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Council for Trade in Services

REPORT OF THE MEETING HELD ON 23 SEPTEMBER 2005

Note by the Secretariat¹

1. On 23 September 2005, the Council for Trade in Services held a meeting chaired by Ambassador Claudia Uribe (Colombia). The agenda for this meeting was contained in document WTO/AIR/2656. The Chairperson suggested that the agenda be adopted as circulated.
2. The Council so agreed.
- A. ANNUAL REPORT OF THE SUBSIDIARY BODIES TO THE COUNCIL FOR TRADE IN SERVICES
3. The Chairperson stated that, in accordance with WTO reporting procedures, the Council for Trade in Services was to consider the annual reports of its subsidiary bodies. She drew the Council's attention to the following reports which had been adopted by the respective bodies during the course of the week: the Report of the Committee on Trade in Financial Services (S/FIN/14); the Report of the Committee on Specific Commitments (S/CSC/11); the Report of the Working Party on Domestic Regulation (S/WPDR/8); and the Report of the Working Party on GATS Rules (S/WPGR/15). The four reports were purely factual and self-explanatory. She suggested that the Council take note of these reports on the understanding that they would be annexed to the annual report of the Council and form an integral part of it.
4. The Council so decided.
- B. ANNUAL REPORT OF THE COUNCIL FOR TRADE IN SERVICES TO THE GENERAL COUNCIL
5. The Chairperson reminded Members that in accordance with WTO reporting procedures, the Council for Trade in Services was to report every year to the General Council on the activities in the Council, as well as in the subsidiary bodies. She drew the Council's attention to the draft 2005 Annual Report of the Council for Trade in Services, contained in document S/C/W/264. This Report was factual and self-explanatory, and the annual reports of the subsidiary bodies would be annexed for submission to the General Council. She proposed that the Council for Trade in Services adopt the draft Annual Report to the General Council, as contained in document S/C/W/264.
6. The Council so decided.

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.

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

7. The Chairperson recalled 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. The Committee on Trade in Financial Services and the Council for Trade in Services were two of the bodies in which this Review was to be conducted. When concluding its review, the Committee on Trade in Financial Services was to submit a report to the Council, which would form part of the Council's report to the General Council. The General Council would conduct its own review. She noted that the Committee on Trade in Financial Services had conducted and concluded the transitional review under Section 18 of China's Accession Protocol on Monday 19 September 2005, and that a report had been submitted by the Chair of this Committee, contained in document S/FIN/15. She 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 this Council's report to the General Council.

8. The Council so decided.

9. The Chairperson drew the Council's attention to a Communication by China, contained in document S/C/W/267, providing information required by Annex 1A of China's Accession Protocol.

10. Turning to the review by the Council, she said that the Council would follow the same procedure as the one used in the previous reviews. She would first invite China to respond to the comments and questions contained in the communications from the European Communities (S/C/W/259), the United States (S/C/W/261), Japan (S/C/W/263), Chinese Taipei (S/C/W/265) and Australia (S/C/W/266). Members would then make comments and pose additional questions, and China would have the opportunity to respond.

11. The representative of China stated that, since the conclusion of the previous transitional review, China had implemented several rules and regulations facilitating liberalization in service sectors, which included the *Administrative Measures on Foreign Investment in Lease Industry; Implementing Measures on the Administration of Automobile Brand Sale; Amendment to the Provisional Rules on the Establishment of Foreign Holding and Wholly Foreign-owned Travel Agencies*, etc. He underlined that these rules and regulations were in conformity with China's WTO commitments, but also contained some voluntary liberalization measures in some sectors, such as tourism, which showed that China took a positive attitude towards market opening in services. He indicated that, as China implemented its commitments, the volume of its services trade had been growing. In 2004, China's total import and export of services had reached USD 129 billion, which made China the 9th biggest services economy in the world. More specifically, in 2004, China's total import of services had reached USD 70 billion, and its total exports of services USD 59 billion, respectively representing an increase of 30 per cent and 31 per cent, as compared with the previous year. China, thus, had a trade deficit of USD 11 billion in services in 2004, which represented an increase of 12 per cent compared with the previous year. These statistics could serve as a strong testimony to the level of liberalization of China's services market. In 2005, four years after its accession to the WTO, China had seen a moderate growth of FDI in services. From January to July 2005, 4,006 new foreign services enterprises had been established in China, representing an increase of 3.17 per cent compared with the same period of 2004; this represented a total of USD 6.499 billion being actually realized in services sectors, accounting for 19.46 per cent of the total FDI realized in China during this period. More specifically, in distribution services, 414 foreign projects had been established by the end of August 2005, with foreign investments reaching USD 966 million and a total of USD 314 million actually being realized. In legal services, China's Ministry of Justice had approved 75 new foreign law firms to set up representative offices by September 2005; these firms came from various WTO Members, such as the US, EC, Singapore, Japan and Korea. In accounting

services, since its accession to the WTO, China had approved the establishment of 18 foreign accounting firms or branches. In medical services, from China's accession to the WTO till July 2005, China's Ministry of Health had approved the establishment of 61 Sino-foreign equity or contractual joint venture medical programmes. China's efforts in implementing its WTO commitments and in expanding liberalization in almost all services sectors had been broadly recognized and appreciated by foreign investors and WTO Members. Members could get more information by referring to the notification submitted by his delegation pursuant to Annex 1A of China's Protocol of Accession.

12. With respect to questions relating to **legal services**, the representative of China first addressed the concern expressed over one of the conditions imposed on foreign law firms, i.e. "the need to start legal services operation" (paragraph 4 (a) of the Communication from the EC). This requirement had taken into account two factors. The first one was the principle of prudence. Profound expertise and experience in legal services were necessary for the protection of customers' rights and interests. Therefore, it was important to test whether foreign law firms could provide high quality services to clients in China by comparing their qualifications, legal practice history and field, as well as professional capability. The second factor was related to different economic development levels and the actual receptivity for legal services in China. China was a developing country with imbalances in terms of economic growth and level of legal services among different areas and regions. Moreover, the overall legal services market in China had yet to mature, market order needed to be straightened out, and a sound service mechanism had yet to be established. He stressed that taking these factors into consideration reflected China's responsible attitude.

13. The 9-month duration required for the approval procedure was calculated on the basis of the actual time needed to complete the whole examination and approval procedure for the establishment of a representative office. Although the *Provisional Regulations on the Establishment of Foreign Law Firms' Representative Offices in China*, promulgated in 1992, had provided for a period of sixty days, the time required for pre-examination formalities had been in fact much longer. The 9-month duration required in the *Regulations on Administration of Foreign Law Firms' Representative Offices in China* covered both the time needed to process applications, starting from the receipt of application documents, and the time required for pre-examination formalities. The latter referred to the examination of the completeness and authenticity of application documents, confirmation of the validity of qualifications and certificates, issuance of notices for supplementary documents, and verification of the notarization and accreditation of relevant documents.

