
Committee on Market Access

MINUTES OF THE MEETING HELD ON 4 OCTOBER 2006

Chairman: Dr. Mohammad Saeed (Pakistan)

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The Committee adopted the agenda as reproduced in WTO/AIR/2893. An annotated agenda was circulated in document JOB(06)/238.

1. Periodic report of the Committee to the Council for Trade in Goods (G/MA/SPEC/33)

1.1 The Chairman drew attention to document G/MA/SPEC/33 which contained the draft periodic report of the Committee. He noted that this report, which would be finalized in the light of the discussion that would take place at this meeting, would be submitted to the Council for Trade in Goods (CTG) for examination. The report contained no requests for extensions of HS96 waivers so no factual information on this issue had been provided in its Annex.

1.2 The Committee took note of the period report and agreed to forward it to the CTG.

2. Submission of HS96 documentation

2.1 The Chairman drew attention to document G/MA/TAR/2/Rev.38 which reflected the present situation concerning the submission of required HS96 documentation. From the document, it could be noted that the submissions of Argentina and Panama remained pending because of reservations by other Members. In addition some information needed to be provided by Venezuela, Paraguay and Thailand in order for certification of their HS96 documentation to take place. Thailand had submitted information which was circulated in document G/SECRET/HS96/17/Rev.2/Add.2. They had recently submitted, in addition, a corrigendum which would be circulated as G/SECRET/HS96/17/Rev.2/Corr.2. Paraguay had also submitted some additional information, but they were still discussing some technical issues with the Secretariat.

2.2 The representative of Thailand stated that following the circulation of their last document (the addendum 2) they had received a communication from Australia indicating that there were some mistakes and incomplete detailed descriptions of the information. Thailand had, accordingly, submitted a correction which would be circulated to Members shortly. They hoped that their revised schedule, including all the modifications, would be accepted and certified to complete their HS96 work. They would continue to work to complete their transposition work including into HS2002 and, soon, into HS2007.

2.3 The representative of Israel informed that the last reservation that they had in respect of its HS96 certification had been withdrawn by the Member in question, so they expected to have the document certified very soon.

2.4 The Chairman raised an issue that had been discussed at the previous meetings. The former Chairman had recalled, at the meeting of the Committee that took place on 3 October 2005, that the Secretariat had already introduced HS96 changes to the schedules of several Members when the CTS database was prepared. This issue had been raised by the Secretariat on 29 June 2005 when it had given a technical briefing on issues arising from the HS2002 transposition exercise. The reason this issue had been brought before the Committee was because the results of this transposition exercise, which were already contained in the CTS files of several Members, had not been verified or certified. Therefore, the HS96 changes contained in these CTS files have not been given legal effect. A question had been raised at that technical briefing regarding which Members were concerned by this issue. In response to that request, the Secretariat had circulated a list in document JOB(05)/124/Add.2.

2.5 The former Chairman had also proposed that the Members concerned could use the work undertaken by the Secretariat to prepare and submit their HS96 documentation, in accordance with the GATT procedures to implement changes in the Harmonized System (GATT document L/6905). He had also proposed that the Committee could revisit the situation the following year to see to what extent there had been any follow-up action by the Members concerned. The Committee had taken note of these proposals.

2.6 The Chairman informed that no follow-up action has been taken by any of the concerned Members. He nevertheless felt that it was his duty to bring this issue to the Members' attention again, and to remind those Members who had not submitted any HS96 documentation that this option was available. He finally urged interested Members to get in contact with the Secretariat as soon as possible.

2.7 The Committee took note of the document and the statements.

3. Extension of the HS2002 waiver

3.1 The Chairman recalled that a number of Members had been given an extension or granted a new waiver – in the form of a collective decision- in order to introduce HS2002 changes domestically and to subsequently introduce these changes to their respective schedule of concessions. Negotiations would be undertaken, if required. This waiver decision was contained in document WT/L/638 and would expire on 31 December 2006. He noted that the status of the HS2002 transposition would be discussed under agenda item F.

3.2 The Chairman noted that a number of Members covered by this waiver had yet to complete the HS02 exercise and proposed to extend it for another year. A draft waiver decision was contained in G/MA/W/80 and addendum 1.

3.3 The representative of Macao, China requested to be included in the waiver.

3.4 The Committee took note of the draft waiver decision, and agreed to amend its annex to include Macao, China and to forward it to the CTG for appropriate action.

4. Changes in the Harmonized System to be introduced on 1 January 2007

- A Draft Procedure for the introduction of Harmonized System 2007 changes to Schedules of Concessions using the Consolidated Tariff Schedules (CTS) database (G/MA/W/81)
- HS2007 Draft Waiver Decision (G/MA/W/82)

4.1 The Chairman addressed the two sub-agenda items together.

4.2 The Chairman recalled that, at the meeting that took place in early April, the former Chairman had proposed that the Secretariat work on draft procedures to incorporate HS2007 changes to the schedules of concessions using as a basis the current HS2002 procedures (WT/L/605), which appeared to be working well. The Secretariat prepared a first draft of these procedures which were circulated in document G/MA/W/81.

