

Committee on Trade in Financial Services

REPORT OF THE MEETING HELD ON 1 DECEMBER 2008

Note by the Secretariat¹

1. The Committee on Trade in Financial Services held a meeting on 1 December 2008, under the chairmanship of Mr. Tom Goodwin (United Kingdom). The agenda is contained in Airgram WTO/AIR/3288.
 - A. ADOPTION OF THE ANNUAL REPORT TO THE COUNCIL FOR TRADE IN SERVICES
 2. The Chairperson drew Members' attention to document S/FIN/W/65, containing a draft report of the Committee's activities in the past year.
 3. The Committee adopted the annual report without introducing changes to the draft.
 - B. ACCEPTANCE OF THE FIFTH PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES EMBODYING THE RESULTS OF THE FINANCIAL SERVICES NEGOTIATIONS
 4. The Chairman recalled that three WTO Members had yet to accept the Fifth Protocol: Brazil, Jamaica, and the Philippines. He informed the Committee that he had received a written communication from the Philippines advising him that, regrettably, there had not been significant developments regarding the country's domestic acceptance procedures. He added that he had received assurances that the Executive Branch in the Philippines was working with the Senate to secure acceptance of the Protocol as soon as possible. The Chairmen then invited Brazil and Jamaica to provide information on the status of their domestic processes.
 5. The representative of Brazil said that the domestic acceptance procedures had not been concluded yet, and that he could not indicate any specific date for when that might happen.
 6. The representative of Jamaica said the Protocol was still under consideration within the Ministry of Finance, and had not been sent to the Legislature yet. Jamaica was taking a prudent approach to the issue, particularly in light of recent financial turmoil. It was not possible for him to provide a specific date for the acceptance of the Protocol at this stage.
 7. The Chairman thanked these two delegations for their updates, and encouraged the three Members concerned to accelerate their internal procedures for the acceptance of the Protocol.
 8. The Committee took note of the statements made and decided to revert to this agenda item at the next meeting.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

C. TECHNICAL ISSUES

9. The Chairperson recalled that there had been no discussion under this agenda item at the last meeting. He remained convinced that the Committee could have a role in supporting, from a technical viewpoint, the Doha market access negotiations that were underway. The Committee could also provide an appropriate forum for dialogue between the trade community and the regulatory community.

10. He recalled that a process of informal consultations had been started last year, with the purpose of addressing a range of issues that might have a bearing on the market access negotiations, and exploring them from a number of different perspectives. On the basis of that approach, he had convened two informal consultations with a representative group of Members, in June and October 2008, to discuss two issues: the trade-related aspects of Islamic Banking, and the trade-related aspects of microfinance. The discussions were based on two room documents prepared under the Chair's responsibility. The meetings contributed to a better understanding of those issues and to the identification of potential trade aspects that may have a bearing on market access negotiations. It had become clear that these issues required further discussion.

11. The Chairperson confirmed his intention to continue with these informal consultations, focusing on issues that Members might want to propose. He would consult in order to identify potential topics for further discussion.

12. No Member took the floor under this agenda item.

13. The Committee took note of the Chair's statement and decided to revert to this agenda item at the next meeting.

D. RECENT DEVELOPMENTS IN FINANCIAL SERVICES TRADE

14. The Chairperson was of the view that discussion under this agenda item could be revitalized in the coming year. This could provide the opportunity for Members to make individual presentations on recent developments in their own markets. Additionally, it could be used as an occasion to discuss other issues of relevance, such as financial services liberalization in Preferential Trade Agreements, or other global market developments of interest to Members. He recalled that there had been many far-reaching developments recently, linked to the ongoing financial crisis. This crisis had had consequences which had been discussed in a number of WTO subsidiary bodies – most notably the informal Heads of Delegation meeting of 12 November and in recent meetings of the Working Group on Trade, Debt and Finance. The implications for trade generally had also been discussed in other international organizations, such as UNCTAD and ILO, and gatherings, such as the recent G-20 Heads of State Summit. In his view, the role of the Committee on Trade in Financial Services in particular was to keep these developments under review from the perspective of the agreements that Members had reached, and that they might reach in the future, on trade in financial services. He called on Members to address these issues from that perspective.

15. No Member took the floor under this agenda item.

16. The Committee took note of the statement made by the Chairperson and decided to revert to this agenda item at the next meeting.

