

Council for Trade in Services

REPORT OF THE MEETING HELD ON 5 DECEMBER 2003

Note by the Secretariat¹

1. The Council for Trade in Services held a meeting on 5 December 2003 chaired by Ambassador Ousmane Camara (Senegal). The agenda for this meeting is contained in document WTO/AIR/2223.
2. The Chairman informed the Council that he intended to make a statement regarding the designation of chairpersons of the subsidiary bodies to the Council for Trade in Services for 2004 under Other Business. He suggested that the agenda be adopted as circulated with the addition to Other Business to which he had just referred.
3. It was so agreed.
- A. ANNUAL REPORTS OF THE SUBSIDIARY BODIES TO THE COUNCIL FOR TRADE IN SERVICES
4. The Chairman stated that in accordance with the Decision on Institutional Arrangements for the GATS, the Council's subsidiary bodies were to report to it annually or more often as necessary. In this regard, he drew the Council's attention to these annual reports which had been recently adopted by the Committee on Specific Commitments (S/CSC/9), the Committee on Trade in Financial Services (S/FIN/10), the Working Party on Domestic Regulation (S/WPDR/6), and the Working Party on GATS Rules (S/WPGR/13). He proposed that the Council take note of these reports on the understanding that they would be annexed to the Council's report and would form an integral part of it.
5. It was so decided.
- B. ADOPTION OF THE ANNUAL REPORT TO THE GENERAL COUNCIL
6. The Chairman drew the Council's attention to the draft of the Council's annual report contained in document S/C/W/230. He pointed out that there was a typographical error in the last line of paragraph 2 of the draft where "informal" should be "formal". He recalled that the reports of the subsidiary bodies of which the Council had just taken note would be annexed to the report of the Council.
7. As no Members sought any changes to the draft, the Chairman proposed that the Annual Report be adopted.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

8. It was so decided.

C. NOTIFICATIONS TO THE COUNCIL PURSUANT TO ARTICLES III:3 AND V:7 OF THE GATS

9. The Chairman drew the Council's attention to recent notifications made pursuant to Article III:3 (Transparency) of the GATS. He stated that one notification had been made by Japan, contained in document S/C/N/234, two notifications from Bolivia, contained in documents S/C/N/235-236, one notification from Armenia, contained in document S/C/N/237, as well as twenty-three notifications from the People's Republic of China, contained in documents S/C/N/238 to S/C/N/260. He pointed out that the notifications contained in documents S/C/N/255-260 were not indicated on the agenda because they were made after the agenda had been issued.

10. The representative of the European Communities suggested that their notification contained in document S/C/N/261 be included on the agenda.

11. The Chairman proposed that the Council take note of these notifications.

12. It was so agreed.

13. The Chairman further drew the Council's attention to one notification (S/C/N/233) made by Australia and Singapore pursuant to Article V:7 (Economic Integration) of the GATS.

14. The representative of Australia informed the Council that the Australian Minister of Trade and the Singapore Minister of Trade and Industry had signed the Singapore-Australia Free Trade Agreement (SAFTA) on 17 February 2003, which had entered into force on 28 July 2003. He stated that the agreement further strengthened trade and investment links between Australia and Singapore. He further stated that, in addition to tariff elimination, this agreement guaranteed increased market access for Australian exporters of services, particularly education, environmental, telecommunications and professional services. He indicated that this agreement provided a more open and predictable business environment across a range of areas including competition policy, governmental procurement, intellectual property, e-commerce, customs procedures, and business travel.

15. The Chairman proposed that the Council take note of the notification and the statement made and that this agreement be referred to the Committee on Regional Trade Agreements for examination of its consistency with the provisions of Article V of the GATS.

16. It was so decided.

D. REQUEST FOR A WAIVER FROM SPECIFIC COMMITMENTS UNDER THE GATS PURSUANT TO ARTICLES IX:3 AND 4 OF THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

17. The Chairman drew the Council's attention to a request for waiver made by the Government of Albania to allow Albania to postpone until 31 December 2004 the implementation of commitments undertaken in its GATS Schedule with respect to the exclusivity granted to Albtelecom SH.A ("Albtelecom"). He noted that this request was presented in accordance with paragraphs 3 and 4 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization. This article stipulated that in exceptional circumstances, a Member might request a waiver from an obligation imposed on it by any of the Multilateral Trade Agreements, including the GATS. The Chairman further noted that the communication from Albania, contained in document S/L/148, had described the exceptional circumstances justifying the grant of the waiver. He indicated that a request for a waiver concerning the GATS were to be submitted initially to the Council for Trade in Services for

examination within a period of 90 days, and that at the end of this period, the Council were to submit a report to the General Council.

18. The representative of Albania thanked the Council for giving his Government the opportunity to explain its waiver request. He pointed out that the commitments referred to in the request, which had been made during the accession negotiations, was related specifically to the liberalization of the international public voice services.

19. He stated that the Government of Albania was fully committed to its reform program which included as key elements the liberalization of the strategic sectors of the economy and their privatization. A strong legal framework had been developed for this purpose and the government was successfully pursuing its early reform strategy. Given its economic importance, the telecommunications sector had been a focus of the reform. He noted that, by recognizing the special role of telecommunications services in sustainable development, the Government of Albania had taken concrete and specific steps aiming at the enhancement of the performance of this sector and its development in accordance with international standards.

20. He indicated that in order to achieve these goals, the Government of Albania had adopted a Policy Paper for the Development of the Telecommunications Sector which envisaged a mid-term development. Following the successful privatization of the first mobile operator in 2000 in accordance with the policy paper, the Government of Albania had issued the second GSM license in 2001 through an open international tender. He drew the Council's attention to the dramatic effect of liberalization and privatization of the telecommunications sector in Albania where mobile subscribers had increased about 50 times during four years from 20 000 in 1999 to more than 1 000 000 to date.