4.3 He noted that his predecessor had also requested the Secretariat to prepare a draft waiver decision for the purpose of allowing Members to introduce the HS2007 changes domestically and to subsequently introduce changes to their schedules of concessions and undertake to negotiations, if required. This draft waiver decision was to follow, to the extent possible, the format of the existing HS2002 draft waiver decision. The Secretariat prepared, with the assistance of the Legal Division, such a draft which was circulated in document G/MA/W/82.

4.4 The Chairman proposed that, given the short time delegations had had to examine these documents, the discussion on this agenda item be suspended. He would hold an informal meeting of the Committee on 16 October 2006 in order to discuss the draft HS2007 procedures and the draft HS2007 waiver decision. The Committee would return to formal mode once it were at a stage to approve them. He finally noted that further details on this meeting would be faxed shortly.

4.5 The representative of the United States noted that he would like to present some brief comments so that both the Secretariat and the Members were aware of their thinking on these documents. He also requested Members to consider these comments with a view to factoring them at the informal meeting. He noted that Annex 1 of the procedures stated that the 2007 material "shall cover all tariff lines and relevant tables". He recommended to expand this provision to state that Members should provide complete tariff schedules, including both concession materials and

concordances. He also considered that it would be useful to add a column to all the concessions in the concordance tables and spreadsheets, which would indicate the lines that had been changed. This would be the most transparent way to proceed and would expedite cross-Member and Secretariat reviews. If the Secretariat preferred MS Access format for the files, it could be stated in Annex 1 for clarity. With respect to the submission of information, he recalled that in the past there was a distinction between so-called "do-it-yourself" group and the rest of the membership. So it could be useful to consider whether the do-it-yourself group would need to get together and talk about what would be possible and how to proceed. The Secretariat could then try to accommodate this format for the Members for which it would be preparing the work. Having dealt with the HS2002 transposition and its review process, he found that this would facilitate the provision of information and review of the schedules.

4.6 The representative of Australia proposed an amendment concerning paragraph 15 of the draft procedures. This paragraph dealt with cases where the scope of concession was modified and provided that the Members concerned should enter into Article XXVIII procedures. He was of the view that Article XXVIII was not applicable to all Parts of Members' schedules. In particular, it was not applicable to Part IV which reflect commitments limiting subsidisation of agricultural products in accordance with the Agreement on Agriculture. These were multilateral commitments that could not be renegotiated through GATT Article XXVIII. Although it was unlikely that the HS transposition exercise would cause any Member to seek a change in the scope of such commitments, Australia would propose that Paragraph 15 be amended to clarify this aspect by inserting a reference to "in Part I of the Members' schedule" in the sentence. He noted that they would be ready to discuss further the issue at the informal session.

4.7 The representative of the Philippines noted that it would be useful if the preliminary comments by the United States and Australia were distributed in advance so that Members would have an opportunity to look at them.

4.8 The representative of Japan noted that he would also like to raise some issues, but he would do so at the informal meeting. One preliminary point he would like to clarify was whether, given the draft procedures were based on the HS2002 procedures contained in WT/L/605, the proposed HS07 file to be submitted would only cover those items affected by HS2007 changes.

4.9 The Chairman proposed to discuss these items at the informal meeting of 16 October 2006. He also proposed to discuss at this meeting a point made by the United States at the July multilateral review concerning the lack of approval by Members of their HS02 Files. These were files in which, although there was no objection remaining from the multilateral review, they could not be certified because the Member concerned had not approved its own file. The impossibility to proceed with the certification was expressly contemplated by Paragraph 12 of the HS2002 procedures (WT/L/605). In this regard, he recalled that he had sent some 36 letters to Members concerned requesting them to either approve their file or to submit specific comments on their HS02 File. Unfortunately, he had not received any response and the Secretariat had not received either any approval or specific comments. This had delayed the procedures leading to the certification of those 36 files and the HS02 exercise as such. He proposed to also take up the issue at the informal meeting of 16 October.

4.10 The Committee so agreed.

5. Modalities and operation of the Integrated Data Base

- Status of submission of the required documentation (G/MA/IDB/2/Rev.24) and Report by the Secretariat

5.1 The Chairman referred to document G/MA/IDB/2/Rev.24 which presented the situation of IDB submissions as of 29 September 2006.

5.2 A member of the Secretariat (Mr. J. Richtering) introduced the report which is contained in Annex I.

5.3 The Committee took note of the report.

6. Consolidated Tariff Schedules Database

- Introduction of Harmonized System 2002 changes to Schedules of Concessions using the CTS database (WT/L/605) – Report by the Secretariat on the status of work

6.1 The Chairman recalled that the Committee had had three multilateral review meetings in 2006. The first one was held on 25 January, the second one on 23 May and the most recent one on 27 July. He also informed Members that the next multilateral review session was tentatively scheduled for 3 November 2006. The Secretariat had circulated an updated periodic report in the JOB(06)/8 series, as provided by Paragraph 14 of the HS2002 Procedures. As mentioned in agenda item D, he proposed to discuss at the informal meeting of 16 October the situation of those HS02 files in which a formal approval by the Member concerned was still required to finalize the procedures.

