

WORLD TRADE ORGANIZATION

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Council for Trade in Services

REPORT OF THE MEETING HELD ON 30 NOVEMBER 2006

Note by the Secretariat¹

1. On 30 November 2006, the Council for Trade in Services held a meeting chaired by Ambassador István Major (Hungary). The agenda for the meeting was contained in document WTO/AIR/2656.
 2. The Chairman said that, under Other Business, he intended to make a brief statement regarding organizational matters in the context of the second air transport review.
 3. The representatives of Japan and Hong Kong, China said that their delegations wished to raise the issue of the Article XXI negotiations with the European Communities under Other Business.
 4. The representative of Brazil said that, under Other Business, his delegation would make an announcement with regard to the notification of the Montevideo Protocol of the Mercosur to the Council for Trade in Services.
 5. The Chairman suggested that the agenda be adopted as modified.
 6. The Council so agreed.
- A. NOTIFICATIONS PURSUANT TO ARTICLE V:7 OF THE GATS
7. The Chairman drew the Council's attention to eight notifications made pursuant to GATS Article V:7 (Economic Integration). These were the communications from Honduras (S/C/N/368/Rev.1); Guatemala (S/C/N/369); Jordan and Singapore (S/C/N/370); Japan and Malaysia (S/C/N/371); the United States, Guatemala, Honduras, El Salvador and Nicaragua (S/C/N/372); the EFTA States (Iceland, Liechtenstein, Norway and Switzerland) and the Republic of Korea (S/C/N/373); Costa Rica and Mexico (S/C/N/374); as well as the United States and the Kingdom of Bahrain (S/C/N/375).
 8. The representative of Guatemala stated that her delegation had submitted the notification (S/C/N/369) on 3 July 2006 regarding the free trade agreement between Guatemala and Mexico. This agreement had entered into force in 2001 with indefinite duration and aimed to promote trade in services through further liberalization between the countries. Referring to notification S/C/N/372, she said that the Dominican Republic - Central America - United States Free Trade Agreement had entered into force for Guatemala on 1 July 2006 with indefinite duration. She further stated that these two notifications had been made in accordance with Article V:7 of the GATS and that her delegation would provide more detailed information about these two agreements in the Committee on Regional Trade Agreements.

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.

9. Referring to notification S/C/N/371, the representative of Japan stated that the Japan-Malaysia Economic Partnership Agreement had entered into force on 13 July 2006, and was the third such pact for Japan, following similar agreements with Singapore and Mexico. The Japan-Malaysia Economic Partnership Agreement covered a substantial range of trade in good and services. The latter were treated under the Chapter on Trade in Services, while Mode 3 was covered under the Chapter on Investment. In the annex to the Chapter on Trade in Services, specific commitments were scheduled in a positive list. Financial services were covered under the Chapter on Trade in Services. Apart from those chapters on market access, the agreement also included provisions on intellectual property, controlling anti-competitive activities and improvement of business environment. The negotiations on this agreement had been conducted with strong support from the Japanese industrial sector which wished to see improvement in the business environment of Malaysia. Japan believed that the implementation of this agreement would greatly contribute to enhancing economic relations between the two countries. The text of the agreement and the related documents were available at the websites of the Ministry of Foreign Affairs of Japan. The Japanese delegation would answer questions regarding this agreement in the Committee on Regional Trade Agreements.

10. Referring to notification S/C/N/371, the representative of Malaysia said that her delegation concurred with the statement made by Japan and looked forward to contributing to the examination of the agreement in accordance with the procedures agreed upon in the Committee on Regional Trade Agreement.

11. Referring to notifications S/C/N/368/Rev.1 and S/C/N/369, the representative of Mexico thanked Honduras and Guatemala for these notifications. Believing that these two agreements with Mexico would contribute to trade expansion, his delegation wished to further trade liberalization with these two countries, particularly taking advantage of the broad scope of these agreements in terms of trade in services. His delegation wished to reiterate that the respective notifications did not prejudice the interpretation that parties might make regarding the scope, as well as the rights and obligations contained therein.

12. The Chairman proposed that the Council take note of the notifications and the statements made, and that the agreements notified be referred to the Committee on Regional Trade Agreements for examination.

13. The Council so agreed.

B. ANNUAL REPORT OF THE SUBSIDIARY BODIES TO THE COUNCIL FOR TRADE IN SERVICES

14. The Chairman stated that, in accordance with WTO reporting procedures, the Council for Trade in Services was to consider the annual reports of its subsidiary bodies. He 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/16); the Report of the Committee on Specific Commitments (S/CSC/12); the Report of the Working Party on Domestic Regulation (S/WPDR/9); and the Report of the Working Party on GATS Rules (S/WPGR/16). The four reports were purely factual and self-explanatory. He 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.