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

17. The Chairperson recalled that the Committee was mandated to conduct this review pursuant to section 18 of the Protocol on the Accession of the People's Republic of China. Paragraph 4 of Section 18 of the Protocol stated that the "review provided for in paragraphs 1 and 2 will take place after accession in each year for eight years. Thereafter there will be a final review in year 10 or at an earlier date decided by the General Council." This would be the seventh such review conducted by this Committee. For this year's review, written communications had been received in advance from the following Members: Japan (S/FIN/W/64); the European Communities (S/FIN/W/66); Canada (S/FIN/W/67); and the United States (S/FIN/W/68).

18. The representative of China said that the current financial crisis had not only affected Members' economic development and living standards, but also brought greater uncertainty to world trade. The causes of the crisis were multiple, including improper macroeconomic policies and lack of adequate financial supervision. If there was a clear lesson that could be drawn from this crisis it was that Members should remain vigilant, and improve financial supervision, reinforce disciplines, and strengthen international policy communication, coordination and cooperation.

19. This global crisis revealed that in the past few years financial institutions in some developed economies had failed to make prudential commercial decisions based on sound analysis. Instead, they had engaged in excessive market speculation in pursuit of irrational capital gains. In the meantime, government authorities' failure to perform their supervisory duties had aggravated the situation and contributed to the crisis to a large extent. As a developing country, China's capital market, compared with those of developed Members, was still in its infancy. Nevertheless, upon accession to the WTO, China had made comprehensive commitments, granting broad market access to its financial sector. China had been faithfully honouring these commitments.

20. The year 2008 had been particularly challenging for China. Both natural disasters and the international financial crisis had had an strong impact on the economy. Under such circumstances, the Chinese government had made some policy adjustments, and strengthened macroeconomic control with a view to ensuring a stable economic environment. Measures adopted included the lowering of deposit reserve ratio, cutting down lending rates, and relaxing the tax burden of enterprises, among others. More recently, a big economic stimulus plan had been announced, involving the injection of RMB 4 trillion between the fourth quarter of 2008 and the end of 2010, in order to boost domestic demand. These measures were also a contribution from China to world financial market stability and economic development.

21. Before turning to the questions raised by some Members prior to the meeting, she clarified that since the US submission had arrived only on the evening of 27 November, some of the questions raised therein might have remained unanswered due to lack of sufficient time. Additionally, she noted that paragraph 3 in the submission by the European Communities was misleading; it seemed to be requesting China to address issues related to import licensing in this Committee, which should not be the case.

22. She first turned to the questions on insurance services. In response to question 1 by Canada, question 8 by the European Communities, and question 1 by the United States, she indicated that China had been performing the review and approval of internal branch applications from foreign insurance companies in accordance with its accession commitments and related regulations. The applications of Chinese and foreign companies were subject to the same regulation, which was fully in line with WTO rules. Reviews and approvals by the China Insurance Regulatory Commission (CIRC) were consistent with the national treatment requirement. She added that national treatment did not simply mean equal in quantity.

23. In response to question 2 by Canada and the United States, she indicated that the moratorium had been imposed with the aim of strengthening the regulation and supervision of the insurance market. She added that CIRC would consider lifting the moratorium in light of circumstances after the market was back in order. This moratorium did not affect the market access of foreign insurance companies or the internal branch approvals. The moratorium was only targeted at sales offices, not at foreign companies coming to China or at foreign companies' applications for internal branching.

24. With regard to question 3 by Canada, she clarified that the *Provisional Measures Governing Insurance Asset Management Companies* and the *Measures for the Overseas Investment with Insurance Funds* were two different regulations targeting different objects and with different purposes. It was therefore inappropriate to say that the latter superseded the former. The two requirements in Article 8 of the *Provisional Measures* were still applied to insurance companies seeking to set up asset management companies.

25. With regard to question 6 by the United States, she said that due to the importance of insurance in everyday life, it was necessary for the representatives of insurance companies to stay for a sufficient period of time to gain deep insight and practical knowledge of the local situation, with a view to conducting appropriate analysis and taking prudent business decisions. China considered the minimum-stay requirements to be reasonable.

26. In response to question 5 by Japan, concerning minimum capital requirements, she said that there was no uniform international standard for insurance companies. The capital requirement applied in China was the same for both domestic and foreign insurers. Besides, this standard was set at the time of China's accession and had never been increased since.

27. With regard to question 6 by Japan, she noted that the *Administrative Methods on Equity Interest in Insurance Companies* were at the revision stage. The competent authorities would carefully study the comments and feedbacks received from stakeholders and give due consideration to them.

