perceived concerns regarding foreign acquisitions of leading Chinese firms in critical sectors, the new FDI policy provides for increased supervision of sensitive acquisitions to ensure that entities identified as “critical industries and enterprises” remain under Chinese control.⁸⁵

70. In 2006, China also continued to employ various sector-specific measures that had effectively imposed new restrictions on foreign investors. One example is the steel industry. Between 2004 and 2005, the Chinese government implemented measures to cool the economy that placed FIEs at a disadvantage. The steel policy implemented in July 2005 treated FIE steel producers more strictly than domestic counterparts and are considered by some FIEs to have amounted to *de facto* technology transfer requirements.⁸⁶ This along with other instances under which investments including technology transfer seem to be more strongly favoured, appear to depart from the spirit of China’s obligations under the WTO Agreement on Trade Related Investment Measures. If such measures are applied equally to domestic enterprises, they would not be considered departures from non-discrimination, however, they would then likely represent an area where regulations could be considered more trade restrictive than necessary.

71. Removing discrimination in the Chinese investment environment, *inter alia*, includes removing tax advantages for foreign over domestic enterprises. Until recently, China maintained a foreign investment

⁸⁰ OECD (2006a).

⁸¹ OECD (2008).

⁸² *Ibid.*

⁸³ See website of the NDRC, www.ndrc.gov.cn.

⁸⁴ OECD (2006d), p. 2.

⁸⁵ *Ibid.*

⁸⁶ USTR (2007), p. 84.

regime that discriminated against domestic enterprises by providing tax holidays, lower corporate taxes and other incentives to FIEs that have not generally available been to domestic enterprises, except in the relatively underdeveloped Central and Western regions. In general, domestic enterprises paid an income tax rate of 33% whereas FIEs paid at a rate of 15%.⁸⁷ On the other hand, domestic enterprises also have advantages, for example because they are permitted to invest in a broader range of sectors than FIEs. Anecdotal evidence also suggests that taxation of domestic enterprises is not as vigorous in the case of domestic versus FIEs.⁸⁸ The Chinese have a well known saying “*shang you zheng ce, xia you dui ce*”, or where the government applies policy measures the governed apply counter measures. Nowhere is this saying truer than in the case of discriminatory tax treatment and its circumvention by domestic enterprises. In a process known as “round-tripping”, domestic enterprises route their domestic investments through offshore subsidiaries or bank accounts back into China. As a result, much FDI entering China and benefiting from FDI tax incentives actually originates from within China.

72. China has removed this element of discriminatory treatment against domestic enterprises. On 16 March 2007, China’s National People’s Congress passed the Enterprise Income Tax Law, which took effect on 1 January 2008. The Law sets a single 25% tax rate for both domestic and foreign enterprises. It also provides for a five-year sunset period and includes continued tax incentives for investment, with no discrimination between foreign and domestic investment, for advanced technologies, environmental protection, water conservation, energy efficiency and safety in production. This legislation should remove economic distortions, such as round-tripping which discriminatory tax policies make rational, and support a better allocation of the limited resources that China must manage in support of its considerable economic challenges.⁸⁹

2.2.2 Trading rights

73. Before its WTO accession, China restricted the types and numbers of firms with the right to trade internationally and allowed only those domestic and foreign firms with trading rights the ability to import and export goods. In 1999, the former Ministry of Foreign Trade and Economic Co-operation announced new guidelines allowing a wide variety of Chinese firms with annual export volumes valued in excess of USD 10 million to register for trading rights. Two years later, this regulation was extended to allow FIEs to export their finished products but still contained restrictions on import rights. Foreign firms could only import equipment and other materials directly related to their manufacturing or processing operations. Domestic and FIEs without trading rights had to use local agents. In its WTO accession agreement, China committed to substantially liberalise trading rights, granting close to 50 000 FIEs full foreign trade rights in the first year after accession.

74. In April 2004, the NPC Standing Committee passed the amended *Foreign Trade Law*, establishing the legal framework for the reform and development of China’s foreign trade regime. The revised law implemented three major changes. First foreign and domestic firms and individuals were allowed to conduct foreign trade business.⁹⁰ This enabled all firms to import and export without intermediaries thus providing easier access to global markets and reducing transaction costs. This amendment enabled China to implement its trading rights commitments nearly six months ahead of its scheduled WTO commitment. Second, legally registered foreign trade operators can now import and export goods and technology without obtaining administrative approval. Third, a percentage of foreign trading rights for special products such as petroleum, grain and chemical fertiliser which were previously the exclusive reserve of state-

⁸⁷ WTO Reporter (2007).

⁸⁸ OECD (2005a), p. 448.

⁸⁹ OECD (2008).

⁹⁰ Article 8, Chapter 2 of the *New Foreign Trade Law* of PRC amended on 4 June 2004.

owned enterprises will be granted to formerly unauthorised companies. The law also includes clauses on protecting intellectual property rights of both domestic and foreign property owners, and new clauses on enabling domestic traders to utilise the anti-subsidy and anti-dumping protections of the WTO to safeguard their interests. Although China has made great progress on compliance with its trading rights commitments, one study notes that there are a few areas (*e.g.*, the importation of foreign publications such as books, periodicals and audio and video products) where China still reserves for state trading.⁹¹

2.2.3 Preferential agreements

75. Regional trading arrangements (RTAs)⁹² are necessarily discriminatory as they normally involve trade and investment liberalisations to parties joining the agreements that are not equally applied to non-parties. Thus, RTAs represent a departure from the principles of MFN and NT. Growth in the numbers of RTAs over recent years has reached a level where economies such as Switzerland no longer view negotiating RTAs as strategy to gain preferential access to the markets. Negotiating RTAs is now considered an approach to removing discrimination against domestic firms competing in foreign markets.⁹³ China articulated its policy on RTAs during its WTO Trade Policy Review conducted in 2006:

Regional trade liberalisation helps bring down barriers to intra-region trade and investment. It could become a useful supplement to the multilateral trading system and help push forward the global trade liberalisation and investment facilitation...

At the same time, regional trade liberalisation should not be done at the expense of the multilateral trading system. WTO Members participating in regional trade liberalisation have obligations to pursue proper balance between the policy objectives of regional trade liberalisation and the defence of the basic disciplines of the multilateral trading system.⁹⁴

76. An important way to support the balance between regionalism and multilateralism is to uphold market openness considerations when negotiating RTAs. Doing so is an important way to minimise discrimination *vis-à-vis* third countries and ensure that maximum benefits are attained from RTAs. Multilateralising liberalisation commitments reached at the bilateral or plurilateral level is an ideal approach that has been achieved only very rarely (such as in the case of Mexico with regard to investment liberalisation negotiated bilaterally and implemented multilaterally). But market openness may also be assisted by attention to the transparency of RTAs so that third parties may more accurately forecast the impact of such agreements on their trade.

77. Amounting to a quarter of its total trade at USD 344.5 billion in 2005, China has completed or is in the process of negotiating nine RTAs encompassing 27 countries and regions.⁹⁵ In keeping with trends in the development of RTAs globally, China's RTAs include provisions that go beyond simple trade liberalisation. They also include agreements that do not necessarily liberalise trade *per se*, but contain provisions on co-operation in a variety of areas that facilitate trade between the parties to the agreements, or which support mutual co-operation relating to technical assistance and capacity building. Most, if not all, of the agreements explicitly recognise China as a market economy.

⁹¹ USTR (2006) "2006 Report to Congress on China's WTO Compliance", 11 December 2006, p. 13.

⁹² The term RTA is used here as a generic term which includes free trade agreements (FTAs), customs unions (CUs) and preferential trading areas (PTAs) which are not necessarily limited to regional groupings.

⁹³ OECD (2006c), p. 25.

⁹⁴ WTO (2006b), p. 17.

⁹⁵ WTO (2006b), p. 17.

Box 4. China's Involvement in Trade Agreements, Negotiations and Fora

Regional agreements

1. *Association of South-East Asian Nations (ASEAN)–China free-trade agreement (ACFTA)* – Brunei Darussalam, Cambodia, China, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore and Thailand.
2. *ASEAN+3* – ASEAN, China, Japan and Korea.
3. *Asia-Europe Meeting (ASEM)* – China, Japan, Korea and seven ASEAN countries (Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam), 15 EC member states and the European Commission.
4. *Bangkok Agreement* - Bangladesh, China, India, Laos, Korea and Sri Lanka

Bilateral agreements

1. *China–Hong Kong Closer Economic Partnership Arrangements (CEPA)*
2. *China–Macao, China CEPA*
3. *China–Chile Free Trade Agreement (FTA)*
4. *China–Pakistan Preferential Trade Agreement (PTA)*
5. *China-New Zealand FTA.*
6. *China and Australia signed a Trade and Economic Framework Agreement (TEFA)*

Other potential agreements

1. *China and Iceland* launched FTA negotiations.
2. China and Peru have launched FTA negotiations.
3. *China and the Southern African Customs Union (SACU)* have launched FTA negotiations - Angola, Botswana, China, Democratic Republic of Congo (DRC), Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
4. *China and the Gulf Co-operation Council* have signed a Framework Agreement on Economic, Trade, Investment and Technology Co-operation – UAE, Bahrain, China, Kuwait, Oman, Qatar and Saudi Arabia.
5. *China and Korea* have launched a Joint Study Group for possible FTA negotiations.
6. *China and India* have agreed to launch a Joint Study Group on expanded trade and bilateral co-operation.
7. *Comprehensive Economic Partnership in East Asia (CEPEA)* – ASEAN 10, China, Japan, Korea, India, Australia and New Zealand

Unilateral Preferences

1. China maintains a preferential tariff regime for 39 least developed countries.

Source: Source: WTO (2006d), pp. 44-51.

78. China's RTAs are diverse in terms of their geography, architecture, level of completion and their underlying rationale. This complexity precludes in depth treatment on market openness within the context of this exercise; however, the more salient features of selected agreement contained in Box. 4 are highlighted in the following. China is part of ACFTA which is only a framework agreement, but appears to have ambitions towards deep integration based on the comprehensiveness of the issue areas detailed in the "framework agreement" for further development. Indeed, the ACFTA includes an unusual "early harvest" provision to eliminate tariffs on trade in unprocessed agricultural trade, which is a sector normally treated lightly in RTAs. Very few tariff lines within HS 1-8 have been excluded from the ACFTA⁹⁶ and substantial

⁹⁶ Tsai (2006).

increases in agricultural trade between its members have resulted.⁹⁷ China's bilateral agreements include CEPA agreements with Hong Kong, China and Macao, China. They should have eliminated all tariffs on internal trade by 2006, comprise significant services liberalisation and have established elaborate institutional mechanisms.⁹⁸ China signed a bilateral TEFA agreement with Australia which includes provisions on co-operation across a range of industries in which the partners have mutual interest. They notably contain a provision on co-operation to assist development in the central and western regions of China, which is a novel way to address domestic economic challenges *via* a bilateral agreement. As TEFA's do not themselves contain substantial provisions on trade liberalisation, China is currently negotiating an FTA with Australia. In April 2008, New Zealand and China signed its most comprehensive bilateral FTA to date. Significantly, it is the first with an OECD country.⁹⁹

2.2.4 Summary remarks on non-discrimination issues

79. Over the last 30 years, China's economy has gradually reoriented itself outwards towards greater international trade and investment. This process has benefited greatly from WTO commitments that have locked in initial domestic reforms in the area of non-discrimination. China's efforts in further reducing discrimination between domestic and foreign enterprises are apparent in its recent restructuring of regulatory institutions notably through the creation of MofCOM and AQSIQ. These new institutions have created a basis for, and have in-fact, improved the quality of non-discrimination in domestic regulatory processes. However, there is room for further consolidation. By merging agencies that formerly handled domestic and international portions of their respective regulatory functions separately, China has put in place a foundation for enhancing non-discrimination between domestic and foreign enterprises in these two areas.

80. China's trade and investment liberalisation has created an attractive business environment, which has significantly impacted foreign direct investment. However, in 2006 a number of explicitly discriminatory measures were introduced that can be seen as erecting barriers to the operation of foreign firms. Integrating the non-discrimination principle into domestic regulations should be viewed as a means for encouraging fair competition between domestic and foreign firms to promote sound economic environment conducive to durable economic growth.

2.3 Measures to avoid unnecessary trade restrictiveness

81. Even when regulations are applied in a non-discriminatory manner, market openness can still deviate from its optimal level if regulatory measures are more restrictive *vis-à-vis* trade and investment than is necessary to achieve their intended policy goals. In these cases the objectives, design or implementation of regulations may be set in a way that creates unnecessary impediments to the free flow of goods, services or investment. These negative effects originate from poor regulatory quality and the absence of regulatory mechanisms to assess the impact that regulations have on market openness. Unnecessary restrictions on trade may be reduced if regulators examine the trade effects of proposed and existing regulations and give preference to regulatory measures and solutions that lead to the achievement of economic and societal objectives, but at the same time minimise disturbances on the flow of trade and investment.

82. OECD governments most commonly employ several tools and mechanisms to ensure that regulations effectively avoid unnecessary trade restrictiveness. Examples include the use of management-

⁹⁷ Gavin (2006), p. 11.

⁹⁸ WTO (2006d), p. 48.

⁹⁹ New Zealand Ministry of Foreign Affairs and Trade (2008).

or performance-based regulation rather than design standards regulations. Enterprises generally find it easier and less costly to comply with regulations that specify product requirements in terms of performance rather than design or descriptive characteristics. Another tool is to conduct regulatory impact assessments (RIAs). At a conceptual level, RIA requires regulators to ask whether regulation is the most appropriate means to achieve the desired policy outcome. RIA also is a systematic process of identification and quantification of important benefits and costs likely to flow from the adoption of a proposed regulation or a non-regulatory policy option under consideration. It may be based on benefit/cost analysis, cost effectiveness analysis, or business impact analysis. A third tool is administrative simplification. The simplification initiatives that aim to reduce administrative burdens on enterprises are also important ways for governments to minimise the trade restrictiveness of regulations.

83. Research suggests that efforts by Chinese regulators to reduce unnecessarily trade restrictiveness in domestic regulation have been advancing. Although progress is being made overall, it likely overlooks disparities in the quality of regulatory environments across the sectors and regions of the Chinese economy. An effective way to improve inconsistencies in the topography of national regulatory environments would be to conduct RIAs that include market openness considerations. This procedure would assess the regulatory quality of proposed measures and looks to possible alternative solutions, which would fulfil the final objective without imposing unnecessary administrative restrictions on business activities. China does not yet have institutions established to implement RIA programmes; however, the nationwide review accompanying the implementation of the Administrative Permission Law¹⁰⁰ indicates that the thinking of China's regulatory authorities is evolving along conceptual lines leading in the direction of RIAs.

2.3.1 Assessing the impact of regulations on trade

84. Unnecessarily burdensome regulations disproportionately impact market openness. Although such regulations and administrative practices or "red tape" may affect domestic and foreign enterprises without distinction when viewed from the perspective of the regulator, they normally impact foreign trade and investment more significantly. This is because local enterprises generally have an advantage due to their knowledge of local customs and circumstances. While large foreign firms are often able to overcome unnecessarily restrictive rules and regulations due their more substantial resource base, small and medium-sized enterprises (SMEs) are particularly disadvantaged due to limited resources and administrative capacities. The impact of red tape on foreign SMEs is compounded not only by size, but also by lack of familiarity with local business and regulatory culture. For this reason, the input of foreign SMEs should, to the extent possible, be elicited to support the development of domestic rules and regulations.

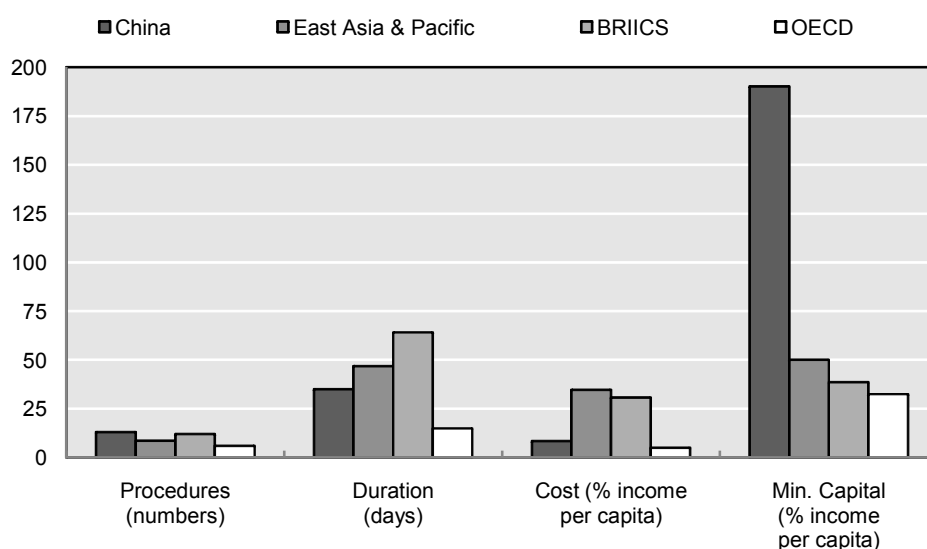
Table 2. Ease of Doing Business in the BRICs

(2008 ranking of 181 countries)

Brazil	Russia	India	Indonesia	China
125	120	1122	129	83

Source: World Bank, *Doing Business* (2008).

¹⁰⁰ The National People's Congress adopted the Law on Administrative Permission, taking effect on 1 July 2004. The implementation of the Administrative Permission Law aimed to further improve China's investment environment and protect foreign investors from losses resulting from policy changes, political corruption and abuse of power by local officials.

Figure 7. Challenges of Launching Business, 2006

Source: World Bank, *Doing Business* (2007).

85. Chinese officials are well aware that unnecessarily burdensome regulations stymie commerce and hold back economic growth. Their efforts at the national level to reduce red tape have, to date, been impressive. The State Council has already promulgated or amended 47 administrative regulations and retired 756 administrative regulations that were in place prior to 2000. Since WTO accession, 1 195 of 3 948 regulations requiring administrative approval have been nullified in an exercise spanning 65 departments.¹⁰¹ Between 1 January 2006 and 11 September 2007, the State Council enacted 48 administrative regulations (including eight amendments) and it abolished 24 regulations. Local governments from 31 provinces, autonomous regions and municipalities, and 49 large cities have the right to formulate local regulations.¹⁰² Late in 2006, China moved up 12 rankings to 19th place out of 61 economies in an assessment of national competitiveness conducted by Switzerland-based International Institute of Management Development (IMD).¹⁰³ The World Bank similarly ranks countries according to the ease of doing business based on regulations and their enforcement. Out of 181 countries tracked in 2008, China moved up 10 places to 83 overall. Table 2 compares the overall score of doing business with the large developing and transition countries (BRIICs, Brazil, Russia, India, Indonesia and China), showing China ahead of its peers. However, the results of the regulatory barriers to launching a business are mixed for China when compared to the East Asia and Pacific region, other BRIICs and the OECD economies (see Figure 7).

86. China faces substantial challenges to furthering reform as a result of the geographic expanse of the economy, which has led to an uneven environment of regulatory quality across the country. The quality of the regulatory environments, as it pertains to market openness, remain significant impediments to investments outside the wealthier coastal provinces.¹⁰⁴ Economic incentives for FDI into the central and

¹⁰¹ Huang Hai (2005). Zhang Xiangchen, Department of WTO Affairs, Ministry of Commerce, made general comments on the status of four years after China's accession to the WTO to the *People's Daily* on 11 December 2005.

¹⁰² WTO (2008b), p.27

¹⁰³ CHINA Daily (2006).

¹⁰⁴ USFCS (2006), p. 154.

western regions of China are unlikely to be sufficient to attract significant inflows. Nationwide statistics likely mask severe unevenness in regulatory quality west of the thriving coastal provinces.¹⁰⁵

87. An important way to improve the consistency of regulatory standards and their market openness is by implementing systemic reviews of regulatory quality across the nation. Such reviews should be wide-ranging both in terms of the economic sectors and the geographic regions examined. The State Council's Office for Legislation Affairs (SCOLA), which is similar to regulatory oversight bodies in many OECD countries, is institutionally well placed to carry out systematic regulatory reform, but lacks the capacity to implement the types of comprehensive reviews and reforms that enable the OECD countries on average to fare better in terms of consistency in regulatory quality. SCOLA is the gatekeeper between proposed legislation and cabinet approval; it plays a key role in planning and coordinating the law-making process. SCOLA prepares materials that are used by ministries and commissions to produce legislation. It is also in charge of assessing the constitutionality of all draft regulations at the central level and assessing the conformance of laws with the *Legislation Law*. In carrying out these duties, SCOLA re-drafts laws proposed by ministries and commissions and engages co-ordination functions among the sources of legislation where required. SCOLA has final authority over whether draft laws are forwarded to the State Council. Augmenting SCOLA with analytical resources to conduct RIAs (the regulatory tool of RIAs is treated more in-depth within Chapter 2 of the horizontal report) that assess the economic and trade impact of proposed legislation would be a logical next step in the gradual development of China's capacity to "regulate regulators" and improve not only laws and regulations, but the quality of their application.

88. OECD experience conducting reviews of regulatory reform also suggest that the involvement of the trade ministry in the regulatory reform process contributes significantly to the quality of market openness throughout domestic regulatory systems. As the ministry responsible for China's relationship with the WTO and its trading partners, MofCOM is the most cognisant of the manner in which domestic regulations impact international trade and investment. In fact, the establishment in 2002 of an internal review mechanism with a mandate to address inconsistent application of laws, which is overseen by the Department of WTO Affairs under MofCOM, indicates that MofCOM has already established some capacity to address important aspect of regulatory quality.¹⁰⁶ A synchronisation of efforts between MofCOM and SCOLA would at some point in China's on-going process of institutional and regulatory reform be an important way to support results of regulatory reform that best serve the large economic objectives that China's economic policymakers are pursuing.

89. In OECD countries, the application of RIAs to assess the impact of proposed laws and regulations and to systematically assess the quality of existing regulations is commonplace. The utility of a well functioning RIA process in creating efficient regulation is underscored by a significant body of OECD work on regulatory reform, endorsed in the *1995 Recommendations of the Council of the OECD on Improving the Quality of Government Regulation* and re-affirmed in the *2005 Guiding Principles for Regulatory Quality and Performance*. Although the designs of RIAs need to be country specific, the *APEC-OECD Integrated Checklist on Regulatory Reform* provides an excellent overview of considerations that should form the basis for designing all RIAs. OECD experience with reviews of regulatory reform in OECD countries find that integrating the potential impact of proposed and existing regulations on foreign trade and investment *via* co-ordination between trade and regulatory agencies is an important way to improve an economy's entire regulatory framework *vis-à-vis* foreign trade and investment. Further enhancing SCOLA's analytical resources and coordination with MofCOM would enable SCOLA to review existing regulations across the expansive Chinese regulatory system. It would also facilitate better efforts to reduce the uneven regulatory quality, which exacerbates geographic and rural-urban economic inequalities in China.

¹⁰⁵ OECD (2005a), 63-64.

¹⁰⁶ USTR (2006), p. 159.

90. Although SCOLA does not (yet) have the capacity to implement RIAs to comprehensively and systematically review regulations and their application for the purpose of ensuring regulatory quality, efforts such as the implementation of the *Administrative Permission Law* signal China's commitment to tackle one significant aspect of regulatory quality in a comprehensive and methodical way.

91. The *Administrative Permission Law* is a strong indication that Chinese regulators are headed in the right direction. Coming into effect on 1 July 2004, the *Administrative Permission Law* seeks to make the process of granting "administrative permissions" transparent and less prone to corruption. It applies to all administrative permissions except those related to personal privacy and business secrets. It specifies, *inter alia*, that all administrative permissions must be published; and that administrative departments make all relevant requirements and information relevant to the application and the permission readily available on their premises. Significantly, a nationwide review to standardise and improve the transparency of administrative permissions processes was conducted alongside establishment of the *Administrative Permission Law*.¹⁰⁷ The review counted 4 000 types of activities requiring administrative approval and, following three rounds of review, abolished nearly half (1 795) of the administrative approvals. The review itself showed that a large number of the administrative approval items did not have any basis in law.¹⁰⁸ Importantly, a review was conducted on a nationwide basis that included reforms in the central and western regions of China where lower standards of regulatory quality have been noted for holding back potential investments.

92. The *Administrative Permission Law* does not explicitly clarify whether it applies equally to foreign as to domestic enterprises. Article 3 of the *Administrative Permission Law* indicates that the "Law is not applicable to ... such matters as personnel, financial and *foreign-related affairs* of other departments ... directly under the administration of the said departments".¹⁰⁹ (Emphasis added). Clarification of the *Administrative Permission Law* as legally applicable to foreign enterprises would represent a substantial move forward in the regulatory quality and market openness of China's regulatory reform efforts.

2.3.2 Example of customs procedures

93. More clearly than in other areas, declining tariffs worldwide have made arbitrary or excessively burdensome administrative requirements in the area of customs a focus of attention in international trade negotiations. Increased customs efficiency serves to reduce costs related to border fees and often more importantly reduces delays at borders that create costs inefficiencies that have gained importance as product cycles have shortened. China's efforts to continue improving the regulatory environment implemented by its customs administration especially in terms of consistency in the application of the new rules would yield important gains for market openness.

94. China's customs management is facing tremendous pressure and challenges with the rapid growth of its foreign trade. Its workload has raised with increasing trade volumes that have not been matched by sufficient growth in resources and staff. In order to make customs procedures more efficient, simplified and economical, China Customs put forward the Second-Step Development Strategy for the Establishment of the Modern Customs System (2004-2010).¹¹⁰ Core to the strategy is the establishment of a risk management mechanism, which aims to solve the contradiction between effective controls, simplified procedures and facilitated international trade through implementing a high-technological and modernised

¹⁰⁷ *Ibid*, p. 38.

¹⁰⁸ OECD (2005a), p. 294.

¹⁰⁹ Government of China (2003).

¹¹⁰ China Customs (2008).

customs system. The aim is for China Customs to further improve management effectiveness and efficiency, to prevent and control the smuggling and non-compliance risks, and accommodate the needs of the rapidly developing Chinese economy.