21. He stated that the same trend had been achieved in other subsectors in accordance with the strategy and commitments of Albania during its accession negotiations. He enumerated subsectors such as internet services, value-added services, data processing and transmission services, which were liberalized and fully opened to competition with many private operators well established across the country.

22. Regarding the fixed telephony services, the representative of Albania noted that this subsector had been further liberalized in his country during 2003, which was now fully opened to competition in urban areas subsequent to liberalization in rural areas in 1999. He pointed out that this step marked the largest liberalization of Albania's telecommunications sector where various private telephone operators had become partners of Albtelecom – the national public telephone company.

23. The representative of Albania noted that, despite these achievements, there were issues not within the full control of his Government. He believed that a substantial transformation of the telecommunications sector could only be achieved by a successful privatization of Albtelecom. While noting that the national telephone company had been restructured and was operating in a liberalized market, he pointed out that his Government could only reach the strategic targets defined in the policy paper through major investments and appropriate management ensured by a competitive and transparent privatization. He stated that this was the reason why the privatization of Albtelecom had been a priority on Albania's privatization agenda. He indicated that such process had been closely assisted by international advisers selected through a World Bank program.

24. The representative of Albania admitted that, notwithstanding the major efforts made by his Government and advisers towards this objective, the privatization of Albtelecom had been postponed several times. He pointed out that the postponement was mainly due to external factors including the war in Kosovo during 1999, the terrorist acts of 2001, the recent global recession and the shift of interest of major global operators toward capital investments in third generation services, which had led to the lack of interest in the privatization of Albtelecom in several failed attempts over the

preceding three years. He drew the attention of the Council to the same situation in other emerging markets and specifically in Eastern Europe.

25. He reiterated that his Government was fully committed to proceeding with the privatization. He stated that the appropriate time for relaunching the process would be the beginning of the second quarter of 2004 according to the indications of the international adviser.

26. He noted that the policy paper for the telecommunications sector had set specific targets for Albtelecom to achieve by 2005 and that the company should make major investments especially in rural and remote areas of the country. He further noted that, in view of considerable investments needed for the achievement of such targets and the privatization of the company to be completed during 2004, the Government of Albania had extended the exclusivity of Albtelecom for the supply of international telephone services until 31 December 2004 as a compensation for investment commitments.

27. He emphasized that this was the last and the only exclusive right Albtelecom enjoyed in the Albanian market, as all the other services had been liberalized in accordance with the commitments of Albania and international standards. He believed that all the arguments discussed and the specifics of the transition in Albania, on which the postponement of the exclusivity from 1 January 2003 to 31 December 2004 was based, justified the waiver request. Pointing out that such request was not a withdrawal of commitments but a temporary freeze of implementation, he reiterated that Albania was deeply dedicated to fulfilling its commitments. He hoped Members could express their understanding on this issue and could accept his delegation's request.

28. The representative of the European Communities thanked the representative of Albania for providing information about the context of the request. She commended Albania for the transparency it had shown. She noted that based on the application and the presentation made by Albania, the waiver decision would only relate to international telephone services. She also noted that there was a wide-ranging liberalization in the other subsectors of telecommunications in Albania. She said that the European Communities was in the process of studying Albania's application and had questions about some of the elements of the motives which were set out in the Albania's proposal. She indicated that the clarification made by Albania suggested that the issue was not so much related to the question of privatization *per se*, but rather to the conflict situation in the region. She said that the European Communities would seek consultations with the delegation of Albania, and hoped to provide an answer at the next meeting.

29. The representative of the United States also thanked the representative of Albania for his presentation. She said that, like the European Communities, the United States was not in a position to be able to react to the request at this meeting but looked forward to having further clarifications on some points her delegation was studying. She expressed appreciation for the information provided by Albania, which would facilitate the task ahead. She indicated that her delegation would undertake further consultations with Albania and would revert to this item at the next meeting.

30. The representative of Japan thanked Albania for its presentation and commended it for having initiated a procedure in a transparent manner given the actual situation in Albania's telecommunications sector. Although he could not commend the delay in implementing commitments, he stated that from a procedural or legal correctness and transparency point of view, the initiative taken by Albania was an example to be followed in similar situations. With respect to the waiver procedure, he posed several technical questions to the Secretariat. He asked how the request should be evaluated in the period leading to the decision by the General Council or report by the Services Council to the General Council. He inquired as to the kind of decision or report the Council for Trade in Services was expected to make and whether a recommendation should be included in the report. He further inquired as to how the General Council would make a waiver decision, namely by three-

fourth majority according to Article IX:3 (a) of the WTO Agreement or by consensus according to footnote 4 under the same provision. With respect to the substance of the Albanian request, he questioned its ties to the conflict in Kosovo or the terrorist activities of 11 September 2001. He indicated that his delegation disagreed on some points contained in the explanations presented by Albania, particularly on the general statement made at the end of paragraph 5 of the Albanian communication, which stated that the experience of other countries demonstrated that strategic investors had been granted a minimum period of two years between privatization and liberalization. He thought that political elements should be distinguished from other economic situations. Finally, he said that Japan needed to further examine the Albania's request.

31. The representative of Canada also thanked Albania for its intervention and clarification which, he thought, helped to set the context for the request. He indicated that the request was being examined in his capital. He suggested that Albania undertake informal consultations with interested Members in advance of the consideration of this item at the next meeting.

