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Council for Trade in Services

REPORT OF THE MEETING HELD ON 5 DECEMBER 2008

Note by the Secretariat[1]

1. On 5 December 2008, the Council for Trade in Services held a meeting under the chairmanship of Ambassador Alex Van Meeuwen (Belgium). The agenda was contained in document WTO/AIR/3290.

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

3. The representative of Australia said that, under "Other Business", her delegation intended to raise the issue of the certification of the EC-25 schedule.

4. The agenda was adopted, as modified.

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

5. The Chairperson drew attention to notifications received pursuant to GATS Article III:3 (Transparency) from the Republic of Albania (S/C/N/452 to S/C/N/461); the Republic of Armenia (S/C/N/464); Switzerland (S/C/N/467); and The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (S/C/N/468).

6. The Council took note of these notifications.

7. The Chairperson thanked those Members for submitting notifications and reminded Members that, according to GATS Article III:3, "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". The number of Members submitting notifications under Article III:3 had been disappointingly low and had a tendency to diminish over the 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: Japan and Indonesia (S/C/N/462); China and Singapore on behalf of the ASEAN Members (S/C/N/463); Iceland (S/C/N/465); Brunei and Japan (S/C/N/466); and, finally, the "CARIFORUM" States and the European Communities (S/C/N/469 + Rev.1).

8. The representative of Japan said that the Japan-Indonesia and the Japan-Brunei Economic Partnership Agreements had entered into force, respectively, on 1 July and 31 July 2008. Both agreements covered a substantial range of trade in goods and services. Services specific commitments were scheduled in positive lists and went beyond commitments in the GATS. The agreement between Japan and Indonesia had an independent chapter on the movement of natural persons, which contained

[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.

substantial mode 4 commitments. The text of the agreements and related documents were available on the website of the Ministry of Foreign Affairs of Japan.

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

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

10. 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/20); (ii) Annual Report of the Committee on Specific Commitments (S/CSC/14); (iii) Annual Report of the Working Party on Domestic Regulation (S/WPDR/11); and (iv) Annual Report of the Working Party on GATS Rules (S/WPGR/18). 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.

11. The Council so agreed.

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

12. 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 2008 was contained in document S/C/W/292. 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.

13. The Council adopted the 2008 Annual Report to the General Council, as contained in document S/C/W/292.

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

14. 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 1st December 2008. A report had been submitted by this Committee (S/FIN/21). 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.

15. The Council so agreed.

16. The Chairperson said that the Council would conduct the Seventh Transitional Review of China's specific commitments and drew Members' attention to the communication from China in

document S/C/W/296 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 Japan (S/C/W/291), the European Communities (S/C/W/293), the United States (S/C/W/294) and Canada (S/C/W/295). After China's statement, the floor would be open for delegations to make comments. Then, China would be invited to respond.

17. The representative of China recalled that this was the Seventh Transitional Review by the Council of Trade in Services. Prior to this meeting, China had received questions from Japan, the European Communities, the United States and Canada, and had studied them carefully. Before coming to the specific questions, the delegation of China wished to make a general introduction on China's services market and the fulfilment of its WTO commitments. China had made extensive and deep commitments on about 100 sub-sectors out of the 160 contained in the services classification list. In 54 of these sub-sectors, wholly foreign-owned companies were allowed. Undertaking extensive GATS commitments was not easy for a developing country with underdeveloped service sectors like China. Moreover, China had liberalized a number of sectors ahead of the scheduled commitments, including securities, insurance and tourism, despite the huge difficulties it had encountered over the years. China's liberalization had not only provided foreign investors with broad market access, but also had reflected China's positive attitude towards an open domestic market and had pushed forward a more open and liberalized world trade. By the end of 2006, the transitional period of China's service trade had phased out and China was now one of the most liberal services markets among WTO Members. Since the last Review, China had promulgated the *Regulations on the Implementation of the Income Tax Law of the People's Republic of China, Supplementary Provisions on Interim Measures for Administrative of Sino-Foreign Joint Ventures and Cooperative Medical Institutions, and Supplementary Provisions III on the Measures for the Administration on Foreign Investment in Commercial Fields*, and amended the *Catalogue for the Guidance of Foreign Investment Industries* and the *Regulations on Administration of Foreign Invested Telecommunications Enterprises*. These promulgations and modifications mirrored China's efforts to create a better environment for services markets and to promote the healthy and continuous development of the services sector. Foreign investments in the services sector had continued to increase in 2008. From January to October, China had approved 11,396 foreign enterprises, and the paid-in foreign capital had hit 2.136 billion USD. China's liberalization was especially remarkable in the construction sector, in which foreign paid-in capital reached 934 million USD, increasing by 184.95% compared with the same period last year. The influence of the on-going financial crisis had spread to the trade area, including trade in services. It was of great importance to the world trade and economic stabilization that all Members remain confident and keep the openness and development of services markets. China had been committed to an open and liberal service market and would continue to do so. China also wished to encourage other Members, especially developed ones, to do the same.