95. As can be seen from Table 3, China's border transaction costs for exports generally compare favourably with those of large developing and transition economies and other economies in its region, particularly in terms of cost per container, which is just over a third that of the BRIIC average and less than half that of the OECD. In terms of imports, China again compares favourably against the BRIICs and neighbour economies in terms of time for import and cost, but falls slightly behind in terms of number of documents required, which for China requires double that compared to the six needed for export.

Table 3. Trading Across Borders (2006)

	China	BRIICs	Region	OECD
Documents for export (number)	6.0	7.6	6.9	4.8
Time for export (days)	18.0	25.4	23.9	10.5
Cost to export (USD per container)	335	975	885	811
Documents for import (number)	12	10.2	9.3	5.9
Time for import (days)	22.0	31.0	25.9	12.2
Cost to import (USD per container)	375	1 135	1 037	883

Source: World Bank, *Doing Business* (2007).

96. The difficulties facing improvements in regulations for market openness in the instance of customs procedures is reflected not so much in the statistics contained in Table 3 (which are generally comparable to the BRIICs and the regional average), but their imprecision which leave customs officials with broad discretion in their application, especially in the area of customs valuation. As part of its WTO accession, China addressed many of the inconsistencies in its customs regulations by implementing the *Measures for Examining and Determining Customs Valuation of Imported Goods* in 2002. In the area of royalties and license fees, the implementation of the *Rules on the Determination of Customs Value of Royalties and License Fees Related to Imported Goods* in 2003 was to clarify ambiguities with pre-existing legislation covering relevant imports (e.g. computer software and other types of digital media in particular). The result however was not greater consistency in the application of customs duties. Indeed, the new rules may even have generated increased uncertainty for importers. It is difficult to determine the extent to which the inconsistent application of duties in this area results from the insufficient training of customs officials or lack of clarity in the regulations themselves, but the resulting flaws in the quality of regulatory environment nevertheless directly affect the openness of Chinese economy to the innovative goods in this product segment.

Table 4. OECD Firms' Experience with Chinese Customs Procedures

	Percentage				
	Not a problem	Minor	Medium	Serious	Very serious
Clear and transparent general rules for customs procedures (e.g. information on required documentation)	24	19	41	13	2
Predictable and impartial customs procedures (e.g. uniform rules applied in all customs posts)	19	17	40	18	5
Pressures for illegal payments in conjunction with customs procedures	30	15	40	11	2

Source: OECD Business Survey, 2008.

97. The OECD business survey posed questions to foreign firms on their experience with customs procedures in China (see Table 4). When asked about clear and transparent rules, predictability and impartial customs procedures, and pressures for illegal payments, 40% of the surveyed firms reported medium problems. The perception of OECD firms of China's customs procedures indicates there is still room for improvement in the application of customs procedures.

2.4 Encouraging the use of internationally harmonised measures

98. The application of different standards and regulations¹¹¹ for like products in different countries – often explained by natural and historical reasons relating to climate, geography, natural resources or production traditions – confronts firms wishing to engage in international trade with significant and sometimes prohibitive costs. There have been strong and persistent calls from the international business community for reform to reduce the costs created by regulatory divergence.¹¹² One way to achieve this is to rely on internationally harmonised measures, such as international standards, as the basis of domestic regulations, when they offer an appropriate answer to public concerns at the national level. The use of internationally harmonised standards has gained prominence in the world trading system with the entry into force of the WTO TBT and SPS Agreement, which encourages countries to base their technical requirements on international standards and to avoid conformity assessment procedures that are stricter than necessary to attain regulatory objectives.¹¹³

99. The concept of internationally harmonised measures refers to two distinct scenarios: reliance on international standards as the basis of domestic regulations (where this is feasible and appropriate) and acceptance of foreign measures as equivalent to domestic measures, even where these may differ, provided that such measures meet the underlying regulatory objective.¹¹⁴

100. As part of the reorganisation of domestic standards and conformity regime described in the above section *Transparency in the field of technical regulations and standards*, the State Council established the Standardisation Administration of China (SAC). Under the authority of the AQSIQ, SAC is responsible for unifying China's administration of product standards and aligning its standards and technical regulations with international practices and China's commitments under the WTO TBT Agreement. It drafts China's annual national standards agenda and also approves records and publishes the final standards. It also manages and coordinates the technical committees assigned to draft technical standards. More than 27 000 experts from academia, industry, and other groups working in over 230 technical committees and 360 subcommittees are involved in the development of Chinese standards.

101. In addition to re-organising the institutional framework, the Chinese authorities also issued a series of new and revised regulations to meet WTO obligations. The National People's Congress has amended or is in the process of amending three important trade-related laws. In September 2000, the 1993 *Product*

¹¹¹ In accordance with established terminology in the WTO TBT Agreement, mandatory technical specifications are referred to as "technical regulations", while rules and guidelines provided for common and repeated use but with which compliance is not mandatory are referred to as "standards".

¹¹² This call has been made in particular by the European and American business communities in the context of the Transatlantic Business Dialogue (TABD). In its reports, the TABD has advocated that governments overcome diverging positions at an early stage of the policy-making process and to give more emphasis on international standards in the regulatory framework, with a view to promoting global competitiveness. See for example, TABD (2007), "Establishing the Barrier-Free Transatlantic Market", March 2007, www.tabd.com/ceo_reports.

¹¹³ Although examples cited in this review focus on TBT related standards, the principle of harmonisation towards international standards applies equally to SPS as it does to TBT standards.

¹¹⁴ OECD (2002), pp. 30-31.

Quality Law of the People's Republic of China was amended. The amendments stipulated tougher punishment for the making and selling of fake and substandard goods. Enforcement agencies were given the right to order inspections, view business documents and confiscate counterfeit products. In October 2002, the National People's Congress amended the 1989 *Import and Export Commodity Inspection Law*. Previously, the quality certification system was used for import and export commodities while the compulsory certification system was used for products sold only on the domestic market. The amendments stipulate a uniform national certification system.

102. The third trade-related law is the *Standardisation Law*, which came into force 1989, and is currently being revised in a process that was to be completed in 2007. It is unclear when the revised law will be ready and sent to the NPC for approval. The revised draft should improve the adoption of international standards but could be significantly strengthened by providing guarantees for foreign participation within the domestic standards process. OECD best practice and current experience by foreign enterprises in China would support the inclusion of an additional guarantee for foreign enterprises to be consulted and provided adequate time periods for meaningful consultations within the domestic standards process. Such a provision in the revised *Standardisation Law* would greatly strengthen the quality of market openness in China's standards process, reduce trade frictions with its trade partners and improve the regulatory environment for trade as well as investment in the central and western regions of China.

103. China is increasing its participation in international standards setting bodies through the SAC. This participation is credited with increasing the alignment of Chinese standards setting practices with international norms. As the standards agency with the authority to sign and implement international co-operative agreements, the SAC represents China in a dozen international and regional standardisation organisations, including the ISO, the IEC, the Asia-Pacific Economic Co-operation Forum and the Pacific-Asia Standards Congress (PASC). SAC has established co-operative relationships with 52 countries.¹¹⁵ One example of such co-operation is that between the ANSI and the Standardisation Press of China (SPC). In 2005, ANSI signed an agreement with the SPC to serve as a distributor of Chinese national standards in the U.S. In turn, the SPC became the Chinese distributor of American National Standards.¹¹⁶ In February 2006, ANSI released the Chinese translation of the United States Standards Strategy. Continued efforts by SAC to increase participation in diverse international standards setting activities would enhance the perspectives of Chinese standards officials, those of officials from other countries and increase the predictability and transparency of China's regulatory environment overall.

104. Under the guidance of AQSIQ, SAC launched an effort to improve the harmonisation of China's standards with international standards in April 2004. The current mandate of SAC includes four general components: to review all standards older than five years; to revise standards that are inappropriate to current conditions in a timely manner; to harmonise domestic standards to international ones where appropriate; and to actively participate in international standards setting organisations. SAC embarked on a review of all 21 000 existing technical regulations to determine their continuing relevance and consistency with international standards. The exercise concluded that 44.2% of the then existing standards remained relevant, 44.2% were to be revised and 11.6% were to be abolished.¹¹⁷ China reported to the WTO TBT committee in November 2005 that as of October that year, the country had abolished 1 416 national standards as a result of the review,¹¹⁸ however, little is known of the extent to which the standards to be revised will be aligned to international standards.

¹¹⁵ See the SAC web site: www.sac.gov.cn.

¹¹⁶ ANSI (2005), p. 4.

¹¹⁷ WTO (2006d), p. 90.

¹¹⁸ USTR (2005), p. 42.

105. Chinese standards fall into four categories: national, sectoral, local and enterprise standards. National standards and sectoral standards are either voluntary or mandatory standards. The mandatory ones generally involve public health, personal safety and the protection of property and the environment. Voluntary standards serve as guidelines; the government encourages their use, but they do not have the force of law and are not governed by regulatory requirements. Technical requirements need to be agreed throughout the whole country and are adopted either on a voluntary or a mandatory basis. Once a national standard is approved, any competing sectoral or local standard has to be withdrawn. *Sectoral standards*, of which there are roughly 29 000, can be issued by the relevant central ministries and should be reported to the SAC for registration. They deal with the technical requirements in any one specific industrial sector throughout the country. They are more professional and technical, and are complementary to national standards. *Local standards*, of which there are more than 13 000, are issued by provincial governments in the absence of national and sectoral standards and reported to the SAC. They cover technical requirements in safety and hygiene within a province, autonomous region or municipality. They apply only within the administrative area concerned. *Enterprise standards*, of which there are roughly 1.32 million, are issued by the enterprises themselves.¹¹⁹ They refer to product standards and are developed as guidelines for managing the production of those products for which no other standards exist. Enterprises are encouraged to develop their own standards, which are stricter than national, sectoral or local standards.¹²⁰

Box 5. Recommendations for the Revision of the Standardisation Law

1. Change the existing four levels of: National, Sectoral Local, and Enterprise standards to the three levels of: National, Association, and Enterprise standards;
2. Change the two categories of standards: Mandatory and Recommended standards into only voluntary standards; voluntary standards becoming mandatory only via references or citations in government regulations;
3. Change the standards development accreditation scheme: Currently, national, sectoral, and local standards are subject to government approval. The suggestion is to change this system so that governmentally accredited bodies will approve national standards and associations will approve association standards;
4. Enterprises should be free to determine their own standards usage without the governmental registration required today; and
5. The users of standards should adopt standards voluntarily.

Source: Karmol, D. (2005), p. 10 and Zhao and Graham (2006).

106. A Chinese government paper, “Study on Development Strategies of China’s Technical Standards”, was drafted by China National Institute of Standardisation (CNIS) in co-operation with ASQIQ, SAC and the Ministry of Science and Technology in November 2005.¹²¹ The study suggests solutions that should feed into the revised version of the *Standardisation Law* (see Box 5). The main theme of the study is that China can, through scientific development, spur domestic innovation and create indigenous and exportable standards. China’s goal by 2010 is to bring the technical level of indigenous standards up to international standards while increasing the proportion of Chinese technology in key international standards.¹²² This new approach states that one of its aims is for the large-scale adoption of international standards. The review of China contained in the USTR’s National Trade Estimates acknowledges that “in 2005, some U.S.

¹¹⁹ WTO (2006d), p. 90.

¹²⁰ See SAC website: www.sac.gov.cn.

¹²¹ Zhao and Graham (2006).

¹²² *Ibid.*, p. 78.

companies concluded that China had begun to make steady progress in reforming its standardisation system by strengthening its links with standards-setters in other countries and by moving its standards regime into closer conformity with international practice.”

107. One of the priorities in China’s 11th Five-Year- Plan (2006-2010) is to develop independent innovation particularly by accelerating the development of high-technology industries.¹²³ In March 2006, the NDRC issued the “Guiding Catalogue for Industrial Restructuring”. Along with 37 other ministries and agencies of the State Council, the NDRC formulated the new Guiding Catalogue for Industrial Restructuring, which:

“Encourages and supports the development of advanced production capability, limit and eliminate backward production capability and promote technological progress and optimising the industrial structure. Several policies encouraging the development of software and integrated circuit industries have been implemented. Guidance of Key Sectors for High-Tech Industrialisation has been put in place.”¹²⁴

108. Some WTO Members consider that China’s industrial policy has resulted in the application of technical regulations and product standards that favour locally produced products over imported ones. Standard setting can be a benign exercise in regulatory oversight, but in some circumstances may also be conducted in a manner that favours domestic firms over foreign enterprises. China’s trade partners have raised concerns that its regulators may be strategically “guiding” the development of product standards for a wide range of electronics products, including consumer video discs, digital televisions, integrated circuits and cellular telephony.¹²⁵ Such divergent standards have the potential to create significant barriers to trade and increase the cost of compliance for foreign firms, thus reducing the market openness of the Chinese economy to the trade and investment that it seeks to promote.

109. In recent years, China has increasingly stressed difficulties that it and other developing countries face when adopting international standards. At an April 2007 conference, Vice-Minister of Commerce, Yi Xiaozhun, stated that standards and intellectual property rights (IPRs) are critical for economies basing their development on science and technology. However, “inappropriate convergence” between standards and IPRs has “caused problems”.¹²⁶ He argued that international standards bodies insufficiently reflect the interests of developing economies. He went on to note that not only are such bodies based in western developed countries, but also they fail to recognise the difficulties developing countries face in adopting international standards.

¹²³ Ma Kai (2006).

¹²⁴ NDRC (2006).

¹²⁵ Linden (2004).

¹²⁶ Intellectual Property Watch (2007).

2.5 Streamlining conformity assessment procedures

110. Conformity assessment refers to measures taken to assess the conformity of products, processes and services to specific requirements or standards. These procedures may have the effect of facilitating trade, or they may create a technical barrier to trade. Public policy objectives like health, safety and the environment often require rigorous and careful conformity assessment procedures. When designed in a manner that considers the costs and time burdens born by producers, these procedures facilitate market openness by increasing consumer confidence in imported products. Likewise, firms are likely to regain the invested costs, as their ability to demonstrate that their products and services meet these strict requirements can lead to high consumer confidence and increased sales.

111. Although reliance on internationally agreed standards has been increasing, many internationally traded goods continue to be subject to specific testing and certification procedures in importing countries. Reducing multiple assessment procedures can considerably cut down trade transaction costs. Different procedures and mechanisms have been developed in OECD countries to facilitate acceptance of conformity assessments conducted by foreign conformity assessment bodies as equivalent as those conducted by domestic ones. Such mechanisms include mutual recognition agreements (MRAs) and suppliers' declaration of conformity (SDoCs). By concluding sectoral MRAs, trading partners agree to mutually accept conformity assessments carried out by accredited conformity assessment bodies located in partner countries for a sub-set of products or services.

112. SDoCs are a more flexible approach leaving the producers to choose the modalities of conformity assessment with technical requirements. These suppliers' declarations of conformity are usually based on in-house procedures or implemented by private organisations and are normally limited to low risk products. SDoC regimes are regularly supported post-market surveillance and robust penalties for non-compliance. In general, SDoCs require a high level of mutual trust between all parties concerned, including the end-users. The European Union "Global Approach" is an example of mutual recognition and accreditation procedures enabling the products recognised in conformity to be freely marketed throughout the EU Single Market. It relies heavily on the SDoC approach for its efficacy.

113. Recognising the results of conformity assessment based on accreditation is strongly supported by OECD best practices. Doing so requires the existence of adequate domestic capacities for accreditation, in particular, the establishment of efficient accreditation mechanism and accreditation institutions. National accreditation bodies, which usually operate under the supervision of the public authorities, are responsible for inspecting and acknowledging the competence and reliability of conformity assessment and share inspection results through international networks, such as the International Accreditation Forum (IAF).

114. As highlighted in the above section on *Transparency in the field of technical regulations and standards*, China has significantly rationalised its institutions dealing with standards and conformity assessment. Under the AQSIQ, the Certification and Accreditation Administration (CNCA) is charged with the task of unifying the country's conformity assessment regime. It establishes, guides, implements and supervises the compulsory product certification system.¹²⁷ CNCA designates certification bodies, testing laboratories, inspection organisations and certificate-mark issuing bodies; publishes an official list of certified products and manufacturers; and directs local AQSIQ branches to find violators of compulsory certification. CNCA also has the power to approve the exemption of products from compulsory certification and to deal with complaints or appeals regarding compulsory certification. CNCA draws up

¹²⁷ See Certification and Accreditation Administration website: www.cnca.gov.cn.

and modifies the product catalogue published jointly with AQSIQ and issues implementation rules for certification of products listed in the catalogue.¹²⁸

115. In March 2006, China established a new accreditation body called China National Accreditation Service for Conformity Assessment (CNAS). This new body is responsible for the accreditation of certification bodies, laboratories, inspection bodies and other similar assessment bodies. There are more than 110 accredited certification bodies currently operating in China.¹²⁹ Although these bodies have been accredited to certify for the purpose of the new China Compulsory Certification (CCC) mark, capacity remains limited when compared to demand for testing. China committed under the WTO to accredit qualifying minority and majority foreign-owned conformity assessment bodies to apply the new CCC mark.

116. To date, only one U.S. based conformity assessment body has been accredited under a Memorandum of Understanding with China to conduct follow-up but not primary inspections of facilities manufacturing CCC certified products for export to China.¹³⁰ Foreign enterprises seeking CCC certification for their products have reported that they are allowed only to receive testing in designated laboratories, which has meant long delays due to limited capacity. One study argues that the CCC is seen by foreign and domestic companies as an unnecessary technical barrier to trade imposing a costly and time-consuming “double certification” procedure for products.¹³¹ In both of these situations attention to strengthening non-discrimination within the process of regulation would further enhance the market openness of the Chinese conformity assessment regime, and provide consumers with a broader selection of products from around the world.

117. The recent restructuring of the Chinese standards and conformity assessment infrastructure has improved conformity assessment practices overall, however, inadequate capacity, un-transparent rules on which products are required to receive the CCC mark, inconsistent application of rules and duplicative testing requirements continue to hamper the efficiency of market openness of China’s conformity assessment regime to foreign trade and investment. The foundations for significant progress have been established, reforming the regulatory processes with particular attention to market openness principles should continue.

2.6 Application of competition principles from an international perspective

118. Anticompetitive practices of private firms can present difficulties for the efficient functioning of international markets. Some of these practices include hard-core cartel conduct, anticompetitive mergers and abuses of dominant position. Some of these anticompetitive activities can seriously reduce consumer welfare and efficiency and can interfere with market access by excluding firms from entering markets. For this reason, a commitment to sound competition principles is crucial. It is therefore important that governments make it possible for both domestic and foreign firms harmed by anticompetitive practices to have an avenue for addressing such practices. The existence of procedures for hearing and deciding complaints about regulatory or private actions that harm the competitive process and thereby impair market access and effective competition by foreign firms, the nature of the institutions that hear such complaints, and adherence to deadlines (if they exist) are thus key issues from an international market openness perspective.

¹²⁸ Weeks and Chen (2003).

¹²⁹ APEC-PAC News (200?).

¹³⁰ USTR (2008).

¹³¹ EUCCC (2007a), p. 12.

119. The introduction of market forces into China's economy has been characterised by nurturing a market sector alongside the large pre-reform state owned enterprises (SOEs) that previously defined China's economy. The successful strategy of leveraging foreign trade and investment to support the development of a rapidly growing market sector in China has been accompanied by gradually introducing laws to regulate forms of anticompetitive behaviour that tend to appear alongside the development of market economies. An effective competition policy regime to check anticompetitive conduct is important to virtually every sector of the Chinese economy and, in particular, those in which China is preparing to introduce market forces in next wave of reforms.

120. Official pronouncements about preventing monopolies date from as early as 1980. The first Chinese competition legislation was the 1993 Law against Unfair Competition. It addressed, *inter alia*, five practices that are usually included in general competition laws or can otherwise have anticompetitive effects: collusive tendering, predatory pricing, abuse of a market-controlling position by public enterprises, administrative monopoly and tied selling. The Price Law, enacted in 1997, prohibits price fixing, predation and discrimination, and the Law on Bid Invitation and Bidding or Tendering, adopted in 1999, imposes stronger sanctions against bid rigging. These laws and regulations expounding them continued the incremental creation of the legal basis for competition policy.

121. In August 2007, following 13 years of deliberation, the Standing Committee of the NPC passed the *Anti-monopoly Law* which came into effect a year later in August 2008. Containing eight chapters and 57 provisions, the Law provides for investigation and prosecution of monopolistic practices. It also bans monopolistic agreements, such as cartels and other forms of collusion, while protecting monopolistic agreements that promote innovation and technological advance. In prohibiting the abuse of a dominant market position and creating a general system for merger review, the Law supersedes the system established in 2003 requiring notification of acquisitions by foreign investors. In addition, the Law prohibits abuses of administrative powers that restrain competition.

122. The capacity of the *Anti-monopoly Law* to support the continued liberalisation and restructuring of new economic sectors will depend crucially on the quality of its application. In this respect, a number of factors including how evenly the law is applied (*e.g.* when addressing anti-competitive practices at the local level) will be essential. Special attention to market principles is merited when applying the *Anti-monopoly Law* under circumstances involving individual SOEs.¹³² This is particularly the case as it contains provisions apparently linking competition policy enforcement to non-competition goals, which may create significant regulatory discretion when applying competition Law, particularly in relation to SOEs. The lack of incumbent foreign enterprises in many of the new economic sectors identified for reform, underlines how important market openness will be in fostering competition and supporting economic reform in these sectors. The degree of market openness will determine the extent to which foreign investment can be harnessed to support continued economic reform. A more detailed discussion of the new *Anti-monopoly Law* and the application of competition principles in the context of regulatory reform can be found in the Competition Law and Policy Chapter of the forthcoming OECD Review of Regulatory Reform in China.

123. The pan-sectoral and pan-thematic importance of competition policy to an advanced market economy is demonstrated by the relevance of competition policy even to regulatory areas such as IPR. The next section will look at competition policy and IPR issues.

¹³² USTR (2008).

2.6.1 Competition policy and IPR

124. Effective regimes governing competition and IPR are essential to fostering growth and to supporting market openness towards international trade and investment. An effective competition policy regime is vital to addressing anti-competitive practices that detract from the efficiency of the market mechanism and deter new market entrants – particularly foreign ones. Some argue that a well functioning IPR regime is essential to rewarding investments in useful innovations by granting limited monopolies to IPR owners. However, to some observers it may not be obvious that an effective IPR regime is in itself important to market openness, or that effective competition policy and IPR regimes are together mutually supportive of economic growth and improved market openness.

125. Domestic protection of the exclusive rights held by IPR owners strengthens the confidence of foreign enterprises to invest in local research and development (R&D) and bring the most innovative technologies to economies with large markets and abundant productive resources such as China.¹³³ The perception that an economy protects IPR held by foreign enterprises increases their confidence to invest and trade in high technology products in such economies, and enhances perceptions that such countries are “open” to such economic activities. An impediment to effective enforcement of IPR – particularly those of foreign IPR holders – is the sentiment held by some local Chinese policy-makers that the IPR held by foreign enterprises will accrue monopoly rents from the domestic economy without providing reciprocal benefits (see Box 6).

126. Such views run counter to Chinese central government’s stated perspective that protecting IPR is a necessary component of efforts to increase the technological upgrading of local productive capacities,¹³⁴ and that creating an attractive domestic IPR environment for investment is an important element of this process. The numerous instances of inadequate efforts to enforce IPR at the local level suggest that local authorities are yet to be convinced.¹³⁵ Supporting this viewpoint is a case highlighted in the IPR Chapter of the OECD publication *Governance in China* in which certain local authorities were reluctant to enforce IPR rules against a large local enterprise, partially because the IPR holder was a foreign enterprise.¹³⁶ It should be noted that China’s IPR legal regime at the national level is largely in line with international standards,¹³⁷ and weaknesses in its enforcement stem from a generally incomplete regulatory infrastructure and an insufficient conviction by local regulators that protecting IPR is the domestic and local economic interest.

127. By preventing unlawful anti-competitive business practices including those of IP right holders, comprehensive and effective competition policy regimes provide regulators enforcing IPR with assurance that enforcing IPR is in the domestic interest – even when enforcing the IPR of foreign against domestic enterprises. This assurance should be underpinned by the knowledge that enforcing IPR: (i) creates incentives for domestic enterprises to invest in R&D; (ii) removes disincentives for foreign enterprises to trade and invest in high technology goods and services domestically; (iii) encourages domestic technology innovators to make public their innovation in exchange for protection of their intellectual property (*e.g.*, *via* patents); and (iv) does not mean that anticompetitive practices by IP right holders will not be addressed.

¹³³ W. Park and D. Lippoldt (2005).

¹³⁴ OECD (2005a), p. 407-8.

¹³⁵ WTO (2006d), p. 157 and OECD (2005a), p. 423.

¹³⁶ *Ibid.*

¹³⁷ USTR (2006), p. 122.

Box 6. Convincing progress on IPR in China?

China overhauled its regulatory framework for IPR as part of its WTO accession and today maintains a "...framework of laws regulations and implementing rules on IPR..." that is "[i]n most respects...satisfactory" according to an assessment by one of its most important trade partners.¹³⁸ It is in the area of enforcement that most significant scope remains for progress including though reforms to address "[j]ack of coordination among Chinese government ministries and agencies, a lack of training, resource constraints, lack of transparency in the enforcement process and outcomes, and local protectionism."¹³⁹

However, significant efforts though bilateral co-operation mechanisms such as the US-China Joint Commission on Trade (JCCT) have yielded some success. In the area of software piracy, the U.S. software industry reports that China's software piracy rate has dropped 10 percent in the last three years due in large part to new rules adopted in 2006 requiring that computers be pre-installed with licensed operating systems, and governments agencies conform to this rule in its procurements. From 2003 to 2006, the legitimate software industry in China grew by 350 percent to USD 1.2 billion.¹⁴⁰

Although examples of such progress remain infrequent against widespread and significant shortcomings in IPR enforcement, a number of factors suggest that broader progress is likely over time. The vast majority of design patents, utility models, trademarks, and plant varieties held as IPR in China are, in fact, held by Chinese IPR holders. And, a domestic Chinese business lobby has been increasingly active in promoting IPR protection and enforcement. Notably, the majority of IPR enforcement efforts in China are now taken to protect Chinese IPR holders.¹⁴¹

A number of studies seeking to assess the economic impact of increased IPR protection support that enhancing IPR enforcement in the domestic interest of the enforcing country. One study estimates that reducing software piracy by another ten points alone could create: 335 000 new jobs, USD 1.6 billion in tax revenues and USD 20.5 billion in economic growth within China.¹⁴² Building upon existing efforts to educate the public, business and government officials on the importance of IPR to the domestic economy will strengthen support for tougher enforcement and improve compliance. The resulting improvements in market openness towards investment will be in IPR intensive sectors of the domestic economy, which policymakers are seeking most actively to promote.