6.2 A member of the Secretariat (Mr. J. Richtering) introduced the report which is contained in Annex II.

6.3 The representative of the United States enquired about the progress on the files that remained to be prepared. He assumed that it was a mix of developed and developing countries. For the developing Members for which the Secretariat was preparing the transposition, he would like to know what was the expected timetable and when would the process be finished. For the developed Members, he wanted to know where the others stood.

6.4 A member of the Secretariat (Mrs. Alya Belkhodja) noted that all the 44 files that remained to be prepared were for developing Members. The Secretariat had already sent initial comments to all developed Members. However, the Secretariat would need to consolidate the files of developed Members at some point, because comments had only been made on the changes. For developing Members, the files were prepared by the Secretariat according to the standard procedure.

6.5 The representative of the United States sought clarification on the expected date to complete the transposition for those developing Members.

6.6 A member of the Secretariat (Mrs. Alya Belkhodja) noted that work was hoped to conclude by the end of this year or during the first part of 2007.

6.7 The Committee took note of the report and of the statements.

7. Transitional Review under Paragraph 18 of the Protocol of Accession of the People's Republic of China

- Questions and/or Comments Submitted to China by the European Communities, Japan and the United States in documents G/MA/W/79, G/MA/W/77 and G/MA/W/78, respectively

7.1 The Chairman noted that the Committee would be conducting its fifth transitional review (TRM). In this respect, he noted that a number of comments and questions had been put to the Chinese delegation from Japan, the United States and the European Communities, which had been circulated in documents G/MA/W/77, 78 and 79 respectively. China had submitted the information required by Annex 1 of the Protocol, which would be circulated in G/MA/W/83.

7.2 The representative of China thanked the delegations of the EC, Japan and the United States for the questions and comments submitted prior to the meeting. He noted that he would like to explain, or rather try to repeat, China's understanding of this exercise, including the mandate, its nature and requirements. He considered this was necessary because, after reading the documents and questions submitted, some of them were not in line with the mandate of the transitional review. For instance, China was requested to provide answers to questions relating to China's Trade Policy Review (TPR) that took place in April. As a procedural issue, he asked what was the relationship between that TPR and this transitional review; and whether China had the obligation to provide answers to those questions under the procedures of Paragraph 18. Another point that he wanted to make was that some questions had been raised in several other committees. For example, the same question concerning the Chinese Compulsory Certification (CCC) regulation had been raised in the Market Access Committee, the TBT Committee and the CTG. He understood that the transitional review exercise was a once-a-year event but, as result of the practice by some Members, it had become an exercise of multiple times a year for certain questions. He believed that this was not in conformity with the requirements of Paragraph 18. He noted that China had no objection to reply to relevant questions, but the same question should not be raised several times in different Committees.

7.3 On a different issue, the representative of China recalled that they had received over one thousand questions during their TPR of April. He considered this was too much of a burden and not fair for his country. Some of the questions received for this transitional review asked why China had not provided answers to questions raised in April. In this respect, he recalled that the United States received less than one thousand questions in their last TPR and, yet, it took them almost nine months to complete all the answers. Given that China was a developing, and relatively new, Member it should take them at least one year to complete all the answers raised at their Trade Policy Review. He requested Members to understand the amount of pressure, work and constraints faced in that context. Coming back to the transitional review, he recalled that one Member had repeatedly requested, in its yearly submissions, that the exercise could be rendered more efficient and effective by having China to provide responses and relevant information prior to the meetings. As to the relevant information part, he recalled that China had provided the information required by Annex 1 and that the document was available at the back of the room. However, he recalled that there had been a debate since the first transitional review under Paragraph 18 as to whether China's responses constituted part of the "relevant information". China understood that relevant information did not cover the answers to questions raised by Members, because they could not know in advance what would be asked and on what time these would be raised. China was prepared to faithfully implement its obligations under Paragraph 18 and to provide the relevant information as needed, but they were not in a position to go beyond that. He hoped that, after this review, Members would strictly follow the mandate contained in that paragraph, as it would otherwise be very difficult for them to comply with the request. Coming back to the request to make the transitional review more efficient and effective, he requested the delegation concerned to provide a definition of what was meant and drew attention to the fact that these terms were not mentioned in the mandate. Finally, he stressed that the seriousness and

importance that China attached to this exercise was demonstrated by the presence of capital-based officials during a week-long national holiday.