14. Concerning the requirement that representative offices of foreign law firms established in China were to practice three consecutive years before establishing any additional office, he indicated that Chinese law firms intending to establish any additional office were even required to have practiced for four consecutive years before application. The 10-year history of representative offices of foreign law firms doing legal business in China showed that it normally took about 3 years for a representative office to get a license, open a business and regularly run the office. Foreign law firms needed a transitional period before setting up any additional office. As a matter of fact, a number of representative offices could not explore or expand businesses after their establishment, and some of them even kept doors closed for a long time. But even so, many of them still applied for the establishment of additional offices. He concluded that the "3-year requirement" was not a quantitative limitation, but an administrative measure.

15. With respect to the definition of "Chinese law practice", he referred to Article 15 of the *Regulations on Administration of Foreign Law Firms' Representative Offices in China*, which prohibited representative offices of foreign law firms from engaging in Chinese legal affairs. In accordance with the *Implementing Rules*, "Chinese law practice" included six types of activities. This definition was based on the following points. First, China's specific commitments on legal services (CPC 861) excluded Chinese law practice. The *Regulations* and the *Implementing Rules* had been formulated accordingly. Second, to ensure the quality of legal services, it was common practice for

most countries that only certified lawyers were allowed to provide legal services, and only in the countries where they had obtained their certificates. Third, taking into consideration the common practice of international legal services, as well as China's actual need for high-quality foreign legal services, "Chinese legal affairs" were defined within a specific scope and representative offices of foreign law firms and foreign lawyers were allowed to provide services related to international conventions, international practices, international business operation and foreign law for a case under the jurisdiction of Chinese law.

16. Concerning the meaning of "providing information on the impact of the Chinese legal environment", he cited Article 33 of the *Implementing Rules*, which stipulated that, when requested to provide information on the impact of the Chinese legal environment, representative offices of foreign law firms were not allowed to provide opinions or certification on the application of Chinese law in any specific case in China. China's schedule of commitments did not cover Chinese legal affairs. Some representative offices and their lawyers introduced the Chinese legal environment to non-regular clients free of charge so as to expand their business influence. This practice was tolerated in China. However, when providing information on the impact of the Chinese legal environment, foreign lawyers and their representative offices were not allowed to provide specific legal opinions and/or certification with regard to the application of Chinese law. This requirement was consistent with China's commitments in legal services. Foreign lawyers in China were widely invited to comment on this issue and their common understanding was that information on the impact of the Chinese legal environment did not include the interpretation of Chinese law.

17. Turning to **telecommunication services**, he stated that China had issued and implemented relevant laws and regulations, such as the *Decision on Maintaining the Safety of Internet by the Standing Commission of the NPC*, *Telecommunication Regulations of China*, *Measures on the Administration of Internet Information services* and *Measures on the Administration of Foreign Invested Telecommunication enterprises*. These legislations had provided legal guarantee for market opening and fair competition in telecommunication services. All the application procedures were open and transparent, and no additional requirements would be imposed on operators, except those stipulated in the relevant legislations. He stressed that China had fulfilled the licensing approval procedures for foreign telecommunication enterprises, in accordance with its WTO commitments and aforementioned laws and regulations. While noting that the *Telecommunication Law* had been submitted to the State Council for review in August 2004 and that the legislative process in this regard had been accelerated recently, he pointed out that China would carry out this process in light of its *Legislation Law*.

18. On the resale of telecommunication services, he referred to the *Notes for Scheduling Basic Telecom Services Commitments* (S/GBT/W/2/Rev.1), which specified that "unless otherwise noted in the sector column, any basic telecom service listed in the sector column may be provided on a facilities basis or by resale." China believed that "resale" was only a form of service provision, not a concrete telecommunication service, and, thus, had not inscribed an item "resale" in its schedule. Therefore, not listing "resale" as a kind of telecommunication service was completely consistent with China's commitments and relevant WTO disciplines. China's policy with regard to resale was clear: there was no separate license for "resale" of telecommunications services. After obtaining the license for operating basic telecommunications, an operator could freely choose the form of service provision, either through constructing its own basic infrastructure or through "resale" by leasing the facilities from other operators.

19. With respect to interconnection, he stated that seven types of telecommunication networks were currently subject to supervision in China. These networks included fixed local telephone, domestic long distance telephone, international telephone, IP telephone, land cellular mobile communication, satellite mobile communication, and internet backbone among China Telecom, China Netcom, China Mobile, China Unicom, China Satellite, and China Tietong. Interconnection relating

to the leased circuit, frame relay and IP-VPN was not within the scope of interconnection supervision in China. The *Regulation on the Interconnections between Public Telecommunication Networks* clearly specified network functions, equipments, interconnection obligations, the setting of interconnection points, apportionment and clearance of interconnection fees, interconnection agreements, and time limits for interconnection. This regulation also ensured the transparency of interconnection arrangements in China.

20. He indicated that China had not committed to open its international telecommunication gateways. All the international telecommunication services were to be carried out through gateways established upon approval by telecommunication authorities in China.

21. Concerning capital requirements on basic telecommunication services, he stressed that the minimum registered capital requirement for foreign enterprises, as specified in the *Regulations on the Administration of Foreign-invested Telecom Enterprises*, was the same for domestic enterprises. Therefore, this requirement was in line with the principle of national treatment. Construction of the telecommunication network involved huge investments due to the broad territory and large population of China. According to preliminary data of China's telecommunication services market, the minimum investment required for constructing the network and operating basic telecommunication services was 200 million RMB within a province (or autonomous region or municipality), and 2 billion RMB across provinces; the minimum investment required for operating value-added telecommunication services was 1 million RMB within a province (or autonomous region or municipality), and 10 million RMB across provinces. These data constituted the basis for determining the minimum registered capital requirement for telecommunication enterprises.

22. Concerning the choice of partner, he explained that the *Regulations on the Administration of Foreign-invested Telecom Enterprises* had taken into consideration complicated technology needs and rapid developments of new services in the telecommunication sector when establishing relevant requirements on the major Chinese investor of foreign enterprises engaging in basic telecommunication services. These requirements aimed at promoting the protection of investors and consumers, and to ensure the healthy development of telecommunication services in China.