Sources: IDC (2008) and USTR (2008).

128. Competition policy regimes support the conviction of regulators that effective IPR enforcement is in the domestic economic interest and that safeguards exist to check the unlawful anticompetitive practices of IP right holders.¹⁴³ The establishment of competition or IPR regulatory regimes within a domestic economy are independently supportive of economic growth and market openness. Their concomitant implementation allows for symbiotic efforts towards attaining their individual regulatory objectives thus enabling higher levels of economic growth and market openness as a result. Article 55 of China's new *Anti-monopoly Law* provides that the law does not prohibit normal exercise of IPRs, but that abuse of IPRs to eliminate or restrict competition is a violation.

3. Regulatory Environment in the Service Sector

129. This section examines the implications for international market openness arising from current Chinese regulations in the services sector. Following an overview of China's commitment under the General Agreement on Trade in Services will be a review of the telecommunications and insurance services sectors. For each sector, an attempt has been made to draw out the effects of sector-specific

¹³⁸ USTR (2008).

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² IDC (2008).

¹⁴³ Maskus (2000).

regulations on international trade and investment and the extent to which the six efficient regulation principles are explicitly or implicitly applied.

3.1. Overview of China's services sector liberalisations

130. In areas where WTO Members have made specific commitments under the GATS, they are not allowed to discriminate between service suppliers from different WTO Members, or between domestic and foreign firms from WTO Members. This principle applies generally unless specific limitations to non-discrimination are identified in a WTO Member's schedule of commitments under the GATS. China made specific commitments in 9 out of the 12 sectors contained in the classification list generally employed by WTO Members to schedule specific commitments under the GATS including: business services; communication services; construction and related engineering services; distribution services; educational services; environmental services; financial services; tourism and travel related services; and transport services.¹⁴⁴

131. Trade in services was a key area in China's WTO negotiations for accession and resulted in commitments to substantially open a broad range of services sectors through the elimination of many existing limitations on market access. China agreed to eliminate by 31 December 2006 most restrictions on foreign entry and ownership, as well as most forms of discrimination against foreign firms. The quality of market openness, absent further liberalisations, will depend on how transparent and automatic the licensing procedures in the liberalised sectors are applied.

132. An indication of how far the WTO moved China away from a command economy and closer towards an increasingly market-led economy can be found in its services commitments at the time of accession, which included the eventual removal of restrictions on trading and domestic distribution for most products. China agreed to allow foreign services suppliers to engage in the retailing of all products by the end of 2003. By the end of 2004, all firms had the right to import and export all goods except those subject to state trading monopolies (such as oil or fertilisers). By the end of 2006, foreign firms were allowed to distribute virtually all goods within the domestic economy. Foreign financial institutions were permitted to provide services without client restrictions for foreign currency business upon accession; local currency services to Chinese companies by December 2003; and services to all Chinese clients by December 2006. In practice, the institutional and regulatory reforms that will enable China to govern its services commitments, and those that will be necessary to make the liberalised services sectors accessible to foreign trade and investment, are still being implemented and improved.

3.2. Telecommunications services

133. Although China's telecommunications liberalisations have been implemented *de jure* through the coming into force of laws and a re-organisation of China's telecommunications infrastructure, the capacity of foreign investment to contribute to the modernisation and of China's telecommunications continues to be deterred by a challenging regulatory environment. Improving the market openness of the Chinese telecommunications sector could be undertaken through structural changes including strengthening the separation between the state regulator and service provider and accelerating the implementation of a comprehensive telecommunications law. Implementing these changes with attention to transparency of the reforms and reducing unnecessarily trade restrictiveness in the design of regulations, would support the market openness of China telecommunications sector, and thus the ability of regulators to leverage inward FDI to support reform in this sector.

¹⁴⁴ WTO (2002b).

134. Before China acceded to the WTO, foreign investment was not permitted in telecommunications services. To implement its liberalisation commitment under the GATS, the Chinese government promulgated the *Telecommunications Regulations* in 2000 and the *Regulations on Foreign Investment in Telecom Enterprises* in 2002. These two laws formally enable foreign investment into the Chinese telecommunications sector and brought foreign equity limits into conformity with China's GATS commitments. These are up to 49% for basic telecommunications services and up to 50% for value-added telecommunications services.

135. Also part of China's commitments under the GATS, China restructured its telecommunications sector by formally separating China Telecom (the operator) from Ministry of Information Industry (MII – the regulator). Potential foreign operators consider that the incompleteness of the separation can be found in the continued responsibility of MII to develop China's Information Technology (IT) industries.¹⁴⁵ Although largely informal, MII still maintains extensive influence and control over the operations China Telecom and other domestic operators thus creating a perception among potential foreign market entrants that they are disadvantaged in the Chinese telecommunications market.¹⁴⁶ Some potential market entrants consider that unnecessarily trade restrictive regulatory outcomes (e.g. the reclassification of value-added services as basic services, the lengthy license application process and capitalisation requirements that seem extraordinarily high) result from the incomplete independence of MII from domestic telecommunications operators.¹⁴⁷

136. China does not yet have a telecommunications law; however, MII in 2004 submitted a draft law to the State Council for review. The Legislative Affairs Office of the State Council is currently reviewing the draft and the new law is currently being revised. Although the draft *Telecommunications Law* could be a vehicle for addressing shortcomings in China's current telecommunications regime, the draft text has not been made publicly available and potential foreign investors have not been formally consulted in a meaningful manner. Seeking comments from potential market entrants would be the most proficient way to assess the current draft of the *Telecommunications Law* for unintended deficiencies in market openness. Applying the principles of procedural transparency as was described in the case of the *Anti-monopoly Law* would strengthen the confidence of potential FDI into the Chinese telecommunications sector, and thus support a more efficient and effective modernisation of the telecommunications sector in China.

3.3 Insurance services

137. With some similarities to the telecommunications sector, the market openness of the Chinese insurance sector appears further progressed with a significant foreign presence already evident in the domestic insurance market. The regulatory environment could be further enhanced, from a market openness perspective, by increasing transparency and focusing more effort on applying the least trade restrictive measures required to achieve regulatory objectives. Regulations governing the Chinese insurance services sector are often general and contain ambiguities that have left regulators with a high degree of discretion. The resulting potential for inconsistent application of regulations in this sector has reduced the transparency and predictability of the regulatory environment for foreign insurers. In a specific case, the lack of precision in regulations concerning the rights of foreign insurers to establish branches, together with the reluctance of China Insurance Regulatory Commission (CIRC) to provide clarifications, has left foreign insurers less-inclined to expand their operations in the Chinese insurance sector.¹⁴⁸ What is likely an unnecessarily trade restrictive approach to achieving the intended regulatory objective can be

¹⁴⁵ USTR (2006), p. 141.

¹⁴⁶ *Ibid.*

¹⁴⁷ USTR (2006), p. 141.

¹⁴⁸ USTR (2005), p. 78.

found in the high capitalisation requirements for foreign insurers intending to establish joint ventures with domestic insurers. A best practice approach in this context would be to assess the possibility of applying less trade restrictive regulatory approaches to achieving regulatory objectives. Increasing regulatory transparency and predictability and better supporting use of least trade restrictive regulatory instruments would better enable foreign insurers to make investments that would improve the quality and range of insurance services available in China.

138. Under its WTO commitments, China agreed to a significant liberalisation of its domestic insurance market. Its commitments include phasing out geographic restrictions on all types of insurance operations during the first three years after accession and expanding the ownership rights of foreign companies. By the end of 2004, China allowed foreign insurance firms to provide health, group and pension/annuities insurance to both foreign and Chinese clients. In that same year, China agreed to permitting up to 51% foreign investment in insurance brokerage joint ventures and lifting all geographic restrictions. China also agreed to permitting wholly foreign-owned firms to provide reinsurance, transport insurance and associated brokerage services by December 2006.

139. To realise these obligations, the NPC Standing Committee implemented revisions to the 1995 *Insurance Law* on 1 January 2003. In addition to the *Insurance Law*, several rules and regulations governing the conduct of insurance activities have been issued by the CIRC, the sector's regulator. The CIRC has an English language website with information on all regulations in the insurance industry (www.circ.gov.cn). As of 11 December 2004, the CIRC lifted all geographic restrictions on foreign insurers. Foreign insurance companies are permitted to enter the market as 100% foreign-owned subsidiaries for non-life insurance and up to 50% foreign-owned for life insurance. According to Chinese authorities, there are no plans to lift this restriction.¹⁴⁹ China's insurance industry at the end of 2004 was comprised of 80 institutions providing insurance services. Of these, 37 are foreign providers, most of which seem to be branches, with some joint ventures. The *Insurance Law* allows the establishment of insurance brokers. At the end of June 2005, there were 234 insurance brokers in China, four of which were foreign-owned (or joint ventures with foreign investment).¹⁵⁰

3.3 *Summary remarks on services trade*

140. As services constitute a significant and growing share of the world economy, there is great potential for China to further develop its services sector and thus realise significant economic and social benefits. China has embarked on a proactive effort to unlock its services potential with the target annual growth rate of 20%, promoting cultural, tourism, transportation, construction and insurance services among others. However, the regulatory process and at times overly burdensome licensing and operating requirements continue to frustrate service providers. There is still a need for further reform in both liberalisation and implementation.¹⁵¹

141. It is not always easy for policy makers, whether in China or the OECD, to understand how regulatory policies restrict trade in services. The lack of sectoral indicators to help policy-makers understand the effects of the myriad regulatory policies on trade in services and to remove their obstacles hinder policy development. Services trade data is lacking and adequate measurement tools have yet to be developed. In response, the OECD will embark on a project to develop a services trade restrictiveness index (STRI) by focusing on the domestic regulatory barriers to services trade in OECD countries and in a

¹⁴⁹ WTO (2006d), p. 221.

¹⁵⁰ *Ibid.*

¹⁵¹ See Australia Department of Foreign Affairs and Trade (2005).

select number of non-member economies, including China. The initial phase of the project will look at telecommunications, construction and business services.

4. Conclusions and Policy Options

4.1 General assessment and main challenges

142. Over the past quarter century of economic reform, China has gradually moved from a command to a more market-oriented economy. Throughout the early part of the reform period, rates of economic growth, inward FDI and export growth had been rapid largely due to the relative isolation of market from the state sector. China's accession to the WTO resulted in substantial liberalisations of the Chinese economy to trade and investment, but more importantly locked in sweeping institutional and regulatory reforms throughout its domestic framework for economic governance. These reforms came at the time when sustained economic growth would require the growth of the market sector into areas of the domestic economy that had traditionally been administered by SOEs.

143. Continued growth of the Chinese economy will be increasingly reliant on domestic rather than on export growth. The role of market forces will necessarily increase within sectors of the domestic economy that had previously been managed *and* operated by SOEs such as telecommunications, power generation, infrastructure and others. Many of the institutional reforms such as separating regulatory functions from service provision have already taken place for instance in the area of telecommunications. However, reforms to allow regulatory institutions to function as truly independent from service providers (where they had once existed as single institutions) will become increasingly important. Such reforms will better enable market forces to assist in the next phase of reforms.

144. Many of the institutional reforms that have been described in this report including the merging of institutions that once separately handled domestic and foreign economic regulation have put into place an infrastructure to govern the introduction of market forces into new sectors and geographic regions of the Chinese economy. Their implementation has been a component within the overall efforts of domestic economic policy to address, *inter alia*, rising regional and urban-rural income inequality, environmental conservation and increasing the resource efficiency of the domestic economy. This report finds that many of the needed institutional reforms have taken place. The qualities of the laws, regulations and more importantly the manner in which the new institutions apply them have room for continued improvement through sustained reform.

145. The following sections presents potential approaches to supporting further progress in regulatory reform for market openness, and are based on the OECD six efficient regulation principles.

4.2 Policy options

146. The *Legislation Law* has provided an important foundation for enhancing **transparency** throughout the Chinese regulatory system in that it requires the publication of legislation prior to implementation, and specifically allows for public consultations. To enhance transparency of the domestic regulatory framework, the following recommendations are proposed:

- The General Office of the State Council has designated the *Foreign Trade and Economic Cooperation Gazette* (Gazette) to be the journal dedicated to publishing all trade related laws and regulations, and directed all government agencies to send copies of all trade related measures to MofCOM for publication in the Gazette. Efforts by MofCOM to make the Gazette a single source for all trade and investment related regulations have met with increasing success, however, a significant number of new trade related measures come into force unaccompanied by publication

in the Gazette. MofCOM should be provided sufficient authority to receive all trade related measures for publication in the Gazette.

- Make mandatory the provision of complete draft legislation texts – as opposed to summary provisions – prior to public consultations. This would better enable input from both domestic and foreign enterprises to reduce the possibility that final legislation would have unnecessary and negative implications, including for market openness.
- Require the provision for a sufficient time-period for public consultations that would be adequate for comments to be taken into consideration within the final drafts of new legislation.
- Implement a standardised and general regulatory process allowing for foreign enterprises to lodge appeals that would enable misinterpretations of rules and regulations to be corrected, thus reducing regulatory uncertainty and enhancing transparency.

147. Institutional reforms to create MofCOM and AQSIQ reflect efforts to put into place a regulatory infrastructure conducive to enhancing **non-discrimination** in the regulation of economic activities. These institutions and others should continue efforts to embrace the importance of *non-discrimination* in the function of regulatory regimes. To further eliminate remaining discriminatory aspects in the regulatory environment, the following suggestions could be made:

- Continue to improve the general and sectoral regulatory framework and eliminate explicit discriminatory restrictions affecting foreign traders and investors, in particular the limitations on the level of foreign ownership in some sectors and reconsider the screening requirements for cross border merger and acquisition transactions.
- Strengthen training for regulators at the sub-national level on the principles of good regulatory practice including the value of non-discriminatory regulatory practices. Such an effort would enhance market openness and improve the overall administration of regulations in a non-discriminatory manner.
- Pursue a strategy to harmonise federal and regional trade policy and regulation and ensure its unified implementation throughout China.
- Reconsider the list of restricted and prohibited investment sectors for FDI.
- Reconsider recent legislation on government procurement that appears to support preferences for domestic suppliers.

The growth in regional trading arrangements (RTAs) over recent years has made the negotiation of agreements a matter of reducing discrimination against the domestic economy rather than seeking preferential access to foreign markets.

- Attention to maintaining the levels of transparency within the negotiating process will reduce the discriminatory impact of such agreements on third economies.

148. Efforts at the national level to reduce unnecessarily burdensome regulations have, to date, been noteworthy. Nevertheless, there still exists broad discretion by administration when applying a variety of laws and regulations. The resulting uncertainty has created substantial regulatory uncertainty and can reduce the confidence of investors to make large and long-term investments within the domestic economy. The implementation of the *Administrative Permission Law* provided an important example of addressing the administrative oversight and discretion that reduces **unnecessary restrictiveness** in regulations. To continue efforts at improving efficiency and tackling unnecessary trade restrictiveness, several measures could be suggested:

- Consider applying a review similar to that which accompanied the *Administrative Permission Law*, including a provision for non-discriminatory application, in selected sectors where FDI is substantial *and* likely to be significant. Broaden application if successful.
- Consider, on a pilot basis, providing SCOLA with the analytical capacity and financial resources to conduct RIAs in co-operation with MofCOM over a pre-defined selection of impending economic draft legislation. If successful, consider institutionalising RIAs as a basis for reviewing all new legislation and applying RIAs across industrial sectors and geographic regions of China to enhance consistency of regulatory quality nationally.
- Pursue regular monitoring of the impact regulatory measures have on the business environment. Maintain the awareness of authorities at different levels and responsible agencies of the primary objective of adopted regulatory measures and ensure that these regulations continue to be thoroughly applied not only immediately after their introduction but also in the longer term.
- Continue custom reforms, including streamlining and simplifying customs regulations to avoid diverging interpretations by local customs officers; ensure adequate financing, training and technical equipment of customs administration.

149. Efforts to **harmonise domestic to international standards** has already resulted in the alignment of over 30% of standards at the national level to international standards, however, few standards have been harmonised internationally in recent years. In the review of national standards initiated in April 2004, a large number of standards were abolished and 44% were indicated for revision. The *Standardisation Law* is also currently being revised to better support harmonisation of domestic standards at the national, sectoral, local and enterprise level. To promote the use of internationally harmonised measures and recognition of equivalent regulatory measures adopted by foreign countries, the following recommendations are proposed:

- Consider including in the revised *Standardisation Law* a provision to guarantee that foreign enterprises will be able to participate in domestic standards setting activities.
- Include a provision within the *Standardisation Law* requiring harmonisation towards international standards as the basis for interventions to harmonise conflicting standards at the national, sectoral, local and enterprise level. Such a provision would not only facilitate foreign imports, but also support in general the ability of locally produced goods to be exported internationally.
- Require that the 44% of national standards designated for revision under the recent review be harmonised internationally wherever practicable.

150. **Streamlining conformity assessment procedures** and upgrading conformity assessment capacity not only facilitates the operation of foreign enterprises, but is indispensable if domestic producers are to continue upgrading their export capacities, particularly in more technologically sophisticated goods. Areas highlighted in this report as most urgently in need of progress include:

- Developing domestic capacities to establish accredited certification bodies and promoting the accreditation of technically qualified foreign-invested conformity assessment bodies to operate in China.
- Promoting the practice of recognising the equivalence of conformity assessment procedures performed in other countries, whether unilaterally (after assessment) or by joining mutual recognition agreements.

151. An effective competition policy regime will be a critical component of ongoing institutional and regulatory reform efforts to establish an effective architecture for governing the increasing role of the market in China. After 13 years of deliberation, The Standing Committee of the NPC passed the *Anti-monopoly Law* taking effect on 1 August 2008. The application of competition principles can be enhanced in particular by:

- Integrating market openness as a consideration within the application of the *Anti-monopoly Law* by the new Anti-monopoly Enforcement Authority. Reinforce the participation of antimonopoly authorities in elaborating trade policy.
- Clearly define the relationship and respective responsibilities of the competition authorities and existing or future sectoral regulatory authorities to limit the risk of inconsistent approaches on competition issues and avoid potential uncertainty for business.

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A selection of useful websites

China Customs: www.customs.gov.cn

China National Regulatory Commission for Certification and Accreditation: www.cnca.gov.cn

China News: www.Chinanews.cn

Information on Chinese legislation: www.sohu.com and in English www.Chinaonline.com,
www.sinolaw.com

Ministry of Commerce: www.english.mofcom.gov.cn

Ministry of Finance government procurement website: www.ccgp.gov.cn

National Bureau of Statistics of China: www.stats.gov.cn

National Development and Reform Commission: www.ndrc.gov.cn and in English www.en.ndrc.gov.cn

People's Republic of China: www.gov.cn and in English: www.english.gov.cn

Standardisation Administration of China: www.sac.gov.cn/english

State Administration of Foreign Exchange: www.safe.gov.cn

WTO/TBT National Notification Authority & Enquiry Point of PRC:
www.tbt-sps.gov.cn/Pages/Channel_90/Class/Index.html

ANNEX

SURVEY ON THE BUSINESS ENVIRONMENT IN THE PEOPLE'S REPUBLIC OF CHINA

Introduction

1. The business environment plays a key role in a country's economic stability and growth. By increasing productivity and investment, businesses can accelerate the rate of development. To maximise this growth potential, the business environment needs an effective regulatory system. Sound public policy fosters a healthy investment climate by reducing costs, risks and barriers to competition. A healthy business environment provides opportunities and incentives for firms to invest productively, to create jobs and to provide goods and services.

2. Government policies and behaviours play a crucial role in shaping the business environment. Governments influence the investment climate through the impact of their policies and behaviours on the costs, risks and barriers to competition facing firms. Creating a better business and investment environment requires that governments tackle all three aspects. A government can greatly shape the domestic business environment through its role in the regulation and taxation both at and within the border, provision of infrastructure, policies toward free enterprise and competition, policy towards foreign investment, foreign trade and exchange controls, securing property rights, the functioning of capital and labour markets, and broader governance features like corruption.

3. The OECD conducted a survey of the business environment in the People's Republic of China ("China") as part of the project on China's Regulatory Reform Review. The Secretariat worked closely with the Business and Industry Advisory Committee (BIAC) to the OECD and its China Task Force to survey the business community on the specific regulatory barriers they faced in China. Together a survey was designed and distributed to OECD member country business associations (in English) as well as one Chinese business association (in Chinese) in the latter part of 2007. The Chinese firms are both state-owned enterprises and private firms and are members of the China Federation of Industrial Economics (CFIE) network. Final results cover responses from 147 companies, comprised of 42 Chinese companies and 105 foreign companies from OECD countries. The responses are included in this annex as well as a copy of the survey.

4. The responses to the survey were divided between OECD firm (Annex Tables 1-39) and Chinese enterprise responses (Tables Annex 40-78). The OECD member country firms surveyed operate in several locations covering 25 cities/regions throughout China with a majority in Shanghai, Beijing, Qingdao and Guangzhou (Annex Table 6). The nature of the business is concentrated in financial services; wholesale and retail trade; chemical raw materials and products; food processing; plastics; and electronics and telecommunications (Table Annex 1). A little more than half the firms are foreign invested enterprises with the remainder wholly foreign owned (Table Annex 2). Close to 40% of the surveyed firms have more than 1000 employees with almost 15% with less than 50 employees (Table Annex 5).

5. The Chinese firms surveyed operate in several locations covering 20 cities/regions throughout China. The majority were in places other than those cited in the questionnaire, followed by Beijing and Shenzhen (Annex Table 45). The nature of the Chinese businesses is concentrated in software, IT and IT related services; financial services; and general machine building (Table 40). Close to 43% of the surveyed firms have more than 1000 employees with almost 18% with less than 50 employees (Annex Table 44).

6. The results of the survey show a large difference in responses from OECD member country firms and Chinese enterprises. For OECD firms, the most serious obstacles facing companies in China are transparency issues. There were also obstacles regarding intellectual property rights and non-tariff barriers such as customs clearance and licensing procedures. The least troublesome issues respondents cited are obstacles imposed by governmental or professional associations such as barriers to entering export markets or recognition of skills and professional qualifications. For Chinese firms, transparency was not as significant an issue. The concern for Chinese firms was enforcement of laws and regulations (Annex Tables 50 and 66) and licensing procedures (Annex Table 69), but the problems are considered minor.

7. The discussion below examines the OECD member country firms' responses in regards to the transparency issue.

Why is transparency important?

8. Transparency plays a critical role in the development of a healthy business environment. Transparent policy promotes efficiency by reducing regulatory impediments to business processes. For the market participant, a transparent regulatory system facilitates timely comprehension and policy compliance. For the government, transparent policy can be assessed and reformed more efficiently because there is a lower risk of extraneous variables.

9. Predictability and simplification are two fundamental components of transparency. Policy predictability reduces business costs by minimising uncertainty. Policy simplification also reduces costs, by limiting the time and effort demanded of market participants to identify and comply with regulatory requirements. Through cost reduction, transparency increases efficiency and thus encourages business expansion and economic growth.

10. Transparency also facilitates market openness on the domestic and international level. As the process of globalisation has gathered momentum, barriers such as language and differences in national policy have increased the demand for transparency. Accordingly, China's integration into the global market implies a greater need for transparency to maximise the country's sustainable economic growth.

11. In joining the WTO in 2001, China subscribed to a global effort to increase transparency. While the country's transparency levels have increased significantly since WTO membership, the OECD survey results reveal several areas in need of further improvement. Survey responses indicated that information on current policies is not always available or up to date, consultation channels can be unsuccessful or nonexistent, and policy enforcement measures are often ineffective. The Chinese government needs to address these transparency deficiencies to sustain the country's role as a key global player.

12. The OECD survey addresses three main elements of transparency that have particular relevance for a healthy businesses environment. These elements are access to regulatory information, channels for government consultation, and policy implementation and enforcement. The following analysis of survey results for OECD member country firms sheds light on the current levels of transparency in China.

Availability of information

13. Availability of information on existing policies and timely notification of changes in regulation are key components of a transparent, healthy business environment. Unclear laws and late notifications of reform measures impede business compliance and overall efficiency. OECD survey questions relating to information accessibility reveal that while information is generally available to businesses in China, there are still some transparency issues.

14. For regulation to be effective and support economic advancement, information on the system must be accessible to market participants. This transparency facilitates educated decision-making in the market and is particularly relevant in a globalising economy, as foreign market entrants must familiarise themselves with the system to succeed in the new business environment. According to survey results, availability of up-to-date information on existing governmental policies is only a significant concern for a small percentage of companies in China. 11.5% of respondents indicated information availability to be a serious or very serious problem, while 41% of respondents reported minor or no problems at all (Annex Table 7).

15. A closer look at specific legislation areas reveals that most types of information are readily available at the national level. Survey responses indicated that information on legislation concerning mergers and acquisitions and shareholder rights were reported as the most difficult categories to obtain. Information on possibilities to establish branches, subsidiaries or joint ventures and information on foreign exchange regulations were the most readily available categories at the national level (Annex Table 16).

16. Overall, information is 1.5% more difficult to obtain on average at the provincial level than at the national level. Respondents indicated particularly high levels of difficulty in obtaining information in the following areas: 64.7% of respondents for Mergers and Acquisitions, 57% of respondents on Environmental requirements, and 52.9% of respondents on shareholder rights indicate difficulty obtaining information at the provincial level (Table 16).