7.4 Another representative from China noted that, as they had done in the previous TRM meetings, China did not undertake any obligation to provide responses in written form to questions and comments presented. On the questions and comments concerning the development policy for the steel industry, he reiterated that this policy was not compulsory in itself. It only outlined the Government's opinion towards the development of the steel sector, such as encouraging innovation, strengthening environmental protection, encouraging energy conservation, further reducing the administrative approval process by the government and narrowing the scope of government approval in investment projects. He noted that no specific regulation or rules regarding imports had been carried out. On the interpretation of some legal terms which had been raised in the questions, he referred Members to document G/LIC/M/22 for detailed information. On the CCC Mark, China believed that this was a technical regulation issue which should not be taken up in the Market Access Committee. He would, nevertheless, provide some background information on the issue. The CCC Mark was a system that was put in place to unify the previous CCIB and the Great Wall Marks, which were unified at the request of some Members upon their accession. Despite the fact that those two recognition systems had been implemented in a manner consistent with the WTO principle of national treatment, China designed a new CCC system to implement their accession commitment. China considered the CCC system to be in full conformity with WTO rules and that it had greatly facilitated trade. This had been demonstrated by the strong growth of both imports into and exports from China since its accession. Another issue raised by Members was the VAT policy for the MAP and DAP, which were two kinds of chemical fertilizers. He noted that China had currently no intention to change the system. Regarding their position and interpretation on this issue, he referred Members to document G/MA/M/35 for further information. On the tariff rates for photographic products, he noted that several rounds of talks on the technical issues had been held in the past year and both parties were currently quite close to a solution. He added that China would welcome any further bilateral technical communication and discussion on the few tariff headings where agreement had not been secured. On the import prohibition of used goods and the TRQ quantity for fertilizers, he indicated that China had no plan to revise the system and their opinion had been clearly reflected in document G/MA/M/35. As to the issues raised concerning wood and wood products, he took note of the comments made by Members. He clarified the notice mainly aimed at environmental protection and natural resource conservation, and would be implemented in a manner that would be consistent not only with China's domestic legislation, but also with WTO rules. On some issues, such as export restrictions, trading rights, and investments measures, he believed that they ought to be discussed in other meetings, such as the TRIMS Committee or the CTG. This was because they did not necessarily fall within the mandate of this Committee. Finally, as to the tariff issue of automobile parts, given the issue was currently under DSB procedures China did not regard any forum other than the DSB as suitable and appropriate to discuss it. Members who were closely involved could refer to DSB documents for this issue and the others could refer to documents G/LIC/M/22 and G/MA/M/35 for further information on the Chinese position.

7.5 The representative of Japan stated that the TRM was an important opportunity to ensure transparency and regularly update the state of the implementation of China's commitment under the WTO, and to improve the understanding on each other's concerns. He welcomed the constructive responses from China and were pleased to note that certain progress had been made. He sought further clarification on two issues. First, he indicated that the explanation given on export licensing for coke was insufficient in Japan's view. The export price of cokes from China had soared since two years ago because of strict export licensing which had left the market disrupted. Japan had asked China to review the export licensing system on a number of occasions, but the scheme still remained. Although China explained that the measures were intended to restrict domestic production and consumption of coke, it was unclear whether those measures had effectively reduced the production and consumption of coal, which was an ingredient of the cokes. Japan asked China to improve its

licensing scheme and to maintain a stable supply of cokes in the future. Another issue on which Japan still had concerns was on the import prohibition of used goods. China had explained that these measures were needed due to hygiene and quarantine concerns. However, Japan was particularly concerned about the consistency of the import prohibition with the WTO rules, in particular with respect to GATT Article XI. In addition Japan was of the view that Chinese consumers would lose their benefits and asked China not to maintain such import prohibition measures to ensure compliance with the WTO rules and to improve the consumers' benefits. Finally, Japan requested China to provide its replies in writing in order to avoid misunderstandings.

7.6 The representative of the United States noted that he would like to start by addressing the issue of questions being raised in multiple Committees and the claim that it was not appropriate to have addressed some of those issues, as it had been done in the US communication. The questions by the United States fell into four categories: trading rights, export restrictions, tariff-rate quotas on fertilizers, and value-added tax on Diammonium Phosphate (DAP). He argued that these were all issues that fell directly within the purview of this Committee. Therefore, the United States expected to have answers to the questions which had been put forward in these four areas. With respect to trading rights, China had said in the past that it had the right to restrict the importation or exportation of books, newspapers and magazines in order to protect public moral and public interest in national security. They had cited Article XX in this respect. However, there was a specific provision in China's Protocol of Accession with respect to these materials. It was clear, on the one hand, that the flow of certain kinds of information was necessarily exempted from this provision. For example, a publication on how to construct a hydrogen bomb was clearly an issue related to national security. But the flow of run-of-the-mill sorts of books, magazines, newspapers and other publications was specifically protected by the provisions of China's Protocol of Accession and it could not simply be asserted that Article XX trumped that provision. The question was whether China contended that it had the right to restrict the importation of these products, despite the provisions of their Protocol of Accession and, in addition, whether China believed it had the right to restrict the importation of audiovisual products and electronic publications on the same basis as it restricted the importation of books, newspapers and magazines. As to the export restrictions, it was clear for the United States that the WTO rules established a general prohibition against export restrictions with only limited exceptions. With respect to the exportation of coke, the United States had understood that China would eliminate its export quota system in 2006. Thus, the question was whether China had any plans to eliminate its coke export quota system in 2006, as it had been previously indicated. There were, in addition, other export quotas on products such as fluorspar. He would like to know whether China could identify the products that remained under export restrictions and an explanation on the consistency of those measures with their WTO obligations. More specifically, whether China had begun to take any steps to eliminate the export quotas that it maintained on fluorspar and other raw materials. If it were not the case, he would like to know why not. With respect to tariff-rate quota on fertilizers, although the United States got a response, the question was whether China had any plan to adjust it. He understood that the answer to this question was no. With respect to the value-added tax and DAP, the United States continued to be concerned regarding China's VAT exemption policy for this product. The United States had previously requested China to provide data showing its annual consumption of DAP and Monoammonium Phosphate (MAP) -which was a direct competitor of DAP- including the amounts sourced domestically versus the imported amounts. Since China had not provided any of these data, they wanted to renew their request. The specific request was whether China had any plans for revising circular 113/2001 which affected this product in order to eliminate the discriminatory treatment of DAP. If it were not the case, he would like to know why not.