18. *Postal and courier services.* The amendment of the Postal Law was in accordance with the procedures stipulated by the Legislative Law of China. Currently, the draft law and its explanatory notes were available on the website and open to public comments. The final adoption and implementation were subject to reviewing by the legislative authority. Her delegation was slightly confused concerning EC question 22 and US question 5, as both the United States and the European Communities seemed to mix the word "document" with "letter". China had not made any specific commitment on the delivery of "letters" upon its accession and, hence, there was no discrimination. The Express Delivery Service Standards were recommendatory rather than compulsory, and would be helpful to encourage enterprises improving their management, as well as the quality of the service. She confirmed that the *Measures for Administration of the Market of Express Delivery Service*, promulgated on 12 July 2008, did not require additional registration. With respect to the universal postal service fund, it was well recognized that universal postal service was an important part of the public service provided by the government. The Chinese Government was committed to provide affordable and non-discriminatory/differential universal postal service to its people. In practice,

universal postal service fund was also adopted by many other WTO Members. The draft Postal Law did not require express delivery companies to pay any additional taxes. Nor was there any connection between the universal postal service fund and additional taxes to express delivery companies. Besides, the draft law was not adopted yet, and it remained to be decided how to collect and use the universal postal service fund.

19. *Distribution services.* Pursuant to the *Measures for the Administration on Foreign Investment in Commercial Fields (Article 17)*, wholesale of crude and refined oil had been opened to foreign companies since 11 February 2006, and the retail of refined oil since 11 December 2004. Thus, China had fulfilled its WTO commitments. The legislative framework concerning the wholesale and retail of oil products included the *Administration of the Market of Crude Oil*, Article 17 of the *Measures for Administration on Foreign Investment in Commercial Fields* and the *Catalogue for the Guidance of Foreign Investment Industries*, 2007. After the implementation of the *Measures for Administration of the Refined Oil Market* and the *Measures for Administration of the Crude Oil Market*, qualified enterprises had been allowed to conduct the wholesale of crude and refined oil products, and various forms of enterprises, including large state-owned oil enterprises, multi-national oil enterprises and other forms of companies, had been allowed to compete on the Chinese oil market. Neither the *Measures for the Administration on the Refined Oil Market*, nor other rules or regulations governing the distribution of refined oil contained any stipulations requiring to sell products to Sinopec or PetroChina. Chapter 5 of the *Measures* had some requirements concerning the purchaser of refined oil, for instance, Article 39 of the Measures stipulated that refined oil retailers should purchase products from enterprises with qualifications for engaging in wholesale business of refined oil, no enterprises should sell refined oil on a commission basis for enterprises without qualification for engaging in the wholesale business of refined oil, and no refined oil wholesaling enterprises should sell any refined oil for business purposes to enterprises without qualifications for engaging in the refined oil business. These stipulations applied to all wholesalers and retailers of refined oil. They reflected China's prudential regulation aiming at ensuring public security, maintaining the market order and protecting the lawful rights of suppliers and consumers of refined oil. The Chinese Government respected enterprises' autonomy and freedom of operation, and enterprises had every right to operate on their own in compliance with the law, choose their business partners and the counterparts of their contracts. Their lawful rights were also protected by the civil and commercial laws, such as the *Contract Law*. With regard to the retailing services via Internet, China wished to point out that the ICP licensing requirement applied equally to foreign and domestic suppliers. The purpose was to ensure effective regulation and protect consumers' interest (for example, preventing commercial fraud). This requirement did not affect China's fulfilment of its commitments in the distribution sector. She noted that GATS Article XIV authorized Members to enforce measures "necessary to protect public morals or maintain public order". It was for that same reason that China imposed restrictions on the manufacture and sales of electronic game equipments. These restrictions applied equally to domestic and foreign enterprises, as stipulated in Article 6 of the *Circular*, and, thus, complied with the national treatment principle. With regard to questions concerning the *Regulation on the Administration of Commercial Cipher*, she indicated that, as a prudential regulatory measure, China prohibited service suppliers to import and distribute cipher products without authentication by the competent authority (the State Cryptography Administration) in order to protect consumers' interest and ensure information security. This measure applied equally to domestic and foreign suppliers. China had approved several applications since May 2007, including Iphay Biology Technology Ltd., and Kelti (China) Commodity Ltd. When examining applications from direct sellers, the Chinese Government always respected its WTO commitments, offering equal treatment to domestic and foreign companies, and followed the principle of prudential regulation, as well as progressive and manageable liberalization. The Chinese Government would grant a license for direct selling in accordance with Article 9 of the *Regulations on Administration of Direct Sales* to qualified applicants. Quite a few enterprises had been permitted to conduct direct selling business in more than one province, autonomous region and municipality. Her delegation asked the United States to clarify question 1c). Article 7.2 of the *Regulations* required foreign investors to have at least three years