15. The Council so decided.

C. ANNUAL REPORT OF THE COUNCIL FOR TRADE IN SERVICES TO THE GENERAL COUNCIL

16. The Chairman 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. He drew the Council's attention to the draft 2006 Annual Report of the Council for Trade in Services, contained in document S/C/W/276. This Report was factual and self-explanatory, and the annual reports of the subsidiary bodies would be annexed for submission to the General Council. He proposed that the Council for Trade in Services adopt the draft Annual Report to the General Council, as contained in document S/C/W/276.

17. The representative of China asked whether paragraph 2 of document S/C/W/276 should refer to the fifth transitional review of the implementation by China of its WTO commitments, rather than the fourth. The Chairman explained that document S/C/W/276 was referring to the transitional review conducted last year and that this year's transitional review would be reflected in the 2007 report.

18. The Chairman proposed again that the Council for Trade in Services adopt the draft Annual Report to the General Council, as contained in document S/C/W/276.

19. The Council so decided.

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

20. The Chairman 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. He 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 27 November 2006, and that a report had been submitted by the Chair of this Committee, contained in document S/FIN/17. He 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.

21. The Council so decided.

22. The Chairman drew the Council's attention to a Communication by China, contained in document S/C/W/278 providing information required by Annex 1A of China's Accession Protocol.

23. Turning to the Review by the Council, he said that the Council would follow the same procedure as the one used in the previous Reviews. He would first invite China to respond to the comments and questions contained in the communications from the United States (S/C/W/271), Japan (S/C/W/272), the European Communities (S/C/W/274), Chinese Taipei (S/C/W/275) and Australia (S/C/W/277). Members would then make comments and pose additional questions, and China would have the opportunity to respond.

24. The representative of China said that his delegation had submitted a new communication as required by Annex 1A, which provided detailed information on new laws and regulations, as well as new licenses granted to foreign service providers in China since the last Review. This document had been circulated to Members before the meeting. He urged Members to present their questions

sufficiently ahead of the meeting and not to repeatedly raise questions irrelevant to the transitional review process. Moreover, China should not be asked to liberalize further beyond its existing WTO commitments. He stressed that China had consistently adopted a positive attitude towards the transitional Review and had always attached great importance to the opportunity to exchange views with Members regarding the implementation of the rights and obligations contained in China's Accession Protocol. He said that a number of ministries and agencies had been involved in the transitional review process. For this meeting, his delegation included officials from the Ministry of Justice, the Ministry of Construction, the General Administration of Press and Publications, as well as the Ministry of Commerce.

25. He first addressed questions on **distribution services**. Regarding foreign participation in the distribution of processed oil and crude oil, he stated that the *Interim Measures on the Administration of Processed oil* and the *Measures on the Administration of Crude Oil* would be promulgated soon, and that China would implement its commitments on time. On the questions relating to the *Measures on the Administration of Foreign Investment in the Commercial Sector*, he said that those Measures contained very clear provisions regarding the licensing procedures and requirements for approval. Operational guidelines had also been enacted and were available at the official website of the Ministry of Commerce. China's services schedule specified that foreign companies were not allowed to have a controlling stake in chain stores with more than thirty outlets engaging in the distribution of books, newspapers, periodicals, pharmaceutical products, pesticides, and processed oil, etc. With respect to the wholesale and retailing of books, newspapers, periodicals and audiovisual products, he claimed that the requirements on registered capital and operational terms did not violate WTO provisions. Foreign service providers were allowed to participate in the distribution of books, newspapers and periodicals through wholly foreign owned distribution enterprises, Chinese-foreign joint equity enterprises and Chinese-foreign cooperative enterprises. Distribution meant wholesale and retail. On electronic publications, noting that this was a new sub-sector for China, he said that China was still in the process of considering how best to regulate it. He pointed out that China had not made commitments to allow foreign service providers to participate in the distribution of films.