17. The availability of legislation in Chinese, English and other foreign languages varies according to the level of legislation sought. According to survey responses, 92.2% of primary legislation is available in Chinese. 31.4% of primary legislation is also available in English, a significant statistic relative to other forms of legislation. Only 10.8% of secondary legislation is available in English. 4% of provincial legislation and 3% of local legislation are available in English. Not only is the availability of local legislation in English limited, respondents indicated that 22.8% of local legislation is not available in any language (Table 18).

18. Survey responses revealed the most common non-governmental and governmental sources for information on laws and regulations. Consulting & law firms (16.3%) and free websites & databases (14.6%) are the primary Chinese non-government sources used by surveyed companies in China. Several foreign non-governmental sources, particularly local partners (14.9%) and personal contacts (11.2%), are also frequent reference sources (Annex Table 21). In a survey question on Chinese government sources, respondents indicated that government websites in Chinese are the most frequently used sources. Informal and formal contact with government officials were the second and third most common sources, respectively (Annex Table 22).

19. Transparency in relation to changes in regulation appears to be a more serious concern for companies in China. 25.8% of companies face serious or very serious problems relating to the availability of information on changes in regulation. An additional 33.3% of companies face medium level problems in this area (Annex Table 8). Another survey question on this subject reveals that obstacles are more significant at the provincial level. 61.9% of respondents face medium to very serious problems at the national level, while 68.3% of respondents face serious or very serious problems at the provincial level (Annex Table 17).

Government consultation channels

20. Another key aspect of transparency is the opportunity for market participants to participate in the rule-making process. Through consultation with policy makers, businesses offer valuable feedback on the effectiveness of current policy and contribute to the reform process. The lack of proper communication

channels impedes business processes and overall economic productivity. The OECD survey results indicate that China's deficient consultation channels between businesses and policy-makers is a serious obstacle.

21. Survey results indicate that government regulations are generally not consistent with the interests and needs of the business community. Nearly 70% of respondents indicated medium, serious, or very serious problems in this area (Annex Table 9). Meanwhile, approximately 75% of respondents face medium, serious, and very serious problems concerning inadequate consultation with business entities prior to introducing new laws or economic policies (Annex Table 10).

22. Respondents assessed the Chinese authorities' effort to consult over planned laws and regulations before their introduction and implementation as generally insufficient. 85% of companies deemed the consultation undertaken by Chinese authorities before the introduction of reform measures to be insufficient. Correspondingly, 87.9% of respondents indicated that the openness of notification and consultation procedures to all interested parties (including foreign investors) was insufficient. 92.9% of respondents noted that exceptions to accessibility to notification/consultation procedures are insufficiently defined (Annex Table 19).

Policy implementation and enforcement

23. The demand for transparency is central to both policy implementation and enforcement. Transparency facilitates accountability between the government and business actors, thus strengthening the regulatory system's effectiveness. Responses to the OECD survey reveal considerable transparency deficiencies in China's implementation and enforcement processes. The majority of companies reported the Chinese government's programs for sectoral regulation to be fairly unpredictable, a reflection on the country's ineffective implementation processes. Faced with frequent changes in regulation, 0% of respondents indicated the system to be completely predictable and only 17.1% consider it fairly predictable (Annex Table 20).

24. The main area for concern for businesses in China is the government's enforcement of laws and regulations. 37.7% of respondents reported serious or very serious problems and an additional 41.6% of respondents reported medium problems (Annex Table 11). This result reveals a lack of transparency and a significant obstacle in China's long-term development.

25. Survey questions regarding legal rights to contest Chinese authorities' administrative decisions through legal appeal and arbitration procedures revealed additional transparency deficiencies. According to survey results, one third of companies believe procedure accessibility is a serious or very serious problem (Annex Table 12). The clarity and transparency of rules and proceedings of appeal and arbitration bodies causes slightly greater concern, as 37.1% of respondents indicated serious and very serious problems (Annex Table 13). Serious and very serious obstacles were highlighted by 41.6% of respondents regarding the uniformity and impartiality of rules and proceedings (Annex Table 14). The most problematic area is whether or not procedures were rapid and effective, where 44.2% of respondents face serious or very serious problems in this area (Annex Table 15).

26. Under the current regulatory framework, 50% of respondents indicated that they have not encountered any serious problems in regards to intellectual property rights protection. Nearly 20% of respondents, however, do face serious to very serious problems in this domain. These results are reasonable considering the diverse range of sectors included in this OECD survey and the variance intellectual property issues faced by different industries (Annex Table 23).

27. Of firms who have experienced intellectual property rights abuse in China, survey results indicate that 0% found recourse via official channels to be very effective. 44.1% of firms took no formal action and 11.9% of firms are awaiting a pending action. Of those who completed the judicial process, 17 firms (65.4%) deemed the final recourse granted to be insufficient (Annex Table 24).

OECD FIRMS

Annex Table 1. Nature of business

	Frequency	Percent
Farming, forestry, animal husbandry and fisheries industries	1	0.6
Food processing	10	5.8
Tobacco processing	1	0.6
Textiles	8	4.7
Paper making and paper products	3	1.7
Chemical raw materials and products	11	6.4
Medicines	4	2.3
Chemical Fibres	4	2.3
Plastics	9	5.2
Non-metal mineral processing	4	2.3
Ferrous metallurgical smelting and rolling	5	2.9
Non-ferrous metallurgical smelting and rolling	2	1.2
Metals	5	2.9
General machine building	7	4.1
Communication and transport equipment	6	3.5
Electrical machinery and equipment	7	4.1
Electronics and telecommunications industries	9	5.2
Production and supply of power, gas and water	4	2.3
Water resources management	1	0.6
Wholesale and retail trade	13	7.6
Real estate	3	1.7
Accounting and auditing services	7	4.1
Software, IT and IT related services	7	4.1
Tourism and related travel services	4	2.3
Financial services	15	8.7
Communication and transportation services	7	4.1
Other	15	8.7
Grand Total	172	100

Annex Table 2. Foreign participation**Annex Table 2A. A single operation in China**

	Frequency	Percent
More than 10% and up to 50% of foreign-owned shares	13	32.5
More than 50% and less than 90% of foreign owned shares	7	17.5
Wholly foreign owned	20	50.0
Grand Total	40	100.0

Annex Table 2B. Several operations in China, with an average of

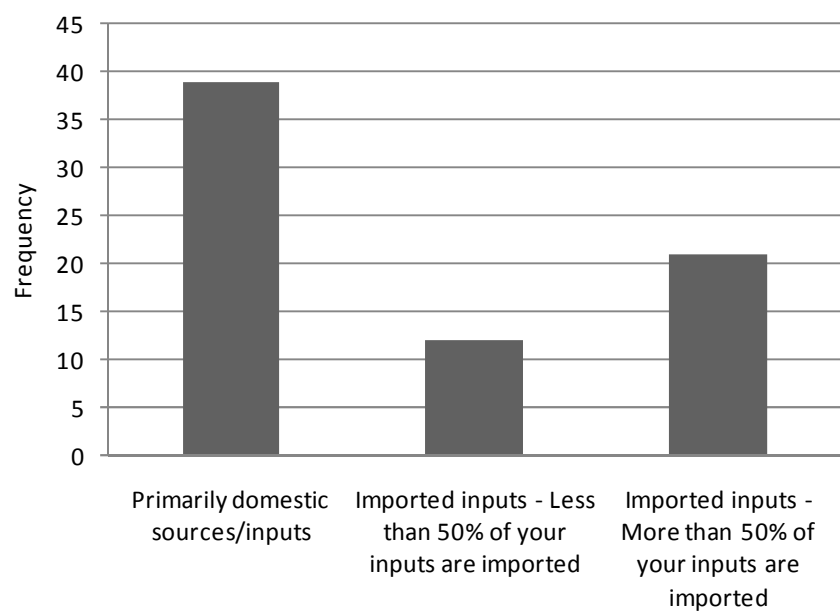
	Frequency	Percent
More than 10% and up to 50% of foreign-owned shares	8	16.0
More than 50% and less than 90% of foreign owned shares	21	42.0
Wholly foreign owned	21	42.0
Grand Total	50	100.0

Annex Table 3. Market orientation

	Frequency	Percent
Primarily domestic market	67	48.9
Export: <i>Less than 50% of sales</i>	20	14.6
<i>More than 50% of sales</i>	23	16.8
<i>Total</i>	43	31.4
Import: <i>Less than 50% of sales</i>	13	9.5
<i>More than 50% of sales</i>	14	10.2
<i>Total</i>	27	19.7
Grand Total	137	100.0

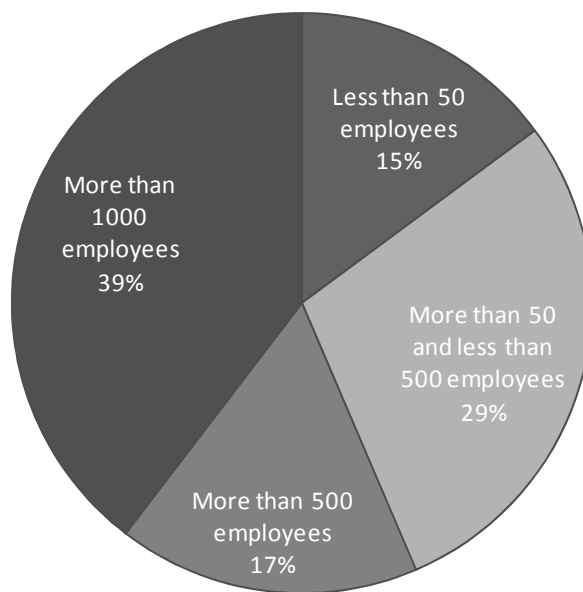
Annex Table 4. Origin of inputs

	Frequency	Percent
Primarily domestic sources/inputs	39	54.2
Imported inputs - Less than 50% of your inputs are imported	12	16.7
Imported inputs - More than 50% of your inputs are imported	21	29.2
Grand Total	72	100.0



Annex Table 5. Company size

	Frequency	Percent
Less than 50 employees	15	14.9
More than 50 and less than 500 employees	29	28.7
More than 500 employees	17	16.8
More than 1000 employees	40	39.6
Grand Total	101	100.0

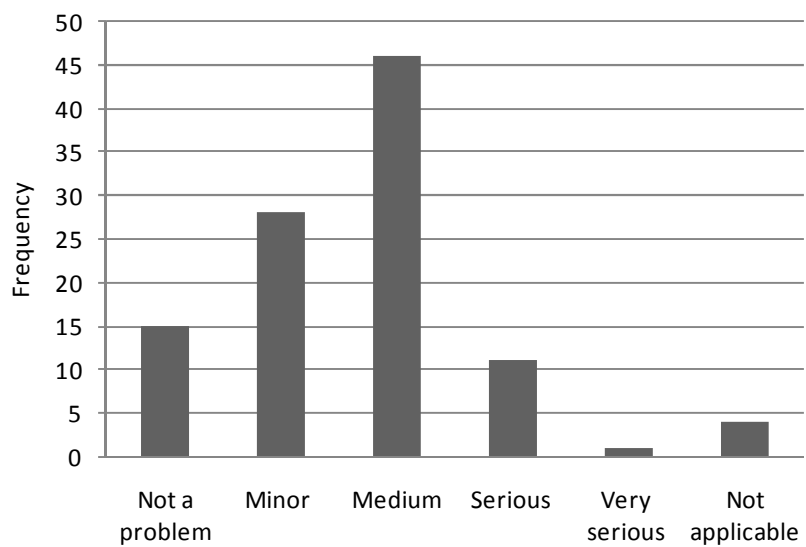


Annex Table 6. Location(s)

	Frequency	Percent
Shanghai	66	17.0
Beijing	57	14.7
Qingdao	31	8.0
Guangzhou	29	7.5
Shenzhen	24	6.2
Tianjin	24	6.2
Other	22	5.7
Dalian	20	5.2
Nanjing	14	3.6
Hangzhou	13	3.4
Chongqing	11	2.8
Wuhan	10	2.6
Xiamen	10	2.6
Xi'an	9	2.3
Shandong	8	2.1
Zhuhai	8	2.1
Shenyang	7	1.8
Dongguan	6	1.5
Ningbo	6	1.5
Harbin	4	1.0
Foshan	3	0.8
Kunming	2	0.5
Zhongshan	2	0.5
Huizhou	1	0.3
Jiangmen	1	0.3
Grand Total	388	100.0

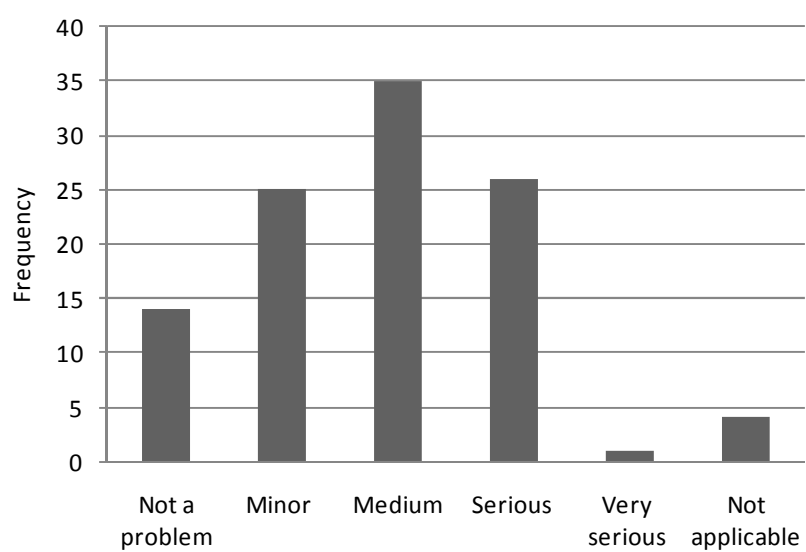
Annex Table 7. Availability of up-to-date information on existing governmental policies

	Frequency	Percent
Not a problem	15	14.3
Minor	28	26.7
Medium	46	43.8
Serious	11	10.5
Very serious	1	1.0
Not applicable	4	3.8
Grand Total	105	100.0



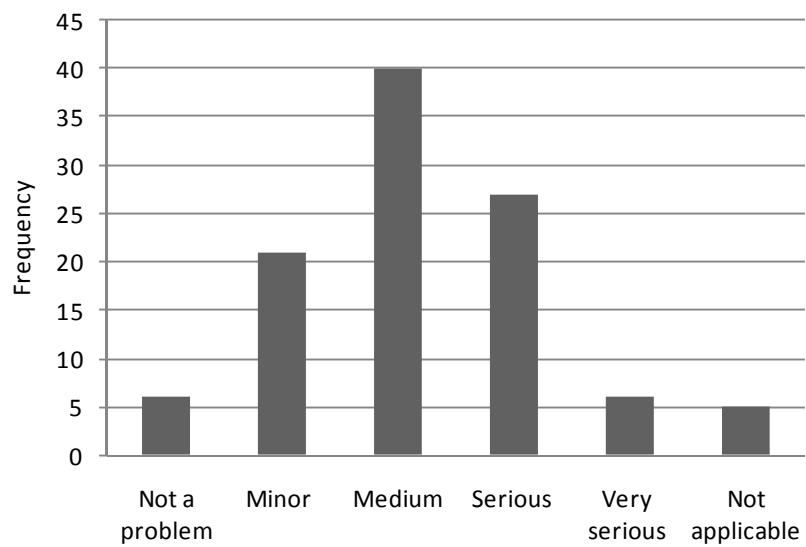
Annex Table 8. Information on changes in regulations

	Frequency	Percent
Not a problem	14	13.3
Minor	25	23.8
Medium	35	33.3
Serious	26	24.8
Very serious	1	1.0
Not applicable	4	3.8
Grand Total	105	100.0



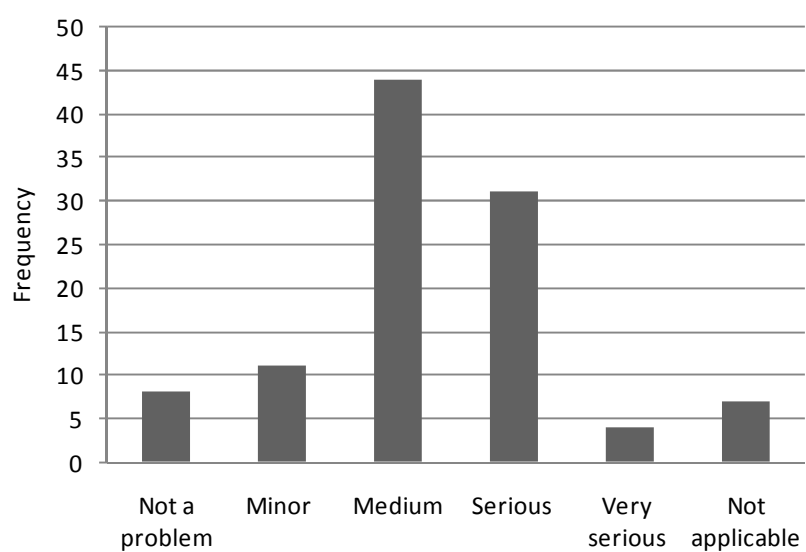
Annex Table 9. Government regulations that are not consistent with the interests and needs of the business community

	Frequency	Percent
Not a problem	6	5.7
Minor	21	20.0
Medium	40	38.1
Serious	27	25.7
Very serious	6	5.7
Not applicable	5	4.8
Grand Total	105	100.0



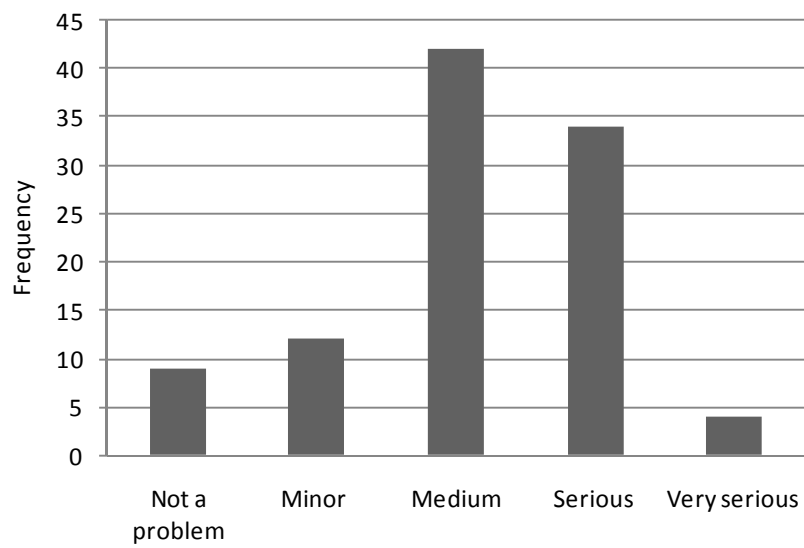
Annex Table 10. Inadequate consultation with business entities prior to introducing new laws or economic policies

	Frequency	Percent
Not a problem	8	7.6
Minor	11	10.5
Medium	44	41.9
Serious	31	29.5
Very serious	4	3.8
Not applicable	7	6.7
Grand Total	105	100.0



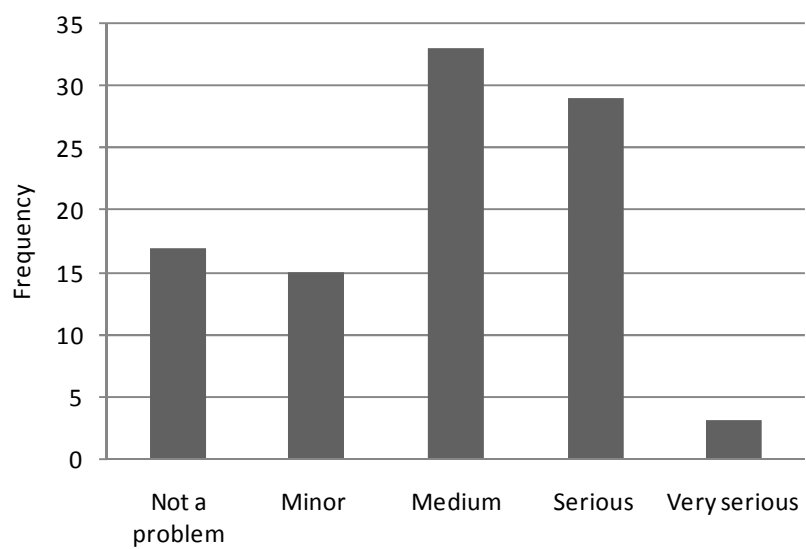
Annex Table 11. How would you characterise the government's enforcement of laws and regulations in general?

	Frequency	Percent
Not a problem	9	8.9
Minor	12	11.9
Medium	42	41.6
Serious	34	33.7
Very serious	4	4.0
Grand Total	101	100.0



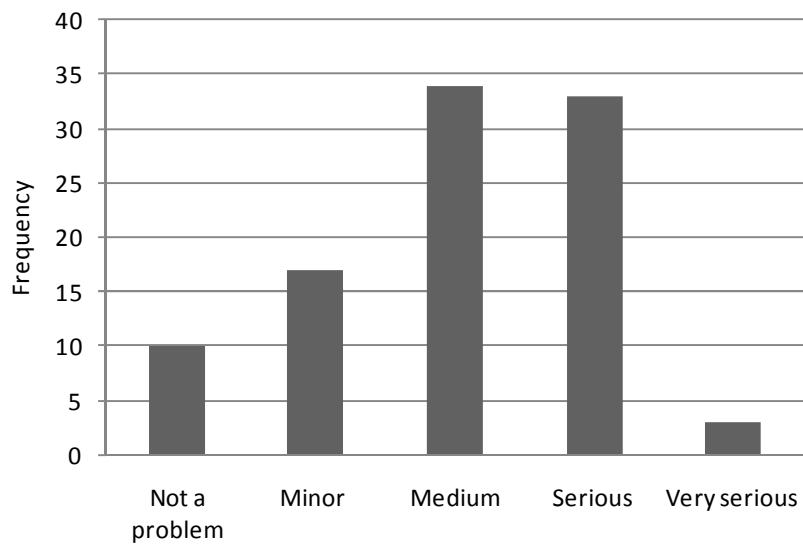
Annex Table 12. Access to appeal and arbitration procedures by foreign firms

	Frequency	Percent
Not a problem	17	17.5
Minor	15	15.5
Medium	33	34.0
Serious	29	29.9
Very serious	3	3.1
Grand Total	97	100.0



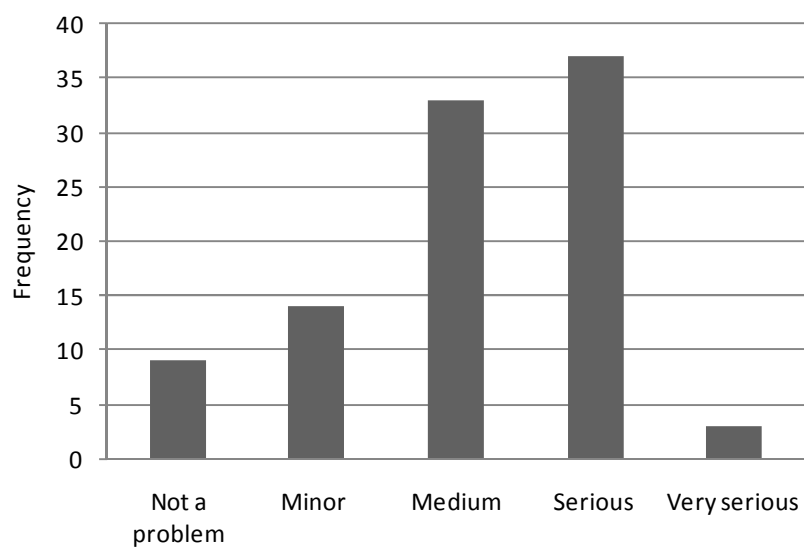
Annex Table 13. Rules and proceedings of appeal and arbitration bodies are clear and transparent

	Frequency	Percent
Not a problem	10	10.3
Minor	17	17.5
Medium	34	35.1
Serious	33	34.0
Very serious	3	3.1
Grand Total	97	100.0



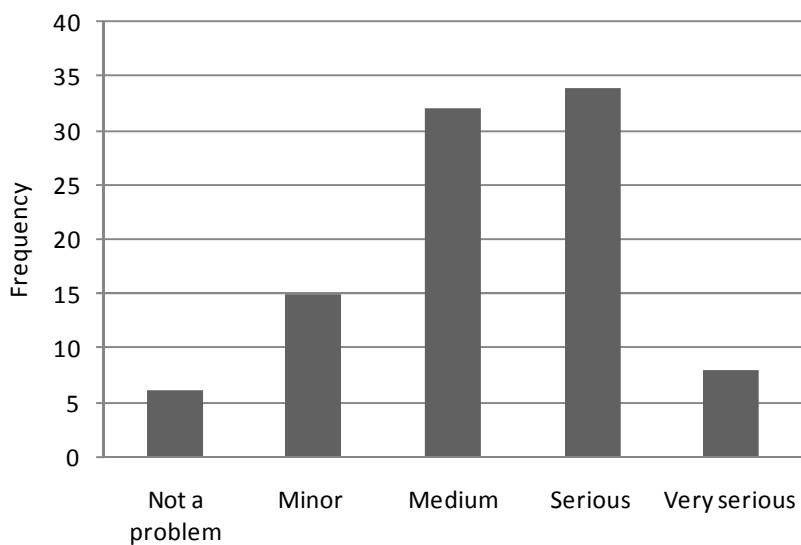
Annex Table 14. Rules and proceedings of appeal and arbitration bodies are uniform and impartial

	Frequency	Percent
Not a problem	9	9.4
Minor	14	14.6
Medium	33	34.4
Serious	37	38.5
Very serious	3	3.1
Grand Total	96	100.0



Annex Table 15. Appeal and arbitration procedures are rapid and effective

	Frequency	Percent
Not a problem	6	6.3
Minor	15	15.8
Medium	32	33.7
Serious	34	35.8
Very serious	8	8.4
Grand Total	95	100.0



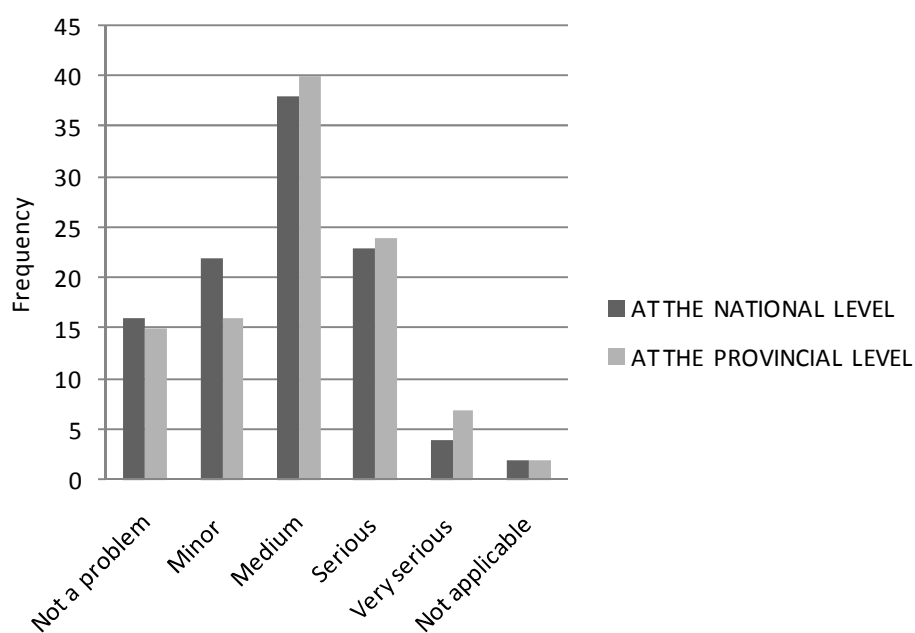
Annex Table 16. How easily available have the following types of information been for your company?

