# WORLD TRADE ORGANIZATION

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**Council for Trade in Services**

## REPORT OF THE MEETING HELD ON 16 NOVEMBER 2007

Note by the Secretariat[1]

1. On 16 November 2007, the Council for Trade in Services held a meeting under the chairmanship of Ambassador C. Trevor Clarke (Barbados). The agenda was contained in document WTO/AIR/3112.

2. The Chairperson indicated that he intended to make a brief statement regarding the Air Transport Review.

3. The agenda was adopted, as modified.

## I. NOTIFICATIONS PURSUANT TO ARTICLES III:3 AND V:7 OF THE GATS

4. The Chairperson drew attention to notifications made pursuant to GATS Article III:3 (Transparency) and submitted by The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (S/C/N/399 and S/C/N/400), Albania (S/C/N/401 to S/C/N/411 and S/C/N/413 to S/C/N/418), and Switzerland (S/C/N/412).

5. The Council took note of these notifications.

6. The Chairperson thanked those Members who had notified, and commended in particular Albania. He reminded Members that, according to Article III:3 of the GATS, "each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, law, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments" under the GATS. He noted that the number of Members submitting notifications under GATS Article III:3 had been disappointingly low. Moreover, it had a tendency to diminish over the years. Since the entry into force of the GATS, in 1995, 38 Members had submitted one or several notifications, while only ten Members had done so over the last three years. He encouraged Members to comply with their notification obligations as transparency was one of the pillars of the system. Turning to the notifications made pursuant to GATS Article V:7 (Economic Integration), he drew attention to communications from: the European Communities and its Members States (S/C/N/397); Chile and Japan (S/C/N/398); Japan and Singapore (S/C/N/206/Add.1); and Japan and Thailand (S/C/N/419).

7. The representative of Japan said that the Agreement between Japan and the Republic of Chile for a Strategic Economic Partnership (Japan-Chile Economic Partnership Agreement (EPA)) had entered into force on 3 September 2007. The EPA with Chile was the fourth such agreement for Japan following those with Singapore, Mexico and Malaysia. The agreement covered a substantial range of trade in goods and services. The latter was treated under the chapter on cross-border trade,

[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.

while mode 3 was covered by the chapter on investments. The provisions on national treatment, most-favoured-nation treatment and local presence contained in the chapter on cross-border trade should not apply to any existing non-conforming measure listed in the Annex containing the reservations for existing measures and to any measure that a Party adopted or maintained with respect to sectors, sub-sectors or activities listed in the Annex containing reservations for future measures. Financial services were treated in a separate chapter. The agreement also included provisions on intellectual property, competition and improvement of business environment. The negotiations on the EPA had been conducted with strong support from the Japanese industrial sector that wished to see improvements in the business environment with Chile. Japan believed that the implementation of the agreement would greatly contribute to enhancing economic relations between the two countries. The Protocol Amending the Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership (Japan-Singapore Economic Partnership Agreement (EPA) Amending Protocol) had entered into force on 2 September 2007. The EPA with Singapore was the first such agreement for Japan. The negotiations on the protocol had been conducted with strong support from both parties' private sector that wished to see further improvements in their business environment. Japan believed that the implementation of the Protocol would further contribute to enhancing economic relations between the two countries. The Agreement between the Government of Japan and the Government of Thailand for an Economic Partnership (Japan-Thailand Economic Partnership Agreement (EPA)) had entered into force on 1 November 2007. The EPA with Thailand was the fifth such agreement for Japan following those with Singapore, Mexico, Malaysia and Chile. The agreement covered a substantial range of trade in goods and services. The latter was treated under the chapter on trade in services, including financial services, while mode 3 was also covered under the chapter on investments. Specific commitments were scheduled in a positive list annexed to the chapter on trade in services. The agreement also included provisions on intellectual property, competition and cooperation. The negotiations on the agreement had been conducted with strong support from the Japanese industrial sector that wished to see improvements in the business environment of Thailand. Japan believed that the implementation of the agreement would greatly contribute to enhancing economic relations between the two countries. The text of the three agreements and protocol and the related documents were available on the websites of the Ministry of Foreign Affairs of Japan. Japan was ready to answer any question concerning these instruments at the coming meeting of the Committee on Regional Trade Agreement.

8. The representative of Chile thanked the delegation of Japan for presenting the agreement signed between their two countries. The EPA was very important for Chile as it was a step forward in Chile's policy to deepen political and commercial links with the Asia-Pacific region. The EPA with Japan followed suit with other agreements signed with Korea, Singapore, New Zealand and, more recently, with China. The EPA with Japan would contribute to transparent and predictable access to the respective markets of the two countries and would be of great value for the private sector.

9. The representative of Singapore said that the Protocol with Japan complemented the far-reaching economic partnership agreement between the two countries. His delegation associated itself with the comments made by Japan. The EPA and the protocol would further deepen bilateral economic relations and benefit business and consumers at large.

10. The representative of Thailand associated his delegation with the statement made by Japan. Thailand was convinced that the Japan-Thailand EPA would further broaden and deepen the longstanding close ties and cooperation between the two countries. The EPA's coverage was comprehensive. Major elements included elimination and reduction of tariffs on industrial goods, agricultural, forestry and fishery products, trade facilitation through simplification and harmonization of customs procedures, a framework for liberalization of trade in services, a framework for the liberalization of investments in non-service sectors, as well as, investment protection, intellectual property, government procurement, competition, mutual recognition and movement of natural persons. With regard to services, the agreement deepened market access in various sectors and sub-sectors,

such as wholesale trade and retailing services relating to the distribution and installation of products manufactured in Thailand or by its group companies in Thailand under the same brand, or automobiles manufactured in Japan by its group companies under the same brand; logistics consulting services; construction services; spa services; a range of professional and business services; and health services. The chapter on trade in services included a general review clause for all service sectors, which should begin within five years after the entry into force of the agreement. Implementation of the agreement, including subsequent rounds of negotiations, would be geared towards forging closer economic relations, enhancing the investment climate and creating greater business opportunities for the two countries with positive spill-over on global services markets in general. The parties had notified the agreement to the Committee on Regional Trade Agreements on 25 October this year, under both Articles XXIV:7 of GATT 1994 V:7(a) of GATS. The agreement would be considered at the next appropriate CRTA meeting.