experience before applying for a direct selling license in China: this was a prudential regulation on the qualifications of service providers. Since direct selling had been prohibited in China before the *Regulations on Administration of Direct Sales* came to effect on 1 December 2005, it had not been possible for Chinese enterprises to gain experience in direct selling prior to that time, which was why Chinese enterprises were not subject to this restriction. The 30 percent cap requirement was a necessary regulatory measure based on the current situation in China. Direct sellers were somewhat like investment bankers in the sense that too much compensation might distort the incentive mechanism, and eventually affect the interest of consumers and undermine the development of the whole sector. China believed that the current cap was reasonable and proper. The opening of new retail outlets was governed by the *Measures for Administration on Foreign Investment in Commercial Fields*, which was uniformly applicable throughout the country. After the approval authority was designated at provincial level, the MOFCOM would intensify training to provincial authorities and enhance the supervision mechanism in order to ensure fair and efficient approvals. Her delegation was not aware of "informal" minimum capital requirements as well as of zoning requirements referred to by the United States. Minimum capital requirements for foreign companies should meet the relevant requirements in the *Companies Law* of China. She confirmed that China had fulfilled its commitment and allowed foreign control in the retailing of motor vehicles. Concerning the distribution of pharmaceutical products, the application process was the following: after obtaining a pharmaceutical trading licence and other documents, the applicants applied to commercial authorities for establishing foreign pharmaceutical wholesale and retail companies. Upon approval, they should finish the registration in the administrative department for industry and commerce. The *Pharmaceutical Law* (Article 14) and its *Implementation Rules* (Article 11 and 12) provided further details. Other related laws and regulations included the *Companies Law*, *Law on Foreign Capital Enterprise, Law a on Sino-Foreign Contractual Joint Venture, Law on Chinese-Foreign Equity Joint Venture* and their *Implementation Rules*, and the *Measures for Administration on Foreign Investment in Commercial Fields*. China asked the European Communities to clarify what it meant by "outsourcing" warehousing services and to give some examples.

20. *Construction services.* The delegation of China explained that the *Construction Law* set minimum registered capital requirements, which applied to all construction enterprises established in China, both foreign and domestic ones. Registered capital was an important guarantee against the risk of the projects. There were currently legislative difficulties to replace registered capital requirements with other financial tools such as letters of credit, insurance bonds, or bank guarantees, because minimum capital requirements were stipulated in the law. The fact that foreign construction companies were only allowed to conduct four types of projects did not violate WTO rules because China had listed these reservations in its Schedule. According to *Circular No. 159 on the Issues of Qualification Administration of Foreign Construction Enterprises* issued by the former Ministry of Construction, the performance of foreign investors gained outside China would be taken into consideration when examining the qualification applications. She pointed out that when Chinese construction enterprises were undertaking projects in some Members, like in the United States, their overseas performances were not considered, which indicated that China truly and sincerely welcomed foreign investments in the construction sector. The *Rules Governing the Foreign Invested Engineering Design Enterprises* (Decree No. 114 from the Ministry of Construction) set requirements on the number of foreign professionals and their residency in China to foreign enterprises; this was a prudential regulation to ensure the quality of the projects. As some foreign enterprises might face difficulties in meeting these requirements, China allowed, in Article 18 of the *Implementing Rules*, that these requirements be "temporarily not applicable". China urged foreign enterprises to make good use of this transitional period and to meet the above-mentioned requirements as early as possible, so as to provide better services in the Chinese market. According to China's classification criterion regarding qualification of construction enterprises, the only specific requirement to conduct dredging business was that an enterprise should first obtain relevant qualifications, including porting and sea-routing. The Chinese Government had introduced the "constructor" system (jian zao shi) in order to ensure quality and safety in the construction sector. Qualified foreigners were allowed to take the