7.7 The representative of the European Communities noted that their industries were facing real challenges in this respect and hoped to be able to get answers. On the systemic issue raised by China on efficiency and effectiveness, although she would abstain from entering into a definitional discussion, she expected an appropriate process to deal with the concerns raised by other Members. On the specific questions, she noted the questions by the EC had many similarities with those raised

by the delegate of the United States and subscribed to many of the comments made. She recalled that she was present at the first TRM and noted that, not only had they raised the same questions in different committees, but had also been putting the same questions for five years without getting answers. She considered this was a serious issue which raised questions on the systemic value of the exercise. She however considered the presence of Chinese capital based officials during holidays as a testimony of China's commitment to the TRM mechanism and that was the reason why she would be referring to those questions. The first concern raised by the EC in the context of the TRM related to export restrictions where the EU was concerned on the compliance of commitments undertaken by China in some particular areas, in particular those related to coke, non-ferrous metals and rare earths. She requested China to live up to the commitment of Part I, Section 8(b), of its Protocol of Accession and notify the quantities associated with these export restrictions, as soon as possible. The EU also wanted to have a justification for such restrictions, which they had not received so far. Whenever there was no justification, like in the case of rare earths or coke, she requested China to notify the date or the time-line by which they intended to remedy the situation. They would be grateful if China could communicate the time-line for the abolition of the export licence system it currently had on coke. They would also like to have comprehensive information on the VAT reimbursement scheme and any other restrictions that concerned specifically non-ferrous metals and chemical products. She joined the US concern on fluorspar and on the problems relating to phosphorous in general. The EC requested to receive this information in order to better understand whether there was some deficiency *vis-à-vis* WTO commitments. The EC also wanted to receive information concerning any new restrictions that China may have imposed. She expressed concerns on a new area which related to export taxes and restrictions on raw hides and skins, and recalled that this was an issue of great importance to the EC which was even being addressed in the NAMA negotiations in relation to Africa's "leather gap". As to the China Compulsory Certification (CCC) Regulation scheme, although she acknowledged that it could also be related to TBT, she noted that it was also a market access concern, because the measures did not seem proportionate to the concerns that China was trying to protect. The EC would like China to develop a certification scheme which would be less of a barrier to trade and they were ready to undertake discussions bilaterally or multilaterally. In this respect, she considered that any bilateral solutions, such as the one indicated by the Japanese delegation on Chapter 37 (photographic products), should be notified to the multilateral forum. As to the automotive chapter, China rightly noted that there was a case being dealt by the dispute settlement body and she would also abstain from comments on the issue concerning the classification of parts and components. However, there were other issues which may overlap with TRIMS and other areas which would nevertheless be related to market access. This was the case of the limitation on the joint venture ownership, also known as the "two plus two" rule. She urged China to undertake a dialogue with the EC because this was curtailing the ability that companies located in China had to compete internationally. As to the approval and homologation standards issue, she urged China to adopt the criteria and standards of the 1958 UN/EC Agreement so that once the products were certified in China could then be exported all over the world. This instead of having a conformity assessment system which, although could be regarded as useful in China, would not allow companies located in there to export abroad. She wanted to know when would discussions on the adoption of such standard would begin. Also on the automotive chapter, she referred to the new Automotive Industry Development policy which presented challenges in terms of investment. This issue was listed as point IV on page three of document G/MA/W/79. She requested clarifications concerning the words that had been included in the policy and to hold consultations to gain a better insight on what was their real aim. On the Steel Industry Development Policy, and the issue which could be called the dearth of raw materials, she questioned the new policy to limit exports on high energy consuming and high polluting primary processed products such as coke, ferroalloys, pig iron, steel scrap and billets (ingots) and export drawbacks on these products. This piece of legislation concerned the EC because many aspects remained unclear and they hoped that an explanation would alleviate their fears. For example, it was not clear what kind of limitations would be imposed and what was meant by the term export drawback. In addition, whether there would be implementing provisions for the policy, the timeframe envisaged and the Ministry that would be responsible for such implementation. It was