32. Hoping he would respond to the questions raised by the representative of Japan, a representative of the Secretariat said that the report of the Council for Trade in Services submitted to the General Council should include the waiver request stating the exceptional circumstances, the views expressed by Members as well as a recommendation for the decision to be adopted by the General Council acting on behalf of the Ministerial Conference. Turning to the question concerning the rule of decision-making, he stated that in principle a decision taken under Article IX:3 of the WTO Agreement should be made by three-fourth majority. He further stated that there was a stipulation for decisions by consensus in relation to this provision and that footnote 4 under it should also be taken into account. He said that Members could approach to the Secretariat if they sought any further clarification on the procedure.

33. Noting that the Albania's request had given rise to much interest, the Chairman suggested that Albania undertake consultations with Members and that the Council take note of the statements made and revert to this item at next meeting.

34. It was so agreed.

E. TRANSITIONAL REVIEW UNDER SECTION 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

35. The Chairman stated that Section 18 of the Accession Protocol of the People's Republic of China provided for an annual review of the implementation by China of the WTO Agreement and of the related provisions of China's Accession Protocol. As indicated in Section 18, the Services Council was one of the bodies in which this review was to be conducted. He further stated that the results of the Services Council's review, as well as those bodies mentioned in Section 18 of the Protocol, would be reported to the General Council, which would conduct its own review.

36. The Chairman noted that on 1 December 2003 the Committee on Trade in Financial Services had conducted and had concluded its transitional review under Section 18 of China's Protocol of Accession and that its Chairman had submitted a report contained in document S/FIN/11.

37. The Chairman proposed that the Council take note of the report from the Committee on Trade in Financial Services on the understanding that it would form part of the Services Council's report to the General Council.

38. It was so decided.

39. The Chairman drew the Council's attention to a communication made by the People's Republic of China, contained in document S/C/W/234, which provided information required by Annex 1A to the Protocol.

40. Regarding the present review, the Chairman suggested that it be conducted the same way as the previous year. He would first invite the People's Republic of China to respond to comments and questions contained in the communications from Japan (S/C/W/228); the European Communities (S/C/W/229); Australia (S/C/W/230); Chinese Taipei (S/C/W/232); and the United States (S/C/W/233). Members would then make comments and pose supplemental questions, and China would have opportunity to respond.

41. The representative of China thanked the Chairman and the Secretariat for their efforts in the preparation of the current review. He said that China had attached the same importance to it as the previous year, as witnessed by the delegation in attendance, which was composed of capital-based officials from the relevant services administrative authorities, including the Ministry of Information Industry, the Ministry of Justice, the Ministry of Communications, the Ministry of Construction and the Ministry of Commerce. He hoped to take the opportunity to briefly describe the latest development of China's compliance with its WTO commitments regarding trade in services other than financial services.

42. He stated that information required by Annex 1A to the China's Accession Protocol had been provided to the Council for Trade in Services and that notifications had been made pursuant to Article III:3. This included the status of market access in sectors and sub-sectors listed in the China's Schedule of Specific Commitments; a list of administrative authorities responsible for specific services sectors and sub-sectors; information on the independence of regulatory authorities from service suppliers; information related to the MFN Exemption List; and laws, regulations and administrative measures directly related to market access in specific services sectors and sub-sectors.

43. With respect to China's fulfilment of its commitments on the expansion of market access in services trade, he underlined that, despite enormous difficulties, China had continued with great efforts to implement its commitments since the last review and that development had been achieved in this respect.

44. Regarding improvement of the legal system and trade policy transparency, he stated that a series of new regulations and administrative rules governing trade in services had been promulgated since the previous review, which included the *Regulation on Sino-Foreign Cooperative Educational Institutions*; the *Implementing Rules on the Regulation on International Maritime Transportation*; the *Rules governing the Foreign Invested Urban Planning Service Enterprises*; the *Provisional Rules on the Establishment of Travel Agencies with Majority Foreign Equity and Solely Foreign Investment*; the *Rules on the Administration of Foreign invested Enterprises for Book, Newspaper and Journal Distribution*; and etc. He further stated that these regulations were in conformity with China's commitments and had consolidated the legal basis on which market access opportunities for foreign service suppliers would be improved.

45. He noted that China's services trade, particularly the importation of services, had seen a rapid development with the implementation of China's commitments. In 2002, China's importation of services increased by 21 percent and reached US\$ 46.5 billion, which made China the ninth largest service importer of the world. China's services import volume for the first six months of 2003 was US\$ 25.5 billion, which represented an increase of 14 percent over the same period in the preceding year. He pointed out that this rapid expansion was not only an indicator of growing demand of better services for China's economic development, but also a testimony to the enhanced exposure of China's services market to the outside world. He also noted that as market access had improved, foreign direct investments to China's services sectors had grown. A total of 5,540 new foreign-invested

enterprises (FIEs) had been established in China's services sectors in the first seven months of 2003, which represented an increase of 28 percent over the same period of 2002 and accounted for 25 percent of all the FIEs established. The volume of actual investment in services sectors had reached US\$ 8 billion, which represented 24 percent of the total foreign investment realized in China.