26. On the issue of direct selling, he stated that the processing and approval of applications for direct selling licenses followed the procedures stipulated in the *Direct Selling Regulations*, including the 90-working-day requirements. The *Measures on the Administration of Service Centres for direct selling enterprises* had been published in September 2006, and contained provisions governing the setting-up, examination, verification and registration of service centres. In accordance with the Regulations and Measures, a service centre did not have to apply for a business licence unless it also engaged in retail business. The Measures also specified that enterprises applying for setting up service centres in a city had to set up no less than one service centre in each district of the city. The reason why domestic direct selling companies were not required to have minimum three-year experience in the direct selling business was that domestic firms had been prohibited from engaging in direct selling in the past. The requirements on compensation for direct selling persons did not contravene any international practice, and this issue was beyond the scope of this Review.

27. On the issue of commercial franchising, he noted that the *Rules on the Administration of Commercial Franchising* had been submitted to the State Council for review and would be promulgated in due course. Finally, regarding the question of allowing foreign service providers to participate in the distribution of chemical fertilizers, he said that China would regulate the entry in accordance with the existing laws and regulations, and would implement its WTO commitments.

28. On **postal services**, the representative of China addressed the issues relating to postal reform, revision of the postal law, the universal service fund, and their relationship with China's GATS commitments. He said that postal reform was still going on in China. The newly restructured China Postal Administration would be the supervisory and regulatory body for postal services. China's Postal Law was under revision, and would follow the procedures stipulated by the *Law on Legislation*.

The question of whether and how to impose the universal service fund was not relevant to the transitional review process. He pointed out that, when joining the WTO, China did not make commitments in postal services, except express delivery. For express delivery, foreign service providers were not allowed to provide services specifically reserved to Chinese postal authorities by law. China would allow foreign service providers to continue to engage in international express delivery of international letter items in accordance with the Postal Law after foreign service providers went through the authorization procedures.

29. Turning to **telecommunication services**, he first addressed the issues of the interconnection of leased circuits, frame relays and IP-VPN, and the regulatory body in charge of the resolution of interconnection disputes. He noted that Articles 18 to 20 of the *Regulations on Telecommunications*, Article 7 and Articles 23 to 26 of the *Administrative Rules on the Interconnection between Public Telecommunication Networks* were specifically devoted to the interconnection of telecommunication networks. These provisions were able to guarantee the interconnection of basic telecommunication service providers and thus the interconnection of leased circuits, frame relays and IP-VPN. The independent regulatory agency responsible for the resolution of interconnection disputes was the Ministry of Information Industry.

30. Regarding the issue of the minimum capital requirement for nation-wide and inter-provincial operators of basic telecommunication services, he said that such requirement was necessary both to guarantee the normal business operation and to safeguard the interests of users of telecommunication services, as the telecommunications industry was a capital-intensive industry involving economies of scale. He held that each and every WTO Member had its own minimum capital requirement specific to its own circumstances. There was no unified or identical international capital requirement. In responding to the question on the selection of joint venture partners by foreign providers in basic telecommunication services, he said that, unlike value-added telecommunication services, the number of licenses for basic telecommunication services was limited due to the scarcity and availability of such scarce resources as frequencies, numbers and rights of way. In China, there were already six major national basic telecommunication service operators, and most of the frequencies and other scarce resources had already been allocated to these operators. It was in the interest of foreign basic telecommunication service providers to form joint ventures with them. He noted that the question relating to wireless technology (including the 3G wireless technology) was irrelevant to the transitional review process.

31. He confirmed that China's Ministry of Information Industry was an independent regulatory body for the telecommunication sector. It had no role in enterprise management, could function as an independent and impartial regulator, and satisfied the criteria for independent regulator set out in the Reference Paper. He informed Members that the law on telecommunications was still being drafted and that the legislative process would follow the procedures prescribed in China's *Law on Legislation*.

32. With respect to the number of approved applications by foreign telecommunication service providers, he indicated that the communication submitted under Annex 1A had provided information in this regard. Regarding the issue of the scope of business for domestic and foreign telecommunication service providers, he noted that China's service schedule specified the scope of telecommunication services open to foreign participation. For those services not listed in the schedule, foreign participation was not allowed.

33. Turning to questions relating to **media-related services**, he noted that China had made no commitments in the broadcasting and TV sector when joining the WTO. He further noted that the box office proportion reserved to the exhibition of domestic films did not contravene China's commitments. The only commitment China had made in this sector was to allow the importation of twenty motion pictures on an annual basis for release on a revenue-sharing basis.

34. The representative of China then addressed questions on **construction, architectural and engineering services**. On the question of whether foreign construction enterprises were permitted to directly engage in construction contracts, he said that China had made no commitment in this regard when joining the WTO. In responding to questions concerning the *Interim Administrative Measures on Construction Engineering Project Management*, he said that China was formulating the administrative rules governing foreign investment in construction engineering services, which would include provisions on market access in terms of engineering services and engineering project management.