exams and could be registered to practice after passing the exam. In 2003, China had began to gradually replace the project manager system with the constructor (jian zao shi) system. All those qualified as a project manager and meeting other relevant criteria would be able to apply for a temporary constructor (jian zao shi) certificate. Therefore, there was no barrier for foreign applicants. She asked Japan to clarify which "local governments" required minimum floor area for offices. China had not made commitments with respect to direct project contracts and, according to China's Schedule, foreign enterprises wishing to contract for project in China should establish commercial presence in the first place. During the examination of qualifications, the Chinese authorities treated domestic and foreign enterprises fairly, and, thus, fully complied with the national treatment commitment.

21. *Air transport services.* The regulation on Computer Reservation Systems (CRS) was still under discussion and her delegation was not in a position to give a specific timetable when it would be issued. Foreign CRS had been open to Chinese airlines, and there was no examination or approval requirement. Agents of foreign airline companies needed to acquire approval from the Civil Aviation Administration of China (CAAC) before connecting to, or using foreign CRS. Pending the entry into force of any new regulation, foreign airline companies needed to file an application to the CAAC before connecting to, or using foreign CRS, according to the *Provisional Administrative Measures on the Usage of Computer (Passenger) Reservation System by Air Transport Enterprises and their Sales Agents within the Territory of China* (CAAC,1995,No. 51). Foreign airlines could use CRS to sell or reserve tickets for customers after their appointed Chinese agents were approved by the CAAC. According to the CAAC, there was no information about approved agents failing to use foreign CRS services.

22. Turning to *telecommunication services*, she said that "resale" services were not listed in China's Schedule. According to the *Notes for Scheduling Basic Telecom Services Commitments*, resale was a way to provide basic telecommunication service rather than a specific service, so the reference by Japan to the fact that "China did not prohibit the resale of those service areas" was improper. Currently, China did not have a specific license for "resale" telecommunication service, so there was no need to design relevant market access requirements. As China had explained in previous transitional reviews, enterprises were allowed to choose the way they wished to provide services after gaining a basic telecommunication license, either by establishing their own facilities or by providing services on resale basis. With regard to the minimum capital requirements for basic telecommunications, after careful study and review of the Chinese basic telecommunication market, the Government had modified the *Regulations on Administration of Foreign Invested Telecommunications Enterprises*, and had reduced the minimum capital requirements by 50 percent. Her delegation wished to note that there was no unified or identical international standard regarding the level of telecom capital requirements. China was a vast country with an enormous population, which required heavier front-loaded investment in telecom infrastructure than most other countries. Chinese telecommunication industry was still underdeveloped compared with developed countries. The digital divide remained a big challenge, especially in the middle and western parts of China, and many remote areas had no basic access to the telecommunication network at all. At this stage China needed to first solve the problem of network construction which required numerous infrastructural investments. As her delegation had explained in previous transitional reviews, minimum capital requirements should be determined according to the actual situation of different countries. The sector in China was currently under reform and major basic telecommunication operators were in the restructuring process. MIIT would require dominant operators to establish rules for interconnection in accordance with the *Regulation on Telecommunication* and *Provisions on the Management of Interconnection between Public Telecommunication Networks* after reconstruction. The rules would be published through a proper channel after review and approval. China had completed the draft of the *Telecommunications Law*, which was now under legislative review. The delegation of China asked Japan to clarify the concept of "indirect share holding" and confirmed that, by September 2008, there were forteen foreign value-added service enterprises operating in China. The qualification