46. Turning to changes in market access for major sectors, the representative of China informed Members that with respect to distribution services, as of the end of August 2003, 35 foreign-invested enterprises with 347 outlets had been approved, whose contractual value had reached US\$ 310. With respect to tourism services, in addition to the approvals granted to 11 sino-foreign equity joint venture travel agencies since China's accession, China had approved one travel agency with foreign majority equity and one with 100 percent foreign capital. On educational services, as of the end of October 2003, China's central and provincial educational authorities had approved 782 sino-foreign cooperative educational institutions and projects, of which 50 had been approved in 2003. Regarding legal services, 23 new representative offices of foreign law firms had been approved in China since accession, thereby increasing the total number of representative offices of foreign law firms in China to 162. In addition, eight foreign-invested cinemas, four foreign invested book and newspaper retailers and 43 cooperative medical institutions had been approved in China. He stated that China was ahead of its implementation schedule in certain areas. He referred to the *Provisional Rules on the Establishment of Travel Agencies with Majority Foreign Equity and Solely Foreign Investment*, which allowed the establishment of travel agencies with solely foreign investment in certain cities upon the approval by State Council and National Tourism and Vacation Zones. This step was three years ahead of China's accession commitments. He further stated that China's implementation efforts in the sectors he had referred to, as well as its effective endeavours to expand market access, had earned broad recognition and appreciation among Members and foreign investors. Citing a statement appeared in *2003 Whitepaper on American Business in China*, (a publication jointly sponsored by the American Chamber of Commerce in China and AmCham Shanghai,) he said that a vast majority of United States companies operating in China deemed that business conditions and climate had improved substantially in the past five years: in 2003, 93 percent of respondents reported their five-year business outlook in China as either optimistic or cautiously optimistic. This statement further reported that this finding had been remarkably consistent for the past three years, indicating that member companies were sufficiently confident to build and support long-term development strategies in the Chinese market.

47. Before responding to comments and questions contained in the written communications, the representative of China noted that some of the communications had been circulated very late.

48. Regarding a question on legal services, which sought a clarification on the requirement of "actual need to establish a representative office in China", he confirmed that there were no geographic and quantitative restrictions on representative offices of foreign law firms as indicated in China's commitments. He suggested that the concerned Members look at this issue in terms of the actual market access of foreign representative offices. He stated that more than 50 representative offices of foreign law firms had been approved in Beijing and Shanghai and that none of them had been subject to a so-called "Economic Needs Test".

49. Responding to a concern on the conditions imposed on Chinese partners in joint-venture telecommunication enterprises, the representative of China referred to the *Provisions on the Administration of Foreign-invested Telecommunication Enterprises*. He stated that, due to the need for complicated expertise and the new services emerging in the telecom industry, this regulation required that the major Chinese investor in a foreign-invested enterprise should have technical personnel suitable for the operation of the enterprise in order to better protect the interest of investors and consumers and to ensure the sound development of the telecom industry. He further stated that this requirement also applied to domestic enterprises, which was in line with the national treatment principle. He noted that this regulation required that the major Chinese investor should invest at least

30 percent of the total capital shared by all the Chinese investors in order to protect the interests of the Chinese and foreign-invested telecom enterprises. He pointed out that these requirements increased the liability of the Chinese investors and therefore alleviated the risks on the part of foreign investors.

50. Turning to a question regarding the entrustment procedure of the courier services, he recalled that the issue of an entrustment requirement for express delivery services had been discussed at the previous review. He noted that in the past calendar year, 167 qualified international freight forwarding enterprises and 362 branches had obtained entrustment and had been operating quite well in China. He stated that China would assure the same procedure of entrustment for international courier agencies as for Chinese operators.

51. With respect to a question regarding the conditions and business scope set out in the new regulation on foreign construction enterprises, he responded that China had provided many explanations and clarifications at the bilateral level during the preceding year in response to the concern of certain Members, and that China's position had been made very clear. He sought to reiterate several points. First, Decree No. 113 of the Ministry of Construction was in line with the principle of national treatment and China's commitments in the construction and engineering sector, which applied a unified qualification standard to both domestic enterprises and foreign invested construction enterprises. According to this decree, wholly foreign-owned construction enterprises had been allowed to be established as from 1 December 2002, which he noted was two years ahead of the timeframe set out in China's commitments, and discriminatory requirements against foreign invested construction companies in terms of qualification standard had been abolished. He stated that this resulted in a further opening-up of construction market to foreign investors. Second, he said that in order to guarantee commercial interests of foreign enterprises, the stability of transition, and the implementation of the existing contracts already signed by foreign companies, the *Implementing Rules on the Qualification Management for Facilitating Foreign Enterprises to Invest in the Construction Sector* required that "for all the engineering contracts signed before 1 October 2003, or contracts remaining valid after 1 October 2003, the foreign companies might continue to complete the works". Finally, he noted that the Ministry of Construction had promulgated Notice No. 193 in September 2003, which stipulated that those foreign enterprises with Qualifications for Contracting Construction Works might prolong their engineering construction activities in China until 1 April 2004.

52. Responding to a concern on the drafting of the new distribution regulation, the representative of China stated that the "Pilot Measures on the Foreign-Invested Merchandising Enterprises", promulgated in 1999, had given foreign service suppliers the opportunity to possess majority ownership in the joint-venture wholesaling enterprises, which was consistent with the China's commitment in market access. He further stated that the drafting of the new distribution regulation governing wholesaling and retailing services was on-going, and that it would provide more detailed rules on the opening-up of the distribution market in accordance with the phase-in commitments of China. He said that China had started to solicit opinions on this draft from industries, including foreign-invested distribution enterprises. He noted that the actual market access had never been negatively affected. He recalled that 35 foreign-invested distribution enterprises had been approved with 347 outlets. Carrefour and Wal-mart had respectively established more than 30 chain stores in China.

53. Finally, the representative of China noted that some questions posed by Members were not relevant to the TRM. He said that trading rights, which directly related to trade in goods and had already been reviewed in the Council for Trade in Goods, should not be dealt with in the Council for Trade in Services. Regarding questions on the Closer Economic Partnership Arrangement between Hong Kong, China and China (CEPA), he responded that China would notify the relevant WTO bodies of the CEPA in due time. With respect to questions concerning the regulation on mergers and acquisitions, he stated that China had no obligation on this issue in its WTO schedule. He further

stated that the issue of mergers and acquisitions was related to the context of competition policy or investment policy, which was not covered by existing WTO rules. He recalled that the Doha Round had not concluded and felt that Members should not show haste in this regard. As to a concern on the drafting of China's Telecommunications Law as well as the revision of the Postal Law, he stated that China took a positive attitude towards Members' keen interest. He pointed out, however, that enacting a new law and revising existing ones, even if they aimed at implementing obligations under international treaties, were the legitimate rights of a Member and that the TRM was not the right context in which to address these issues.