finally unclear what was the meaning of the encouragement of Chinese companies to source and to invest abroad in the supply of minerals. As to the section concerning technology transfer and technology policies in the steel sector, the EC would like to understand what measures were being referred to with the allusion to reducing or eliminating the importation of equipment from abroad. The EC would like to understand what type of implementing provisions would be put in place and when would they be launched. She noted the reference by the Chinese delegate to document G/MA/M/35, but since she could not find an answer therein, she requested China to provide more clarity on the issue. Another question concerning the steel industry development policy was the reference to foreign investors not holding a controlling stake. She noted that such limitations would be questionable from a WTO point of view and counterproductive to investment in this sector. As to the petrol chemical, chemical and energy sector, the EC delegate recalled there was in place limitation to invest –a less than fifty per cent ownership provision- which they found very difficult to cope with. She urged China to eliminate such limitation and the local content requirements which have travelled with these type of provisions. The EC had also noticed difficulties in the opening of the retail and wholesale market of fuels, where they would like to know when would the investment limitations and the price control regulations would be eliminated. As to the pharmaceuticals, she noted that these products were burdened with very costly procedures for registration, licensing, certification and reimbursement. They did not find it acceptable that imported active ingredients faced stricter licensing requirements than the national ones. She also noted some empirical evidence suggesting that clinical trials lasted more than one year to the detriment of consumers. The EC delegate urged China to shorten the clinical trial periods to more normal time spans, such as for instance three months, and to de-link the price of generics *vis-à-vis* the original manufacture of the speciality product. Another issue of concern in the chemical sector was the double tier. The local versus central tier was an increasing problem in some countries which related to the relationship between the regional and central level an item also recognised by the EU as a negotiable NAMA point in its second submission (TN/MA/W/11). She requested China to try and streamline the situation. As to cosmetics, the questions were similar to that of chemicals in terms of trials and all the procedures were required every time leading to high costs. The EC considered that this situation did not live up to the national treatment commitments and they requested China to notify when would there be a unification of the two streams, the imported and the local products under one single procedure. As to wood and wood products, the EC delegate noted that it was a major concern for them. She was not clear about the scope of the wording in the Chinese legislation concerning "legally harvested" products. She asked what limitations were imposed, what sort of certification was being considered and how would China proceed in this respect. The EC requested to have regulations that did not discriminate between foreign and local producers if the product came from a sustainably farmed area. Finally, she requested China to submit written answers so that all interested Members could profit from the clarification.

7.8 The representative of Australia noted that they had a more modest question to present to China. Their question related to the implementation of the tariff commitment of subheading 1006.40, broken rice. China's schedule of commitments provided that this subheading should have a bound rate of 10% from the date of accession, a concession which was also listed in the CTS. This was the out-of-quota binding. The lines were also related to a tariff rate quota commitment for which there was a lower in-quota bound rate. On the other hand, China's national tariff, as notified in the IDB file for 2005, provided for an applied MFN tariff rate of 65%. Australia requested China to take whatever steps were required to ensure that it did not impose tariffs on imports in this item in excess of the bound rate of 10%. He also requested China to correct the published applied rate to reflect this.

7.9 The representative of China took note of the question raised by Australia and indicated that, that since it was just being raised at the meeting, he would convey it to capital for study. Coming to the last statement by the delegate of the EC, he believed that most of the concerns and questions raised could already find answers in the several documents which had been mentioned by China. He added that the EC's submission covered several major categories and he really believed that some of

those issues, such as investment, did not belong to the scope of responsibility of the Market Access Committee. If the Market Access Committee were also to discuss investment issues and foreign investment regulations, he would have no objections, but advised the EC to think carefully on what really belonged to the responsibility of this Committee. He added that some of the questions raised by the EC covered services sectors. On the EC questions regarding some of the policies, he noted that China had been trying to act upon advice of well-known international economists and think tanks, including EC experts, who had suggested that China was developing too fast and at the expense of the environment. They have acted upon these suggestions to develop new policies and guidelines to have a more sustainable and environmentally friendly industries, and reduce the number of high pollution, high energy consumption sectors. However, they were now being criticized for following that advice because they could not satisfy the demands for raw materials of certain foreign partners. He considered that there was a conflict of interest even within the EC, because some governmental departments were calling China to invest more in pollution control, reduce the speed of development, do more to reserve natural resources and to leave more for the future generation of children. However, other departments were calling China to ensure a sufficient supply of coke and other products. This presented a dilemma for China and asked those countries giving conflicting advice to help them out with the problem. On the export restrictions, he considered there were double standards being applied. For instance, the EC encouraged China to impose export restrictions on textiles and shoes, but now had problems with the ones imposed on the raw materials they needed. He considered this was against the interest of developing countries. On the questions raised by the United States, he stressed that China attached a great deal of importance to the trade relations with the other Members, because their bilateral trade –both exports and imports- had been growing considerably. He considered it was only natural for problems to occur in this context and China was fully committed to implementing its commitments under the terms of its Protocol of Accession. There should not be any doubt in this respect because they did not want these problems to hinder future trade expansion and investment flows. He requested the United States to specify which accession commitment they considered related when raising a specific question. Although the purpose of the exercise was to review the manner in which China had been implementing its accession commitments on market access, some documents raised new problems which were not related to the Protocol of Accession. He considered that they could continue a dialogue on the issues which had been raised by US. On the request by the EC and Japan to have written answers, he considered there was a procedural issue and stressed that China was not required to do so. He noted that China was the only Member required to undergo a transitional review each year and he considered this was against the basic WTO principle of non-discrimination. China would continue to work and cooperate with others in order to conduct the transitional review in a way that fulfilled the mandate of Paragraph 18, but they would not go beyond it. He concluded by requesting Members to study the mandate carefully before preparing documents and comments for the next exercise.