23. Regarding the telecommunication regulatory authority, he indicated that China had established the Ministry of Information Industry in 1998 as its telecommunication regulator, thereby strictly following the requirement of an independent regulator stipulated in the Reference Paper. China saw no need or possibility to create a second regulator outside the Ministry of Information Industry. Under the leadership of the Ministry of Information Industry, local telecom authorities carried out supervision and administration duties in the telecommunication sector within their governing areas, in accordance with the *Telecommunication Regulation* and other relevant laws and regulations. With respect to whether China would further liberalize its telecom sector in the ongoing services negotiations, he recommended that Members consult with China's services experts in the appropriate forum, as the TRM was not the right instrument to address this issue.

24. On **construction and engineering services**, he stated that the Ministry of Construction and the former MOFTEC had promulgated the *Management Regulations on Designing Enterprises for Foreign Funded Construction Projects* (Decree No. 114) in September 2002, which set out establishment standards, as well as approval and inspecting procedures for designing enterprises in foreign-funded construction projects. Decree No. 114, which had been established in light of China's actual designing market and the need for further opening-up, was consistent with China's commitments, and there was currently no plan to revise it. Many countries, including the United States, applied an individual practice certificate system without imposing requisitions on the qualification of enterprises and only those certified in their own countries had the right to sign on the design plan. In accordance with China's commitments, foreign designing enterprises were allowed to establish in China within three years after China's accession to the WTO. Market access requirements

were the same for their domestic counterparts, except those regarding the number and the duration of residency for foreign services providers. At the same time, the designing of construction projects could be provided across borders and foreign services providers, thus, could cooperate with Chinese designing enterprises. China was currently working on the *Detailed Implementation Rules* for Decree No. 114 to review the requirement on the proportion of foreign staff.

25. Referring to the *Regulations on the Management of Foreign-funded Urban Planning Service Enterprises* (Decree No. 116), he indicated that foreign urban planning service organizations seeking to provide urban planning consultative services in China were to establish an agency in China's territory; the foreign staff in such agency were to account for no less than 25 per cent of the total staff. This requirement was currently under review as well.

26. In response to the questions regarding Decree No. 113 and the abolished Decree No. 32 (paragraph 12 of the communication from Japan), the representative of China stated that China had undertaken commitments on three types of commercial presence in construction services: wholly foreign-owned enterprises, China-Foreign Joint Ventures, and China-Foreign Cooperatives. There was no commitment on the project-contracting services directly provided by foreign enterprises. Prior to China's accession, an agreement had been reached between China and WTO Members, including Japan, to abolish Decree No. 32 of the Ministry of Construction. And this agreement had been faithfully reflected in the negotiations memorandum. Decree No. 113 had been implemented in accordance with China's commitments in construction services. Certain restrictions on foreign construction enterprises had been eliminated 2 years ahead of China's commitments. For example, the registered capital requirement for China-foreign construction joint ventures or cooperatives was not necessarily higher than that for domestic enterprises, and wholly foreign-owned enterprises were allowed to set up. Therefore, China's construction market had been further opened up. In accordance with Decree No. 113, certified foreign investors pursuing project contracting within the Chinese territory would enjoy national treatment. The regulations on the four types of construction projects undertaken by wholly foreign-owned enterprises were made in accordance with China's WTO commitments as well. The requirements regarding the registered capital of foreign-invested construction enterprises and the number of financial or technical managers of the project were part of China's licensing requirements applicable to all enterprises applying for construction licenses, including domestic enterprises. In order to guarantee the legal rights and interests of project contractors within the territory of China, the Ministry of Construction and the Ministry of Commerce had promulgated relevant documents facilitating foreign construction enterprises to fulfil licensing requirements and procedures. First, a foreign enterprise having received approval for project contracting could directly apply for the corresponding construction enterprise license. Second, project managers and financial or technical managers meeting education or experience requirements could apply for corresponding certifications. Third, foreign enterprises could submit their overseas project performance report as the declaration of qualification. Fourth, the implementation of Decree No. 113 was subject to a relatively long interim period allowing foreign enterprises to be established. The Ministry of Construction and the Ministry of Commerce had jointly promulgated the *Circular on Several Issues about Qualification Management of Foreign-Funded Construction Enterprise* (Jianshi [2004] No.159) in September 2004, which had extended such interim period until 1 July 2005.

27. He indicated that the residency requirement for foreign staff in foreign construction enterprises established in China corresponded to enterprises' operational needs in this sector. Given the special characteristics of engineering construction projects, managers of such projects needed to be available for management activities at any time, so as to guarantee the quality and safety of the projects, and to ensure that the design and technology would meet the needs of the projects. Foreign project managers needed to ensure that they could spend sufficient time on project management.

28. Turning to **computer and related services**, the representative of China stated that his country's schedule clearly specified the telecommunication services and computer and related services that were committed. China would strictly follow its commitments and WTO rules. The issue of overlapping between telecommunication services, on the one hand, and computer and related services, on the other, was currently under discussion among WTO Members; those services whose classification was unclear were subject to Members' own regulations. China had established its classification catalogue for telecommunication services. The current services negotiations were based on the Services Sectoral Classification List of the WTO, but Members could discuss the issue of classification during bilateral market access negotiations.

29. On **distribution services**, he stated that China was trying its best to secure a smooth transition as its commitments in this sector would be phased in by January 2007, and his country would strictly follow its commitments in opening this sector. His delegation intended to address the question of trading and distribution of books, newspapers and magazines under the TRM agenda item in the Committee on Market Access. With respect to direct selling, he stated that the *Decree of Direct Sales* had been approved and issued by the State Council in September 2005. Competent authorities had undertaken a wide public comment soliciting process through different channels, including seminars or symposiums in Xiamen City, in 2003 and 2004. Stakeholders, including foreign enterprises, had been involved. The *Decree of Direct Sales* had been revised, based upon written feedbacks from stakeholders, some of which were US companies, such as Amway. The promulgation of the *Decree of Direct Sales* had won the applause of both domestic and foreign companies, including US companies. Concerning franchising, he indicated that the MOFCOM had issued the *Rules on the Administration of Commercial Franchising* on 31 December 2004, which specified the rules for foreign investors to engage in franchising activities. The *Decree on Commercial Franchising* was under drafting and the MOFCOM would amend the *Rules on the Administration of Commercial Franchising* in light of the *Decree on Commercial Franchising*.

30. With respect to **tourism**, and more particularly the establishment of branches of foreign travel agencies, he stated that China would continue to implement its WTO commitments. However, this did not mean that China had to start making any laws and regulations in this regard. The interpretation that some Members made of China's response at the previous TRM was inaccurate. China would make a prudential study on the timeframe for removing the restrictions on the establishment of branches of foreign travel agencies. The State Travel Bureau and the MOFCOM had amended the *Provisional Rules on the Establishment of Foreign Holding and Wholly Foreign-owned Travel Agencies* in 2005, which stipulated that the registered capital for the establishment of a foreign holding or wholly foreign-owned travel agency was to be no less than 2.5 million RMB. Geographic restrictions on the establishment of such agencies had been removed two years earlier than China's GATS commitments.