In Percentages

	AT THE NATIONAL LEVEL		AT THE PROVINCIAL LEVEL	
	Information readily available	Information difficult to obtain	Information readily available	Information difficult to obtain
Information on possibilities to establish branches, subsidiaries or joint ventures	72.8	27.2	70.5	29.5
Information on licensing procedures for activities in specific sectors	64.0	36.0	64.5	35.5
Information on real estate acquisitions for business purpose by foreign firms	59.1	40.9	58.6	41.4
Information on foreign exchange regulations	68.0	32.0	66.7	33.3
Information on the levels of provincial and local taxes	60.0	40.0	60.6	39.4
Information on tax exemptions granted by local authorities to foreign investors	61.1	38.9	62.1	37.9
Information on customs regulations and procedures	61.5	38.5	61.4	38.6
Information on legislation concerning mergers and acquisitions	43.6	56.4	35.3	64.7
Information on environmental requirements (e.g. treatment of environmental liabilities)	51.1	48.9	43.0	57.0
Information on work permits for expatriates	67.0	33.0	65.9	34.1
Information on legal obligations regarding the information disclosure and shareholders rights	44.2	55.8	47.1	52.9

Annex Table 17. Obtaining information on changes in governmental policy and regulations is

	AT THE NATIONAL LEVEL		AT THE PROVINCIAL LEVEL	
	Frequency	Percent	Frequency	Percent
Not a problem	16	15.2	15	14.4
Minor	22	21.0	16	15.4
Medium	38	36.2	40	38.5
Serious	23	21.9	24	23.1
Very serious	4	3.8	7	6.7
Not applicable	2	1.9	2	1.9
Grand Total	105	100.0	104	100.0



Annex Table 18. How easily has your company been able to find information about the different types of legislation?

In Percentages

	Not available	Available in Chinese only	Also available in English	Also available to foreign investors in their home countries
Primary legislation (e.g. national laws, codes)	7.8	53.9	31.4	6.9
Secondary legislation (e.g. regulations issued by national agencies and services, such as China Customs)	10.8	75.5	10.8	2.9
Legislation and regulations issued by provincial authorities (e.g. specific regulations on regional licensing procedure)	19.8	76.2	4.0	0.0
Legislation and regulations issued by local authorities (e.g. specific local requirements)	22.8	74.3	3.0	0.0

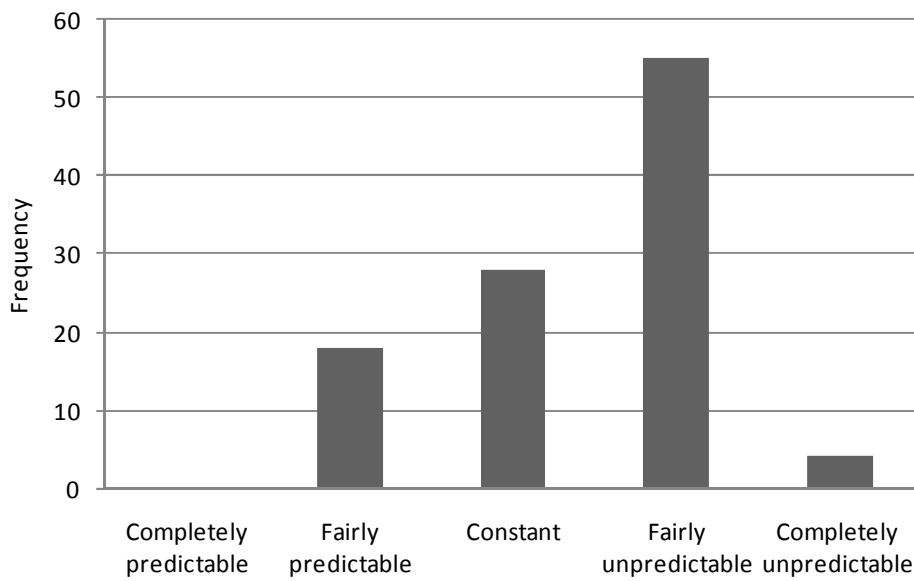
Annex Table 19. How do you assess the Chinese authorities' effort to consult over planned laws and regulations (important for your business?)

In Percentages

	Sufficient	Insufficient
Notification/consultation procedures are undertaken by Chinese authorities sufficiently before the introduction of new measures	15.0	85.0
Notification/consultation procedures are open to all interested parties , including foreign investors	12.1	87.9
Exceptions to accessibility to notification/ consultation procedures are clearly defined and delimited	7.1	92.9

Annex Table 20. How would you characterise the government’s overall program for regulating your sector?

	Frequency	Percent
Completely predictable	0	0.0
Fairly predictable	18	17.1
Constant	28	26.7
Fairly unpredictable	55	52.4
Completely unpredictable	4	3.8
Grand Total	105	100.0



Annex Table 21. What are your company's general sources of information on laws and regulations important for your operations in China?

	Frequency	Percent
Chinese non-governmental sources		
Consulting/law firms	57	16.3
Websites/database: Provided free of charge	51	14.6
Websites/database: Provided on a commercial basis	23	6.6
Foreign non-governmental sources		
Consulting/law firms	28	8.0
Websites/database: Provided free of charge	31	8.9
Websites/database: Provided on a commercial basis	9	2.6
Business newspapers	32	9.2
Business associations	27	7.7
Local partners	52	14.9
Personal contacts	39	11.2
Grand Total	349	100.0

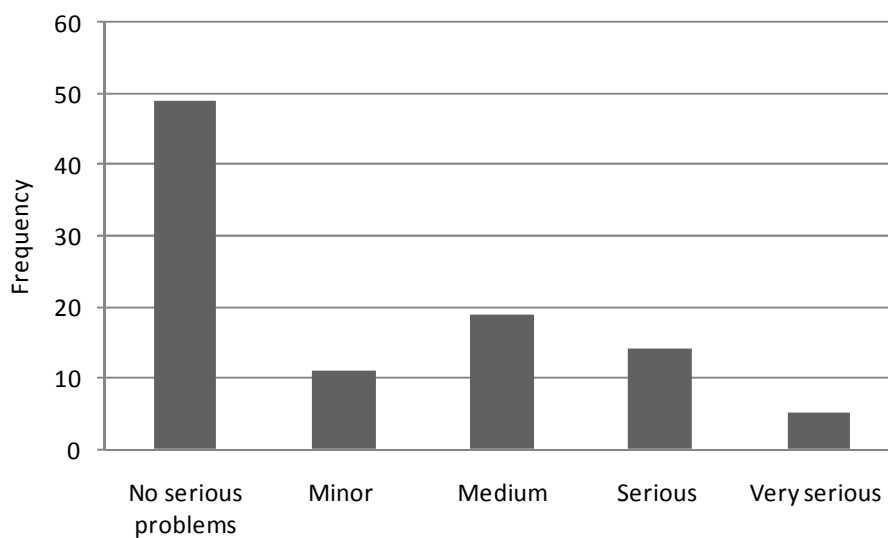
Annex Table 22. Which of the following information sources provided by the Chinese government does your company usually use?

Ranked from the most frequently used (1) to the least frequently used (7).

	Average Ranking
Government website in Chinese	2.7
Informal contact with government officials	3.3
Formal contacts with government officials	3.5
Official legal gazettes published in Chinese	3.8
Government website in English	4.1
Special enquiry point established by the government	4.4
International agreements signed by China	5.0

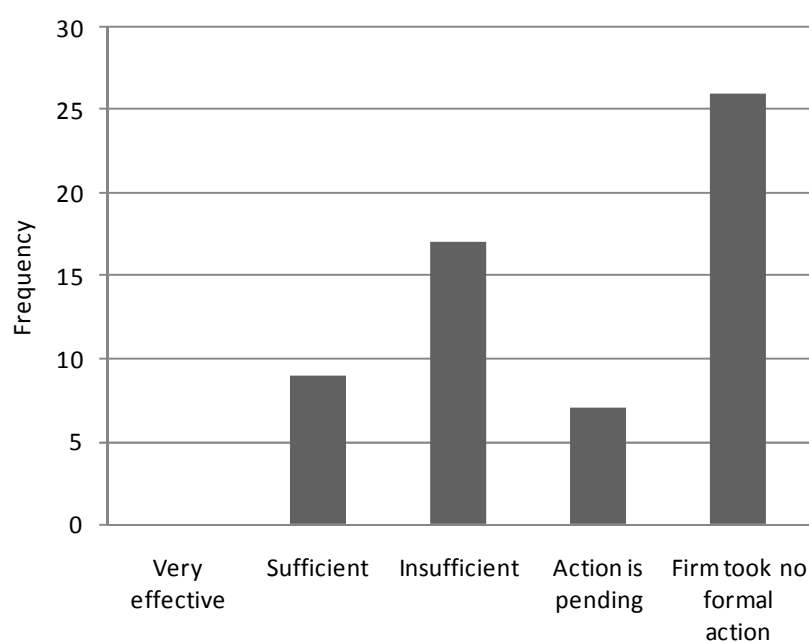
Annex Table 23. Has your firm encountered problems in protecting its intellectual property under the current regulatory framework (i.e., since China's accession in 2001 to the World Trade Organisation)?

	Frequency	Percent
No serious problems	49	50.0
Minor	11	11.2
Medium	19	19.4
Serious	14	14.3
Very serious	5	5.1
Grand Total	98	100.0



Annex Table 24. If your firm experienced abuse of its intellectual property in China, has your firm been able to seek effective recourse via official channels?

	Frequency	Percent
Very effective	0	0.0
Sufficient	9	15.3
Insufficient	17	28.8
Action is pending	7	11.9
Firm took no formal action	26	44.1
Grand Total	59	100.0



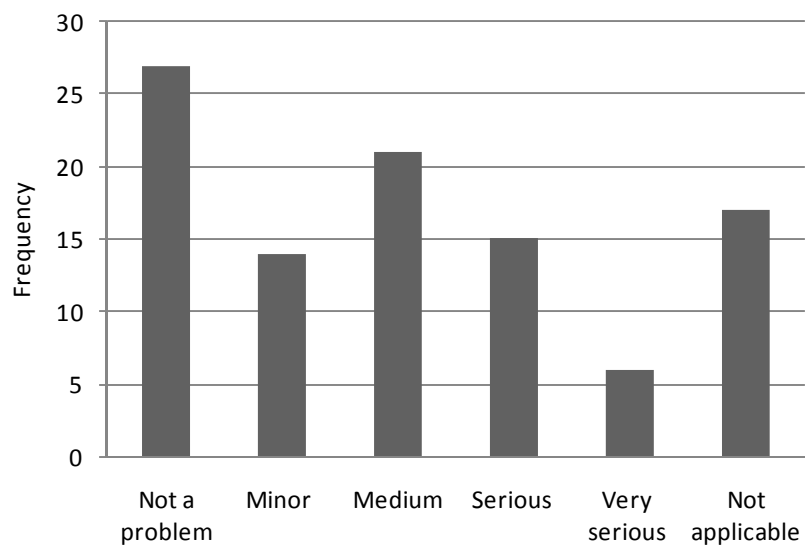
Annex Table 25. Has your firm encountered problems relating to compulsory technology transfer?

In Percentages

	Compulsory joint ventures	Compulsory local public contracts	Compulsory use of Chinese design institutes	Problems with certification
Not a problem	69.9	78.3	80.7	66.3
Minor	14.5	6.0	3.6	12.0
Medium	9.6	10.8	8.4	15.7
Serious	3.6	2.4	3.6	4.8
Very serious	2.4	2.4	3.6	1.2

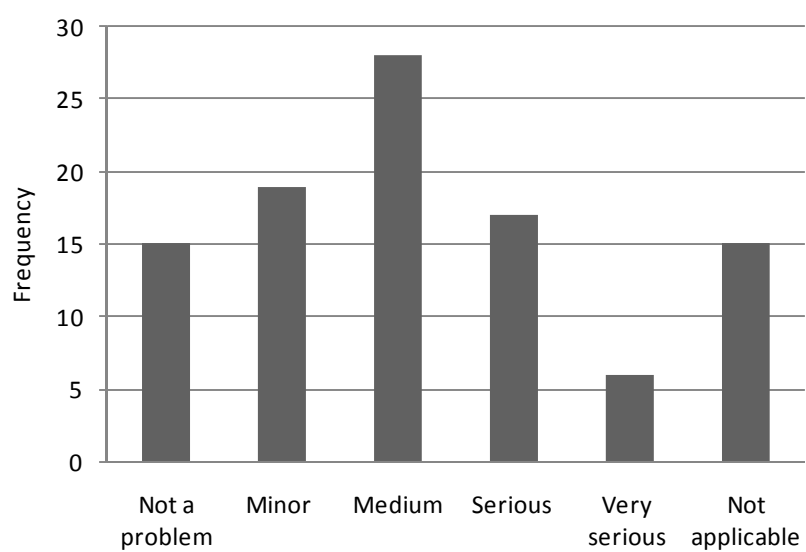
Annex Table 26. Restrictions on foreign ownership of services companies

	Frequency	Percent
Not a problem	27	27.0
Minor	14	14.0
Medium	21	21.0
Serious	15	15.0
Very serious	6	6.0
Not applicable	17	17.0
Grand Total	100	100.0



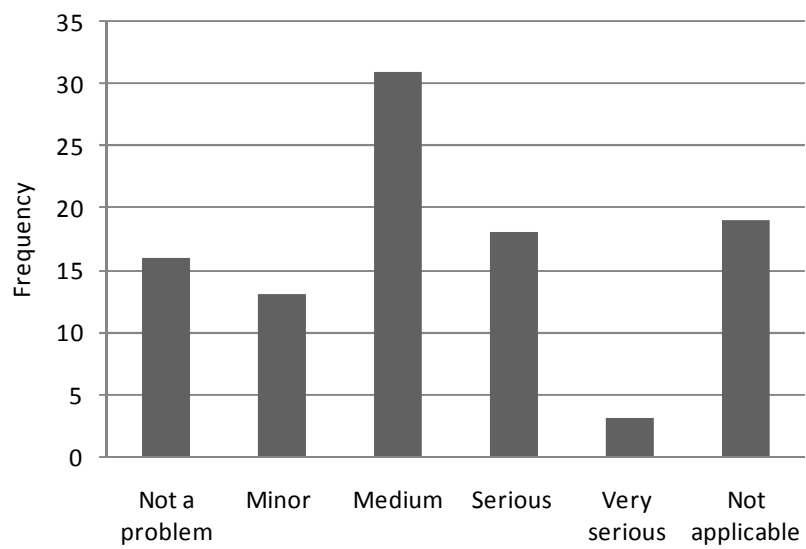
Annex Table 27. Inadequate enforcement of existing laws

	Frequency	Percent
Not a problem	15	15.0
Minor	19	19.0
Medium	28	28.0
Serious	17	17.0
Very serious	6	6.0
Not applicable	15	15.0
Grand Total	100	100.0



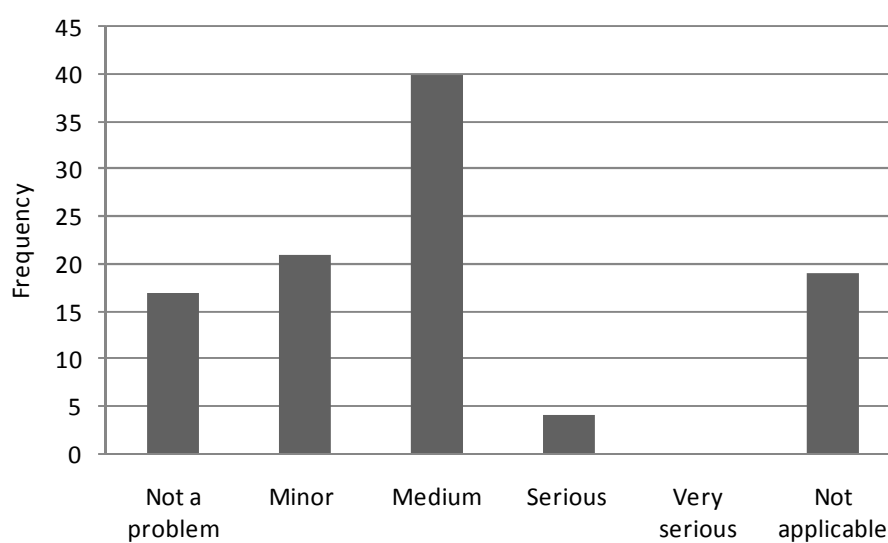
Annex Table 28. Ineffective appeals and arbitration procedures

	Frequency	Percent
Not a problem	16	16.0
Minor	13	13.0
Medium	31	31.0
Serious	18	18.0
Very serious	3	3.0
Not applicable	19	19.0
Grand Total	100	100.0



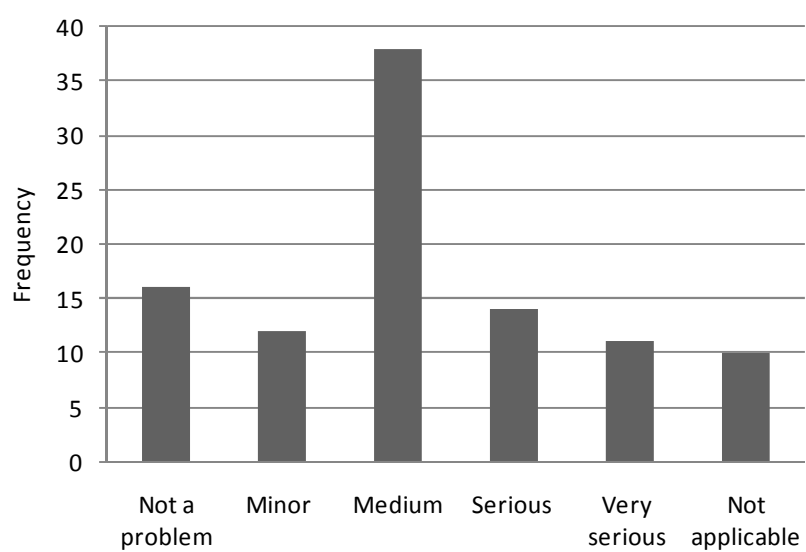
Annex Table 29. Effectiveness of existing incentives in attracting foreign participation in your business

	Frequency	Percent
Not a problem	17	16.8
Minor	21	20.8
Medium	40	39.6
Serious	4	4.0
Very serious	0	0.0
Not applicable	19	18.8
Grand Total	101	100.0



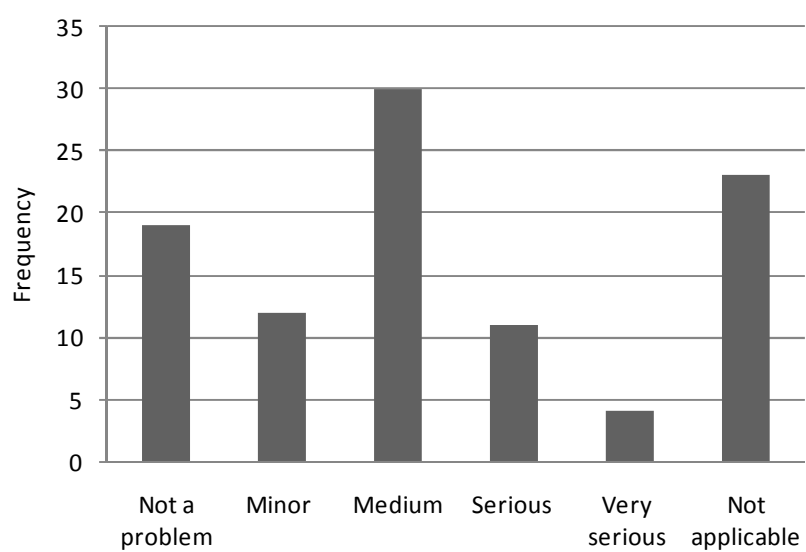
Annex Table 30. Restrictive licensing procedures

	Frequency	Percent
Not a problem	16	15.8
Minor	12	11.9
Medium	38	37.6
Serious	14	13.9
Very serious	11	10.9
Not applicable	10	9.9
Grand Total	101	100.0



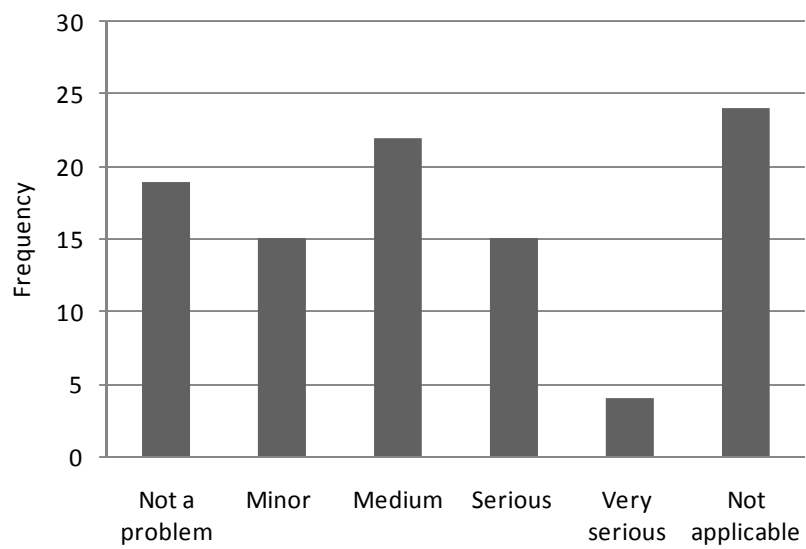
Annex Table 31. Inadequate or untimely information on rules and requirements of tender

	Frequency	Percent
Not a problem	19	19.2
Minor	12	12.1
Medium	30	30.3
Serious	11	11.1
Very serious	4	4.0
Not applicable	23	23.2
Grand Total	99	100.0



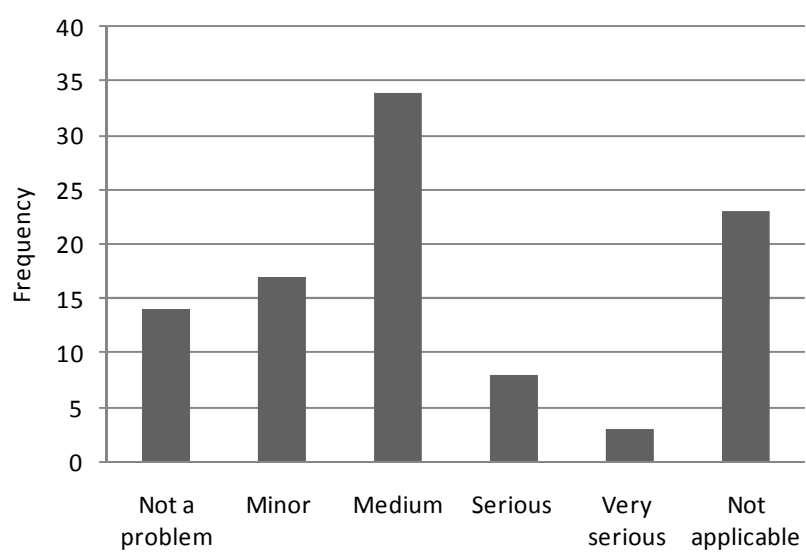
Annex Table 32. Lack of transparency of tendering procedures

	Frequency	Percent
Not a problem	19	19.2
Minor	15	15.2
Medium	22	22.2
Serious	15	15.2
Very serious	4	4.0
Not applicable	24	24.2
Grand Total	99	100.0



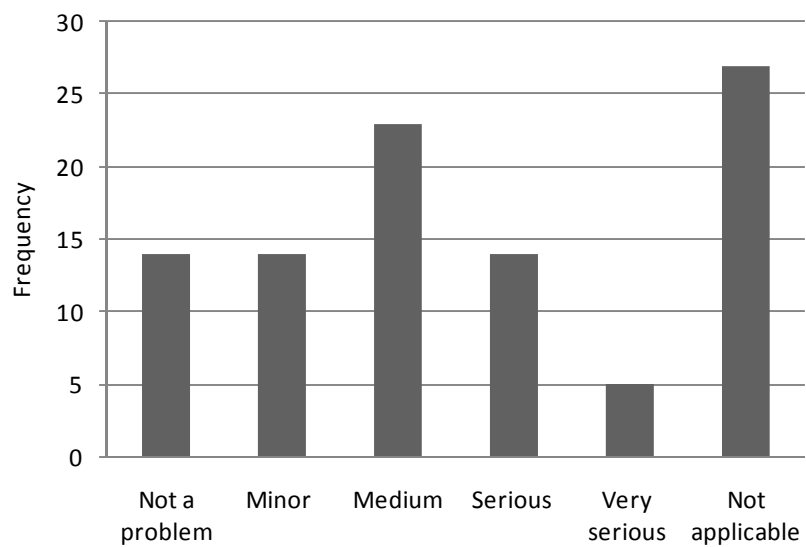
Annex Table 33. Requirements of firm localisation