11. The representative of the European Communities said that the European Communities and its Members States had notified the accession of Bulgaria and Romania to the European Communities pursuant to GATS Article V:7. The EC Treaty liberalised, *inter alia*, trade in services between the parties, as stipulated in GATS Article V:1. This notification complemented that made under the GATT.

12. The Council took note of the notifications and the statements made, and referred the agreements notified to the Committee on Regional Trade Agreements for examination.

## II. NOTIFICATION FORMAT FOR REGIONAL TRADE AGREEMENTS

13. The Chairperson recalled that, on 13 October 2006, the Committee on Regional Trade Agreements (CRTA) had agreed to recommend the introduction of a common and simplified format for the notification of regional trade agreements (RTAs), including those under Article V of the GATS (WT/REG/16). In forwarding its recommendation, the CRTA had indicated that the proposed format would facilitate the task of the parties to comply with the requirement to notify an RTA while making available to other WTO Members the necessary basic elements in a systematic and coherent way. Moreover, on 14 December 2006, the General Council had adopted a Decision establishing, on a provisional basis, a Transparency Mechanism for RTAs (WT/L/671). He understood that the proposed new format for RTA notifications was in line with the overall approach to RTAs that Members had agreed to adopt in that Decision. This notification format had already been adopted some months ago by both the Council for Trade in Goods and the Committee on Trade and Development. He recalled that, upon request by some delegations at the March meeting, the Secretariat had prepared a draft decision for the purpose of adopting the proposed new format and formally modifying S/L/5 as far as notifications made pursuant to GATS Article V:7 were concerned. This draft decision had been circulated in document S/C/W/282 and considered by the Council at its June meeting. It had then decided to revert to this issue.

14. The representative of the United States recalled that, at the last meeting of the CTS, her delegation had proposed a change in the last paragraph, third line, of the draft decision. The proposal was that the word "will" should be changed to "may".

15. The Chairperson proposed that the draft decision on the notification format for regional trade agreements, as contained in document S/C/W/282, be adopted, with the amendment proposed by the United States.

16. The Council so agreed.

## III. ANNUAL REPORTS OF THE SUBSIDIARY BODIES TO THE COUNCIL FOR TRADE IN SERVICES

17. The Chairperson said that, in accordance with WTO reporting procedures, the Council for Trade in Services was to consider the annual reports of its subsidiary bodies. Accordingly, he drew attention to the following reports which had been adopted by the respective bodies: (i) Annual Report of the Committee on Trade in Financial Services (S/FIN/18); (ii) Annual Report of the Committee on Specific Commitments (S/CSC/13); (iii) Annual Report of the Working Party on Domestic Regulation (S/WPDR/10); and (iv) Annual Report of the Working Party on GATS Rules (S/WPGR/17). These reports were factual and self-explanatory. He suggested that the Council take note of the four reports on the understanding that they would be annexed to the annual report of this Council and form an integral part of it.

18. The Council so agreed.

19. The representative of the Philippines said his delegation, speaking on behalf of Brunei Darussalam, Cambodia, Indonesia, Malaysian, Myanmar, the Philippines, Thailand, and Viet Nam, wanted to make a couple of brief points for the record. He welcomed the report of the Working Party on GATS Rules to the Council for Trade in Services and wished to put on record his appreciation for the excellent leadership exercised by the Chair of the Working Party over the last year. He also wished to commend the work of her immediate predecessor who had chaired his last WPGR meeting on 19 April 2007. Secondly, Philippines recognized that the Chair of the Special Session was responsible for facilitating the process of negotiating a so-called breakthrough text in services. However, as the Working Party was a subsidiary body of this Council, Philippines wished to briefly record here its fundamental interest in the ESM negotiations and its basic position that GATS rules, together with domestic regulation, were vital components of the services negotiations in addition to market access. Philippines believed, therefore, that the report adopted today and the minutes referred to in the footnotes provided a solid and factual background for engaging constructively and positively with other Members, in the appropriate negotiating forum, in order to craft a text on GATS rules that recognized the importance of the rules negotiations, captured progress in the implementation of Ministerial instructions from Hong Kong, and would be the basis for Members' work forward.

20. The Council took note of this statement.

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

21. The Chairperson said that, in accordance with WTO reporting procedures, the Council for Trade in Services should report each year to the General Council on the activities in the Council, as well as in the subsidiary bodies. The draft Annual Report of the Council for Trade in Services on its activities in 2007 was contained in document S/C/W/288. The Report was factual and self-explanatory. As already indicated, the annual reports of the subsidiary bodies would be annexed to this Report for submission to the General Council.

22. The Council adopted the 2007 Annual Report to the General Council, as contained in document S/C/W/288.

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

23. The Chairperson recalled that, Section 18 of the Accession Protocol of the People's Republic of China provided for an annual review of the implementation by China of the WTO Agreement and of the related provisions of China's Accession Protocol. As indicated in Section 18, the Committee on

Trade in Financial Services (CTFS) and the Council for Trade in Services were two of the bodies in which this Review was to be conducted. When it concluded its review, the CTFS 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. The Committee on Trade in Financial Services had conducted and concluded the transitional review under Section 18 of China's Accession Protocol on Monday 12 November 2007. A report had been submitted by this Committee (S/FIN/19). The Chairperson proposed that the Council take note of the report by the Committee on Trade in Financial Services on the understanding that it would form part of this Council's report to the General Council.