31. Concerning **express delivery services**, he said that most posts reserved monopoly in letter services in order to guarantee universal postal service and to protect citizens' right of communication. The scope of postal monopoly differed from country to country, reflecting various circumstances and different levels of economic development. China would fulfil its WTO commitments and take into consideration the successful experience of other Members when defining the scope of its postal monopoly. As the State Council had approved the plan of the postal system reform, China Post had begun to undertake reforms vigorously and steadily, including separating the regulatory and operational functions, and setting up the National Postal Regulatory Authority. These reforms would ensure that postal enterprises provided universal postal service, and that the postal market was regulated. Express delivery services would be opened up and fair competition assured.

32. He noted that several questions had been raised regarding **transport services**. With respect to freight forwarding agency services, he referred to the *Notice on Simplification of Entrustment Procedures for International Freight Forwarding Agent Enterprises* (Guo You [2002] No. 556), issued by the National Postal Bureau in 2002, which required the validity period of the agency license and the agency scope to be in line with what was approved by the MOFTEC. In 2004, the State Council had abolished the MOFCOM (former MOFTEC)'s authority to approve the establishment of an international freight forwarding agent enterprise. The fact that China had made commitments on freight forwarding agency services under the sub-sector heading of "Services Auxiliary to All Modes of Transport" did not mean that air freight forwarding agency services were automatically included. So far, Members had agreed that only three sub-sectors in air transport services (i.e. aircraft repair and maintenance services, selling and marketing of air transport services, and computer reservation system services) were covered under the GATS. Paragraphs 62 and 63 of document S/C/W/59, prepared by the Secretariat for the Review of air transport services, stated that it was not clear whether freight transport agency services (CPC 748) were directly related to the exercise of traffic rights. Moreover, at the meeting of the first review on air transport held on 4 December 2000, with respect to the criteria for defining "services directly related to the exercise of traffic rights", the United States had stated that "the test that had to be used was what was necessary for the exercise of bilateral rights, not what services were bilateral rights necessary for" (paragraph 104 of document S/C/M/50). China thought that, in the light of the criteria suggested by the United States, air freight forwarding agency services were directly related to the exercise of traffic rights and not covered under the GATS; therefore, they were excluded from China's commitments.

33. Responding to the question raised by Japan on the ferry service between Shanghai and Shimonoseki, the representative of China recalled that the Chinese and Japanese maritime authorities had signed the *Agreed Minute* in 1985, which had made a special arrangement for ferry services between China and Japan to be operated by Chinese and Japanese shipping companies. This *Agreed Minute* was still in force and required that the launching of a new ferry service between China and Japan be agreed upon by the two parties. When China's Ministry of Communications examined the application for the ferry service between Shanghai and Shimonoseki, both the *Regulations on International Maritime Transportation of China* and the *Agreed Minute* had been taken into consideration. China's Ministry of Communications had also informed the applicant and the Japanese maritime authority that both the *Regulations on International Maritime Transportation* and the *Agreed Minute* needed to be observed. China's Ministry of Communications had asked the applicant to fulfil the required procedures. China had completely fulfilled its GATS commitments. The ferry service between Shanghai and Shimonoseki was based on a special arrangement between China and Japan, and was not an issue of implementing WTO commitments by China.

34. Concerning the requirement of "the existence of a scheduled entering of a port where the wholly foreign-owned shipping company is planned to be located" (see Communication by Japan), he referred to the *Interim Provisions on the Examination and Approval of Wholly Foreign-owned Shipping Companies*. This requirement had taken into account the fact that wholly foreign-owned shipping companies mainly provided services such as cargo soliciting, issuance of bills of lading, settlement of freight, and signing service contracts for parent companies' vessels visiting Chinese ports. If a parent company had business in the inner part of China, it could entrust Chinese shipping companies to provide the above-mentioned services. Thus, there was no barrier to supplying services to customers residing in the inner part of China. Some Japanese shipping companies had established wholly-owned container consolidation service companies in China, which could provide services to their customers in the inner part of China.

35. On the issue of Computer Reservations Services (CRS), he indicated that the Chinese Administration of Civil Aviation (CAAC) had drafted the *Regulation on Ratifying Agents of Foreign Aviation Enterprises Access to Foreign Computer Reservation Systems* in light of China's commitments in air transport services. The CAAC had even invited some foreign computer

reservation services (CRS) providers, such as Amadeus and Abacus, to participate in a consultative meeting in early September 2005 in Beijing to comment on this Regulation. The CAAC was also drafting *the Code of Conduct for Computerized Reservation Systems* with a view to creating an environment for fair competition in civil aviation.

36. While recognizing that China's statement had answered most of the questions raised by her delegation, the representative of the European Communities indicated that some questions remained to be clarified, in particular concerning legal services. In the view of her delegation, several requirements imposed on foreign law firms were equivalent to an economic needs test, though her delegation understood China's legitimate concerns related to the quality of legal services. She asked China when it intended to remove these requirements in accordance with its commitments under GATS Article XVI, which prohibited a Member from maintaining ENTs, unless otherwise specified in its schedule. With regard to telecommunications, her delegation noted that for the establishment by foreign investors of joint ventures in the basic telecom sector, there was a requirement to venture with a main Chinese partner in this sector. This requirement appeared to be in contravention with China's commitments set forth under the Working Party Report, and she asked when China would bring its legislation in line with its WTO commitments. On tourism, she noted that Article 11 of the *Regulations on Administration of Travel Agencies* established an ENT which was not reflected in China's schedule, and she enquired when China would align this legislation with its GATS commitments. Noting that China's postal reform plan had been adopted, she asked when WTO Members would receive the information on this plan.