	Frequency	Percent
Not a problem	14	14.1
Minor	17	17.2
Medium	34	34.3
Serious	8	8.1
Very serious	3	3.0
Not applicable	23	23.2
Grand Total	99	100.0



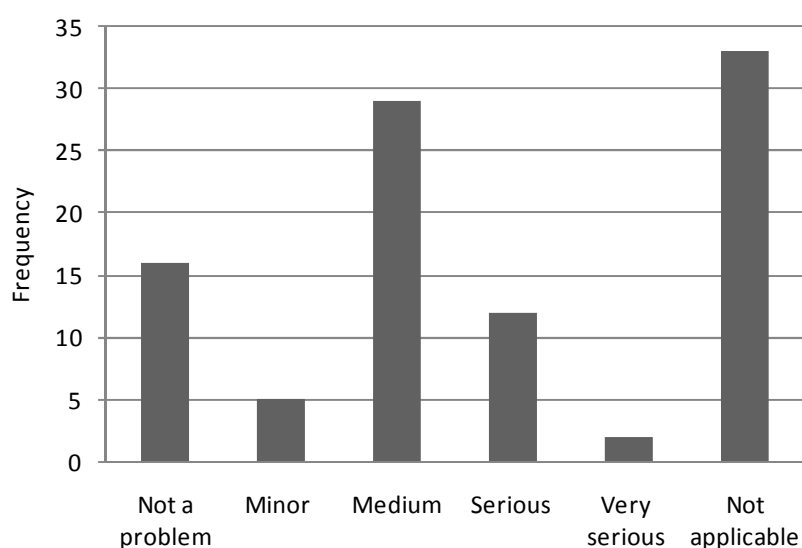
Annex Table 34. Ineffectiveness of existing appeals and arbitration procedures

	Frequency	Percent
Not a problem	14	14.4
Minor	14	14.4
Medium	23	23.7
Serious	14	14.4
Very serious	5	5.2
Not applicable	27	27.8
Grand Total	97	100.0



Annex Table 35. Inadequate opportunities to bid for foreign government contracts

	Frequency	Percent
Not a problem	16	16.5
Minor	5	5.2
Medium	29	29.9
Serious	12	12.4
Very serious	2	2.1
Not applicable	33	34.0
Grand Total	97	100.0

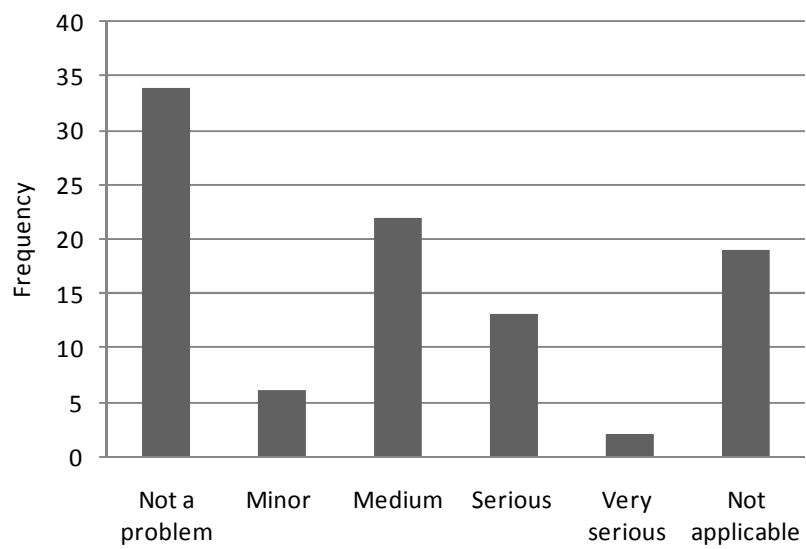
**Annex Table 36. Please assess your firm's experience with customs procedure in China**

In Percentages

	Not a problem	Minor	Medium	Serious	Very serious
Clear and transparent general rules for customs procedures (e.g. information on required documentation)	24.5	19.1	42.6	12.8	1.1
Predictable and impartial customs procedures (e.g. uniform rules applied in all customs posts)	19.1	17.0	41.5	18.1	4.3
Pressures for illegal payments in conjunction with customs procedures	31.2	15.1	41.9	10.8	1.1

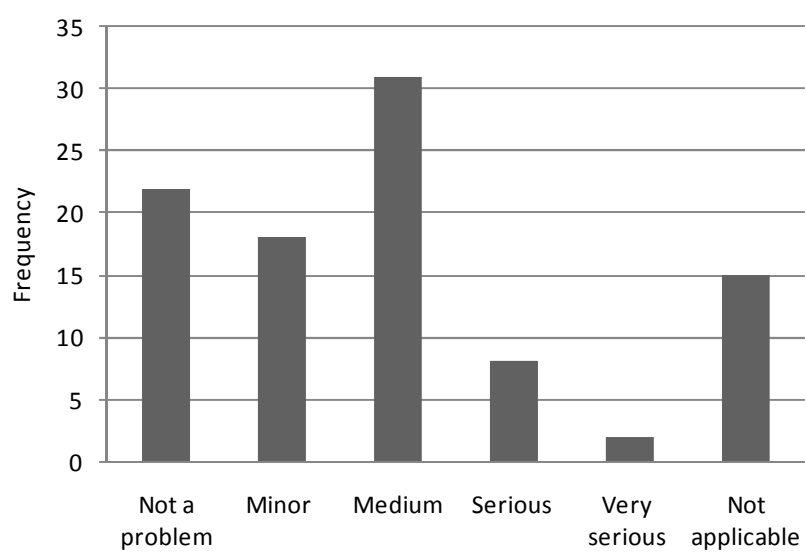
Annex Table 37. Barriers to entering export markets

	Frequency	Percent
Not a problem	34	35.4
Minor	6	6.3
Medium	22	22.9
Serious	13	13.5
Very serious	2	2.1
Not applicable	19	19.8
Grand Total	96	100.0



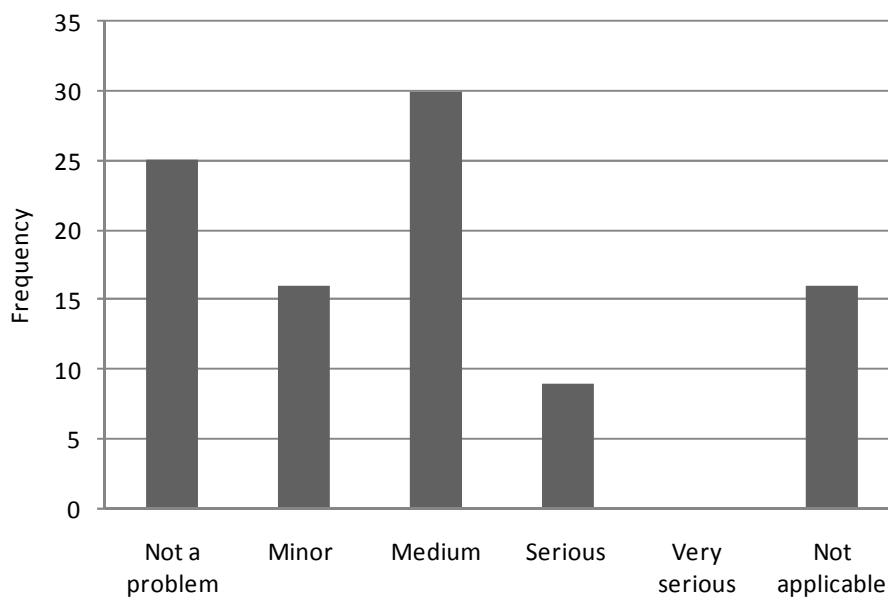
Annex Table 38. Recognition of skills and professional qualifications

	Frequency	Percent
Not a problem	22	22.9
Minor	18	18.8
Medium	31	32.3
Serious	8	8.3
Very serious	2	2.1
Not applicable	15	15.6
Grand Total	96	100.0



Annex Table 39. Restrictions imposed by professional bodies

	Frequency	Percent
Not a problem	25	26.0
Minor	16	16.7
Medium	30	31.3
Serious	9	9.4
Very serious	0	0.0
Not applicable	16	16.7
Grand Total	96	100.0



CHINESE FIRMS

Annex Table 40. Nature of business

	Frequency	Percent
Farming, forestry, animal husbandry and fisheries industries	1	2.1
Food processing	1	2.1
Paper making and paper products	1	2.1
Petroleum refining and coking	1	2.1
Chemical raw materials and products	2	4.2
Plastics	1	2.1
General machine building	5	10.4
Communication and transport equipment	4	8.3
Electrical machinery and equipment	2	4.2
Electronics and telecommunications industries	3	6.3
Production and supply of power, gas and water	2	4.2
Water resources management	1	2.1
Wholesale and retail trade	2	4.2
Public service facilities	1	2.1
Software, IT and IT related services	6	12.5
Tourism and related travel services	1	2.1
Financial services	6	12.5
Other	8	16.7
Grand Total	48	100.0

Annex Table 41. Foreign participation

Annex Table 41A. A single operation in China

	Frequency	Percent
More than 10% and up to 50% of foreign-owned shares	0	0.0
More than 50% and less than 90% of foreign owned shares	0	0.0
Wholly foreign owned	2	100.0
Grand Total	2	100.0

Annex Table 42B. Several operations in China, with an average of

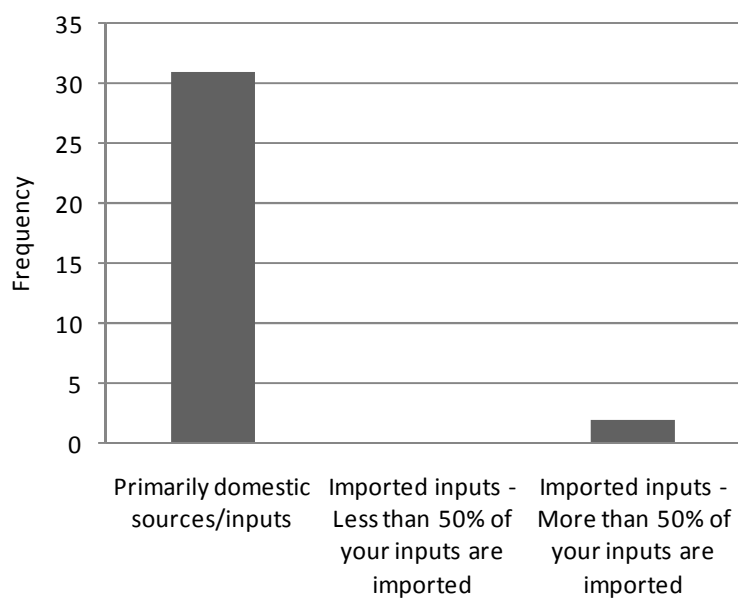
	Frequency	Percent
More than 10% and up to 50% of foreign-owned shares	0	0.0
More than 50% and less than 90% of foreign owned shares	0	0.0
Wholly foreign owned	1	100.0
Grand Total	1	100.0

Annex Table 42. Market orientation

	Frequency	Percent
Primarily domestic market	33	60.0
Export: <i>Less than 50% of sales</i>	11	20.0
<i>More than 50% of sales</i>	2	3.6
<i>Total</i>	13	23.6
Import: <i>Less than 50% of sales</i>	8	14.5
<i>More than 50% of sales</i>	1	1.8
<i>Total</i>	9	16.4
Grand Total	55	100.0

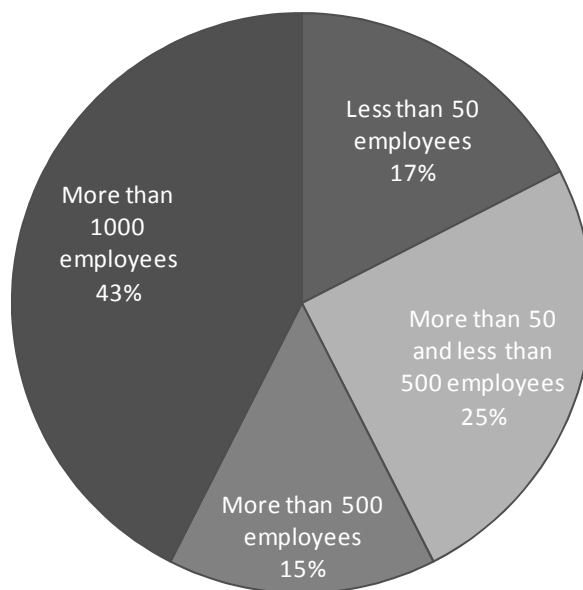
Annex Table 43. Origin of inputs

	Frequency	Percent
Primarily domestic sources/inputs	31	93.9
Imported inputs - Less than 50% of your inputs are imported	0	0.0
Imported inputs - More than 50% of your inputs are imported	2	6.1
Grand Total	33	100.0



Annex Table 44. Company size

	Frequency	Percent
Less than 50 employees	7	17.5
More than 50 and less than 500 employees	10	25.0
More than 500 employees	6	15.0
More than 1000 employees	17	42.5
Grand Total	40	100.0

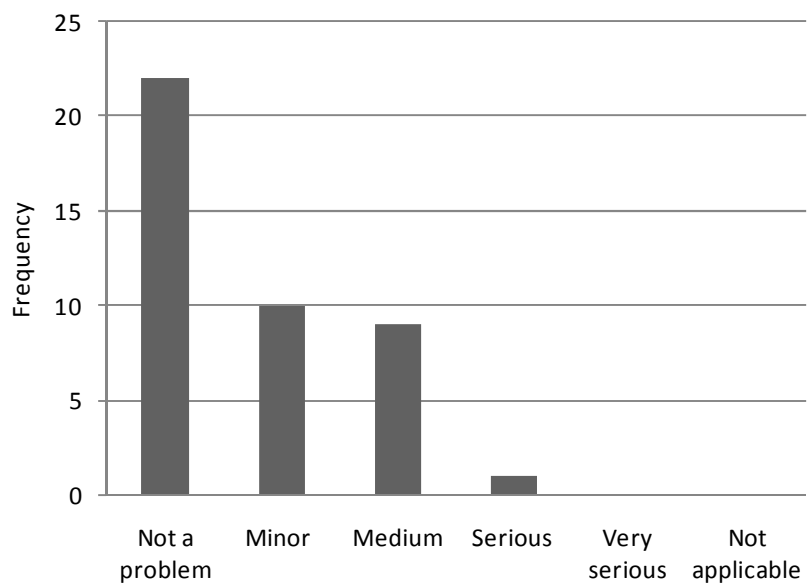


Annex Table 45. Location(s)

	Frequency	Percent
Other	15	16.5
Beijing	14	15.4
Shenzhen	6	6.6
Chongqing	5	5.5
Harbin	5	5.5
Nanjing	5	5.5
Shandong	5	5.5
Shenyang	5	5.5
Guangzhou	4	4.4
Hangzhou	4	4.4
Shanghai	4	4.4
Tianjin	4	4.4
Wuhan	3	3.3
Xiamen	3	3.3
Xi'an	2	2.2
Zhuhai	2	2.2
Dongguan	1	1.1
Foshan	1	1.1
Huizhou	1	1.1
Jiangmen	1	1.1
Zhongshan	1	1.1
Grand Total	91	100.0

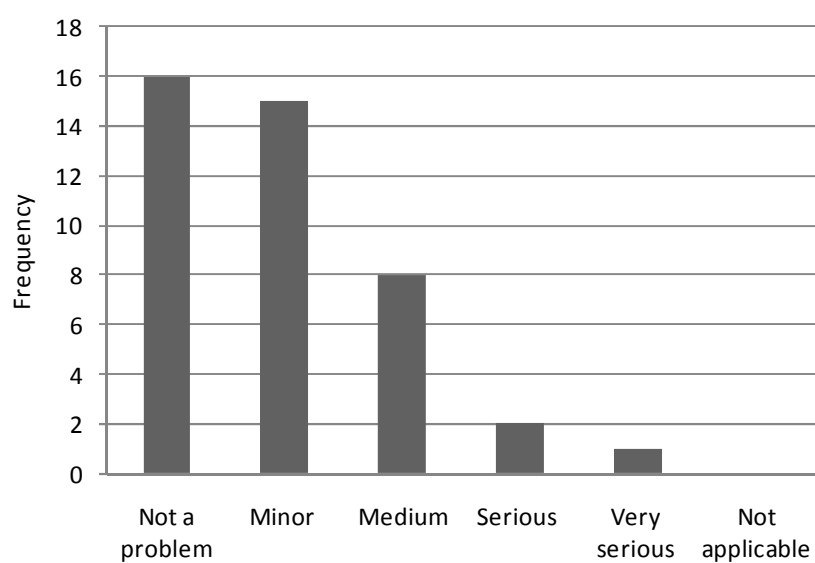
Annex Table 46. Availability of up-to-date information on existing governmental policies

	Frequency	Percent
Not a problem	22	52.4
Minor	10	23.8
Medium	9	21.4
Serious	1	2.4
Very serious	0	0.0
Not applicable	0	0.0
Grand Total	42	100.0



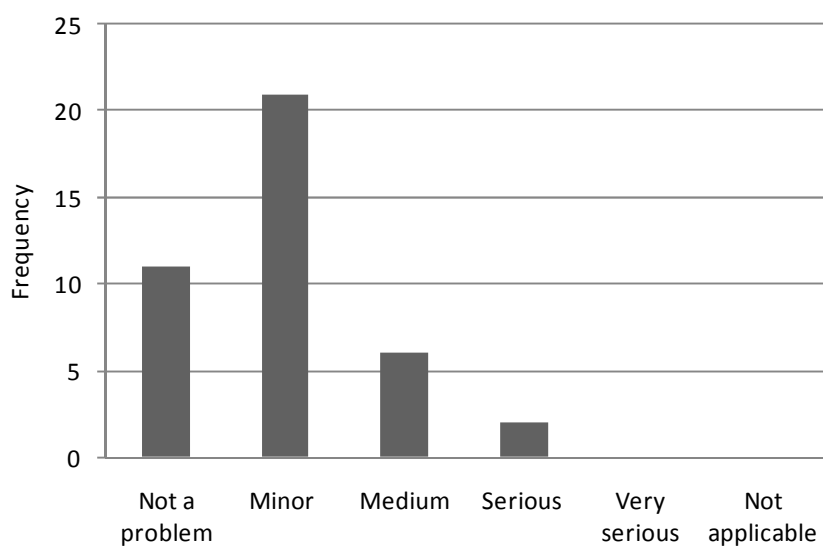
Annex Table 47. Information on changes in regulations

	Frequency	Percent
Not a problem	16	38.1
Minor	15	35.7
Medium	8	19.0
Serious	2	4.8
Very serious	1	2.4
Not applicable	0	0.0
Grand Total	42	100.0



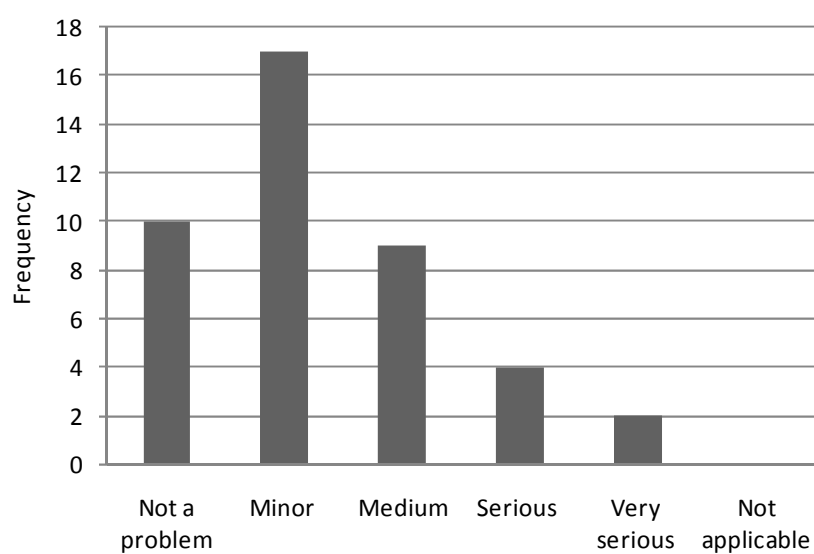
Annex Table 48. Government regulations that are not consistent with the interests and needs of the business community

	Frequency	Percent
Not a problem	11	10.5
Minor	21	20.0
Medium	6	5.7
Serious	2	1.9
Very serious	0	0.0
Not applicable	0	0.0
Grand Total	40	38.1



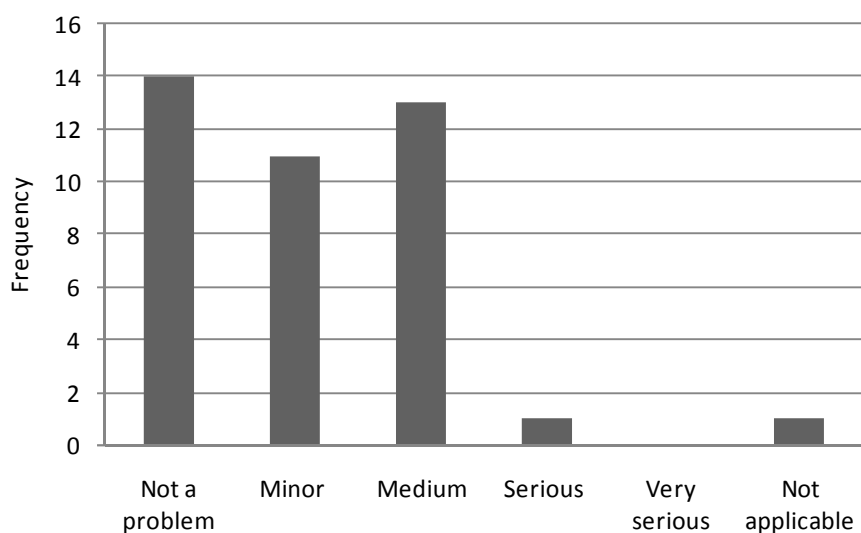
Annex Table 49. Inadequate consultation with business entities prior to introducing new laws or economic policies

	Frequency	Percent
Not a problem	10	23.8
Minor	17	40.5
Medium	9	21.4
Serious	4	9.5
Very serious	2	4.8
Not applicable	0	0.0
Grand Total	42	100.0



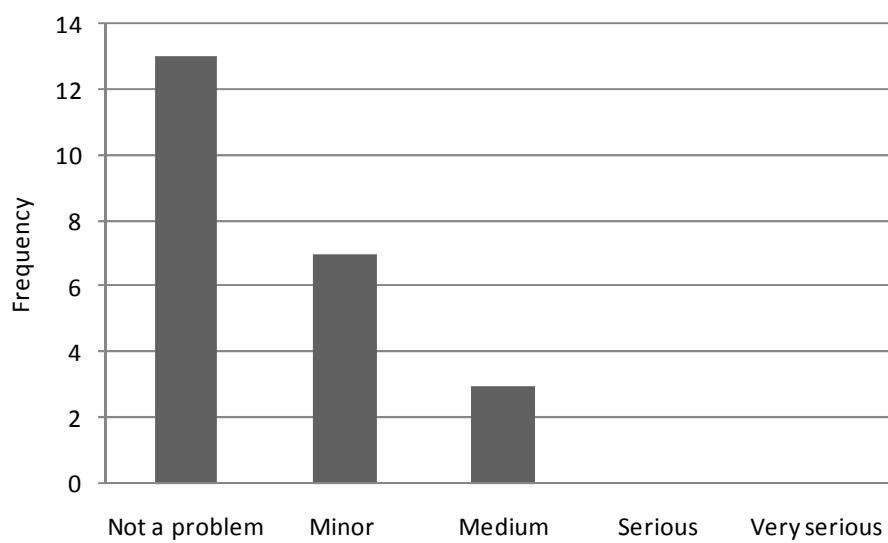
Annex Table 50. How would you characterise the government's enforcement of laws and regulations in general?