24. The Council so agreed.

25. The Chairperson said that the Council would conduct the sixth transitional review of China's specific commitments and drew Members' attention to the communication from China in document S/C/W/290 which provided information required by Annex 1A of China's Accession Protocol. He proposed that the Council follow the same procedure as in previous reviews. First, China would be invited to respond to the comments and questions which were contained in the communications from The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (S/C/W/285), the European Communities (S/C/W/286), Japan (S/C/W/287) and the United States (S/C/W/289). After China's statement, the floor would be open for delegations to make comments. Then, China would be invited to respond.

26. The representative of China said that, before responding to questions, her delegation wanted to inform Members of the regulations that China had adopted since the last Review to implement its commitments in sectors other than financial services. Her delegation would also give Members some concrete ideas of how open China's services market was with the implementation of its commitments. The Chinese government had adopted rules and regulations covering sectors such as construction engineering, onshore oil exploration, and distribution. They were the *Provisions concerning Foreign-invested Construction Engineering Enterprises, Detailed Rules for Implementing Provisions concerning Foreign-funded Construction Engineering Design Enterprises, Amendment to the Regulations Governing Sino-foreign Cooperation in Exploitation of Continental Petroleum Resources, Regulations governing Commercial Franchises, Measures for Regulating the Processed Oil market, Measures for regulating the crude oil Market, Supplementary Provisions II on Measures for regulating Foreign Investment in Commercial Fields*. The adoption of these rules and regulations further improved the regulatory framework under which services suppliers operated in China. As a result of China's efforts to fulfil its commitments, China's trading partners had witnessed the speedy increase of their services exports to China. In 2006, the total value of China's services imports reached a record level of 100.33 billion USD. Consequently, China's services deficit had also reached a record high of 8.91 billion USD. Foreign direct investment continued to increase fast in China's services sectors. In the first nine months of 2007, a total of 11,627 new foreign-invested services projects had been approved, up by 5.48% compared with the same period of last year. The actualized FDI stood at 19.94 billion USD respectively. For example, in express services, foreign express companies were allowed to set up wholly foreign-owned enterprises in China. Multinational firms, DHL, TNT, FedEx and UPS had taken a dominating share of 80% of the international segment of the market, which was the most profitable business in express services. In construction, design and engineering services, by the end of September 2007, investors from 30 countries and regions had set up 1,633 construction design and engineering joint ventures in China. During the same period, 254 representative offices of foreign law firms, 6,200 Sino-foreign partnership accounting firms and 66 Sino-foreign joint-ventures or contractual medical facilities had been granted approval to operate in China. Efforts made by China so far in implementing its commitments and expanding liberalization in these sectors had been already widely acknowledged and highly commended by a majority of foreign investors and WTO Members. Foreign services suppliers were becoming more and more confident doing business in China. These impressive figures also demonstrated China's faithful implementation of its GATS commitments. Her delegation hoped that the Members who

most benefited from China's market opening would follow suit in providing effective market access to Chinese services providers, by applying reasonable regulatory requirements and streamlining approval procedures.

27. The representative of China then turned to the question submitted prior to the meeting. Starting with legal services and the comment that China maintained certain measures incompatible with its GATS commitments, she noted that the two major domestic laws regulating the foreign law firms and foreign lawyers in China, i.e. *Regulations On Administration Of Foreign Law Firms' Representative Offices In China* (hereinafter referred to as the *Regulations*) and *Implementation Rules On Regulations On Administration Of Foreign Law Firms' Representative Offices In China* (hereinafter referred to as the *Implementation Rules*) were both fully consistent with China's GATS commitments. With regard to an "actual need to establish a representative office in China to conduct legal service business", which was alleged to constitute a *de facto* economic needs test, China wished to clarify that, as a developing country, it was confronted with imbalances in economic and legal services development within its territory. Therefore, in view of China's immature evolution of legal services, the Chinese government needed to maintain an "actual need" requirement, determined by the local economic and legal services level of development. Besides, the regulatory authority intended to foster and keep a sound market order in legal services by fulfilling their responsibility in this regard. As a matter of fact, none of the applications by foreign legal firms for establishing a representative office in China had been rejected due to such a requirement since China's accession to the WTO. Regarding the request to provide a positive list of activities which could be undertaken on the provision of information on the impact of the Chinese legal environment, she said that Article 15.5 of the *Regulations* allowed the representative offices of foreign law firms and their representatives to provide information on the impact of Chinese legal environment. China's interpretation of this provision was that foreign representative offices could offer introductory services on China's legal regime including its laws, regulations and rules. Besides, article 33 of the *Implementation Rules* provided that foreign representative offices should not give specific opinions or make judgments on the application of Chinese laws, regulations and rules when providing such legal information services. Article 32 of the *Implementation Rules* defined specifically what "Chinese legal affairs" were. All these stipulations were in compliance with China's commitments. Foreign representative offices could engage in legal information services, with the exclusion of those defined as "Chinese legal affairs". Concerning the three-year waiting period required before a foreign law firm could open each additional office in China, China's explanation was three-fold. First, GATS specific commitments on the elimination of quantitative restrictions by no means deprived regulatory agencies of their right to regulate: the three-year requirement was a regulatory behaviour, and not a quantitative restriction. Second, representative offices were allowed to engage in commercial operations in China. Article 20 of the *Regulations* and Article 34 of the *Implementation Rules* had granted these representative offices the right to charge and apply for tax invoices. Therefore, the legal status of these representative offices were not non-profit-making institutions that only handled general liaison issues, and the Chinese authorities needed to set up criteria to evaluate the operational ability of a foreign law firm that intended to open several representative offices in China. Third, operational experiences of foreign representative offices in China over the past decade showed that it generally took an average of three years for a representative office from getting the license, then starting the operation until operating normally. Therefore, the three-year requirement was reasonable and necessary for protecting the legitimate interests of the public. The time period of nine months for establishing a foreign legal representative office in China, was meant to take into consideration all the procedures needed during the process of examination and approval, upon receiving the relevant application materials including, examining the completeness and authenticity of the materials, then confirming the qualification, or notifying the applicant of supplementary materials and verifying the required notarization and certifications, etc. In the practice of the past two years, relevant authorities in charge of the examination and approval had accelerated the process, which could be completed within nine months provided that the application materials submitted were in line with relevant regulations.