requirements for basic telecommunication suppliers were set out in Articles 4 to 10 of the *Regulations on Administration of Foreign Invested Telecommunications Enterprises*. The *Regulation* was available on the website www.miit.gov.cn and www.fdi.org.cn. The *Regulation on Telecommunication*, *Regulations on Administration of Foreign Invested Telecommunications Enterprises*, Decrees No. 19 and No. 31 of the MII provided for qualifications and procedures in applying for telecommunication licenses (see www.miit.gov.cn or www.fdi.org.cn for detailed information). All the application procedures were open and transparent. In order to promote foreign investment in telecommunication, MIIT also provided relevant policy consulting services bilaterally, for example, with the European Communities. According to its Schedule, China had opened the following value-added services: electronic mail, voice mail, on-line information and database retrieval, electronic data interchange, enhanced/value-added facsimile services (including store and forward, store and retrieve), code and protocol conversion and on-line information and/or data processing (including transaction processing). China had noted that certain Members had concerns about the approval process for foreign applications, but wanted to assure that China honoured its WTO commitments, and examined applications in accordance with the *Regulations on Administration of Foreign Invested Telecommunications Enterprises*, the *Regulation on Telecommunication*, *Measures for the Administration of Permits for Operation of Telecommunication Business* and other relevant laws and regulations, which improved transparency and streamlined approval procedures. China noted that some countries and regions had already implemented industrial and commercial tests of WCDMA and CDMA2000, while TD-SCDMA, as one of the three major 3G standards accepted by ITU, had not yet been tested in other countries and regions. China allowed technological and commercial tests on TD-SCDMA in order to further improve this standard and create a competitive environment for foreign and domestic enterprises. MIIT had approved and issued the telecommunication industrial standards corresponding to the three technologies accepted by the ITU, namely TD-SCDMA, WCDMA and CDMA2000. China understood that ITU was improving the 802.16e standard, and would follow the development of 802.16e technology closely. China encouraged US enterprises to continue their cooperation with Chinese enterprises, and make joint efforts to contribute to the technology and industry development. China's definition of value-added telecommunication service was in line with international practice. As the technology and the market developed, China would follow closely the definition adopted by other countries.

23. *Advertising services.* China recalled that it had committed to allow the establishment of wholly foreign-owned subsidiaries in advertising services within four years after accession. According to the 2004 *Regulations on Foreign Investment in Advertising Firms*, wholly foreign-owned advertising firms had been allowed to set up in China after 10 December 2005, thus fulfilling China's commitment. Advertising could be double-edged. On one hand, it could play a key role in facilitating economic development, but, on the other hand, improper operation might have adverse impacts on the interest of consumers and advertising operators, and even cause criminal cases in the worst scenarios. Appropriate measures and regulations of the advertising market were therefore necessary, including qualification approvals. China welcomed foreign firms with advanced managerial and operational experiences which could contribute to pushing forward the healthy development of China's advertising industry. She indicated that China had approved forty-nine foreign advertising firms from January to October in 2008, of which thirty-nine were wholly foreign-owned. China had honoured its commitment and provided great market access to foreign investors.

24. With respect to *transparency*, China recalled that, in Article 2 (c) of its Accession Protocol, it had committed to "establish or designate an official journal dedicated to the publication of all laws, regulations and other measures pertaining to or affecting trade". The "laws, regulations and other trade-related measures" referred to adopted ones. As the draft *Postal Law* was still in the legislative process, no final version had been published yet. China had improved legislative procedures and enhanced legislative transparency. Since February 2008, except for special exceptions, all the administrative regulations promulgated at the legislative level of the State Council were published on a single platform of the China Legislative Information Network System (maintained by the

Legislative Office of the State Council) for public comments before promulgation. And, starting from July 2008, departmental rules by the central governmental agencies were collected and published on the aforementioned website. Since then, twenty-three drafts of administrative regulations and three drafts of departmental rules had been published on the website for public comments.