37. Noting that this was the fourth annual transitional review for China, the representative of the United States stated that such review continued to be a very useful mechanism, particularly in the area of services where a lot of China's commitments were still to be phased in. Through the transitional review, Members could take the opportunity to seek clarifications from China on its policies and practices, and China could in turn provide explanations and prevent misunderstandings that might lead to trade questions. This was also a forum for Members to convey to China what their expectations were with regard to China's implementation of its WTO commitments. His delegation appreciated China for having provided detailed responses. His delegation's questions concerned five areas including distribution services, express delivery services, telecommunications services, construction services and legal services. On distribution services, he noted that China's markets were fully opened, as China had phased in its commitments in December 2004, and that China's Ministry of Commerce was trying to address problems initially arising from setting up a new system. Several guidelines had been issued during the last months, and hopefully this effort would facilitate a full implementation of commitments in this area. However, his delegation still had some concerns on this sector, in particular concerning direct selling. As to the two sets of regulations (one on direct selling, the other on anti-pyramid schemes) circulated by China after the United States had submitted the TRM questions, he stated that his delegation understood China's concern on pyramid schemes. However, one provision in the regulations on anti-pyramid schemes would outlaw practices used by the US industry in 170 countries where it operated around the world. This provision would not allow compensation based on sales as a team where the upstream personnel were compensated based on downstream sales. His delegation hoped that China could revise this provision to allow this kind of compensation, while at the same time still be able to address its legitimate concerns. There were two other provisions in the regulations on which his delegation had concerns. One was the 3-year experience requirement that was only applicable to foreign firms. The other was the capital requirement which, to his delegation's view, was too high, as in other sectors. Another question regarded the distribution of books, newspapers and periodicals, which, he understood, had two components. First, it was about the right to import books, newspapers and periodicals. Second, it related to the right to distribute these products throughout China once they were imported. He noted that, as of December 2004, foreign firms were to have the right to import all the products except those reserved for state trading listed in Annexes 2A and 2B. Books, newspapers and periodicals were not included in those Annexes. While intending to submit questions regarding the right to import and

export books, newspapers and periodicals in connection with the transitional review before the Committee on Market Access, his delegation sought clarifications in this Council on several measures that seemed unclear regarding the right to distribute books, newspapers and periodicals after they had been imported. Regarding telecommunication services, his delegation had raised a range of questions, such as high capital requirements, classification of basic and value-added telecom services, independent regulator, international gateways, choice of partner, and transparency issues. With regard to high capital requirements, although China pointed out that they were in line with some other Members' practice, he stated that it was not the case in the area of telecommunications. After a review of capital requirements in basic telecommunication services around the world, his delegation had found that there was no capital requirement in the United States, the Member States of the European Communities, Canada, Japan, Australia, Argentina, Brazil or Chile, and very low capital requirements in some other Members. For example, Hong Kong only required a performance bond; India required a bank guarantee ranging from 5 to 80 million US dollars, depending on the geographic scope; Korea required 2.5 million US dollars of performance bond or bank guarantee; and Singapore required a performance bond, scaled according to business scope. Only one Member had maintained capital requirements comparable those in China, and this Member had been scaling them back. Another question his delegation had raised was how many applications for basic and value-added telecom services had been received by the Chinese regulator and whether these applications had been approved or denied. Noting that bilateral dialogue had been created in telecommunications between the Chinese regulator and the US government, his government looked forward to addressing these and other issues in the dialogue. On express delivery services, construction services and legal services, he hoped that China would take into account the concerns his delegation had expressed.

38. Thanking China for having provided detailed responses, the representative of Chinese Taipei noted that some of the questions raised by his delegation had been addressed. His delegation recognized the efforts made by China over the past few years to improve its business environment and to implement its WO commitments with a view to further integrating into the global economy. His delegation wished to see China continue to carry out further liberalization in the area of services and provide a greater degree of market access.

39. While thanking China for giving detailed information, the representative of Japan noted that some of the questions raised by his delegation had not been fully answered. On legal services, echoing the statement made the European Communities, his delegation thought that the explanation provided by China seemed to be what the ENT stood for. Such measures were not to be maintained, unless otherwise specified in the schedule. On telecommunication, despite China's explanation, his delegation did not think that international gateways were excluded from China's commitments. His delegation would continue to request China to comply with its commitments in this regard. He sought clarifications from China on one issue regarding construction services. While noting that experience obtained outside China was taken into account regarding a new application for qualification or certificate, he wished to know whether this was still the case for renewal or reviewing of certificates. Concerning distribution services, his delegation found that China's licensing requirements were not transparent and needed to be improved. As to the issue of international liner services between Shanghai and Shimonoseki, Japanese companies had to wait for a long time, even if they had fulfilled the required procedures. He invited China to specify what had not been fulfilled by Japanese companies in this regard. Apart from the above questions relating to individual sectors, his delegation wished to stress that market liberalization was twofold, including both the establishment of a regulatory framework and the implementation of the framework. While Japan believed that China had made great efforts to establish a regulatory framework, Japanese business in China had made complaints regarding operational inconsistency with Chinese laws and regulations. Therefore, Japan wished to emphasize the importance of implementation of laws and regulations all over China.

40. Thanking China for its detailed responses, the representative of Australia stressed that the TRM was an important forum for clarifying China's trade practices of key interests to his country, namely telecommunications, legal services and construction services. He indicated that the questions raised by his delegation were specifically related to China's implementation of its WTO commitments and that the WTO was the appropriate forum to ask such questions. Nevertheless, his government would also be pursuing its commercial interest with China bilaterally in FTA negotiations. In responding to China's responses, he wished to highlight his delegation's concern about the seeming economic needs test imposed through Clauses 1 and 2 of Article 4 of the *Provisions on the Execution of the 'Regulation of Foreign Law Firms Representative offices in China' (Ministry of Justice Order No. 73 promulgated on 4 July 2002)*. Echoing the interventions by the European Communities and Japan, he enquired whether any applications for the establishment of representative offices of foreign firms had been rejected as a result of failure to satisfy the above criteria since July 2002.

41. In response to the question relating to application status in legal services, as well as in telecommunication services, the representative of China referred to the communication from his delegation, contained in document S/C/W/267. Regarding the follow-up questions on some of China's requirements on legal services, he reiterated that these requirements were based on the principle of prudence and took into account different economic development levels and the actual receptivity for legal services in China. China was still at the preliminary stage in terms of opening its legal services market and would continue to open. However, his delegation could not agree that such requirements constituted an ENT. Members should study the detailed responses provided by his delegation and try to understand the particular situation that China, as well as other developing countries, were facing. On telecommunication services, noting that the follow-up questions would involve very technical discussions, he suggested that interested Members talk with Chinese telecom experts after the meeting. China had made great efforts to set up and complete its services regulatory framework since its accession to the WTO. Referring to his introductory statement regarding foreign investments in services, he pointed out that all these figures and data could testify that China had not only fulfilled its WTO commitments by setting up and improving its regulatory framework, but also tried its best to enforce those commitments. China's achievements had to be recognized by other Members.

42. The representative of the United States sought clarifications from China on the issue of distribution of books, newspapers and periodicals. He wished to know whether China was going to address this issue in the Committee on Market Access.

43. The representative of China reconfirmed that this issue would be addressed in the Committee on Market Access.

44. The Chairperson 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 fourth transitional review pursuant to Section 18 of China's Accession Protocol.