28. With respect to postal and courier services, including express delivery services, the representative of China noted that several questions related to the amendment of the *Postal Law*. Since the law was still in the process of being drafted, her delegation could not predict the final results and was unable to provide detailed information. However, China would ensure that amendments would be made fully in line with China's commitments The Chinese authorities had solicited opinions from domestic and foreign enterprises on various occasions. Regarding delivery of mails, China's commitments indicated that the courier markets would be open, "except for those currently specifically reserved to Chinese postal authorities by law". The existing *Postal Law* stipulated that "Posting and delivery services of mail and other articles with characteristics of mail shall be exclusively operated by postal enterprises". The 2007 postal industry standards for express services were China's first non-mandatory standards for express services and applied equally to both domestic and foreign enterprises. In drafting these standards, the Chinese authorities had solicited opinions from different types of courier enterprises (including foreign-invested enterprises), and consumers, and had publicized the whole draft on the website. More than 600 organizations, including government authorities, courier enterprises, academic institutions, consumers' associations had put forward many constructive suggestions and reasonable ones had been included into the draft. The core of China's postal system reform was to separate operational and regulatory functions. As prescribed by the State Council, the new State Post Bureau would be responsible for the "supervision of the quality of postal services, implementation of the market access system in postal services including courier services". Moreover, as a wholly state-owned enterprise, the newly established China Post should conduct the operational function of the former State Post Bureau, undertake the universal service obligation, and operate in a market-oriented manner in a competitive business environment.

29. Turning to telecommunication services, she said that, since the operation of basic telecommunications services was restricted by the scarcity of resources (frequency, number and right-of-way), the number of licenses was limited. On frequency, the Chairman's Note on Market Access Limitations on Spectrum Availability (S/GBT/W/3) indicated that "[i]n light of the physical nature of the frequency and the constraints inherent in its use, … under the GATS each Member has the right to exercise spectrum/frequency management, which may affect the number of service suppliers". There was a strong natural monopoly situation in fixed telecommunications, which relied on the scarce resources of number and right-of-way. Market access and competition were limited by the objective factors of technology and resources. Minimum capital requirements applied equally to domestic and foreign telecommunications enterprises, and, thus, complied with the national treatment obligation. The telecommunications sector was capital-intensive and each WTO Member had its own minimum capital requirement in line with its actual situation. There was no unified requirement in this regard. Regarding the approval of foreign-invested telecommunications enterprises, China strictly followed its GATS commitments and its laws and regulations, such as the *Regulation on the Administration of Foreign Invested Telecommunications Enterprises*, the *Regulations on Telecommunications*, and *the Administrative Rules on Telecommunications Service Operation Licenses*, when examining and approving foreign telecommunications enterprises. On national treatment for foreign services suppliers wishing to provide the same value-added services as domestic suppliers, she said that China's schedule clearly indicated telecommunications services for opening up. As regards services not included in the schedule, foreign investments and operations were currently not allowed. China strictly respected the commitments undertaken upon WTO accession and the relevant WTO rules in opening up its telecommunications market. On the independence of the regulatory authority responsible for telecommunications, she recalled that the Reference Paper prescribed the "independent regulators" as "the regulatory body [that] is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions and the procedures adopted by regulators shall be impartial to all market participants". In 1998, China had established the Ministry of Industry Information (MII), which separated the operational and the regulatory functions. The MII had completely relinquished its operational function and transferred the regulatory function of personnel, finance and property to enterprises or relevant agencies, so as to realize equitable, open and fair

regulation of the telecommunications industry. The MII completely complied with the requirement of an "independent regulator" in the Reference Paper. For detailed information on the responsibilities of MII, Members could refer to the website of MII at www.mii.gov.cn. The agreement between China Telecom and China Netcom reflected voluntary behaviour between enterprises. Bearing in mind the principle of maintaining the order of the telecommunications market and safeguarding the rights and interests of users, her authorities would continue to follow the progress of the agreement. At the same time, MII required that telecommunications regulators at all levels should strengthen their supervision and instruction of competition, step up regulation of illegal competitive behaviour, such as dumping, operating beyond the business scope and damaging network interconnection, and expose typical cases of infringement to consumer interests.