	Frequency	Percent
Not a problem	14	35.0
Minor	11	27.5
Medium	13	32.5
Serious	1	2.5
Very serious	0	0.0
Not applicable	1	2.5
Grand Total	40	100.0



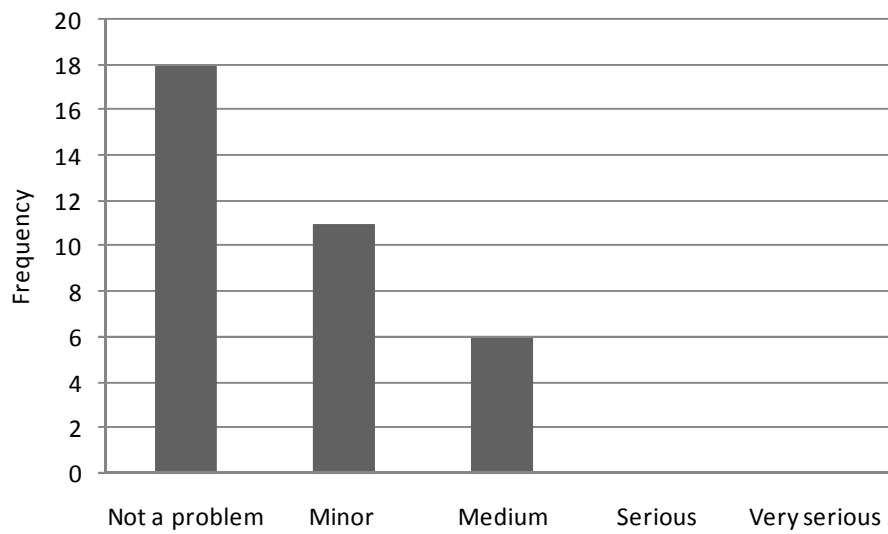
Annex Table 51. Access to appeal and arbitration procedures by foreign firms

	Frequency	Percent
Not a problem	13	56.5
Minor	7	30.4
Medium	3	13.0
Serious	0	0.0
Very serious	0	0.0
Grand Total	23	100.0



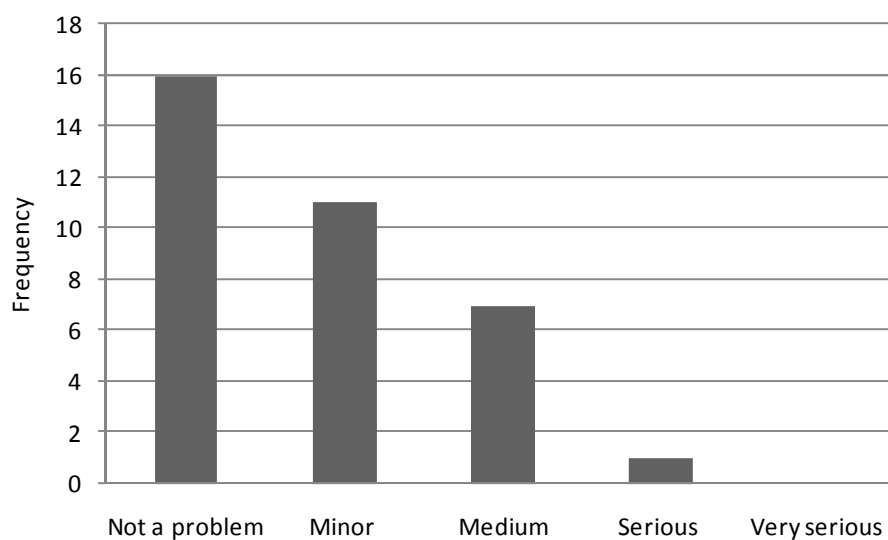
Annex Table 52. Rules and proceedings of appeal and arbitration bodies are clear and transparent

	Frequency	Percent
Not a problem	18	51.4
Minor	11	31.4
Medium	6	17.1
Serious	0	0.0
Very serious	0	0.0
Grand Total	35	100.0



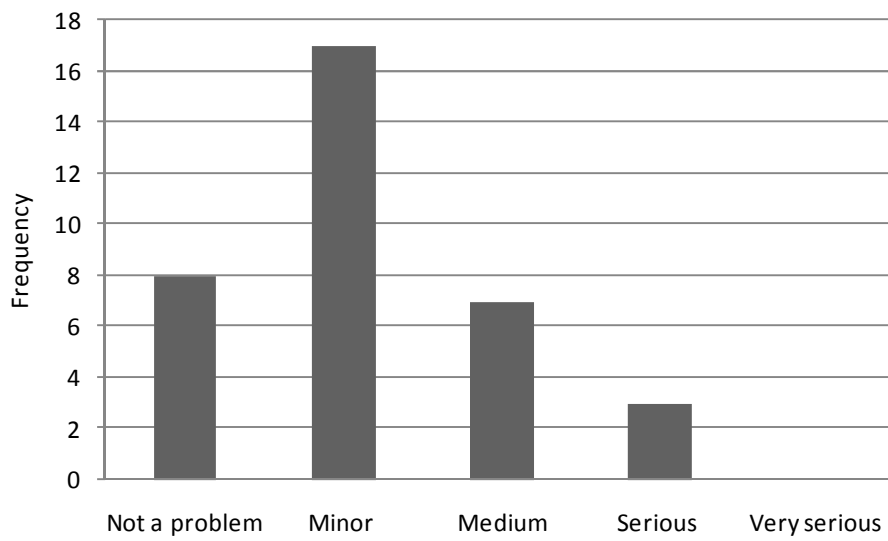
Annex Table 53. Rules and proceedings of appeal and arbitration bodies are uniform and impartial

	Frequency	Percent
Not a problem	16	45.7
Minor	11	31.4
Medium	7	20.0
Serious	1	2.9
Very serious	0	0.0
Grand Total	35	100.0



Annex Table 54. Appeal and arbitration procedures are rapid and effective

	Frequency	Percent
Not a problem	8	22.9
Minor	17	48.6
Medium	7	20.0
Serious	3	8.6
Very serious	0	0.0
Grand Total	35	100.0



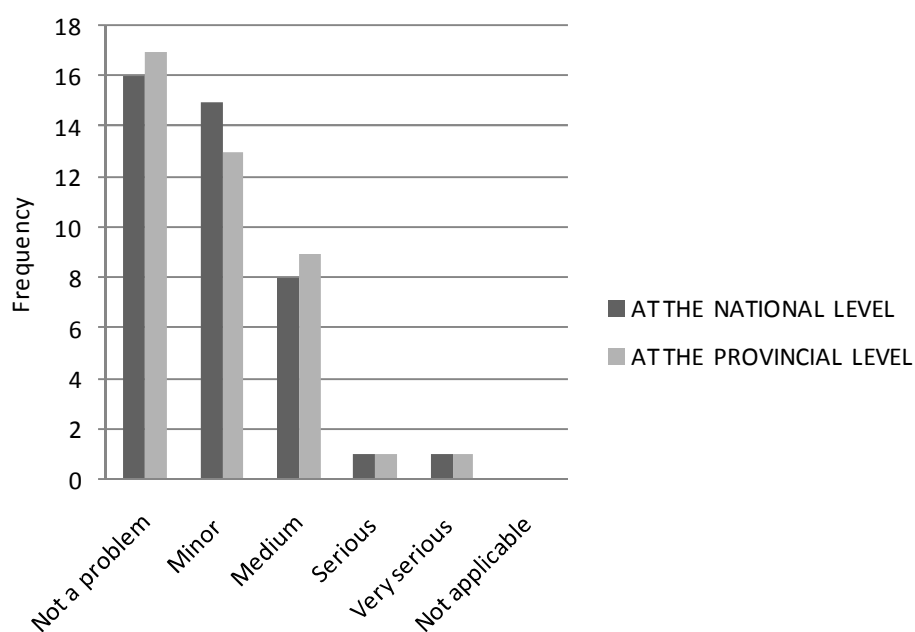
Annex Table 55. How easily available have the following types of information been for your company?

In Percentages

	AT THE NATIONAL LEVEL		AT THE PROVINCIAL LEVEL	
	Information readily available	Information difficult to obtain	Information readily available	Information difficult to obtain
Information on possibilities to establish branches, subsidiaries or joint ventures	88.9	11.1	84.4	15.6
Information on licensing procedures for activities in specific sectors	59.5	40.5	80.6	19.4
Information on real estate acquisitions for business purpose by foreign firms	46.2	53.8	43.5	56.5
Information on foreign exchange regulations	84.8	15.2	89.3	10.7
Information on the levels of provincial and local taxes	84.4	15.6	83.9	16.1
Information on tax exemptions granted by local authorities to foreign investors	76.0	24.0	72.7	27.3
Information on customs regulations and procedures	76.7	23.3	80.8	19.2
Information on legislation concerning mergers and acquisitions	61.8	38.2	58.6	41.4
Information on environmental requirements (e.g. treatment of environmental liabilities)	73.5	26.5	72.4	27.6
Information on work permits for expatriates	63.3	36.7	61.5	38.5
Information on legal obligations regarding the information disclosure and shareholders rights	62.5	37.5	65.5	34.5

Annex Table 56. Obtaining information on changes in governmental policy and regulations is

	AT THE NATIONAL LEVEL		AT THE PROVINCIAL LEVEL	
	Frequency	Percent	Frequency	Percent
Not a problem	16	39.0	17	41.5
Minor	15	36.6	13	31.7
Medium	8	19.5	9	22.0
Serious	1	2.4	1	2.4
Very serious	1	2.4	1	2.4
Not applicable	0	0.0	0	0.0
Grand Total	41	100.0	41	100.0



Annex Table 57. How easily has your company been able to find information about the different types of legislation?

In Percentages

	Not available	Available in Chinese only	Also available in English	Also available to foreign investors in their home countries
Primary legislation (e.g. national laws, codes)	12.2	61.0	19.5	7.3
Secondary legislation (e.g. regulations issued by national agencies and services, such as China Customs)	9.8	65.9	19.5	4.9
Legislation and regulations issued by provincial authorities (e.g. specific regulations on regional licensing procedure)	9.5	66.7	16.7	7.1
Legislation and regulations issued by local authorities (e.g. specific local requirements)	11.9	76.2	11.9	0.0

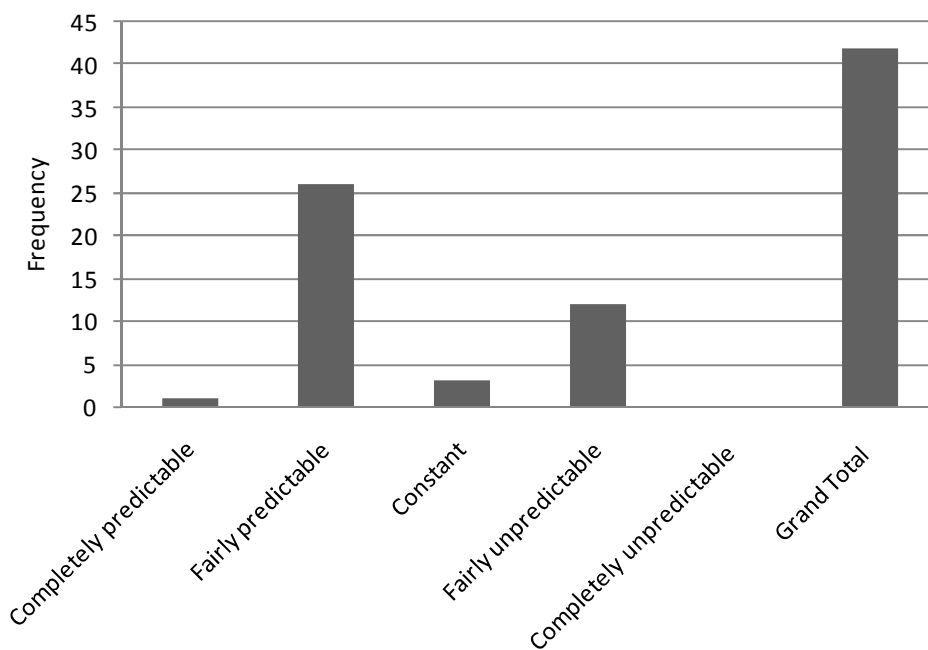
Annex Table 58. How do you assess the Chinese authorities' effort to consult over planned laws and regulations (important for your business)

In Percentages

	Sufficient	Insufficient
Notification/consultation procedures are undertaken by Chinese authorities sufficiently before the introduction of new measures	28.2	71.8
Notification/consultation procedures are open to all interested parties , including foreign investors	29.7	70.3
Exceptions to accessibility to notification/ consultation procedures are clearly defined and delimited	32.4	67.6

Annex Table 59. How would you characterise the government’s overall program for regulating your sector?

	Frequency	Percent
Completely predictable	1	2.4
Fairly predictable	26	61.9
Constant	3	7.1
Fairly unpredictable	12	28.6
Completely unpredictable	0	0.0
Grand Total	42	100.0



Annex Table 60. What are your company's general sources of information on laws and regulations important for your operations in China?

	Frequency	Percent
Chinese non-governmental sources		
Consulting/law firms	17	13.0
Websites/database: Provided free of charge	25	19.1
Websites/database: Provided on a commercial basis	7	5.3
Foreign non-governmental sources		
Consulting/law firms	8	6.1
Websites/database: Provided free of charge	13	9.9
Websites/database: Provided on a commercial basis	2	1.5
Business newspapers	19	14.5
Business associations	17	13.0
Local partners	14	10.7
Personal contacts	9	6.9
Grand Total	131	100.0

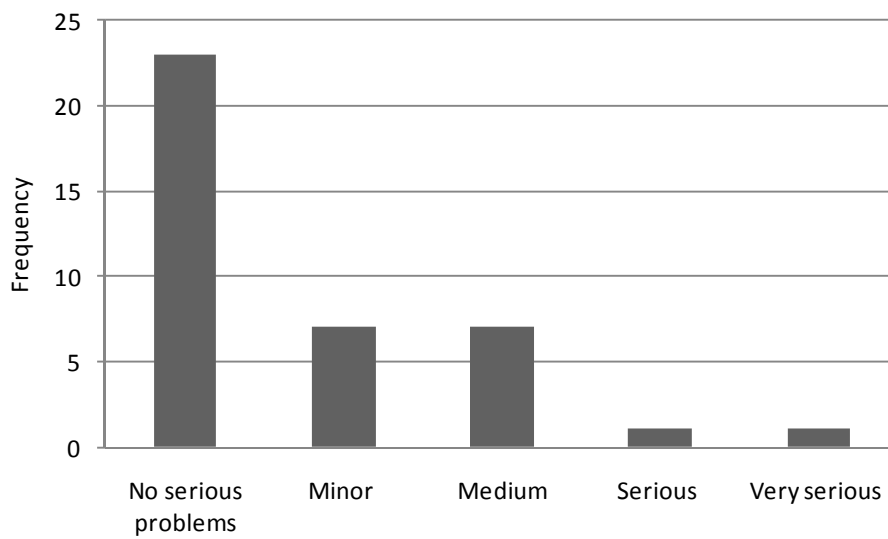
Annex Table 61. Which of the following information sources provided by the Chinese government does your company usually use?

Ranked from the most frequently used (1) to the least frequently used (7)

	Average Ranking
Official legal gazettes published in Chinese	1.76
Government website in Chinese	1.91
Formal contacts with government officials	3.86
Informal contact with government officials	4.04
Special enquiry point established by the government	4.16
International agreements signed by China	4.79
Government website in English	5.08

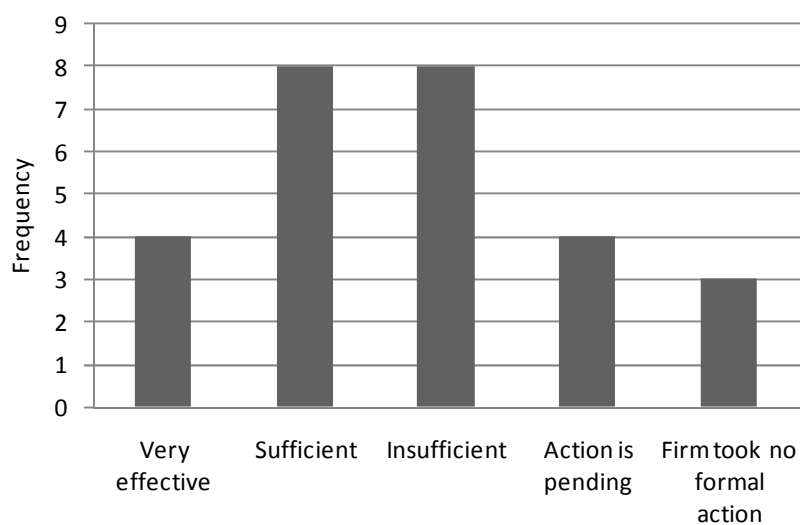
Annex Table 62. Has your firm encountered problems in protecting its intellectual property under the current regulatory framework (i.e. since China's accession in 2001 to the World Trade Organisation)?

	Frequency	Percent
No serious problems	23	59.0
Minor	7	17.9
Medium	7	17.9
Serious	1	2.6
Very serious	1	2.6
Grand Total	39	100.0



Annex Table 63. If your firm experienced abuse of its intellectual property in China, has your firm been able to seek effective recourse via official channels?

	Frequency	Percent
Very effective	4	14.8
Sufficient	8	29.6
Insufficient	8	29.6
Action is pending	4	14.8
Firm took no formal action	3	11.1
Grand Total	27	100.0

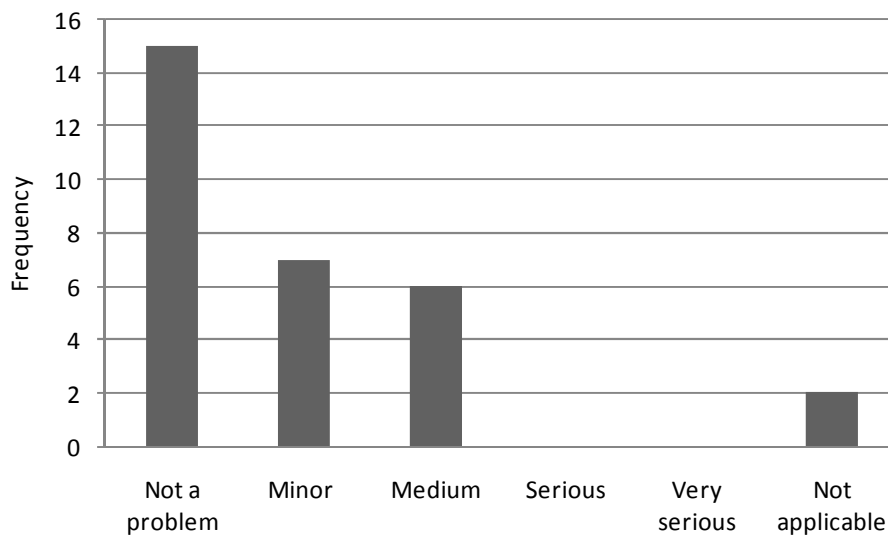
**Annex 64. Has your firm encountered problems relating to compulsory technology transfer?**

In Percentages

	Compulsory joint ventures	Compulsory local public contracts	Compulsory use of Chinese design institutes	Problems with certification
Not a problem	78.1	67.7	77.4	79.4
Minor	15.6	25.8	22.6	14.7
Medium	6.3	3.2	0.0	5.9
Serious	0.0	3.2	0.0	0.0
Very serious	0.0	0.0	0.0	0.0

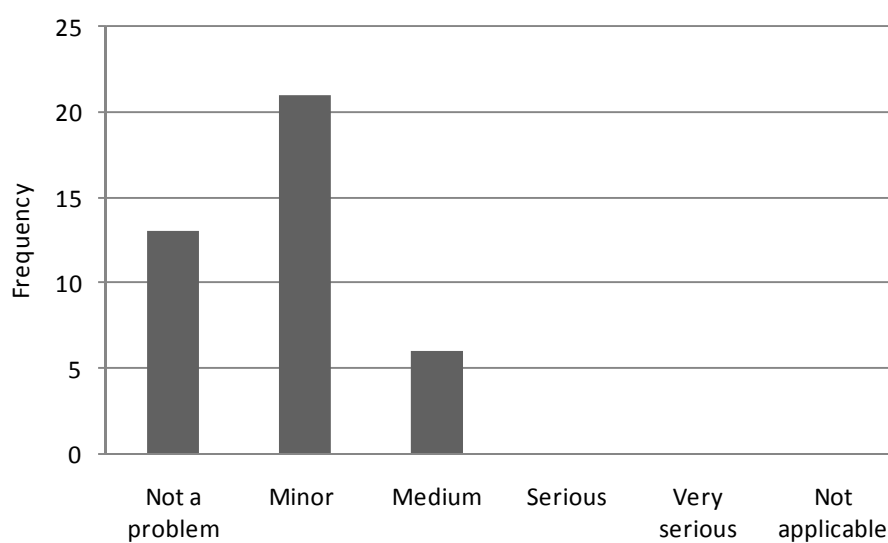
Annex Table 65. Restrictions on foreign ownership of services companies

	Frequency	Percent
Not a problem	15	50.0
Minor	7	23.3
Medium	6	20.0
Serious	0	0.0
Very serious	0	0.0
Not applicable	2	6.7
Grand Total	30	100.0



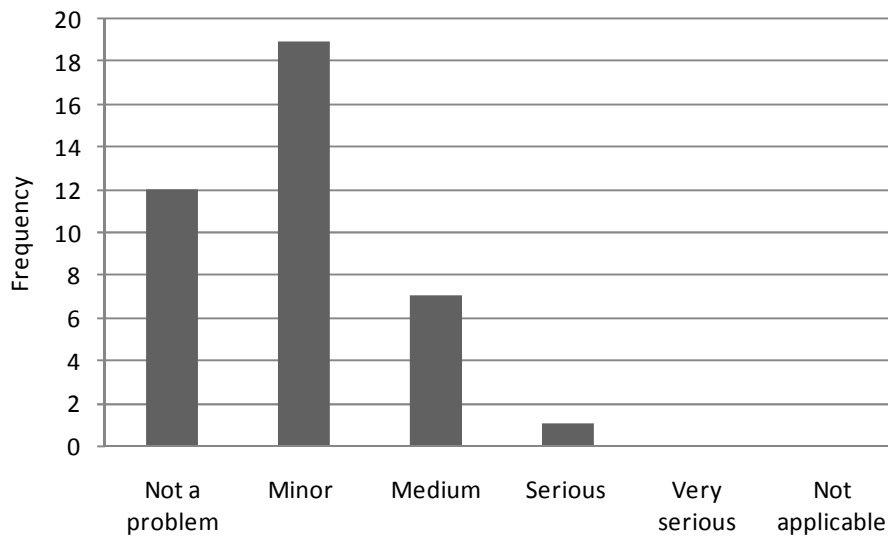
Annex Table 66. Inadequate enforcement of existing laws

	Frequency	Percent
Not a problem	13	32.5
Minor	21	52.5
Medium	6	15.0
Serious	0	0.0
Very serious	0	0.0
Not applicable	0	0.0
Grand Total	40	100.0



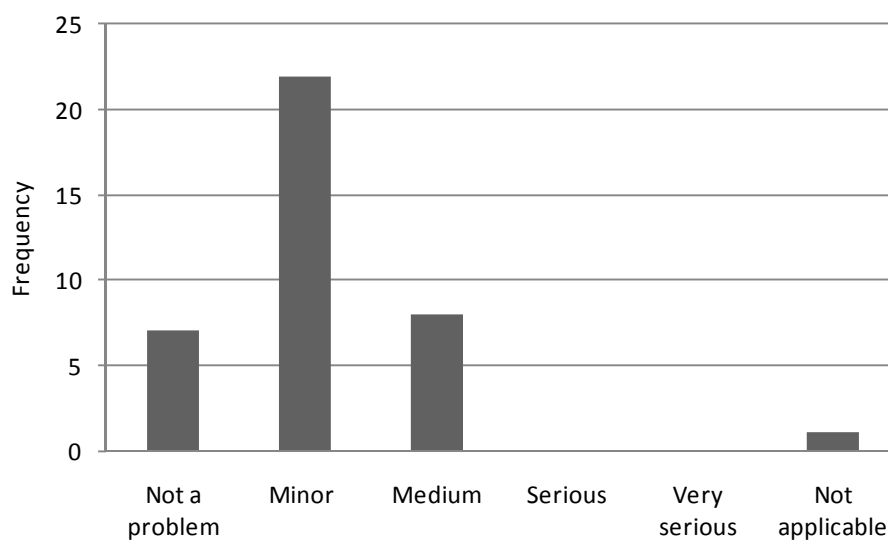
Annex Table 67. Ineffective appeals and arbitration procedures

	Frequency	Percent
Not a problem	12	30.8
Minor	19	48.7
Medium	7	17.9
Serious	1	2.6
Very serious	0	0.0
Not applicable	0	0.0
Grand Total	39	100.0



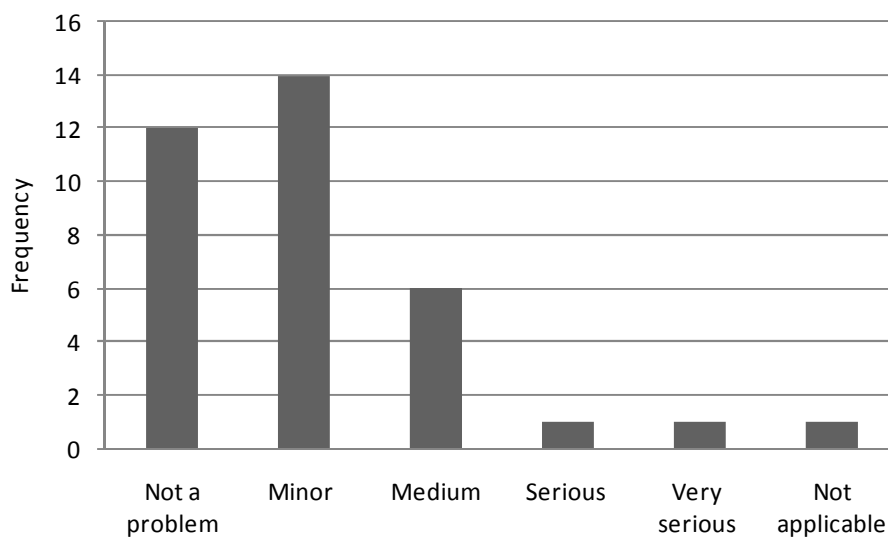
Annex Table 68. Effectiveness of existing incentives in attracting foreign participation in your business

	Frequency	Percent
Not a problem	7	18.4
Minor	22	57.9
Medium	8	21.1
Serious	0	0.0
Very serious	0	0.0
Not applicable	1	2.6
Grand Total	38	100.0



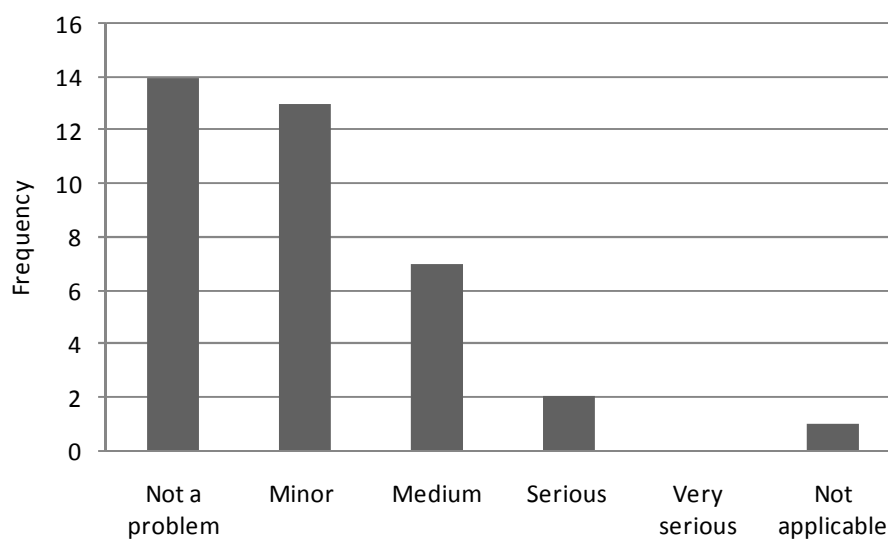
Annex Table 69. Restrictive licensing procedures