35. Regarding registered capital and qualification requirements for construction enterprises, he stated that these requirements would be maintained as they did not discriminate foreign-invested construction enterprises. He further stated that the issue of recognition of the qualification of Sino-foreign joint venture construction enterprises was not relevant to market access or national treatment commitments and thus not within the scope of the TRM. On the question of why foreign invested enterprises were only permitted to participate in four types of projects, he noted that this was what China had committed on at the time of accession and that China had fulfilled its commitments. He stressed that any requirement for further liberalization was not relevant to the TRM.

36. Addressing the concern that the tax burden on foreign dredging companies leasing vessels to Chinese leasing companies was higher than that on enterprises directly importing vessels from abroad, he explained that different taxes were involved therein: one was import tariff and the other service industry tax. He stressed that foreign enterprises were not discriminated. Noting the allegation that there existed additional market access barriers to foreign construction enterprises in some local areas, he said that local authorities were not allowed to create market access barriers in violation of the *Rules on Administration of Foreign-Invested Construction Enterprises*. His government would verify the information with relevant local governments. In responding to the enquiry on the date for the promulgation of the *Implementing Regulations for the Rules on Administration of Foreign-Invested Engineering and Design Enterprises*, he said that his government was soliciting public comments through the website of the Ministry of Construction and that the implementing regulations would be promulgated in due course.

37. With respect to questions relating to **legal services**, the representative of China explained that the "three-year requirement" for foreign law firms to establish the representative office in China was not a quantitative restriction, but a regulatory measure aimed at the protection of the interest of legal service buyers. The nine-month period for examination and approval was reasonable. The requirement that "before establishing a representative office, a foreign law firm shall provide proof of practical need to provide legal services in the territory of China" was an administrative measure taking into consideration of the fact that the level of economic development in different areas of China varied substantially. So far no application had been rejected for this reason.

38. On the issue of **transparency**, referring to his statement made in the Committee on Trade in Financial Services, he thought that Members knew China's services-related laws and regulations better than those of any other major Member. China would continue its good practice in transparency.

39. Turning to **tourism and travel related services**, he said that China would fulfil its GATS commitments to eliminate restrictions on the establishment of branches of joint venture travel agencies and to allow for the establishment of wholly foreign-owned travel agencies within six years after accession. However, foreign-controlled travel agencies or wholly-foreign-owned travel agencies were not allowed to engage in the business of Chinese citizens' travelling abroad, or the business of Chinese citizens living in other areas travelling to Hong Kong SAR, Macau SAR and Chinese Taipei. Regarding the question on whether there was an economic needs test on the establishment of travel agencies, he explained that the provision "to meet the need of travel market" provided for in Article 11.2 of *Regulations on Administration of Travel Agencies* meant that travel agencies applying for

establishment had to meet the needs of travel market in terms of business scale, business scope, business lines, etc. It was not an economic needs test in the sense of the GATS. This provision was applied equally to domestic and foreign-invested travel agencies. He added that China did not intend to restrict market access through "economic needs test".

40. On the issue of **computer reservations system (CRS) services**, he indicated that China would fulfil its commitment in this respect, whether or not there was a legislation plan.

41. The representative of Australia stated that his delegation had raised only two specific questions on telecommunication services. One was whether Foreign Investment Telecommunications Enterprises (FITE) telecommunication licence applications would be considered by the relevant agencies in China throughout the year, or whether there were prescribed lodgement periods. The other question was whether a FITE could use the existing telecommunications licences held by its Chinese domestic joint venture partner (i.e. to accept that licences were part of an enterprise's asset register), or whether it had to apply for new licences in the same way that a FITE whose Chinese domestic joint venture partner did not have any licences would be required. Not sure whether the Chinese delegation had replied to these two questions in its statement, he wished to seek guidance from China, either during or after the meeting.

42. The representative of the United States reiterated that the TRM continued to be important for both China and other WTO Members. His delegation recognized the progress that had been made by China in implementing its WTO commitments and hoped to see China continue to carry out further liberalization in services and provide a greater degree of market access for foreign services providers. He wished to explain some of the concerns underlying the questions in his delegation's written submission and to ask a few follow-up questions relating to recent events subsequent to the submission. His delegation's key concerns involved distribution services for processed and crude oil; distribution services for books, newspapers and periodicals; sales away from a fixed location; express delivery services; telecommunications; and construction services.