30. With respect to construction, architectural and engineering services, she said that China had fully implemented its specific commitments with regard to the four categories of projects open to foreign companies. In order to ensure the fairness of the qualification review, administrative authorities in charge of construction at various levels strictly abided by legal procedures and standards. According to the *Circular on the Issues of Qualification Administration of Foreign Construction Enterprises* issued by the Ministry of Construction, the Chinese authorities would give consideration to the performance in construction projects of a foreign investor gained abroad when examining the qualifications of a foreign investor in its application for establishing new enterprises in China. With regard to foreign contractors setting up joint-ventures with Chinese partners, the *Construction Law* stipulated that enterprises engaging in constructing activities should meet registered capital and qualification requirements by the state. Therefore, domestic or foreign enterprises had to comply with Chinese laws and engage in construction services within the permitted business scope after being approved and getting the qualification certification. Concerning large-scale construction projects jointly contracted by more than two contracting entities, Article 27 of the *Construction Law* stipulated that "in the case of a joint contract by more than two units with different quality grades, the project shall be contracted in accordance with the business scope granted to the entity with lower quality grade". Therefore, enterprises taking the form of joint-venture should follow this provision in contracting projects. The *Circular of the Ministry of Construction on Distributing the Measures of the Ministry of Construction for the Implementation of the Relevant Qualification Administration Provided in the Provisions on the Administration of Foreign Funded Construction Enterprises* stipulated that, in case a foreign enterprise purchased a domestic enterprise, the newly formed enterprise should be regarded as a foreign-funded construction enterprise and its qualification should be reviewed and re-evaluated. As already indicated, since China had fully implemented its WTO commitments in the new system, it did not intend to amend or abolish these regulations. Registered capital requirements were stipulated in the *Construction Law* and applied to all construction enterprises established in China, both foreign and national, which was consistent with the national treatment principle. The Chinese construction market was still under development. China was now promoting the reform of enterprises and developing guarantee and insurance system fitting the development of the market. Under the current situation, the registered capital was still an important guarantee for the risk of the projects. Whether China would replace capital requirements with other financial tools, such as letters of credit, insurance bonds, bank guarantees, depended on China's reform process of the financial system and the development of the construction market. Regarding the dredging sector, according to China's criterion for the categories of construction enterprises, an enterprise should first get relevant qualification in porting and sea-routing in order to conduct dredging business, and there was no special qualification requirement. Enterprises conducting renting business of dredging vessels should comply with relevant Chinese laws and regulations, and there was no market access restriction. In order to acquire the qualification concerning construction designing, an enterprise should employ a certain number of architects or engineers who needed to reside in China for a required period of time. If the foreign architects or engineers constituted a part of the required number of architects or engineers, the residency requirements was also to be met. This regulation aimed, *inter alia*, at reaching the standard of quality prescribed by relevant Chinese laws and regulations. The residency requirements for foreign staff in foreign companies registered in China

was based on the operative need of enterprises. Unlike general operations, construction projects required project managers to be present on the site to direct and guide the constructing process, so as to ensure the quality, security and technical requirements of the projects. Therefore, if the project managers or professionals of an enterprise were foreigners, they had to stay in China for a certain period of time, so as to exercise the project management. With regard to allowing foreign construction enterprises without local presence to undertake construction projects, China had a mode 3 commitment on construction and related engineering services to permit the establishment of wholly foreign-invested enterprises; yet, China had made no commitments on allowing foreign enterprises to conduct project contracting directly in China. With regard to the qualification for project management services, according to the *Circular* no. 200 of the Ministry of Construction, an enterprise providing project management services should have at least one of such qualifications as project reconnaissance, designing, constructing, supervision, cost consultation and bidding agent.

31. Turning to tourism services, she said that China had never taken "meeting the development plan of tourism" and "meeting the need of the market" as necessary requirements for approving travel agencies. Considering that some WTO Members had raised this question in previous TRMs, China would consider modifying the expressions in relevant regulations to avoid misunderstanding. China had modified its relevant regulations to align them with its WTO commitments. China National Tourism Agency and Ministry of Commerce had promulgated *Provisional Rules on the Establishment of Travel Agencies with Majority Foreign Equity and Solely Foreign Investment* and *Amendment to the Provisional Rules on the Establishment of Travel Agencies with Majority Foreign Equity and Solely Foreign Investment* respectively in 2003 and 2005. These regulations had addressed issues such as establishing solely foreign-owned travel agencies, eliminating geographical restrictions, lowering registered capital requirements, etc. China's specific commitments stipulated that the elimination of restrictions on the establishment of branches by foreign travel agencies and the granting of national treatment in terms of registered capital should be eliminated within six years after accession, i.e. before 11 December 2007. Currently, China was working to modify and amend the *Regulations on Administration of Travel Agencies* and other relevant domestic regulations in accordance with its commitments.

32. With respect to distribution services, she said that, according to *Measures for the Administration on Foreign Investment in Commercial Fields*, there was a cap on the share of foreign investments in retail distribution services of several products for suppliers with more than 30 stores. This limitation was in line with China's specific commitments, and the situation had not changed. Regarding internet retailing, according to the definition on distribution under Annex 2 of China's Accession Protocol, retailing without fixed outlets was confined to the sales away of goods or commodities for individual or household consumption from an unfixed location. This was different from the value-added telecommunication business, which required an ICP license and did not affect China's implementation of its commitments on the distribution sector. Regarding the period of examination of the application for direct selling, according to the *Regulations on Administration of Direct Selling*, MOFCOM, State Administration for Industry and Commerce and Ministry of Public Security should hold substantial examinations of the applications, and the approval could be granted on the condition that all the requirements had been met. Speeding up the processing of applications for direct selling license depended on the capacity of the relevant agencies. Regarding restrictions on the geographic scope of licenses, applicants should specify the exact location of the branches or networks situated in provinces, municipal cities or regions when applying for establishing direct selling enterprises. With regard to the fact that the *Regulations on Administration of Direct Selling* required foreign investors to have more than three years experience in direct selling before applying for establishing direct selling enterprises, while domestic enterprises did not need to meet similar requirements, she wished to clarify that: (i) domestic enterprises were prohibited from engaging in direct selling before promulgation of the *Regulation*, which meant that they had no operational experiences in this sector; (ii) the requirement which applied only to foreign investors was set up by taking into consideration the fact that foreign enterprises had been engaged in this sector abroad for