54. The representative of China thanked the Chairman and the Secretariat again for their efforts in the preparation of the review and he invited Members to make comments and raise questions on his presentation.

55. The representative of the European Communities thanked the Chinese delegation for the statement it had made. His delegation was aware that China had made considerable efforts to improve its legislation to implement its GATS commitments. He further stated that the European Communities had noted the progress made by China in several services sectors over the preceding year and expressed his delegation's appreciation to the Chinese authorities for having engaged in substantive dialogues on the remaining questions and for having improved their legislation in a number of areas. He said that the European Communities attached crucial importance to its trade relations with China, which, he noted, was one of its main partners.

56. He said that, in preparing for the current review, the European Communities had compiled its questions on trade in services and had sent them in advance to China. He stated that the European Communities appreciated China's cooperation in the multilateral TRM exercise, and its willingness to provide replies to some of the questions put forth. Noting that China recently had notified a number of laws and regulations to the Council, he thanked China for its goodwill and efforts in terms of transparency. He stated that the European Communities had received these notifications recently and would need time to analyze the corresponding laws and regulations. He said that the European Communities had already contacted the Chinese GATS enquiry point in Beijing and was looking forward to receiving the documents requested. He indicated that the European Communities would appreciate the willingness to provide these regulations in English as this would facilitate work. He also indicated his intention to make comments and seek clarifications on a few questions.

57. Turning to more specific comments and requests for clarifications and starting with telecommunications services, the representative of the European Communities reiterated the need to revise and further develop the Chinese regulatory framework to bring it in line with China's WTO commitments, notably as regarded the choice of a partner and conditions imposed on the Chinese partner.

58. On construction services, he said that this sector was a high priority for the European Communities. He expressed his delegation's hope that China would be willing to work together with them on the new regulatory framework so as to ensure that conditions imposed on foreign contractors were reasonable, in compliance with China's GATS commitments, and not more restrictive than they had been under the previous system.

59. Regarding postal services, he sought further clarifications on the planned scope of the postal monopoly, the scope of universal service, and the independence of regulators.

60. On tourism services, he noted that the question on the ENT for new travel agencies had not been answered. In conclusion, the representative again expressed his gratitude to the Chinese delegation.

61. The representative of Japan expressed his delegation's appreciation to the delegation of China for its explanations, and China's efforts to implement its WTO commitments and their active participation in the TRM. He said that Japan attached a great importance to this exercise and therefore had presented questions to China well in advance of the meeting. He sought to follow up some of the points raised in the China's presentation as well as questions raised by Japan in document S/C/W/228 that had not been fully answered.

62. Regarding telecommunications services and referring to questions contained in paragraphs 7-11 of document S/C/W/228, he said he took note of China's statement on Members' right to amend and improve national legislations and that Japan was not against this as a basic concept. He stated, however, that information on when and how the Chinese Telecommunications Act would be enacted would be helpful in understanding the implementation of China's GATS commitments. He reiterated that his delegation sought to know the schedule of the enactment of this regulation. He also reiterated Japan's concerns on the criteria and list of "Leading Telecommunication Services Providers" as well as the formula for the calculation of interconnection fees. He also sought a clarification on the Telecommunication Services Classification List.

63. With respect to construction services, he noted that a new regulation had come into effect on 1 October 2003 and had been implemented. He indicated, however, Japan's concern that certain requirements, such as requirements for a minimum number of engineers, would be too burdensome in view of Article VI:5 of the GATS. He sought a clarification on the level of domestic regulation in committed areas.

64. Regarding distribution services, he expressed an interest in having more specific information on the new regulation mentioned in the Chinese presentation. He stated that the Chinese distribution sector involved many different regulations and rules including those referred to in paragraphs 16-17 of Japan's communication regarding the retailing of automobiles. He asked which was regulation the representative of China had referred to.

65. On trading rights and agreeing that it was also related to trade in goods, the representative of Japan stated that it had an important impact on investments by service providers. He said that the Japanese services business community had repeatedly expressed their concern with the delay in implementation of commitments related to trading rights and that this was also one of the major concerns of various Japanese services sectors. Reiterating his view that trading rights were not totally irrelevant to trade in services, he requested a further explanation on it from the Chinese delegation.

66. Seeking further information from the delegation of China and referring to the question on distribution services, the representative of the United States inquired as to whether, in preparing any law in the process of implementing its commitments, China intended to circulate draft regulations for public comment consistent with paragraph 2(C)2 of the Protocol of Accession, and when these might be accessible. While acknowledging that the amendment of law *per se* was a matter of sovereignty, she stated that China had committed to allow for public comment before a law was implemented. Noting that China was undergoing consultations with various interested parties, she expressed her Government's wish to participate in this process in light of paragraph 2(C)2 of the Protocol of Accession. With respect to the Chinese commitment to permit foreign service suppliers to supply wholesaling services and commission agents' services through majority foreign-owned joint ventures subject to certain exceptions and within two years after accession (or by 11 December 2003), she said that she had taken note of the statement made by the Chinese delegation. She underlined the importance her delegation attached to seeing the new distribution services legislation, particularly given the timing when commitments had already or would come into effect. She stated that China appeared to have fallen behind in implementing its commitments regarding wholesaling services and commission agents' services insofar as they related to foreign-invested enterprises seeking to distribute goods made by other enterprises in China or imported goods. She further stated that to date,

China had only opened up wholesaling services and commission agents' services to minority foreign ownership joint ventures that could satisfy a number of stringent qualification requirements and other restrictions relating to registered capital, assets, wholesale volume, past import and export levels and prior experience. She expressed the hope that these measures would not in fact nullify any commitments that allowed market opening.