43. With respect to distribution services for processed and crude oil, he noted that Chinese commitment permitted foreign service providers to engage in wholesale distribution and commission agents' services for processed oil and crude oil within five years after accession, i.e. by 11 December 2006. The United States was concerned about draft regulations reportedly imposing limitations on the ability of foreign services providers to operate in China that might be more restrictive than China's existing wholesale regulations dating from 2000. The United States urged China to release these draft regulations for public comments as soon as possible if that had not already been done. The United States asked China to confirm whether the current draft of the regulations would require foreign companies to build a network of gasoline-distribution depots, or whether foreign service providers would be allowed to lease such facilities from Chinese owners. The United States also asked China to clarify whether or not the current draft required new license holders to secure long-term fuel supply contracts with the existing state-run players as well as to have two-year retail experience with at least ten gasoline stations.

44. Regarding distribution services for publications, the United States remained concerned that China continued to maintain a variety of restrictions on the distribution of books, newspapers, periodicals, electronic publications, and audiovisual products despite the market opening commitments that China had made in these areas. Noting that the United States and China had held a series of bilateral meetings on this issue, he hoped that these discussions would lead to a mutually agreed resolution of some of the concerns.

45. With respect to sales away from a fixed location, the United States welcomed the issuance of the *Administrative Procedures on Service Centres* in September 2006 to further clarify China's 2005 *Regulations on Direct Selling*. The United States also supported China's efforts to protect citizens

from fraud while opening markets to direct selling. The United States urged that the Chinese government ensure consistent interpretation and implementation of its direct selling measures across the country to prevent new barriers to Chinese direct selling market from being created by variations at the district or city level with respect to how these service centres should be established. While appreciating the detailed explanation provided by China regarding the requirements on services centres contained in relevant administrative procedures, the United States was of the view that there were sufficient ambiguities that could pose problems. The United States was disappointed that to date only a small number of foreign companies had received licenses since the *Regulations on Direct Selling* had become effective in December 2005. The United States urged China to expedite the review process so that foreign companies could realize the full benefits of China's commitments to open the sector. It was the US understanding that the adherence to the 90-day review process guidance had been decidedly maxed. The United States also renewed its concerns with the parameters that China had set around sales away from a fixed location. In some cases China defined well accepted industry practices such as multi-level marketing and compensation mechanisms as legal activities. It required three-year domestic direct selling experience in order to be granted a license. And it included overly burdensome capital requirements. These limitations were preventing foreign companies from realizing the full benefits from China's commitments to open this sector.

46. With respect to wholesale distribution and commission agents' services for chemical fertilizer, the United States noted that China's market access commitment would come into effect on 11 December 2006. While appreciating the information provided that the commitment would be conducted in accordance with existing regulations, the United States still looked forward to more detailed information as to how this would be carried out in a timely fashion.

47. On express delivery, the United States understood that since it had submitted its TRM questions, the China's State Council had gone beyond the 8th draft of the postal law and probably was working on the 9th draft. Consistent with China's transparency commitments, the United States urged China to release the draft for public comments in a users-friendly way so that relevant stakeholders would have the opportunity to express their views. The United States also asked China to clarify whether the current draft excluded foreign express delivery companies from providing domestic express delivery services. If it did, the United States asked China to explain how this restriction was consistent with the commitments that China had made in its GATS Schedule with regard to courier and express delivery services. Understanding that China had taken additional steps to separate China Post from provincial level postal administration regulators, the United States sought additional information about this, as well as the broader progress in postal reform. The United States also asked whether China had any plans to abolish entrustment certificates, and if so, how the plans would go forward.

48. With respect to telecommunications, the United States reiterated its concerns about the RMB 2 billion capital requirement for foreign-invested telecommunications enterprises. In the US view, the requirement was excessively high, both when viewed in relation to the norms in other economies and in the specific context of China's telecommunications market. The United States had urged China to address this issue and to set a deadline for revising this requirement. Interested in seeing China's draft telecommunications law, the United States wished to know when it would be released for public comments. The United States also asked the following questions: how many applications the Ministry of Information Industry (MII) had received from foreign carriers seeking to provide telecommunications services in the Chinese market? How many of these applications had been approved or denied in the basic services sector? How many of these applications had been approved or denied in the value-added services sector? What criteria were used to evaluate these applications? Worried that China had reportedly licensed numerous new domestic value-added service suppliers, the United States asked whether these suppliers offered services beyond the illustrative list of services that China had set forth in its Schedule. If so, the United States urged China to extend national treatment to foreign suppliers interested in offering similar services, which fell under China's

domestic definition of value-added services. The United States also urged China to set a deadline for updating this domestic definition of value-added services.