7.10 The representative of Cuba noted that she fully subscribed to the essential matters that had been raised by China. She considered regrettable that the TRM did not apply to all WTO Members. In responding to the representative of the EC, and her concern for the situation of developing countries, she noted that they would be most comfortable to pose the same questions to a certain specific Member in the manner that it had been put to China. She agreed there was a double standard because one Member was required to do certain things that others were not. In fact, the right to invoke Articles XX and XXI on the part of China was being questioned by some, whereas other Members who applied these measures were not called to talk about them. She considered the exercise was discriminatory in its very nature, because there was just one Member in the position of having to respond, while others were over extending in the questions asked and refraining from answering themselves of any infringements to certain WTO Articles being invoked. The Cuban delegation encouraged delegations to keep in mind the legitimate objectives of the exercise.

7.11 The representative of the United States considered that a step backwards had been taken with respect to previous years. They previously sensed that China was taking the process seriously and

doing what it could within the limitations. There were, however, two new issues of concern for this year. The first one that China was not under an obligation to deal with the process and the questions being raised. He hoped this was not China's official position. He noted that China had many rights under the WTO Agreements and that those rights could only be carried into force if the other Members dealt with them in a manner that was consistent, official, efficient and useful. If the answer from the other side were that they did not believe that they had to recognize that commitment, for whatever reason, that would be a recipe for disaster. A situation like that would not serve anyone's interest. He was therefore disappointed by the tone adopted in this TRM. Second, it seemed that the specific questions that were put forward by the United States were caught in the cross-fire. He hoped the Committee could go back to the specific issues before it, because he knew that it had never been the Chinese position to ignore commitments that it had undertaken. He was willing to acknowledge that this was a sensitive issue for China, but the US had put forward some specific questions in a reasonable and rational manner and would, therefore, appreciate getting a response.

7.12 The representative of the European Communities shared the feelings of the delegate of the United States. She was convinced of the seriousness of China, but found herself puzzled by the answers. She insisted that she was not looking for a written answer, but for an answer which could be written and stressed the need to get a response, even if it were in other forum which China considered more appropriate. She also noted that the key word to interpret the EU's attitude was "rules" and that China seemed not to be living up to some of the commitments signed in their accession, in particular those referring to the TRM. She found unacceptable the words of the Chinese delegate referring to Europe as promoting unsustainability, because the EU was one of the largest donors for sustainable development schemes in China. The TRM was not an imposition on China, but rather an advantage for them as a beginner. She was concerned by the lack of answers and noted that she had not found them in any of the documents which had been cited by China. She hoped that, by putting the questions *in extenso* for this session, they would be getting the answers from the capital based officials in the room and begged for the understanding of the rest of participants.

7.13 The representative of China noted that he did not believe a step backwards had been taken. The Market Access Committee had conducted a transitional review each and every year according to Paragraph 18 and he hoped the exercise would continue until the day it expired. On the request by the United States, he noted he would try to answer some of the questions orally, although they might differ from the exact wording of the documents cited. On the issue of distribution of books, newspapers and audio-visual products, he believed that China's policy was completely consistent with WTO rules, regulations and China's accession commitment. There was indeed a question of moral concern and public moral. For instance, Playboy magazines may be allowed to be distributed in the United States, but they would never be allowed to be distributed freely in China. This was a moral issue because the overwhelming majority of the Chinese people had a strong believe that this kind of publication was not good for the public moral and it could, therefore, not be allowed for free distribution. As to the issue raised by both the US and the EC on the export tax on coke, he believed that it could be viewed as part of the Chinese efforts to try to reduce a heavily polluting industrial sector. This would help China to undertake an industrial restructuring in a direction that their industries would gradually shift towards more environmentally friendly or cleaner forms of energy. He noted that there was nothing wrong with that and that it conformed with the general goal of many important decisions of other international organizations. He was puzzled because the US had previously imposed anti-dumping duties on Chinese coke, but was now concerned by the export restrictions. So, on one hand they imposed the anti-dumping duty on Chinese coke, which was like a request for China to export less or fewer cokes to the US, but on the other hand they were now concerned by the export restrictions. He stated that China stood ready to discuss this type of issues bilaterally and noted that bilateral discussions and consultations had never stopped, including for all the issues raised by the US for the meeting. The same was true for all of the issues that had been raised by EC and Japan. For example, on the Japanese concern on photographic materials, the technical teams of both countries had been working together and agreed on a methodology to convert

the duties. But Japan still believed that the duties were higher as compared to Chinese products. As far as China was concerned, they were prepared to continue consulting with Japan to explore this process and find a mutually acceptable solution. China's attitude towards TRM exercise had been very positive and they were committed to continue along this conviction.

7.14 The Chairman noted that the report¹ of the review to the CTG, as in previous years, would be a brief factual report indicating that the review had taken place, an acknowledgment of the documentation submitted pursuant to the review, and a reference to the discussions that had taken place, as reflected in the minutes of this meeting.

7.15 The Committee took note of the statements.

8. Draft Report (2006) of the Committee to the Council for Trade in Goods (G/MA/SPEC/34)

8.1 The Chairman noted that the Committee was required to submit annually a report on its activities to the CTG. A draft report, covering the activities of the Committee in 2006, was circulated in document G/MA/SPEC/34. The report would be updated in light of the meeting.