25. *Legal services.* The delegation of China indicated that it had noted the concerns expressed by the United States in relation to legal services. This sector was highly specialized, especially for a developing country like China where economic development was imbalanced across different regions. Supervision and regulation were needed to ensure the quality of the services provided to protect public interest, and to meet the demand for legal service in different regions. For this reason, China encouraged foreign law firms to open representative offices in the regions suffering from a lack of legal services, as indicated in the *Regulations on Administration of Foreign Law Firms' Representative Offices in China*. As for the time period, practice in the past 10 more years had shown that it took three years on average for a representative office to be set up and operate normally in China. Therefore, a three-year period was required before foreign law firms could open an additional office in order to leave some transitional time to ensure that the quality of services provided would not be adversely affected by overexpansion of law firms. China had made great efforts in shortening the time span in the application process. In practice, most applications had received replies within less than nine months.

26. The representative of the United States said that his delegation believed that the TRM continued to be a useful mechanism which provided needed additional transparency for China's trade regime. His delegation appreciated China's effort to respond to important questions. Some of the answers to specific questions raised by the United States were encouraging. With respect to express delivery, it was important to clarify that we were talking about letters and not documents. With respect to the draft postal law, his delegation wished to encourage that comments be taken into consideration when the law was in the drafting stage. There had been positive responses on the distribution on crude and processed oil. On direct selling, his delegation was still perplex by the three years direct selling experience requirement. Although the response indicated that this was due to prudential reasons, his delegation was not really sure what those prudential reasons would be. In fact, the reference made by China to prudential reasons was undermined by the next comment which referred to the fact that Chinese companies did not have experience in direct selling; hence, it was odd that foreign providers with experience would be subject to more onerous prudential measures. The answer to US question 3 regarding allowing foreign-owned chains to sell motor vehicles had been positive. His delegation also wanted to thank China for the information regarding transparency. Telecommunication services had been a long standing issue of concern. While the United States had noted the reduction of the minimum capital requirement by fifty percent, the remaining amount remained very high and his delegation would continue to urge a further reduction, especially in the light of the comments that China was looking to expand its telecommunication infrastructure; such high capital requirements did not encourage investments. In the area of value-added services, his delegation was encouraged by China's willingness to engage and work with other trading partners.

27. The representative of the European Communities thanked the delegation of China for its presentation made in response to the questions submitted by the European Communities and other delegations. Her delegation attached great importance to the TRM which provided an excellent opportunity to assess the progress made by China in complying with its WTO commitments under the GATS. The EC wished to make some brief follow-up remarks in order to seek further clarification following China's presentation. As regards postal and courier services, the EC welcomed the fact that a consultation process was opened on the 11th draft Chinese Postal Law at the level of the National People's Congress. The EC had taken this opportunity to submit comments to China which it hoped would be taken into account. The EC took note of China's confirmation that the express deliver standards issued on 12 September 2007 were voluntary only and wished to further ask whether China could also confirm that the draft postal law, through its reference to the standards in Article 51 of the

current draft, did not in fact make these standards mandatory. Regarding the issue raised in EC question 22(a), the EC wanted to clarify that it was concerned about commercial document delivery and not only private letters. At the time of accession, the Chinese courier market was open to foreign companies for express delivery of commercial documents, parcels etc., covering domestic express, as China's limitation was restricted to the delivery of private letters only. Hence, in the view of the EC, Article 50 paragraph 2 of the draft postal law prohibited foreign companies to operate domestic express delivery of all documents, which created discrimination outside the reserved postal services area. The EC asked China to clarify how it would ensure that the draft postal law would not contain this discriminatory element. Regarding air transport services, the EC understood that China was not fully able to clarify the exact timeframe of the entry into force of the draft new regulation relating to Computer Reservation Systems. The EC would nevertheless be grateful if China could clarify whether the new law would allow direct access to and use of foreign CRS by Chinese travel agents, including booking or reservation of tickets, but crucially also issuing tickets through BSP. The EC thanked China for its explanations regarding the questions submitted on the construction sector and highlighted the importance of this sector. The EC acknowledged China's taking note of the difficulties faced by foreign companies to fulfil the requirements stipulated by Decree 114. However as stated by China, the current transitory phase of non-application to foreign companies was temporary. The EC asked China how this "temporary" provision should be interpreted and when the regime would become permanent. The EC noted that retailing services via the internet were of growing importance in the distribution services sector. The EC took note of China's statement but wished to raise a general concern regarding China's requirement for a telecommunications license for value added services. The EC believed that distribution service suppliers should not be subject to telecommunications licences.