67. With respect to delivery services, she commended China on the circulation of draft amendments to its Postal Services Law. She noted, however, that the draft amendments purported to give China Post a monopoly over the delivery of letters under 500 grams, which would constitute a new restriction on the scope of activities of existing foreign-invested express delivery companies, in apparent conflict with the horizontal "acquired rights" commitment that China had made in its services Schedule. She further noted that the draft amendments had not addressed the need for an independent regulator. She noted that the latest draft of the amendments appeared to give China Post a monopoly on letters weighing under 500 grams, and did not clearly separate China Post's regulatory and operational functions. She sought a clarification from the Chinese delegation in this regard. She also expressed a concern on a provision in the draft amendments which required express delivery companies to pay 4 percent of their revenues into a universal service fund.

68. Regarding telecommunications services, the representative of the United States noted that China had not yet established an independent regulator, as the Ministry of Information Industries (MII) was not structurally and financially separate from all telecommunications operators and providers. She sought a clarification from the Chinese delegation on this issue and emphasized that it related to a specific commitment recorded in paragraph 2(C)2 of the Protocol of Accession. Finally, she pointed out that the MII had reclassified several telecommunications services from the value-added category to the basic category, contrary to widely-accepted international practice and, in some instances, in apparent contravention of China's scheduled commitments.

69. The representative of Australia stated that his Government took seriously the implementation of China's accession commitments and specifically raised questions related to the telecommunications sector. He said that Australia continued to place a high priority on telecommunications services as a vital economic activity as well as a trade in services in its own right. Noting that China was an important WTO Member and a market for Australia, he stated that China's implementation of its accession commitments was of significant interest to Australia. With respect to market access and national treatment commitments as well as the telecommunications Reference Paper, he commended on China's implementation as an example for other Members. He noted that there existed a variety of interpretations of the Reference Paper obligations across the membership. He further noted that Members agreed that latitude was provided for in some paragraphs of the Reference Paper for different models of telecommunications competition. He stated that the TRM provided an insight into China's understanding of its obligations and its intentions for fulfilling those obligations.

70. Turning to some specific questions on telecommunications services, the representative of Australia said that Australia sought to understand the extent to which the *Regulations on the Administration of Foreign-Invested Telecommunications Enterprises* (FITE Regulations) had been successful in facilitating foreign participation in China's domestic telecommunications services market. In this regard, he asked how many FITE applications had been lodged and of the FITE applications lodged, how many had been approved, as well as how many FITEs had been issued with a Telecommunications Business Operational Permit. Echoing comments by the United States and Japan, he also raised the issue of the *Telecommunications Service Classification Catalogue*.

71. Finally, he took note that China was currently finalising the drafting of its Telecommunications Law, and that the drafters of the new law were consulting with leading domestic Chinese operators in order to obtain their comments and suggestions. While Australia regarded these consultations as very positive, he suggested that the process would benefit from inclusion of interested

foreign parties who wished to participate in the domestic Chinese telecommunications market. He stated that foreign operators, in commenting on the draft law, would be able to draw on their experience in other jurisdictions. He expressed the hope that China would hold consultations on the new law with interested foreign parties.

72. The representative of Chinese Taipei thanked China for its hard work on the implementation of its commitments as well as for the statement which had contained relevant information which replied to comments and questions tabled by her delegation and other delegations. She stated that, as a major trading partner of China, her delegation felt it an obligation to identify a number of legitimate concerns in areas particularly in telecommunications and professional services. She further stated that China's smooth and faithful implementation of its accession commitments was in the interest of all the Members, including China itself. She expressed appreciation for the notifications China had made recently on rules and regulations in the context of transparency.

73. Referring to the various follow-up questions that had been asked, the representative of China said that, with respect to the question on accounting services which related to the qualification of a Certified Public Accountant (CPA) in China, any accountant from any other WTO Member who wished to apply for a license to practice as a CPA in China had to have accumulated at least two years' experience and must have one year of residency and a fixed residence or fixed contact point within China. He noted that this kind of qualification requirement, which related to Articles VI:4 and VI:6 of the GATS, was under discussion by Members in the Working Party on Domestic Regulation.

74. Turning to concerns on telecommunication services and referring to the question raised by Australia regarding how many FITE applications had been approved, he suggested that Australia refer to the communication his delegation had recently presented pursuant to Annex 1A to the Accession Protocol.

75. With respect to the question on the definition of "leading telecommunication services providers", he stated that "leading telecommunication services providers" were those providers who possessed necessary basic telecom facilities, whose fixed local telephone business represented greater than 50 percent shares of the market within local networks, and who had a substantial impact on the market access of other telecom operators. To date, the operators meeting these requirements were China Telecom and China Netcom. He noted that, given the actual situation of the telecom market and the rapid growth of mobile telecom business, the MII was considering including more leading telecom operators.

76. With respect to transparency issues concerning, for instance, the current formula for interconnection fees and the possible revision of the terms and conditions of individual licences, he referred to the relevant regulations, such as *Regulations on the Methods for the Settlement of Inter-network Call Charge*, and *Administrative Measures on Licensing for Operation of Telecommunication Services*. He indicated that these regulations, published on the website of MII (www.mii.gov.cn), were domestic regulation that applied to all suppliers equally. He stated that a regulation governing basic telecommunications licenses through public tender was currently under study and elaboration.