45. The Council so decided.

46. Regarding the report to the General Council, the Chairperson suggested that the Secretariat prepare a factual report stating that: (i) pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China, at its meeting held on 23 September 2005, the Council for Trade in Services conducted the fourth transitional review of the implementation by China of the WTO Agreement and of the related provisions of the Protocol; (ii) written communications had been received from five WTO Members, namely the European Communities, the United States, Japan, Chinese Taipei and Australia; (iii) the details of the discussion could be found in the meeting report; and (iv) the report (S/FIN/15) from the Committee on Trade in Financial Services would form part of the Council's report.

47. The Council so decided.

D. REVIEW ON AIR TRANSPORT UNDER ANNEX ON AIR TRANSPORT – DISCUSSION ORGANIZATIONAL MATTERS

48. The Chairperson stated that, in accordance with paragraph 5 of the Annex on Air Transport, the Council for Trade in Services was to review periodically, and at least every five years, developments in the air transport sector and the operation of the Annex with a view to considering the possible further application of the Agreement in this sector. At the conclusion of the first Review, on 24 October 2003, the Council had decided that the formal commencement of the second Review was to take place at the last regular meeting of the Council in 2005, which was this meeting according to the schedule. Therefore, this item was included in the agenda and the second Review formally started. It would be reasonable for Members to first address organizational matters, such as the modality of the Review as well as preparatory work that might be undertaken by the Secretariat. She recalled that she had held consultations on 28 July 2005 to this effect. With respect to the modality of the Review, the consensus resulting from the consultations was that the second Review was to be conducted in dedicated meetings with the participation of capital-based experts, following the practice of the previous Review. Regarding the preparatory work, it had been agreed that the Secretariat was to update the background documents circulated for the first Review. However, some issues remained to be addressed regarding how to conduct this Review. The first issue was whether the Council was to have a schedule for the Review. She suggested that Members should try to decide the date of the first dedicated meeting. Her proposal was that the first dedicated meeting of the Review take place during the first services cluster of 2006, back-to-back with the regular session of the CTS, i.e. probably in February or March of 2006. The second issue was related to the background documents to be updated by the Secretariat: she invited Members to discuss which subject matters these papers were to address and which form they would take. The third issue concerned what topics should be discussed during the second Review. She recalled that in the previous Review, Members had requested the Secretariat to establish a list of issues for their consideration. This List, circulated as Job 2451 and dated 19 April 2000, was entitled "Issues for possible consideration in the Review of Air Transport". Her understanding was that the List of Issues contained in Job 2451 remained valid, and, thus, she suggested that the Council proceed from the assumption that this list could be used as a starting-point for the discussion during the second Review. She enquired whether delegations wished to include additional items in the List. Before opening the floor, she invited the Secretariat to provide background information regarding the documents prepared by the Secretariat for the first Review.

49. A representative of the Secretariat stated that the two documents included in the package for this meeting, namely the List of Issues and the list of background documents prepared by the Secretariat for the first review, were self-explanatory. The core background documents were document S/C/W/163 and its six addenda, as well as two executive summaries (S/C/W/200 and S/C/W/200/Add.1). Noting that document S/C/W/163 and its six addenda still retained high degree relevance for the second Review, he suggested it would be practical to consolidate all these documents in one package, and circulate them as a booklet. The Secretariat would produce updates to these documents. The updated documents would therefore cross-refer to the relevant parts of the booklet, when needed. The timeframe for updating the documents would depend on Members' decision on when to start the substantive discussion for this review.

50. The representative of Japan stated that the Review was to be properly organized to avoid an unproductive discussion. The first Review had taken three years, and its last two sessions had been held just to decide when to end the Review and when to start the next one. Therefore, to discuss the timeframe and the agenda for each meeting in the first place was a possible solution to manage the Review effectively and efficiently. After a decision was adopted on a timeframe, additional sessions could be organized, only when necessary and on a consensus basis. The purpose of the Review was, as stated in paragraph 5 of the Annex on Air Transport, to review developments in the air transport

sector and the operation of Annex. Since air transport services were developing drastically under the current civil aviation system, the development in this sector was to be reviewed. For this purpose, the Secretariat paper analysing air transport was essential and it was crucial to analyse it and discuss it extensively during the Review. It would be inappropriate to prejudge the result of the Review. Assessment of developments in the air transport sector would be a basis for the discussion on the operation of the Annex. The Review itself was not a negotiation. Given the special and technical nature of the sector, the participation of aeronautical authorities, as well as the ICAO, was necessary. ICAO was playing a significant role in the development of the sector. The further application of the GATS to air transport services would bring serious and critical influence on aviation policies. Aeronautical authorities and ICAO that had expertise and responsibility on aviation issues had to participate in the discussion.

51. The representative of New Zealand reiterated the points her delegation had made at the informal meeting held on 28 July 2005. Her delegation supported the proposal that the dedicated meetings of the Review be held back-to-back with the CTS regular session and that the first such meeting take place in February or March 2006. It was crucial to update the documentation prepared by the Secretariat for the first Review. She agreed that the List of Issues contained in document Job 2451 remained valid. In terms of areas to be updated in the documents, one specific interest to her delegation was general aviation, aero-fire fighting and developments in these areas. While agreeing with the point made by Japan that a proper organization of the Review was essential to ensure an effective and productive discussion, her delegation could not accept the suggestion to limit the number of meetings. It was inappropriate to prejudge the outcome of the Review at this stage.

52. The representative of Korea stated that his delegation shared a number of points made by Japan on organizational matters. Members should focus the discussion on substantive issues, and therefore decide the timeframe for the Review and the number of meetings as early as possible. His delegation supported the proposals that the first dedicated meeting take place during the first cluster of 2006 and that the Secretariat update the background documents. The participation of representatives from relevant international organizations, especially ICAO, was essential to provide more detailed information and to deepen the discussion.

53. Supporting the launching of the second Review, the representative of Australia stated that paragraph 5 of the Annex indicated two specific elements on which the Review was to focus: developments in the air transport sector and the operation of the Annex. This paragraph also established the objectives of the Review, namely "considering the possible further application of the Agreement in this sector". The second Review offered WTO Members an opportunity to explore and commit further liberalization of ancillary air transport services in the GATS. His delegation supported the Chairperson's proposal that the Review be conducted in dedicated meetings back-to-back with the regular session of the Council, and that the first dedicated meeting take place during the first cluster of 2006. There was no need at this stage to attempt to fix the duration of the Review, nor the number of the meetings: the Review was to continue as long as the substantive discussion was not exhausted. His delegation wished the Secretariat to update the documentation on the first half of the mandate (developments in the air transport sector), and was also interested in additional work being undertaken on airfreight services, services to tourism destinations, air charter services. While open to other Members' suggestions, his delegation's chief interest was to explore fully the second part of the mandate, i.e. the operation of the Annex with a view to considering the possible further application of the Agreement in this sector. Noting that this had not happened during the first Review, he stressed that it was essential for the second Review to concentrate on the second part of the mandate. In this regard, he believed that part II of the List of Issues continued to cover the key questions to which his delegation sought answers. His delegation looked forward to the commencement of the substantive discussion in early 2006 and would engage constructively.