49. With respect to construction services, the United States welcomed the release for public comments of the draft implementing rules for Decree 114 (*Rules on the Administration of Foreign-Invested Construction Engineering and Design Enterprises*). The United States recognized a number of positive elements therein, particularly waiving a requirement for foreign engineers and architects to pass Chinese equivalent professional examinations and temporarily lifting both the 25 per cent minimum foreign professional staff employment and annual 6-month foreign staff residency requirements. However, the United States still had a few concerns about the new implementing rules. In the US view, the 25 per cent professional staff employment requirement remained too high even if Chinese staff was included in that percentage. Asking why the 25 per cent minimum foreign professional staff employment and annual 6-month foreign staff residency requirements were temporarily lifted, and what "temporarily lifted" meant, the United States believed that these requirements should be permanently waived. The United States also wished to know how existing construction services companies could change their permitted scope of work to be able to apply for engineering licenses under Decree 114. As foreign companies were permitted to use outside experience in applying for establishing an initial foreign-invested design enterprise in China, the United States was of the view that foreign companies should also be allowed to use relevant experience to apply for a higher class of license rather than waiting for two years under seasoning requirement. This would prevent national treatment issues that unfairly favoured domestic providers. While pleased that the draft implementing rules had been circulated for public comments, the United States was highly disappointed that the draft had been released to the public on 25 October 2006 with a deadline for public comments on 30 October 2006. In order for prior public comments to be an effective and useful exercise, it was critical that there be adequate opportunity for relevant stakeholders to present their views. The United States urged that, as China considered how to improve transparency practices on a governmental wide basis, it was important to have a standard period of sufficient duration for adequate response from private sector stakeholders. Understanding that China might consider issuing to Chinese companies a super-qualification construction services certificate, the United States looked forward to more information in this regard and wished to know whether foreign companies would also be able to apply for such comprehensive certificate. The United States urged China to clarify the mechanism to allow licensed project managers to transfer their registration of engineers from one China-based firm to another. In addition, the United States hoped that China would consider its repeated suggestion to lower capital requirements for construction licenses and to allow the use of performance bonds in lieu of registered capital as was frequently practiced in other Members.

50. The representative of the European Communities said that his delegation attached great importance to the TRM. On postal and express delivery services, he asked when the further draft of the postal law would be available for public comments and whether express delivery of addressed letters would be included in the reserved area. After having listened to China's explanation on its needs requirements in legal services as well as in tourism, his delegation was convinced that such requirements constituted Economic Needs Tests (ENTs) as defined in Article XVI of the GATS. In his delegation's view, China's clarification that these needs requirements were equally applied to domestic companies was irrelevant in this regard. Remaining concerned about these ENTs, his delegation wished to know when China would remove them in compliance with its GATS commitments. On telecommunications, he sought confirmation from China that there was no obligation for foreign companies to venture with a main Chinese partner.

51. The representative of Chinese Taipei thanked China for having provided detailed responses to questions raised by her delegation in telecommunications as well as in tourism and travel-related services. She also thanked China for providing an updated list of laws and regulations. She reiterated

that liberalization of trade in services would not only enhance the efficiency of relevant services sectors, but also contribute to China's overall economic growth.