77. Regarding the concerns expressed about China's implementation of the Reference Paper on Basic Telecommunications, on matters such as independent regulator and interconnection, he referred to the *Regulation on Telecommunications of PRC* and the *Regulation on Interconnection Between Public Telecommunication Networks*. According to these regulations, leading telecom operators should develop rules on interconnection and report them to the MII for approval prior to implementation. He noted that leading telecom operators should provide interconnections within the specified time limits. They were neither allowed to deny request for interconnection from other telecom operators and private network operators nor permitted to freely restrict the right of users to chose the telecom services provided by other operators. As well, in offering inter-network

connections to other telecom operators, the service quality of leading operators should be as good as that of like services within their own networks or that of like services supplied to subsidiaries or branches. He stated that leading telecom operators had an obligation to coordinate with users acquiring telecom network code number resources in order to realize the function of the resources, with necessary technical measures.

78. With respect to a question about the independence of the regulator, the representative of China noted that China had separated the regulatory body from the operational business by establishing the Ministry of Information Industry (MII) in 1998. He further noted that the MII had given up all its management functions to China Telecom. He stated that the MII could regulate in an impartial, fair and transparent manner and acted as an independent regulator. He indicated that the MII had always followed the principle of transparency and impartiality in order to promote the orderly development of China's telecom industry.

79. Regarding the classification of telecommunication services, he noted that it was a complicated issue not only for China, but also for other WTO Members, especially given the rapid development of contemporary science and technology. He further noted that Members had their own classifications based on the different level of development in telecom industries, unique domestic situations and different approaches to regulate the market. He indicated that the MII had adjusted part of the previous categories and had republished the revised Catalogue of classification in April 2003 in response to new developments. According to the new catalogue, some basic telecommunications services would be managed as value-added services. He noted that the operator qualifications and daily management of these basic telecommunications services would be administered with reference to relevant requirements for value-added services. He referred to Article 9 of the *Regulation on Telecommunications*, which stipulated that "New types of telecom services other than those in the Catalogue of Telecom Service Classifications that are carried out on an experimental basis using new technologies should be submitted to telecom regulatory authorities at the provincial level for record". He stated that the MII was in the process of considering and developing detailed rules on qualifications and procedures on recording new services, and that it was expected that these would be adopted in the near future.

80. Turning to questions on courier services, he recalled that the issue of the revision of the Postal Law had been addressed in the previous statement made by his delegation. Regarding monopoly and exclusive rights, he recalled China's reservation in its commitments, which stated "except for those currently specifically reserved to Chinese postal authorities by law". With respect to the independent regulator, he referred to paragraph 309 of the Working Party Report, which stated that "the representative of China confirmed that for services included in China's Schedule of Specific Commitments, relevant regulatory authorities would be separated from, and not accountable, to any service suppliers they regulated, except for courier and railway transportation services".

81. Regarding the concern on distribution services regulations, he stated that the current regulation governing this sector was the *Pilot Measures on the Foreign-Invested Merchandising Enterprises* and that China was drafting a new distribution regulation governing wholesaling and retailing services. He reiterated that China was starting to solicit opinions from industries. With respect to a question on the dual distribution system for automobiles, his delegation was of the view that this policy did not violate WTO rules or China's commitments and that foreign and domestic investors would be treated equally in establishing automobile distribution enterprises selling either imported cars or domestically produced cars. He indicated that his delegation had noted certain Members' concern in this regard and would study it with competent authorities. Turning to questions on future liberalization such as the opening-up of distribution of processed oil and crude oil, and on permitting wholly foreign-owned freight forwarding subsidiaries four years after accession, he stated that China would implement its commitments in accordance with the phase-in period set out in its Schedule.

82. With respect to a clarification sought on the approval of travel agencies subject to "the development plan of travelling industry", he referred to the *Administrative Rules on Travel Agencies*, which stipulated that the examination and approval of applications for the establishment of travelling agencies must be in line with the development plan of travel industry. He stated that this requirement, which applied equally to domestic travel agencies, was to regulate the whole Chinese travel agency market and did not constitute a market access limitation.

83. Finally, regarding a question on the maritime transportation, the representative of China responded that the regulatory system on non-vessel operating common carriers (NVOCC) was to administrate those carriers which did not physically operate vessels, but issued bills of lading in their names. He stated that this system was regulated by the Ministry of Communication, and that by issuing bills of lading and collecting freights, NVOCCs bore the liabilities of carriers. He explained that the purpose of the payment of 800 000 Yuan as surety bond, as required by the *Regulations on International Maritime Transportation*, was to protect the lawful interests of cargo owners and to maintain the normal order of the cargo transport market.

84. The representative of the United States stated that her delegation was still unclear about China's interpretation of paragraph 309 which appeared to refer to transportation services of two particular types, and said her delegation would revert to this issue at some point. While reiterating her delegation's appreciation for China's efforts to draft legislation as quickly as possible, she insisted that, with respect to legislation for which the implementation dates had either passed or would pass in the following days, her government sought to look at those pieces of legislation before they were implemented and enforced, as required by paragraph 2(C)2 of the Protocol of Accession.

85. The Chairman thanked China for its responses and suggested that before moving on to the issue of the report to the General Council, the Council take note of the statements made and conclude the second transitional review mechanism pursuant to Section 18 of China's Protocol of Accession.

86. It was so decided.

87. Regarding the report to the General Council, the Chairman suggested that the Secretariat prepare a factual report stating: that pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China, the Council for Trade in Services conducted the second review of the implementation by China of the WTO Agreement and of the related provisions of the Protocol, in its meeting held on 5 December 2003; that written communications had been received from five WTO Members, namely, Japan, the European Communities, Australia, Chinese Taipei, and the United States; and that the details of the discussion could be found in the meeting report. As agreed earlier in the meeting, the Report from the Committee on Trade in Financial Services (S/FIN/11) would form part of the Services Council's report.