54. The representative of the United States stated that her delegation could agree on the proposal to continue to use the List of Issues. Her delegation needed the full Secretariat documentation in order to engage in the substantive discussion. She was concerned that US experts would not have adequate time to prepare the first dedicated meeting if the documentation was available just before the first cluster of 2006. She therefore suggested that Members consider having the first dedicated meeting during the second cluster of 2006 if the full documentation could not be provided adequately before the first cluster of the year. She shared the concern expressed by Japan about the protracted debate that had taken place in the previous Review and about the time spent on deliberating when to close the Review. Hence, a work plan for this Review was needed, so as to have a clear idea on how and when to proceed in dedicated meetings. Her delegation was interested in including an end-date in the work-plan upfront. Noting that some delegations were concerned about the idea of an end-date, her delegation was open to any potential ideas on how to build necessary comfort in the work-plan so as to avoid what had happened in the previous Review. The work-plan could include the number of dedicated meetings. She reiterated that her delegation could not support the proposal to hold the first dedicated meeting during the first cluster of 2006 without the full documentation ready well in advance. Nor could her delegation support the plan without a clear idea on an end-date or a fixed number of dedicated meetings as one possible option. Her delegation was open to any ideas that could provide necessary comfort. For the Review to be valuable and to enable Members to fulfil the mandate, it was necessary to have experts' participation.

55. A representative of the Secretariat recalled that, in the first Review, Members had picked up issues from the List to proceed with the discussion. At the first dedicated meeting, Members had addressed items from (a) to (f) under Part I of the List. If the first dedicated meeting of the second Review dealt with the same cluster of items, the Secretariat could complete the documentation covering these items and circulate it by the end of January 2006. The Secretariat would also try to cover the following three items, from (g) to (i), in the documentation. The remaining items on the List would be covered shortly after and the full documentation would be available well in advance of the second dedicated meeting. He recalled that the Council had taken the decision, on 23 July 1998, to grant *ad hoc* observer status to ICAO and ITU, which meant that they would be invited to the meetings of the Council whenever there was an agenda item relevant to their activities. Therefore, ICAO would be invited to the dedicated meetings of the Review.

56. The representative of Mexico stated that his delegation shared several points made by the United States and Japan. It was important to have a clear date for the conclusion of the Review.

57. The representative of the European Communities supported the proposal that the first dedicated meeting be held back-to-back with the CTS regular session in the first cluster of 2006. The first nine items on the List of Issues would enable Members to have a substantive discussion. Her delegation opposed setting an end-date and believed that it was essential to have a productive and substantive discussion. Her delegation did not wish to discuss the work-plan or the number of meetings, which would delay the substantive discussion. Also, her delegation wished to discuss the issues of charging policies of airport and rental leasing services.

58. The representative of Chile supported the proposal that the substantive Review start in the next cluster. There was already a work-plan for this review, namely Job 2451. Her capital was holding consultations to see whether other issues should be raised. It would be premature to decide now the number of meetings or when to conclude the Review. Her delegation hoped that the Review could meet its objectives and be as efficient and effective as possible.

59. The representative of Switzerland supported the statements made by Australia, New Zealand, the European Communities and Chile. The idea of fixing the number of meetings or an end-date did not correspond to WTO practice. Secretariat's assistance was very important and it should be given a broad mandate to update the background documents. His delegation agreed that Job 2451 could be

used as starting-point, including further items that might be proposed by other Members. A full documentation did not need to be ready before the first dedicated meeting, as the priority was to have a good and exhaustive documentation.

60. The representative of China stated that, when the first review had started in 2000, China was not yet a WTO Member. Therefore, his delegation was glad to participate in the second Review to discuss the coverage of the Annex. Noting that the Chicago Convention on International Civil Aviation had covered air transport for more than 60 years, his delegation considered that Members needed to find out a way to establish a balance between bilateral and multilateral regimes. While a schedule of meetings was necessary to facilitate the participation of air transport experts, it should be indicative only. His delegation was flexible concerning the details of the schedule.

61. The representative of Canada supported the proposal that the first dedicated meeting be held during the first cluster of 2006 on the understanding that the documentation was received within a reasonable period of time to allow for review by her capital and experts. Her delegation supported any solution that would avoid the reoccurrence of the situation in the last two meetings of the first Review. The Secretariat documentation would be factual and would not touch upon the interpretation of current GATS coverage of the air transport sector. Any consideration relating to the further application of the GATS to the sector was to await the conclusion of the first two parts of the Review. Her delegation could agree on the issues listed in Part I and Part II:A & D of Job 2451, but did not support Part II:B because it involved the consideration of services that were not identified in the Annex and, thus, were beyond the mandate of the Review. Her delegation could not support Part II:C either because it presupposed that Members had agreed to develop additional disciplines under the GATS and it also involved the consideration of services that were not identified in the Annex. Part II:C implied an assessment that would need to be made by individual Members. Members were free to submit negotiating proposals as they saw fit, but the determination that additional disciplines were required would be subject to negotiations. Her delegation could support a modification of Part II:C that was limited to "Identification of the possible need for clarified disciplines under the Agreement for services covered under A".

62. Echoing the point made by the European Communities, the representative of New Zealand insisted that the Review should avoid a protracted procedural debate and get to the substantive discussion as soon as possible. She supported the Secretariat's suggestion to begin with items (a) to (f) from Job 2451. She sought further explanations from Canada on its view regarding Part II:B & C, which was different from her delegation's understanding.

63. The representative of Trinidad and Tobago supported any suggestion that would avoid reoccurrence of delay in the previous Review. She sought clarification from the European Communities concerning the issues to be added to the List.

64. The representative of Norway supported the proposal that the first dedicated meeting be held in the first cluster of 2006. He shared the statement made by New Zealand, and stressed a few points. First, the second Review was to be kept open and should not be limited to a specific number of meetings, although he agreed that the meeting schedule or the work-plan should ensure a broad participation of air transport experts. Second, given the profound changes in the air transport sector since the previous Review and the clear tendency towards liberalization of air transport policies, his delegation held a firm conviction that only a thorough discussion could facilitate the undertaking and fulfilment of the mandate. Third, to meet this goal, it was crucial that the Secretariat be free to prepare all the relevant background documents, *inter alia*, by updating the background documents. Finally, agreeing that it was premature to prejudge the outcome, he hoped that this Review could at least aim at including additional soft rights and that its focus was to be on the operation of the Annex.