28. The representative of Japan expressed her delegation's deep appreciation for the detailed explanations given by China. In Japan's view, the TRM mechanism was a very important element to try and secure the level of commitments undertaken by China when it acceded to the WTO. Her delegation was very satisfied with the answers, which would be conveyed to experts in Tokyo, and wished to make some follow-up questions. With respect to advertising services she asked China to confirm her delegations' understanding that the conditions contained in the regulations on foreign investment in advertising firms, which entered into force on 1st October, such as (i) mainly operating the advertising firms, and (ii) having three-year experience after establishment, were regarded as prudential measures. Second, in the construction and related engineering services sector, her delegation wished to clarify whether the minimal capital requirement was consistent with the national treatment, i.e. whether both foreign and domestic enterprises were subject to this requirement. With respect to the distribution sector, she understood the explanation given by China as meaning that the authorization from the national commission for the distribution and import of household use game machine and software, as well as commercial secret code product, was required from both national and foreign companies and, thus, was compatible with the national treatment obligation. She stressed that her delegation highly appreciated China's useful explanations and understood that preparing them had required great efforts from China.

29. The representative of Canada said that the TRM has considerably facilitated the assessment of China's compliance with the terms of its accession. Her delegation had submitted written questions concerning telecommunication services and regulatory transparency. She was pleased to take note of the clarifications provided by the delegation of China.

30. The representative of China said that she wanted to make some follow-up remarks. China understood the US concern regarding direct selling. However, as explained, China prohibited direct selling before the regulation had been adopted in 2005, mainly for moral reasons, i.e. to protect public interest and prevent commercial fraud. This prohibition meant that Chinese enterprises had no experience in that area, which was why they were exempted from the regulation. This did not meant, however, that foreign companies were discriminated. The market was open to qualified foreign

investors with good managerial and operational experience. Direct selling was based on honesty and credibility, and China had had bad experiences with cases leading to criminal action. Minimum capital requirements in the telecommunication sector were applicable to both domestic and foreign companies. China welcomed qualified foreign investors which were ready to contribute to the development of the Chinese market. In its schedule, China had committed to liberalize courier services, except for those reserved to Chinese postal authorities by law. According to the postal law, all letters – and not only private letters – were reserved to China Post. This had remained unchanged since China's accession to the WTO. Her delegation was ready to talk bilaterally with the European Communities about the definition of documents and letters. Express Delivery Standards were recommendatory only. With respect to air transport, the regulation on CRS was still under discussion; her delegation was therefore not in a position to give specific information in this regard, but would keep the European Communities informed of the progress made. In the construction sector, China would give a five year transitional period, starting from February 2008, after which the project manager system would be replaced by the contractive system. Foreign companies were encouraged to come and work in the Chinese market, to meet the requirements and also to consider hiring Chinese employees. With respect to internet selling, China wished to note that the e-business developed rapidly, which represented a challenge for regulatory authorities. The ICP licence requirement enabled suppliers and consumers to have access to reliable information regarding on-line distribution and did not affect China's commitments in the distribution sector. Her delegation also wanted to confirm that the three-year experience requirement for advertising firms was justified by prudential reasons. Finally, the prohibition to sell household use game machine and software applied to both domestic and foreign companies.

31. 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.

32. The Council so decided.

33. 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 1st December 2008, the Council for Trade in Services conducted the Seventh 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: Japan, the European Communities, the United States and Canada; (iii) a detailed account of the discussion during the meeting can be found in the meeting report, contained in document S/C/M/92.

34. The Council so decided.

V. NOTIFICATION PURSUANT TO GATS ARTICLE XXI

35. Statements made under this agenda item are contained in an informal document (JOB(08)/131) 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.

VI. FUTURE WORK OF THE COUNCIL FOR TRADE IN SERVICES (REGULAR SESSION)

36. The Chairperson said that this item had been placed on the agenda as the result of discussions among delegations, and, in some instances, with the Secretariat. The main question was how delegations envisaged the allocation of their time and efforts in the coming months. At this point, he wished to hear delegations' views and see whether there might be any specific suggestion.

37. The representative of Hong Kong, China said that the main preoccupation of her delegation was to conclude the DDA. Nevertheless, it would be important to reflect on what the CTS should do in 2009. It would be opportune for delegations to get together and discuss this issue.