8.2 The Chairman noted that following the previous year's procedure, the updated draft report would be sent to the Members by fax, and if no comments were forthcoming within a certain time period then it would be considered adopted. If there were minor changes, a revised report would be circulated with the changes marked clearly and if no comments were submitted within a certain time frame, the revised report would be considered adopted. If the changes were more substantive in nature he would then had to consider convening an informal meeting

8.3 It was so agreed.

9. Election of the Vice-Chairperson

9.1 The Chairman noted that, as he had indicated at the last formal meeting, he intended to hold informal consultations on a Vice-Chair of the Committee for 2006. He had completed those consultations and, on this basis, proposed to elect Mr. Fakhry Hazimeh (Jordan) as Vice-Chairperson of this Committee by acclamation.

9.2 The Committee elected Mr Fakhry Hazimeh as Vice-Chair.

10. Other Business

- The Access of the African Union to the IDB and CTS database

10.1 The Chairman recalled that on 12 June 2002 it had adopted document G/MA/115 containing the dissemination policy of the IDB and CTS database. Certain organizations (UNCTAD, IMF, World Bank, ITC) were given automatic access to these two databases. However, the Committee agreed that other intergovernmental organizations wishing to have access would need to obtain approval from the Committee on a case-by-case basis. This was contained in Paragraph 5 of document G/MA/115.

¹ Issued as G/MA/193.

10.2 In this connection, the Chairman noted that Committee had receive that day a request from the African Union wishing to have access to the IDB and CTS database, in accordance with the terms and conditions laid out in document G/MA/115, which would be circulated shortly. For that reason, the Chairman expressed his intention to convene a meeting of the Committee on 3 November 2006, which would be held back to back with the HS2002 Multilateral Verification meeting, in order to consider access of the African Union to these two databases. The Chairman proposed to take note of this suggestion.

10.3 It was so agreed

- Date of the next meeting

10.4 The Committee took note that the next meeting of the Committee would take in the Spring of the following year. However, he noted that no definite date had been fixed yet.

ANNEX I

Secretariat's Report on the Modalities and Operation of the Integrated Data Base (IDB)

IDB Submissions

Since the circulation of the Status of Submissions document, G/MA/IDB/2/Rev.24, the Secretariat received the following submissions:

- Chile tariff for 2004

IDB Dissemination and Uses

As of 22 September 2006, files for 111 Members² and five acceding countries are available on the IDB website.

On the uses of IDB and CTS data I would like to mention:

- IDB and CTS data were used in simulation exercises prepared for the NAMA Negotiating Group (JOB(06)/210);
- IDB and CTS continue to be used for the calculation of AVEs for both, NAMA;
- I would like to announce our intention to issue a new publication called World Tariff Profiles which is co produced with ITC and UNCTAD. It will contain three parts:
 1. The first part would contain summary tables with some 10 indicators on bound and applied tariff rates. This is very similar to the summary tables which were published in past years in the World Trade Review as Annex tables. This year's WTR does not contain them any more in view of the forthcoming new tariff publication.
 2. The second part would contain a one-page summary per Member also non-Members with tariff and trade information:
 - (a) by duty ranges
 - (b) by sectors (MTN)
 - (c) by major markets from an exporter perspective
 3. There will furthermore be a part where special methodological or empirical issues will be addressed and discussed. It is proposed to deal in this first edition with aggregation issues and AVEs calculation methods.

This publication is expected to be issued by the end of 2006 or early 2007. It is planned to make available in connection with this publication also IDB and CTS data at the level of HS 6-digit subheadings on the WTO website.

² This counts the European Communities as one for its 25 Members and Switzerland and Liechtenstein as one

Technical Assistance

Since the last meeting of the CMA in April the following TA activities have been undertaken:

Regional NAMA workshops in:

- Kenya for Anglophone Africa
- Jamaica for the Caribbean region
- Singapore for Asia
- Tunisia for Arab speaking countries
- Peru for Latin America

National NAMA workshops in:

- Benin
- Bolivia

National IDB workshops in:

- Jordan
- Burkina Faso

The IDB and CTS was also presented in 2 regional Trade Policy courses.

IDB/CTS Software Development

A new version of the IDB/CTS Internet Analysis Facility (IAF), containing improved navigation facilities, will be available in November.

ANNEX II

Secretariat's Report on the HS2002 transposition using the Consolidated Tariff Schedules (CTS) database

Consolidated Tariff Schedules Database

Brief summary of the work on the HS2002 files:

- The HS02 files of 49 Members have been reviewed so far.
- Of these, the HS02 files of 36 Members have no objections pending, but cannot be certified because the Member itself needs to approve its file. The Chairman sent letters to these Members urging them to either approve their file or to provide specific comments to the work by the Secretariat, but no response has been forthcoming.
- The Secretariat is currently preparing paper copies of the approved HS02 files of 5 Members and will circulate them under the G/MA/TAR/RS/ series, in accordance with Paragraph 13 of the HS2002 procedures. Pursuant to the 1980 procedures, these documents will be certified by the Director General 3 months after the date of circulation, provided that no objection is raised by other Members.
- The HS02 Files of 71 Members remain to be reviewed. At the next multilateral review 9 of these will be taken up for the first time. In addition, 2 resulting from revisions and some further 2 because their review had been postponed.
- 44 draft HS02 files remain to be prepared and sent to Members.

An updated version of the report contained in the JOB(06)/8/- series will be issued shortly to assist Members during the next multilateral review.