65. The representative of the United States reiterated that her delegation needed to see the full documentation ready before engaging in the discussion on developments in the air transport sector. She indicated that each item included in Part I of the List was interrelated with the items in Part II. US experts needed to await all the information and determine the level of substance they were able to engage in. Her delegation had not been able to engage appropriately in the substance during the previous Review as the ordering of the items in the List was rather random. Therefore, her delegation was reluctant to proceed, unless they could receive the full documentation in advance. Reiterating the need to have a schedule, she stated that her delegation would not accept any proposals that could not help avoid an open-ended review. Her delegation was concerned about some Members' interest in an open-ended Review, and requested that her delegation's concern be accommodated. Having taken note of the comments made by Canada regarding the List, she said that her delegation was also concerned about some items on the List, in particular about the way Part II:C had been drafted. Her delegation was open to Canada's suggestion with regard to Part II of the List.

66. The representative of Brazil stated that his delegation shared some concerns expressed by Japan, Canada and the United States. He said that his original intention had been to suggest a compromise that, at the first dedicated meeting in the first cluster of 2006, Members could have both substantive and procedural discussions. Taking into account the statement by the United States, he suggested that another option would be to have a meeting in early 2006 devoted to resolving the procedural issues and, then, to decide how to proceed.

67. With regard to how to proceed, the Chairperson stressed that the experience of the previous Review was to be taken into consideration. Therefore, she wished to suggest that, first, the Secretariat would work intensively to complete the documentation covering the items from (a) to (i) on the List by the end of January 2006. Second, at the dedicated meeting that might take place in February or March 2006, a decision might be taken on procedural issues.

68. Responding to Trinidad and Tobago, the representative of the European Communities stated that her delegation had no intention to include additional issues to the List contained in document Job 2451, but was specifically interested in undertaking a substantive discussion on two issues: charging policies of airport and rental leasing services. She indicated that her delegation might be open to discussions on procedural issues, but could not accept the suggestion to have a meeting dedicated for that only purpose. The substantive discussion should start during the first cluster of 2006, on the basis of the documentation prepared by the Secretariat.

69. The Chairperson clarified that her suggestion was to have both substantive and procedural discussions during the first dedicated meeting.

70. Responding to the question raised by New Zealand, the representative of Canada stated that, in the view of Canadian air policy experts, some of the items listed in Job 2451, under Part II:B "operation of the Annex for services not directly related to traffic rights" and Part II:C "identification of the possible need for clarified and/or additional disciplines under the Agreement for services covered under A and B above" presupposed agreement among Members to extend the agreed mandate for the review in the Annex. Her delegation would revert to this point at a later stage.

71. The representative of New Zealand could support the Chairperson's proposal to have the substantive discussion followed by a procedural discussion at the first dedicated meeting. However, her delegation could not accept setting arbitrary cap on the duration of the Review. Nonetheless, her delegation could enter into constructive conversation about how to ensure that the Review would proceed effectively. She was not satisfied with Canada's response and pointed out that her delegation did not agree that the mandate of the Review could only cover those sectors that had already been covered by the Annex. Her delegation looked forward to further explanations by Canada.

72. The representative of Mexico thought that the proposal by Brazil concerning the procedural discussion could be acceptable. Considering that the Review was to have a broad participation by Members, he was concerned that only developed Members would be able to participate in the substantive discussion because the documentation would be too technical. Members needed adequate time to consult experts in capital and the documentation had to be translated. The conclusion of the Review could not be decided by a small group of Members.

73. Echoing the statements made by the European Communities and New Zealand, the representative of Chile stated that it would be better to go along with the Chair's proposal. Sharing the concern expressed by Mexico regarding the documentation, she encouraged the Secretariat to update and translate it as soon as possible. Commenting on Brazil's suggestion, she indicated that Members might consider discussing procedural issues informally from now on till the first cluster of 2006, as experts were supposed to participate in the substantive discussion.

74. In response to the statements by Brazil and Chile, the representative of the United States agreed that the first dedicated meeting was to discuss substantive issues rather than procedural ones. She reiterated that her delegation would not engage in the substantive discussion until the full documentation was completed, covering the whole list of issues. She suggested that the first dedicated meeting take place during the second cluster of 2006, as the Secretariat implied that the full documentation would not be ready by the first cluster of the year. On the issue of the number of dedicated meetings or the end-date, she wished to address it upfront to avoid the situation that had happened in the previous Review. With regard to the concerns expressed by Canada and her delegation in relation to the content of the List, she suggested that the Chairperson have informal consultations. While acknowledging that the Review had started, she indicated that there existed disagreement regarding how it should be conducted. Her delegation reserved its acceptance of the List until these problems were resolved and looked forward to having the first dedicated meeting in the second cluster of 2006 on the condition that informal consultations could resolve these problems.

75. The Chairperson recalled that the Council had had two dedicated meetings to conduct the review of MFN exemptions, which had been concluded only with the agreement of all Members. Regarding the present Review of air transport, she stressed the importance to proceed. She suggested that the documentation to be prepared by the Secretariat cover as much information as possible by the end of January 2006, and that the first dedicated meeting take place during the first cluster of the year to have the substantive discussion based on the documentation received. It would also be possible to start the substantive discussion in the second cluster of 2006 if some Members needed more time to study the documentation. On procedural issues, she would hold consultations. She assured that the review would not be concluded until all Members agreed.

76. The representative of New Zealand supported the proposal made by the Chairperson. Regretting that the United States had a different view on how to proceed with the review, she encouraged the United States to participate.

77. The representative of Norway also supported the Chair's proposal. Echoing the statement by Chile, he stressed that it was important to sort out procedural issues through informal consultations before the first dedicated meeting.

78. The representative of the United States could not concur with the Chair's proposal.

79. A representative of the Secretariat stated that the preparation of the documentation was a hard work and would take time, especially to ensure the quality Members required. He recalled that it had taken more than one year to prepare the documentation for the first Review and said the Secretariat would do its best to complete the full documentation covering all the items under Part I of the List by May 2006. However, it would be up to Members to decide how to schedule the meetings.

80. In view of the fact that no agreement had been reached, the Chairperson suggested that the Council take note of statements made and indicated that she would hold informal consultations.

81. The Council so agreed.

E. NOTIFICATIONS PURSUANT TO ARTICLE III:3 OF THE GATS

82. The Chairperson drew the Council's attention to four notifications made pursuant to GATS Article III (Transparency): (S/C/N/343-346) from Albania and two from Macao, China (S/C/N/347-348, S/C/N/347/Corr.1-348/Corr.1). She suggested that the Council take note of these notifications.

83. The Council so agreed.

F. OTHER BUSINESS

84. No statements were made under this item. The Chairperson suggested that the Council adjourn the meeting.

85. The Council so agreed.