38. The representative of Chile said that it was opportune to include this topic on the agenda. The DDA was a priority. Nevertheless, it was important not to underestimate the regulatory work of the CTS and of its subsidiary bodies. It would be useful to consult on this issue at the beginning of 2009, as the regular agenda should not be hostage of a lack of progress in the DDA.

39. The representative of the Philippines said that these informal consultations should be open-ended, at least in a first instance, without precluding the need to undergo some more bilateral or plurilateral consultations later on, if differences needed to be bridged.

40. The Chairperson said that he would be conducting open-ended informal consultations on this issue at the beginning of next year.

41. The Council took note of the statements made.

VII. OTHER BUSINESS

42. The representative of Australia wished to raise the issue of the certification of the EC-25 schedule. He said that his delegation had taken the floor on this issue at previous meetings of the Council, including in June this year, and remained concerned that more than two years since the EC had notified certification of the EC-25 schedule of commitments, referred to in document S/L/286, that schedule had still not entered into force. His delegation was one of the affected Members with whom a compensation arrangement had been agreed and from Australia's perspective, a delay of unknown duration for entry into force was unacceptable on both systemic and commercial grounds. Australia had raised this matter bilaterally with the EC and had not yet been advised as to when the schedule would be ratified by member states for its entry into force. His delegation wished again to call on the EC to expedite the entry into force of the EC-25 schedule.

43. The representative of Japan said that the compensation should enter into force as soon as possible. It was regrettable that no date was set two years after the certification of the schedule.

44. The representative of India said that his delegation wished to echo what previous speakers had said. The EC-25 schedule had still to come into force. The compensation package had been agreed more than two years ago and there was still no clarity as to when it would come into force. This situation gave rise to various questions. In effect, what was enforced at the moment? Was the EC-12 schedule in force at the moment? Was the EC offer based on the EC-12 or the EC-25 schedule? The implications for the next EC offer were not clear. India wished to encourage the EC to look closely at its internal processes, keeping in mind the objective of Article XXI and S/L/80.

45. The representative of China recalled that China was an affected Member in this proceeding. The delay in implementing the new schedule created legal and commercial implications. It was also a systemic precedent. Her delegation wished to urge the EC to expedite its internal ratification procedure.

46. The representative of Hong Kong, China said that her delegation was concerned about the systemic and commercial ramifications of this delay. Her delegation had conveyed its concerns bilaterally, including concerns regarding compliance with procedures set out in S/L/80 with the EC. She wished to thank the EC for its readiness to engage in these bilateral discussions. Hong Kong, China hoped that the EC could take these concerns into account seriously in order to reach a satisfactory solution.

47. The representative of Brazil said that his delegation was concerned with the legal status of the EC-25 package. The new commitments were still not in force, which created legal uncertainty and represented a grave precedent. This situation was unacceptable both from a legal and commercial point of view.

48. The representative of Canada said that his delegation shared the views of previous speakers. The situation of the EC-25 schedule undermined the certainty that Canada valued in the GATS system.

49. The representative of the European Communities recalled that, as had been indicated in the notification document as well as in the respective agreements signed with the affected Members, the consolidated schedule should enter into force following the internal decision-making procedures of the European Communities and its Member States, where appropriate. Following the signature of the relevant agreements with the affected Members and the completion of the WTO certification procedure in December 2006, the European Commission had formally proposed the conclusion of the agreements to the EC Council, by means of a proposal for a Council decision. Subsequently, by amending the original proposal of the Commission, the EC Council had decided to require the national ratification of the relevant agreements by the EC Member States, and had also called for the consultation of the European Parliament. The entry into force of the new schedule was dependent on the outcome of these proceedings. For the time being, 10 Member States (Austria, Denmark, Germany, Lithuania, Malta, The Netherlands, Greece, Hungary, Spain and Sweden) had concluded their national procedures and ratified the relevant agreements. Once the internal procedures would be completed, the EC would notify to the WTO the entry into force of the new schedule.

50. The Council took note of these statements.

51. 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. He informed the CTS that it was his intention to hold informal consultations in order to reach an agreement on how to proceed further with the second Review.

52. The Council took note of this statement.

53. The Council bid farewell to Mr. Roberto BOSCH from Argentina and to Mr. Minh DANG from Vietnam.