many years; (iii) the *Regulation* had adopted opinions and suggestions from foreign enterprises before implementation. Therefore, such a requirement was designed to create a level playing field for domestic and foreign enterprises to compete in China's direct selling market and did not constitute barriers for foreign investment. By the end of 2006, China had approved 13 directing selling enterprises, among which ten were foreign enterprises. Regarding limitations on the income received by direct sellers, she indicated that the payment to salespeople by domestic and foreign direct selling enterprises could only be calculated according to his or her direct sales revenue to consumers. The overall payment, including commission, bonus, reward in various forms and other economic benefits should not exceed 30% of the sales revenue. This requirement had been designed after adopting the opinions of most foreign investors, and perfectly met the status quo. On licensing foreign retail outlets, up to now, most municipal, provincial cities or cities in central government levels of China had made and published their urban commercial network plans, which would apply to all kinds of investment entities regardless of whether it is domestically- or foreign-owned. Moreover, according to the *Measures on Administration of Foreign-funded Commercial Sectors*, there was no requirement on registered capital for newly established branches. Since the promulgation of the *Measures*, MOFCOM has transferred the power for approving foreign-investment in commercial sector to a lower level twice, and streamlined the administrative examination and approval procedures. Article 16 of the *Implementing Measures on the Administration of Automobile Brand Sale* stipulated that a foreign investor who conducted automobile brand sale with more than 30 outlets could exceed the 49% share cap after 11 December 2006. On implementation of China's specific commitments regarding wholesale and retail distribution of crude oil and processed oil, MOFCOM had promulgated *Measures for Administration of the Market of Crude Oil* and *Measures for Administration of the Market of Processed Oil*. China had fully honoured its relevant commitments. With regard to the progress made in commercial franchising administration, the State Council promulgated, on 6 February 2006, the *Regulations on the Administration of Commercial Franchises*, and, on 30 April 2007, MOFCOM had promulgated the *Measures for the Administration of Information Disclosure of Commercial Franchises* and *Administrative Measures for Archival Filing of Commercial Franchise*.

33. Turning to air transport services and legislation concerning Computer Reservation Systems (CRS), she said that China General Administration of Civil Aviation had finished drafting the *Interim Regulation on Approval and Administration of the Direct Access and Usage of Foreign Computer (Passenger) Reservation System by Sales Agents of Civil Air Transport Enterprises*. The *Regulation* had been submitted for approval, and the time for promulgation remained uncertain.

34. To conclude, the representative of China indicated that her delegation welcomed the questions on trade in services raised by some Members under the TRM. Her delegation wished to avail this opportunity to exchange views with, and clarify misunderstanding of, Members on China's implementation of its GATS specific commitments. However, her delegation regretted that some communications had not reached her authorities timely, leaving them very limited time to prepare the answers to questions that involved a wide range of sectors. Therefore, she asked for Members' understanding if the responses did not fully and adequately satisfy them. She wished to reiterate, as she did in the Committee of Financial Services, that, for the next TRM, Members should submit their written questions at least one month before the meeting. Otherwise, China could not guarantee to address fully the late communications.

35. The representative of the United States said that the United States attached great importance to the TRM, which gave WTO Members an opportunity to assess the progress made by China in complying with its WTO obligations, in this case the GATS. Her delegation thanked China for its lengthy and in some cases, detailed, presentation, and wished to make some follow-up questions regarding certain areas that, in the view of the United States, were not sufficiently addressed as part of China's presentation. Regarding legal services, her delegation noted that China had provided an initial answer regarding foreign legal firms wishing to establish offices and had asserted that this related to

China's right to regulate the sector. As a follow-up question, the United States wondered what exact policy objective was China attempting to achieve and would any such requirements also apply to Chinese domestic law firms. Regarding the sector of postal and courier services, including express delivery services, the United States appreciated the information that China had provided and noted that China had emphasized that foreign express delivery companies could hold 100% foreign equity and that foreign companies had established a presence to service the international market. However, foreign express delivery companies were also seeking rights to service China's domestic market and the United States was concerned that there might be certain elements of the ninth draft of the postal law which China mentioned that would effectively cut out foreign companies from participating in the domestic express delivery market. For example, the ninth draft might contain provisions that would reserve the delivery of all items weighing less than 150 grams to China post and would not allow foreign companies to deliver to letters or documents weighing more than 150 grams. So, when you put those two numbers together, that could effectively keep foreign providers from supplying an integrated chain of services both related to international delivery and access to the Chinese domestic market. If such elements did exist in the current draft, the United States would ask China to explain how they would be consistent with China's GATS commitments. Also relating to the express delivery services sector, her delegation appreciated that China provided information regarding the express delivery standards that were issued in September 2007 and had taken note that China had confirmed that these standards were not mandatory. However, the United States had some concerns that, even though China now intended the standards not to be mandatory, they might in some ways have the effective mandatory regulations, given that China might be considering delegating authority to regulate the sector to certain provincial level industry associations and they might look closely at these non-mandatory express delivery standards. With that in mind, the United States emphasized that, in most markets around the world, express delivery providers were not regulated directly or were regulated in a very light fashion. Her delegation hoped that the issuance of the standards, even though not mandatory, would in no way be interpreted to impose undue burdens on the operations of express delivery providers.

36. She noted that China had provided lengthy information with regard to the telecommunications sector, but the United States had some follow-up questions. Regarding China's minimal capital requirement for foreign-investment telecommunication providers, the Chinese delegation had clarified that this requirement applied equally to domestic and foreign companies. However, the point of concerns that had been expressed by foreign companies was that the level of these capital requirements were so high that they served effectively to keep foreign providers out of China's market. In addition, the United States would emphasize that provision of telecommunication services was not always capital-intensive, i.e. it did not always require setting aside high levels of capital. Many providers of telecom services could operate successfully with very little capital outlay or rely on infrastructure located outside China. With these factors in mind, the United States would urge China to continue review of these minimal capital requirements with a view to making them less burdensome. China had also provided some information about the ability of providers of basic telecom services to be able to freely choose a joint-venture partner. In China's Working Party Report, that right was very clearly provided – not just for telecom, but more generally. In response to this issue, China had talked again this year about concerns about scarcity of resources. However, many types of basic telecom services could be provided without competing for scarce resources. Even in sub-sectors where scarce resources would be implicated, the United States wondered why China felt that such resources might already be exhausted since Chinese incumbents, that was domestic providers, continued to be granted licences and grew at a rapid rate. On a separate issue related to telecom, she noted that her delegation had not heard an answer from China about the US question about whether China was planning to update its domestic definition of value-added services. The United States would encourage the use of a broad definition in this regard. She also noted that China had not addressed the US questions on satellite services. Specifically, how were preferences that China had granted – a Hong Kong based satellite service – consistent with China's GATS MFN obligation.