52. The representative of Canada said that his delegation took this occasion to both congratulate and encourage China on its efforts at implementing its commitments and opening further its markets pursuant to its accession to the WTO. Given the size of China's economy and its impact on trade, it was no surprise that China's compliance with its WTO obligations and the fulfilment of its market access commitments required close attention. The annual transitional Review undertaken in the Council for Trade in Services since 2002 had facilitated the assessment of China's compliance with the terms of its accession. Moreover, this Review had provided a forum for an open and constructive exchange between China and WTO Members regarding specific regulations, measures, or practices and their impact on China's services market access commitments. For this year's Review, it was evident from the submissions made by other WTO Members that certain measures and regulations in specific sectors still caused concerns because they were viewed as inconsistent with China's specific GATS commitments. Canada thanked the other delegations for their submissions and wished to note that concerns raised in respect of sales away from a fixed location were shared by Canadian direct sellers as well. Although Canada did not make a submission for this Review, it wished to focus on the issue of regulatory transparency. In general terms, the feedback his government had received from Canadian companies operating in China suggested that it was still difficult to get a sense of proper procedures to receive administrative approvals or licenses. Canadian companies noted that the decision process was often complex, open to interpretation, and not always under a truly independent regulator. This had resulted in situations where local and foreign companies appeared to receive different treatment. In this regard, for all service suppliers and investors to compete effectively in the global market, access to and availability of clear and up-to-date information was crucial. Therefore, Canada thanked China for its communication on information required by Annex 1A. In particular, Canada remained unclear on the specific criteria applied by China in order to sign an *Approved Destination Status Memorandum of Understanding* with a WTO Members. Furthermore, regarding the tourist quota system referred to in *Measures for Administration of Outbound Tour*, Canada understood that this had been phased out with the relevant laws and regulations to be updated. Canada sought information on the status of the affected laws and regulations. Finally, noting that China was in the process of developing its standards for the engineering profession, Canada asked that these standards be reasonable, fair and transparent in order to ensure access by foreign professional engineers. Canada thanked China for its participation in this Review and looked forward to continued improvements in transparency which remained key to services trade liberalization.

53. The representative of the United States stated that his delegation appreciated the directive issued by China's State Council in March 2006, which required that all trade-related laws and regulations be published in the MOFCOM Gazette by all ministries and all levels of government. This was extremely important in the area of services with a large number of licenses and other administrative procedures required in order to participate in the Chinese market. The United States urged that great efforts be made to ensure full compliance with this State Council directive. The United States would appreciate it if China could provide information about the degree to which other ministries besides MOFCOM and local level officials were providing relevant laws and regulations that affected the ability of foreign firms to take advantage of China's market access commitments.

54. The representative of China said that his delegation took note of the comments made by other Members. He himself also wished to make a few comments. China realized that liberalization of services sectors was conducive to economic development. On the issue of transparency, it was difficult for any Member to make all its measures fully understood by other Members. Some issues raised by other Members went beyond China's WTO commitments and some of them were even subject to debate in the services negotiations. For example, there were no clear definitions of trade in services and commercial presence under the GATS. While the GATS did not recognize the right of establishment, a lot of foreign services providers had already set up business in China. China had its

own concerns about entering other Members' markets, such as the visa problem Chinese businessmen were facing. In fact, China and other developing Members were facing serious barriers in those areas where they had advantage, such as the movement of natural persons. While foreign services providers were allowed to set up business in China in capital- and technology-intensive sectors, Chinese companies could not set up construction enterprises in major developed markets to compete with local companies. He stressed that the TRM could not solve all the issues. Some issues had been repeatedly raised, though they had been answered. While recognizing Members' need to express their concerns, he said that China should be praised for its great achievements since its accession to the WTO. He noted that in just five years, China's services industry had already been very open. China was undergoing profound reforms, including reforms in the field of trade policy, and was facing a huge task of opening its services sectors. Although China needed more time to better understand the provisions of the GATS, it had made liberalization ahead of some advanced Members. He reiterated that China should be praised for this. With respect to those follow-up questions raised by Members, he said that there was no time or expertise to respond to new questions. As to demand for clarification on some issues, he suggested an informal meeting with those interested Members after this meeting.

55. The representative of the European Communities said that his delegation still had concerns about the implementation by China of its services commitments and that a number of questions raised by his delegation had not been answered.

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

57. The Council so decided.

58. Regarding the report to the General Council, the Chairman suggested that the Secretariat prepare a factual report stating that: (i) at its meeting held on 30 November 2006, the Council for Trade in Services conducted the fifth transitional Review of the implementation by China of the WTO Agreement and of the related provisions of the Protocol, pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China; (ii) written communications had been received from five WTO Members, namely the United States, Japan, the European Communities, Chinese Taipei and Australia; (iii) the details of the discussion could be found in the meeting report contained in document S/C/M/85.

59. The Council so decided.

E. OTHER BUSINESS

60. The Chairman recalled that the Council had held its first dedicated meeting in the context of the second Air Transport Review on 12 September 2006 (the report of that meeting is contained in document S/C/M/84). At the end of that meeting, it had been agreed that the next dedicated meeting would take place mid-December. In the course of October, several delegations had requested postponing the second dedicated meeting. After consulting with several delegations and in view of the fact that no objection had been raised, the Chairman had informed all delegations, with a fax dated 30 October 2006, that the second dedicated meeting would be postponed and that a new date would be proposed. In the meantime, the Secretariat had issued the second part of the documentation dealing with developments in the air transport sector (document S/C/W/270/Add.1). He then proposed that the second dedicated meeting take place during the week of 5 February 2007.