	Frequency	Percent
Not a problem	12	34.3
Minor	14	40.0
Medium	6	17.1
Serious	1	2.9
Very serious	1	2.9
Not applicable	1	2.9
Grand Total	35	100.0



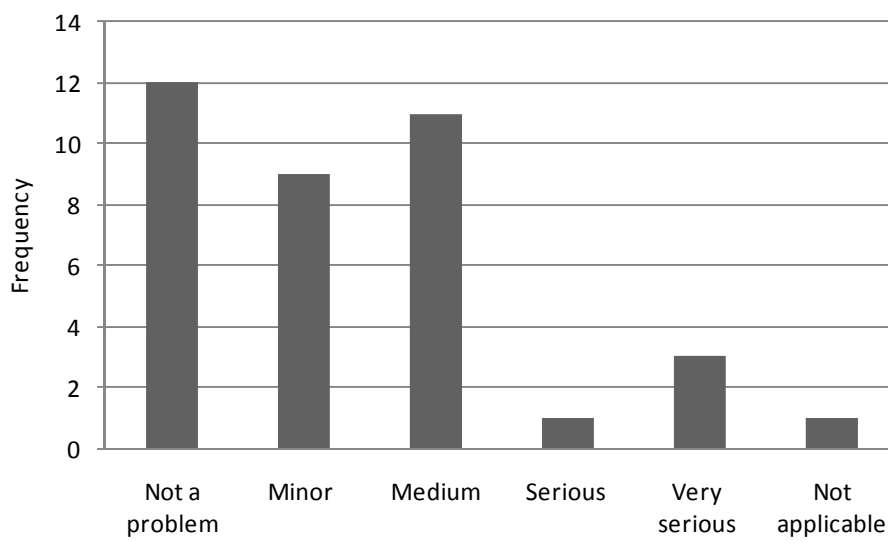
Annex Table 70. Inadequate or untimely information on rules and requirements of tender

	Frequency	Percent
Not a problem	14	37.8
Minor	13	35.1
Medium	7	18.9
Serious	2	5.4
Very serious	0	0.0
Not applicable	1	2.7
Grand Total	37	100.0



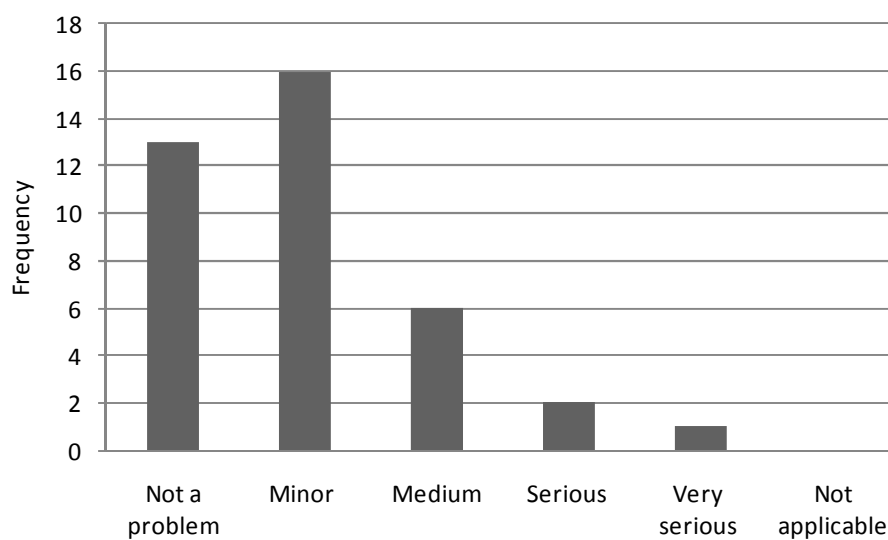
Annex Table 71. Lack of transparency of tendering procedures

	Frequency	Percent
Not a problem	12	32.4
Minor	9	24.3
Medium	11	29.7
Serious	1	2.7
Very serious	3	8.1
Not applicable	1	2.7
Grand Total	37	100.0



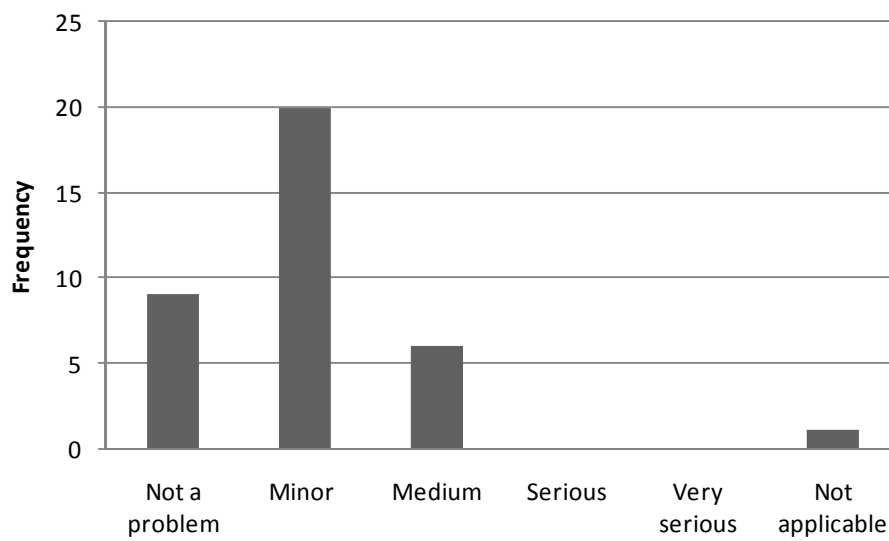
Annex Table 72. Requirements of firm localisation

	Frequency	Percent
Not a problem	13	34.2
Minor	16	42.1
Medium	6	15.8
Serious	2	5.3
Very serious	1	2.6
Not applicable	0	0.0
Grand Total	38	100.0



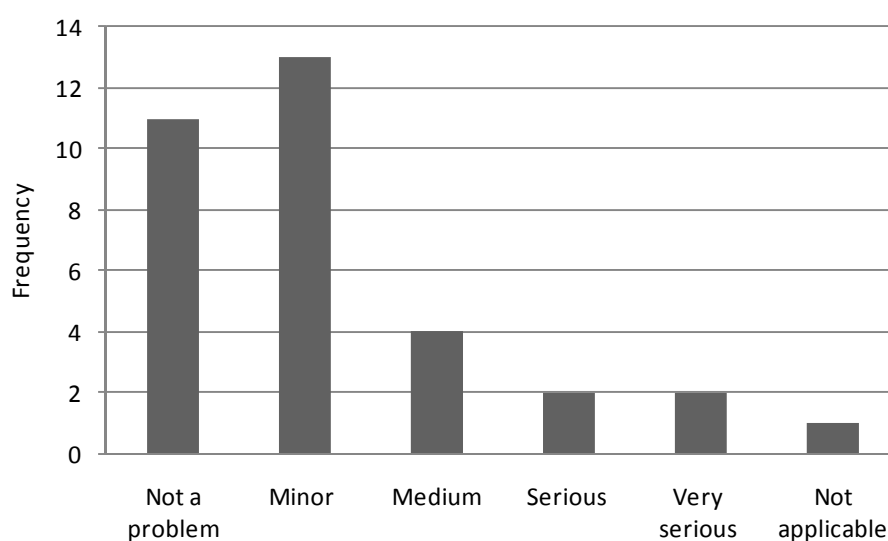
Annex Table 73. Ineffectiveness of existing appeals and arbitration procedures

	Frequency	Percent
Not a problem	9	25.0
Minor	20	55.6
Medium	6	16.7
Serious	0	0.0
Very serious	0	0.0
Not applicable	1	2.8
Grand Total	36	100.0



Annex Table 74. Inadequate opportunities to bid for foreign government contracts

	Frequency	Percent
Not a problem	11	33.3
Minor	13	39.4
Medium	4	12.1
Serious	2	6.1
Very serious	2	6.1
Not applicable	1	3.0
Grand Total	33	100.0

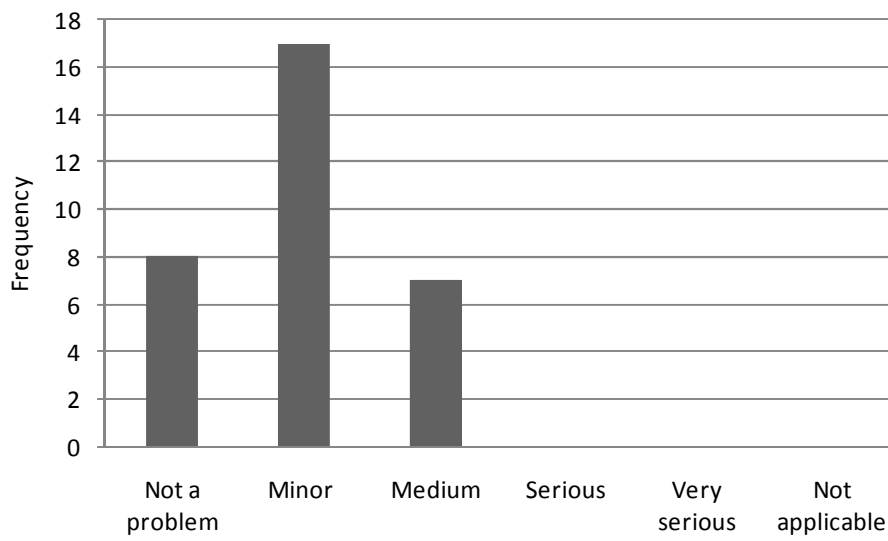
**Annex Table 75. Please assess your firm's experience with customs procedure in China**

In Percentages

	Not a problem	Minor	Medium	Serious	Very serious
Clear and transparent general rules for customs procedures (e.g. information on required documentation)	44.4	41.7	11.1	2.8	0.0
Predictable and impartial customs procedures (e.g. uniform rules applied in all customs posts)	47.1	38.2	14.7	0.0	0.0
Pressures for illegal payments in conjunction with customs procedures	41.9	35.5	22.6	0.0	0.0

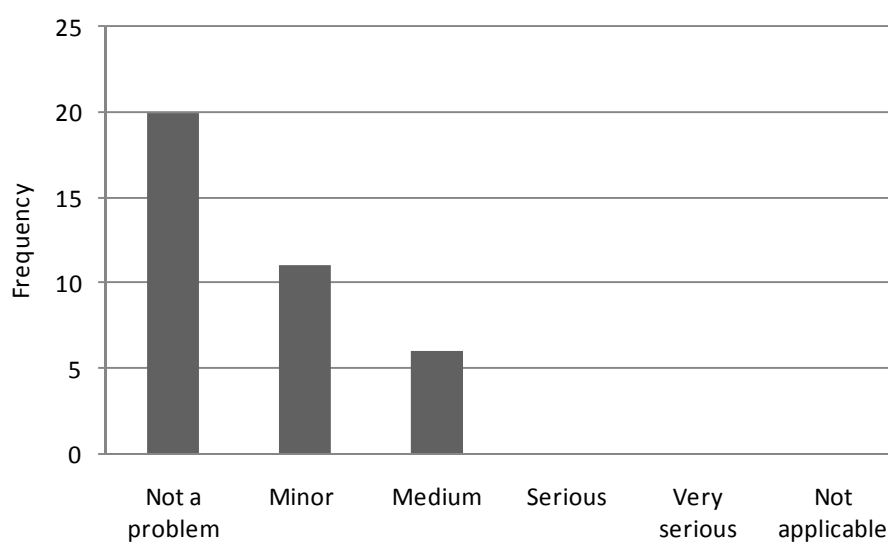
Annex Table 76. Barriers to entering export markets

	Frequency	Percent
Not a problem	8	25.0
Minor	17	53.1
Medium	7	21.9
Serious	0	0.0
Very serious	0	0.0
Not applicable	0	0.0
Grand Total	32	100.0



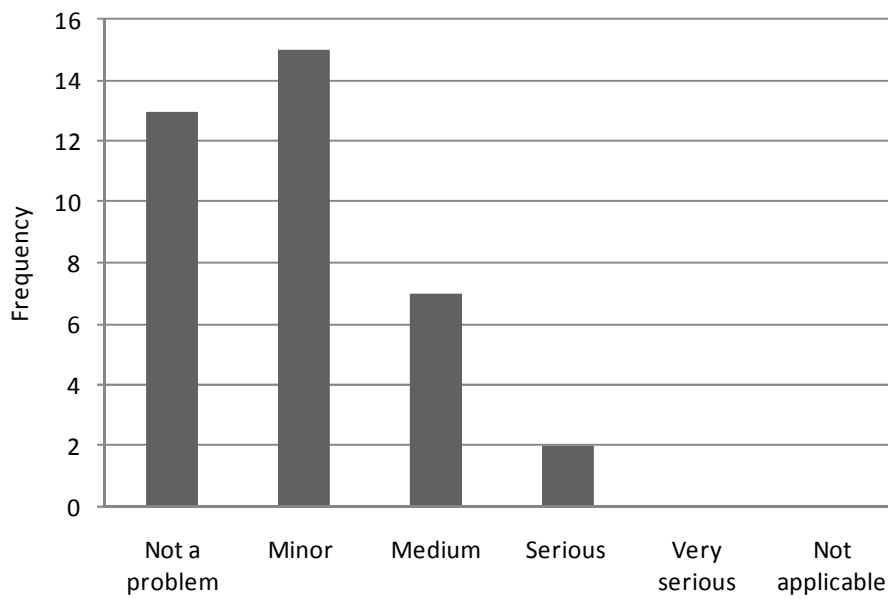
Annex Table 77. Recognition of skills and professional qualifications

	Frequency	Percent
Not a problem	20	54.1
Minor	11	29.7
Medium	6	16.2
Serious	0	0.0
Very serious	0	0.0
Not applicable	0	0.0
Grand Total	37	100.0



Annex Table 78. Restrictions imposed by professional bodies

	Frequency	Percent
Not a problem	13	35.1
Minor	15	40.5
Medium	7	18.9
Serious	2	5.4
Very serious	0	0.0
Not applicable	0	0.0
Grand Total	37	100.0



OECD QUESTIONNAIRE: SURVEY ON THE BUSINESS ENVIRONMENT IN CHINA

The purpose of this questionnaire is to assess the business environment in China within the framework of the OECD project on China's Regulatory Reform Review. The questionnaire is aimed at both foreign and domestic companies operating in China both in the capital and in other major cities. It should be distributed to top and middle management of the surveyed firms. Such firms should represent different sectors of the economy, be of various sizes, and come from different geographical locations. The questionnaire will be distributed in May with a deadline for completed questionnaires by Friday, 1 June 2007. It would be most convenient if the completed questionnaires could be returned electronically via e-mail to Malory Greene at malory.greene@oecd.org.

I. General information about your business

Nature of business:

<input type="checkbox"/> Farming, forestry, animal husbandry and fisheries industries	<input type="checkbox"/> General machine building
<input type="checkbox"/> Food processing	<input type="checkbox"/> Communication and transport equipment
<input type="checkbox"/> Tobacco processing	<input type="checkbox"/> Electrical machinery and equipment
<input type="checkbox"/> Textiles	<input type="checkbox"/> Electronics and telecommunications industries
<input type="checkbox"/> Leather, coat products	<input type="checkbox"/> Production and supply of power, gas and water
<input type="checkbox"/> Lumber processing; bamboo, bine, palm, grass products	<input type="checkbox"/> Water resources management
<input type="checkbox"/> Paper making and paper products	<input type="checkbox"/> Wholesale and retail trade
<input type="checkbox"/> Petroleum refining and coking	<input type="checkbox"/> Real estate
<input type="checkbox"/> Chemical raw materials and products	<input type="checkbox"/> Public service facilities
<input type="checkbox"/> Medicines	<input type="checkbox"/> Accounting and auditing services
<input type="checkbox"/> Chemical Fibres	<input type="checkbox"/> Post and Telecommunication Services
<input type="checkbox"/> Plastics	<input type="checkbox"/> Software, IT and IT related services
<input type="checkbox"/> Non-metal mineral processing	<input type="checkbox"/> Tourism and related travel services
<input type="checkbox"/> Ferrous metallurgical smelting and rolling	<input type="checkbox"/> Financial services
<input type="checkbox"/> Non-ferrous metallurgical smelting and rolling	<input type="checkbox"/> Communication and transportation services
<input type="checkbox"/> Metals	<input type="checkbox"/> Other

Foreign participation:

<input type="checkbox"/> A single operation in China	
<input type="checkbox"/>	<input type="checkbox"/> More than 10% and up to 50% of foreign-owned shares
<input type="checkbox"/>	<input type="checkbox"/> More than 50% and less than 90% of foreign owned shares
<input type="checkbox"/>	<input type="checkbox"/> Wholly foreign owned
<input type="checkbox"/> Several operations in China, with an average of	
<input type="checkbox"/>	<input type="checkbox"/> More than 10% and up to 50% of foreign-owned shares
<input type="checkbox"/>	<input type="checkbox"/> More than 50% and less than 90% of foreign owned shares
<input type="checkbox"/>	<input type="checkbox"/> Wholly foreign owned

Market orientation:

<input type="checkbox"/> Primarily domestic market	
<input type="checkbox"/> Export	
<input type="checkbox"/>	<input type="checkbox"/> More than 50% of sales
<input type="checkbox"/>	<input type="checkbox"/> Less than 50% of sales
<input type="checkbox"/> Import	
<input type="checkbox"/>	<input type="checkbox"/> More than 50% of purchase
<input type="checkbox"/>	<input type="checkbox"/> Less than 50% of purchase

Origin of inputs:

<input type="checkbox"/> Primarily domestic sources/inputs	
<input type="checkbox"/> Imported inputs	
<input type="checkbox"/>	<input type="checkbox"/> Less than 50% of your inputs are imported
<input type="checkbox"/>	<input type="checkbox"/> More than 50% of your inputs are imported

Company size:

<input type="checkbox"/> Less than 50 employees	<input type="checkbox"/> More than 500 employees
<input type="checkbox"/> More than 50 and less than 500 employees	<input type="checkbox"/> More than 1000 employees

Location(s):

<input type="checkbox"/> Beijing	<input type="checkbox"/> Hangzhou	<input type="checkbox"/> Ningbo	<input type="checkbox"/> Shenyang	<input type="checkbox"/> Zhuhai
<input type="checkbox"/> Dalian	<input type="checkbox"/> Harbin	<input type="checkbox"/> Qingdao	<input type="checkbox"/> Wuhan	<input type="checkbox"/> Other
<input type="checkbox"/> Chongqing	<input type="checkbox"/> Huizhou	<input type="checkbox"/> Shandong	<input type="checkbox"/> Xiamen	
<input type="checkbox"/> Dongguan	<input type="checkbox"/> Jiangmen	<input type="checkbox"/> Shanghai	<input type="checkbox"/> Xi'an	
<input type="checkbox"/> Foshan	<input type="checkbox"/> Kunming	<input type="checkbox"/> Shenzhen	<input type="checkbox"/> Zhaoqing	
<input type="checkbox"/> Guangzhou	<input type="checkbox"/> Nanjing	<input type="checkbox"/> Tianjin	<input type="checkbox"/> Zhongshan	

II. Transparency and predictability of laws and economic policies

Does your company face problems listed below. If so, please judge how serious they are:

1. Availability of up-to-date information on existing governmental policies

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Information on changes in regulations

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Government regulations that are not consistent with the interests and needs of the business community

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. Inadequate consultation with business entities prior to introducing new laws or economic policies

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. How would you characterise the government's enforcement of laws and regulations in general?

No serious problems	Minor	Medium	Serious	Very serious problems
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. How would you characterise your company's legal rights to contest Chinese authorities' administrative decisions?

	Not a problem	Minor	Medium	Serious	Very serious
Access to appeal and arbitration procedures by foreign firms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rules and proceedings of appeal and arbitration bodies are clear and transparent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rules and proceedings of appeal and arbitration bodies are uniform and impartial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appeal and arbitration procedures are rapid and effective	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7. How easily available have the following types of information been for your company?

Type of information	At the national level		At the provincial level	
	Information readily available	Information difficult to obtain	Information readily available	Information difficult to obtain
Information on possibilities to establish branches, subsidiaries or joint ventures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on licensing procedures for activities in specific sectors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on real estate acquisitions for business purpose by foreign firms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on foreign exchange regulations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on the levels of provincial and local taxes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on tax exemptions granted by local authorities to foreign investors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on customs regulations and procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on legislation concerning mergers and acquisitions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on environmental requirements (e.g. treatment of environmental liabilities)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on work permits for expatriates	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on legal obligations regarding the disclosure of information and the rights of shareholders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8. Obtaining information on changes in governmental policy and regulations (such as in the areas mentioned above in question 7) is:

	Not a problem	Minor	Medium	Serious	Very serious	Not applicable
At the national level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
At the provincial level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. How easily has your company been able to find information about the different types of legislation?

	Not available	Available in Chinese only	Also available in English	Also available to foreign investors in their home countries
Primary legislation (e.g. national laws, codes)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Secondary legislation (e.g. regulations issued by national agencies and services, such as China Customs)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legislation and regulations issued by provincial authorities (e.g. specific regulations on licensing procedure applied in regions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legislation and regulations issued by local authorities (e.g. specific local requirements)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10. How do you assess the Chinese authorities' effort to consult over planned laws and regulations (important for your business) before their introduction and implementation?

	Sufficient	Insufficient
Notification/consultation procedures are undertaken by Chinese authorities sufficiently before the introduction of new measures	<input type="checkbox"/>	<input type="checkbox"/>
Notification/consultation procedures are open to all interested parties , including foreign investors	<input type="checkbox"/>	<input type="checkbox"/>
Exceptions to accessibility to notification/ consultation procedures are clearly defined and delimited	<input type="checkbox"/>	<input type="checkbox"/>

11. How would you characterise the government's overall program for regulating your sector?

Completely predictable	Fairly predictable	Constant	Fairly unpredictable	Completely unpredictable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12. What are your company's general sources of information on laws and regulations important for your operations in China? Please indicate the three most frequently used sources.

Most frequently used sources
Chinese governmental sources
<input type="checkbox"/> Chinese non-governmental sources
<input type="checkbox"/> Consulting/law firms
<input type="checkbox"/> Websites/databases
<input type="checkbox"/> Provided free of charge
<input type="checkbox"/> Provided on a commercial basis
Your home country's governmental sources
<input type="checkbox"/> Foreign non-governmental sources
<input type="checkbox"/> Consulting/law firms
<input type="checkbox"/> Websites/databases
<input type="checkbox"/> Provided free of charge
<input type="checkbox"/> Provided on a commercial basis
<input type="checkbox"/> Business newspapers
<input type="checkbox"/> Business associations
<input type="checkbox"/> Local partners
<input type="checkbox"/> Personal contacts

13. Which of the following information sources provided by the Chinese government does your company usually use? Please rank them from the most frequently used (1) to the least frequently used (7).

	Ranking from 1 (most frequently used) to 7 (least frequently used)
Official legal gazettes published in Chinese	<input type="checkbox"/>
International agreements signed by China	<input type="checkbox"/>
Government websites	<input type="checkbox"/>
• In Chinese	<input type="checkbox"/>
• In English	<input type="checkbox"/>
Special enquiry point established by the government	<input type="checkbox"/>
Formal contacts with government officials	<input type="checkbox"/>
Informal contact with government officials	<input type="checkbox"/>

14. Has your firm encountered problems in protecting its intellectual property under the current regulatory framework (*i.e.*, since China's accession in 2001 to the World Trade Organisation)?

No serious problems	Minor	Medium	Serious	Very serious problems
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If so, what was the principal challenge? (e.g., abuse of patents, copyrights, trademarks, trade secrets; or another issue such as patent registration) _____

15. If your firm experienced abuse of its intellectual property in China, has your firm been able to seek effective recourse via official channels?

Very effective	Sufficient	Insufficient	Action is pending	Firm took no formal action
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

16. Has your firm encountered problems relating to compulsory technology transfer?

	No serious problems	Minor	Medium	Serious	Very serious problems
Compulsory joint ventures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Compulsory local public contracts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Compulsory use of Chinese design institutes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Problems with certification	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If so, what is the principal challenge? _____

III. Issues related to Commercial Presence

Does your company face problems listed below? If so, please judge how serious they are:

1. Restrictions on foreign ownership of services companies

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Inadequate enforcement of existing laws

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Ineffective appeals and arbitration procedures

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. Effectiveness of existing incentives in attracting foreign participation in your business

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. Restrictive licensing procedures

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. Other, please identify any difficulties you face:

a) in competition related issues, e.g. cartels, predatory pricing, etc?) _____

b) other areas, e.g. differences in treatment among provincial authorities

IV. Government procurement

Does your company face problems listed below? If so, please judge how serious they are:

1. Inadequate or untimely information on rules and requirements of tender

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Lack of transparency of tendering procedures

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Requirements of firm localisation

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. Ineffectiveness of existing appeals and arbitration procedures

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. Inadequate opportunities to bid for foreign government contracts

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

V. General obstacles imposed by governmental or professional associations

Does your company face problems listed below? If so, please judge how serious they are:

1. Please assess your firm's experience with customs procedure in China:

	Not a problem	Minor	Medium	Serious	Very serious
Clear and transparent general rules for customs procedures (e.g. information on required documentation)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Predictable and impartial customs procedures (e.g. uniform rules applied in all customs posts)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pressures for illegal payments in conjunction with customs procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Barriers to entering export markets

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

What kind of barriers in entering export markets does your business usually face? _____

3. Recognition of skills and professional qualifications

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. Restrictions imposed by professional bodies

Not a problem	Minor	Medium	Serious	Very serious	Not applicable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>