37. On construction services, the United States welcomed all the information that China had provided. This was a sector with a number of different decrees, in implementing rules and regulations but it was a growing sector in China. China was right that there were a number of foreign companies in the Chinese market. Her government welcomed the fact that China had issued a draft Decree 114 implementing regulations, but hoped that China would consider revising these implementing rules for Decree 114 to allow foreign companies to receive all classes of licences including high-grade licences without a trial period under a smaller scale licence. Her delegation had also noted China's comment that it would be willing to consider the experience of parent and affiliated companies of foreign enterprises when examining their qualifications to carry out certain grades of projects and welcomed that step. On the provision of construction services and minimum capital requirements, the United States appreciated China's comment that it was actively considering a system under which performance bonds or other types of guarantees could be posted in lieu of existing minimum capital requirements. As noted by China, such an issue was connected with developments under China's regime more generally, and the United States would think that this related to China's financial services regime which also continued to strengthen. On the issue of project management services, her delegation noted that China had said that foreign companies might provide project management services if they qualified for one of a list of various construction and design qualifications. In the view of her delegation, this kind of regulation remained unduly burdensome because in global markets, such project management services could be provided well and effectively without those providers being separately qualified under a construction or design regimes.

38. On the issue of distribution services, she noted that, with respect to direct selling, China had mentioned that its licensing process contained no restrictions on the geographic scope of licences that companies could apply for. Her delegation welcomed that information and would welcome full implementation of such a system. China also mentioned that it had been speeding up the review of applications for direct selling licenses and, in that regard, the United States understood China's own regulations in this area to require a decision within 90 days on applications. Her delegation wished to express its continuing concern about China's imposition only on foreign firms, but not on domestic firms, of a three year direct selling experience in other markets in order to be granted a direct selling licence. Moving onto the sub-topic of retail services, her delegation welcomed what it thought it had heard from China, in that the MOFCOM licensing process for a retailing services would not impose additional regulatory requirements on foreign versus domestic companies in the form of additional minimum capital to be satisfied for each branch outlet of such retail suppliers. Regarding majority-owned retailers of motor vehicles, she would appreciate if China could repeat what particular pieces of legislation or regulations implemented China's WTO obligations in this area. Regarding the areas of both wholesale and retail of processed and crude oil and gasoline, the United States had understood that China's response this year had been that its GATS commitments had been fully honoured. Her delegation would appreciate more detailed information, i.e. could China simply explain the steps it had taken and the relevant legislation or regulations that pertained to fulfilling its GATS obligations regarding wholesale and retail distribution of crude and processed oil.

39. The representative of Japan thanked China for providing detailed responses to questions raised by his delegation. The TRM continued to be important for China and other WTO Members. Japan 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. His delegation had not heard responses from China on some questions and comments raised by his government. In the field of postal and courier services, Japan understood that Article 8 of the Postal Law stipulated that Chinese postal services should monopolize services of delivering correspondence and other articles that had the nature of correspondence. On the other hand, Article 8 also stipulated that the above provisions did not apply if the State Council decided otherwise. Japan would like to know the details of such decisions, if any. Also China might clarify the reason why international express was subject to stricter conditions, and why and how personal letters were distinguished from other letters in China. In field of telecom

services, China had explained, during the 2006 TRM, that Chinese domestic rules and regulations on the interconnections between public telecommunication networks did include leased circuits Frame relays and IP-VPN, although this was not clearly stipulated in the law. Japan wished to seek confirmation that leased circuits, Frame relays and IP-VPN were included in "Other networks that the Ministry of Information Industry defines", as stipulated under paragraph 8 of Article 2 of the *Regulation on the Interconnections between Public Telecommunication Networks* (Decree 9 of the Ministry of Information Industry). Moreover, it would be much appreciated if China provided the legal document on what "the Ministry of Information Industry defines" under paragraph 8 of Article 2 of this regulation. Japan further enquired whether, under Chinese domestic law, foreign enterprises were able to undertake Internet data centre services and Internet connection services, provided that foreign capital participation was less than 50%. It would be appreciated if China could clarify whether or not Internet data centre services and Internet connection services were included in the sub-sectors which had already been committed to at the time of China's accession to the WTO. Finally, Japan wished to know whether the rules for interconnection were disclosed to the public, consistent with the Reference Paper which China had committed to. If so, Japan would request information on where to obtain appropriate documents on these rules, as well as the name of the law and the article number that obliged operators to disclose them for interconnection.

40. The representative of Canada said that her delegation appreciated China's efforts at improving the transparency of its regulatory regime and welcomed the publication of the 2006 *China Trade in Services Report* and the continued update of its Gazette via the MOFCOM website. At the same time, her government had surveyed Canadian businesses, which still expressed concerns regarding transparency. During its 2006 transitional review, China had reported that the State Council had issued a circular requiring authorities and local governments to send copies of laws, regulations and other measures to MOFCOM for immediate publication in the Gazette. Some Canadian companies, however, had cited difficulty in obtaining a complete set of the necessary procedures to establish commercial presence. While there was official information available at the state level, it was often supplemented with hard-to-find and locally specific rules and regulations. There was also the challenge of inconsistent implementation and interpretation of regulations between government departments. For service suppliers to compete effectively in global markets, they required consistent, clear, up-to-date and easily accessible information. Canada requested further updates from the Chinese delegation on this matter. In respect of *Annex IA, Section V, Policies Affecting Trade in Services, paragraph a*, Canada remained unclear on the specific criteria applied by China in order to sign an *Approved Destination Status Memorandum of Understanding* with a WTO Member. Canada had made inquiries with the MOFCOM enquiry point, but had not yet received a response. Her delegation would appreciate knowing where to find such information. Finally, Canada wished to touch on the implications of the measures or regulations that would evolve from the *State Council's Opinions on Accelerating the Development of Service Industries*. In developing measures to promote the development of its service industry, Canada understood that China would give priority to specific production-based service industries and provide various forms of support to these priority sectors. Canada was interested to know what this would mean for China's mode 3 national treatment commitments. Would foreign-owned service suppliers also benefit from any measures taken to give priority to a sector? Would the grant of priority involve any new subsidies? China had taken only an exception for subsidies in a few sectors (audio-visual, aviation, and medical services) and the exception did not cover new subsidies, only existing ones. Canada looked forward to China's responses in this regard.