61. The Council so agreed.

62. The representative of Japan noted that Japan and a number of other Members had recently concluded the Article XXI negotiations with the European Communities. The draft schedule reflecting the result of the negotiations was going through the certification procedure. In accordance with paragraph 20 of document S/L/80, the modifying Member – in this case, the European Communities – was required to clearly indicate the details of the modifications in the draft schedule. If in the draft schedule there were modifications which were not clearly indicated and constituted rollbacks of commitments, Japan would not consider those modifications as having satisfied those conditions required for certification. Accordingly, Japan would not regard those parts of the draft schedule as certified.

63. The representative of Hong Kong, China noted that her delegation had concluded the Article XXI negotiations with the European Communities. While the certification process was still ongoing, her delegation thanked the European Communities for their tremendous efforts. She noted that the experience drawn from these negotiations was particularly important because of their systemic implications and precedent-setting effect. In this spirit, she stressed that the agreement between the European Communities and Hong Kong, China had been reached on the basis of a number of understandings. Notably, the compensatory adjustments were not intended to lessen the existing commitments of the European Communities and its individual Member States. The procedures initiated by this exercise under relevant communications involved exclusively modifications and withdrawal of specific commitments and did not include the lists of MFN exemptions of the European Communities and its individual Member States, which remained unchanged. She stressed that the communication from her delegation, contained in document S/L/219, had expressed her delegation's understanding of Members' interest to enter into negotiations under Article XXI. She believed that, in the light of the experience from this particular exercise, Members could enhance and further strengthen the Article XXI procedures. Her delegation looked forward to this opportunity.

64. Echoing the statement made by Japan, the representative of Switzerland added that modifications that were not made in accordance with Article XXI could not take effect by means of certification. He pointed out that, in accordance with Article XXI:2(a), any modification or withdrawal was to be notified. It was understood that obligations under Article XXI as well as those under the GATS in general remained in force, regardless of the existence or absence of declarations and regardless of the certification procedures.

65. Thanking the European Communities for their efforts in the Article XXI negotiations, the representative of Chinese Taipei said that the experience Members had gained from these negotiations was very important for the future. She indicated that there were some discrepancies in Article XXI procedures, as contained in S/L/80. Echoing the statement by Switzerland, she stressed that any modification or withdrawal of specific commitments had to go through the Article XXI procedures. It was on this understanding that her delegation had reached agreement with the European Communities and believed that the compensatory adjustments contained in the draft schedule could maintain a general level of mutually advantageous commitments, no less favourable to trade than that provided for in the previous schedule. Echoing the statement by Hong Kong, China, her delegation was also concerned about some MFN exemptions contained in the draft schedule and hoped that this issue could be solved multilaterally in the future.

66. The representative of Korea supported the statement by Hong Kong, China that the Article XXI negotiations were limited to specific commitments and that the European Communities' lists of MFN exemptions remained unchanged. His delegation expected appropriate action to be taken by the European Communities in this regard.

67. The representative of the European Communities stated that for her delegation, the Article XXI procedures were clear. It was stipulated that Members had 45 days to review her

delegation's consolidated schedule. Her delegation would consider the certification procedure as concluded at the end of this 45-day period. In practice, noting that the French and Spanish versions of the consolidated schedule had been circulated three weeks after the circulation of the English version, her delegation took the later date of circulation as the beginning of the 45-day period. As a result, Members had been given three additional weeks to review the consolidated schedule. She reiterated that her delegation had applied the existing procedures and would continue to do so as long as they were not changed.

68. The representative of Brazil said that his country was holding the presidency of the Mercosur at present. Brazil would submit to the Secretariat the notification of the Montevideo Protocol which concluded the negotiations on liberalization of trade in services within the Mercosur. It was a further step to strengthen this trade block. The notification would be formally made to the Council for Trade in Services on the understanding that it would be forwarded to the Committee on Regional Trade Agreement. For transparency purposes, he informed Members that the Montevideo Protocol would also be notified to the Committee on Trade and Development.

69. Referring to the Chairman's proposal that the second dedicated meeting of the second air transport review take place during the week of 5 February 2007, the representative of the United States said that she needed to confirm with her capital whether or not the experts of her country could come to Geneva during that week.

70. The Chairman said that he hoped the proposed date for the meeting of the air transport review would still be acceptable to all Members. He suggested that the Council adjourn the meeting.

71. The Council so agreed.