88. It was so decided.

F. IMPLEMENTATION OF ARTICLE VII OF THE GATS

89. The Chairman recalled that the Council had held discussion on this item at its meetings in July and October based on an informal note from the delegation of India contained in document JOB(03)/120. Some twenty delegations had made statements at that time and, given the level of interest, the Council had agreed to revert to this item.

90. The representative of India stated that India had introduced its informal note at the meeting of the Council for Trade in Services in July which had generated much discussion in July, and less discussion at the meeting in October. He noted that during the course of discussions one of the points raised by India and referred to by other Members, related to the issue of delegated authority. He

recalled that Members had indicated their wish to revert to this issue in subsequent meetings. He expressed the hope that Members would revert to this item either at the present meeting or at a subsequent meeting of the Council for Trade in Services. He stated that his delegations had its own view on the issue of delegated authority, that this area had a great bearing on market excess commitments especially in professional services and that it related to the non-discriminatory obligation under Article VII:3 of the GATS. He felt that Members would benefit from notifications made to the Council for Trade in Services. He drew the Council's attention to a previous Secretariat list of existing notifications and suggested that the Council look at the issue of delegated authority in terms of the notifications on the table. He wondered whether the Secretariat could make a contribution in this regard, with the help of the notifying Members and without any prejudice to Members' positions on this issue.

91. He said that the issue of Article VII:3 of the GATS was not very clear in terms of how obligations would be met. He believed that it would be of great benefit if Members who had experience with recognition agreements could share information on the issue. He referred to the presentation made by New Zealand at an earlier meeting of the Working Party on Domestic Regulation in the context of Article VI:6 of the GATS. Noting that this presentation had helped Members to better understand the implementation of Article VI:6, he suggested that similar exercise be undertaken with respect to Article VII:3. Finally, he drew the Council's attention to paragraph 9 of India's note, which suggested that the Council improve the content of notifications in terms of the service sectors/sub-sectors addressed, and make available the text of agreements to the Secretariat. He stated that, were texts available to the Secretariat, any interested Member could obtain a copy and forward it to capital or to professional bodies that might have an interest in a particular agreement. He expressed his hope that Members would reflect on some of the points he made.

92. The representative of New Zealand supported the India's statement on the importance of the issue of delegated authority and on the treatment of recognition agreements. While noting that the note presented by her delegation to the Working Party on Domestic Regulation had addressed a slightly different aspect of the two issues, she felt that they had some bearing on further discussions in this area and were topics on which the Council would be reverting at future meetings.

93. Referring to his suggestion for a contribution from the Secretariat, the representative of India clarified that suggestion that the Council look at the existing notifications made under Article VII of the GATS.

94. The representative of the United States sought a clarification on the India's request. She asked whether the Secretariat would be asked to collect information or prepare a list of existing notifications that were already on the table. She said that if the request was made with a specific purpose in mind, her delegation would probably have a problem with it.

95. The representative of India confirmed that what he had requested was only factual information without other particular perspective in mind.

96. The Chairman suggested that the Council take note of the statements made and that it revert to this issue at its next meeting.

97. It was so agreed.

G. OTHER BUSINESS

98. As he had indicated at the beginning of the meeting, the Chairman wished to make a statement regarding the designation of chairpersons of the subsidiary bodies to the Council for Trade in Services for 2004. He noted that pursuant to the rules of procedure (S/L/15), the election of the

new chairpersons should take place at the first meeting of the year and should take effect at the end of that meeting. He informed the Council his intention to engage in consultations on the list of chairpersons of the subsidiary bodies at the beginning of the new year.

99. Recalling this had been discussed at the meeting of the Working Party on Domestic Regulation, the representative of the United States sought clarifications regarding the dates of the next cluster.

100. The Chairman responded that the Secretariat would take necessary steps to ensure that the information would be communicated to the delegation of the United States as soon as possible.

101. The representative of the United States expressed her concern on the opportunity to have an agreement among Members on the dates of the next cluster. She said that if this issue would not be settled at the current meeting, she would have to report to her capital that the question remained open.

102. The Chairman repeated his response that the Secretariat would reply to the question of dates as soon as possible.

103. The representative of Philippines suggested that the Chairman of the Council as well as the Director of the Services Division undertake consultations with the Chairman of the General Council and other concerned officers of the various bodies. He felt that the problem essentially arose from the conflict between the proposed scheduling of the General Council and the cluster of meetings of the Council for Trade in Services in February. He suggested that once this problem was resolved, the Chairman could proceed with consultations with interested Members on the appropriate schedule for the next cluster of services meetings and then could notify the Members at large of the dates fixed.

104. The representative of the United States stated that this issue had been discussed in the Working Party on Domestic Regulation and that the Secretariat had circulated optional dates of the next cluster. She further stated that her delegation and a few other delegations could not accept those dates. She recalled that the Secretariat had also proposed another set of dates, namely the week of 23 February 2004. She sought some feedback from the Secretariat on the progress in settling the dates of the next cluster so that her delegation could make the appropriate planning.

105. The representative of Switzerland stated that his delegation was among the delegations that had been expressing their concern about the dates for the future cluster. He understood that the dates submitted by the Secretariat were preliminary and that no formal decision had been taken in this regard. He said that his delegation was also among those that might have a problem with the dates originally proposed. He expressed his support for the Chairman's suggestion on consultations and hoped that an appropriate solution to this question would be found.

106. The Chairman suggested that he proceed with consultations with interested Members in liaison with the Secretariat and that a reply be given to Members. Before he adjourned the meeting, the Chairman further suggested that the Council take note of all the statements.

107. It was so agreed.