41. The representative of the European Communities said that he intended to raise two issues on which his delegation requested further clarification from China. On legal services, he had noted China's explanations regarding the rationale behind the "actual need requirement" for a law firm to establish a representative office in China and for the three year waiting period that applied to the opening of new representative offices of foreign law firms in China. His delegation had noted that, in China's view, these measures were derived from China's right to regulate. While the European

Communities did not want to challenge the right to regulate, it still wondered whether these restrictions were fully compatible with the commitments that China had undertaken on legal services because none of them – the limitation on needs and the three-year waiting period – were scheduled in China's commitments on legal services. Hence, his delegation would welcome more details on how these two limitations/elements were compatible with China's commitments on legal services under the GATS. Concerning telecommunications, he noted China's explanation that the signature of the agreement between China Netcom and China Telecom earlier this year amounted to "voluntary behaviour" between private partners and that the independent regulator, in this case the MII was monitoring the market. His delegation would welcome more specific information as regards to the measures that the MII had taken in response to this "so-called" voluntary behaviour between private partners because the European Communities understood that these two companies had signed an agreement which amounted to a non-competition agreement and would therefore be incompatible with the principles contained in the Reference Paper.

42. The representative of Chinese Taipei thanked China for the detailed answers provided and said that, in the view of his delegation, the TRM was useful.

43. The representative of China said that most of the follow-up questions had been addressed in her statement, but she was ready to repeat the replies. Questions on satellite services were irrelevant as China did not have specific commitments in this sector and the agreement with the Hong Kong based satellite services providers predated China's accession to the WTO. China had already responded to the questions on interconnection during the 2006 TRM and had decided not to repeat the answers so as to save time. Moreover, these questions had come very late. China did not respond to questions coming too late or concerning issues not included in its schedule of specific commitments. China had taken note of the questions posed by Canada on transparency, but noted that, in past Reviews, her delegation had not responded to questions posed at the meeting and, thus, believed that Canada did not expect an answer now. She wished to note, nevertheless, that the Chinese government had made every effort to improve transparency in the country and also through the TRM. In fact, China had done more in this respect than any other Member in the WTO and hoped that others would follow this example.

44. The representative of the United States said that, in her earlier presentation, her delegation had neglected to mention how important transparency was. So, she wished to associate her delegation with the remarks made by Canada and other delegations on that issue. She took note that China believed it had made the most contribution on transparency. While the United States believed that China had indeed taken several important steps on transparency of regulation since its accession to the WTO, her government still had concerns that China's system was not uniform. It was very arbitrary and even when China was willing to consult with interested persons, including from the business community, the process, except for certain limited sectors, was not clear and there was no understanding of how the process would be carried out. So, while the United States welcomed the progress that China had made, it still believed hat there were areas where China might think further about how to guarantee a more transparent trade regime. On the issue of process, she understood that, according to China, Members should submit the written questions at least one month in advance of the TRM session. Her delegation understood that there was no such specific requirement for the TRM. Of course, her delegation would endeavour to always provide as much advanced notice to China as possible and provide the questions early before the TRM review. But it did not have the same understanding as China regarding this one month in advance requirement.

45. The representative of China said that she had heard a lot about transparency for several years, but was still ready to continue the discussion with the US delegate. As far as process was concerned, China could follow the US advice in the next TRM.

46. The representative of the United States said she did not wish to change the rules regarding the submission of documents. Members were supposed to submit their documents ten days in advance of the meeting and extra time was a courtesy. Members who had to do translations outside of the official languages of the WTO had to make the necessary adjustments. A delegation should not be penalized for not respecting specific, independent rules. Her delegation would be happy to work with delegations bilaterally if necessary, in order to accommodate genuine concerns relating to their internal domestic process. However, Members should not try to create new rules.

47. The Chairperson thanked China for its responses and proposed that the Council take note of the statements made and consider China's Transitional Review concluded.

48. The Council so decided.

49. Regarding the report to the General Council, the Chairperson suggested that the Secretariat prepare this report, in accordance with previous practice. It would be a factual report, stating basically the following: (i) at its meeting on 16 November 2007, the Council for Trade in Services conducted the Sixth Transitional Review of the Implementation by China of its WTO Agreement and of the related provisions of the Protocol, pursuant to Section 18 of the Protocol of Accession of the People's Republic of China; (ii) written communications were submitted before the meeting by the following Members: The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, the European Communities, Japan and the United States; (iii) a detailed account of the discussion during the meeting can be found in the meeting report, contained in document S/C/M/90.

50. The Council so decided.

## VI. NOTIFICATION PURSUANT TO GATS ARTICLE XXI

51. Statements made under this agenda item are contained in an informal document and will be circulated as an addendum to this report after the conclusion of the Article XXI negotiations and the certification of any changes to the relevant schedule of commitments.

## VII. OTHER BUSINESS

52. The Chairperson recalled that, as indicated at the beginning of the meeting, he wished to make a brief statement regarding the Review of the Air Transport Annex. As indicated at the last dedicated meeting, on 2 October, it was his intention to hold informal consultations in order to reach an agreement on how to proceed further with the second Review. He proposed to hold these consultation on Tuesday 4 December, in the afternoon.

53. The Council took note of the statement.