28. Turning to the questions on reinsurance services raised by Japan, she said that the *Administration of Reinsurance Business Regulations* was not against the commercial freewill principle. Article 11 only required prior solicitation, but did not force the transaction outcome. Therefore, these requirements were not inconsistent with China's accession commitments, and were compliant with the national treatment principle. The Insurance Law, which was under revision, would further clarify and adjust these requirements. Additionally, in order to better prevent risks, CIRC supervised affiliated reinsurance transactions in accordance with prudential criteria set out by the International Association of Insurance Supervisors (IAIS). Once the foreign insurer's reinsurance plan was approved, the company was allowed to conduct reinsurance transactions with affiliated companies. Japan's interpretation of Article 22 was therefore incorrect.

29. She then turned to questions on banking services. In response to questions 7 by Japan and 9 by the United States, she said that the scope of business of foreign banks branches was defined so as to protect the interest of depositors, and was consistent with the principle of prudential supervision and regulation. Because branches were not legal entities, it was difficult for China, as a host country, to control the overall risk and to separate the risks arising from the parent bank from those arising from the branches in China. Since, on the one hand, as stipulated in bankruptcy legislation in many Members, the sequence of liquidation was in favour of domestic rather than foreign depositors, and, on the other hand, only legal entities – instead of branches – were allowed to join the deposit insurance systems in many Members, once the parent bank was at risk and its Chinese branch was affected, then the interests of Chinese depositors could not be guaranteed. Therefore, it was important for China to take prudential measures to protect Chinese depositors, especially the small- and medium-sized ones.

30. Regarding questions 4 and 6 by the European Communities on capital requirements for subsidiaries of foreign banks and their scope of business, she considered that the European Communities had misunderstood China's policy. Article 44 of the *Regulation on the Administration of Foreign-invested Banks* stipulated that 30 percent of the operating capital of a branch of a foreign bank shall be deposited in no more than three Chinese commercial banks within the territory of China in the form of interest-generating assets as designated by the banking regulators. Risk supervision of foreign bank branches raised more difficulties and uncertainty than the supervision of locally incorporated subsidiaries. Therefore, for prudential purposes, China had adopted more stringent requirements for the branches of foreign banks. However, China offered equal treatment to locally incorporated subsidiaries of foreign banks and to domestic banks. Regarding foreign debt, she confirmed that China would continue to supervise and regulate overall systemic risk, and to control the overall scale of foreign debt, with a view to securing the national economy by using different policy instruments. This was well accepted internationally.

31. Regarding the five-year waiting period, it seemed that the European Communities had misinterpreted China's policy again. As clearly stipulated in China's Schedule of Specific Commitments, the requirements for foreign financial institutions to engage in local currency business were the following: three years business operation in China, and being profitable for two consecutive years prior to the application. Therefore, it was not a five-year waiting period, as understood by the European Communities. China's current practice was fully in line with its commitments.

32. Regarding the shareholding cap of foreign invested banks, the Regulation of the People's Republic of China on the Administration of Foreign-Invested Banks and the Detailed Rules for the Implementation of the Regulation of the People's Republic of China on the Administration of Foreign-Invested Banks allowed qualified foreign financial institutions to establish wholly foreign-owned banks or joint-venture banks without any equity cap on foreign investment. At the same time, according to China's laws governing foreign investment and the horizontal commitment in China's GATS schedule, "the proportion of foreign investment in an equity joint venture shall be no less than 25 percent of the registered capital of the joint venture." In other words, the criterion for determining whether an enterprise was qualified as a joint-venture was that foreign equity participation be no less than 25 percent.

33. Regarding the questions on capital requirements raised by the European Communities (question 6) and the United States (questions 9 and 11), she said that China Banking Regulatory Commission (CBRC) did not grant differential treatment for foreign-invested legal entities and foreign bank's branches with regard to business scope. Foreign banks' branches were also permitted to do retail business in China. The requirement on minimum operating capital of these branches was determined by taking into account the special organizational structure, the risks associated with the business scope of branches, and China's existing regulatory capacity. Since 2003, CBRC had lowered twice the operating capital requirements for branches of foreign banks. The new Regulation and its Implementation Rules further streamlined the requirements to only two categories. CBRC was of the view that the new regulation met the diversified needs of foreign banks while maintaining prudential supervision and regulation.

34. Regarding the data location mandated by the bankcard policy, it was not clear to her where the European Communities had gotten this information from, since there were some inaccuracies in the document references. Nevertheless, she clarified that China had always required all foreign banks having a legal entity status to place their data systems in China, and that policy had never been changed.

35. Turning to securities services, she said that the relevant information sought by the United States in question 13 of its submission was available at the China Securities Regulatory Commission website (www.csrc.gov.cn).

36. Finally, regarding transparency-related issues (questions 5, 15 and 16 in the submission by the United States), she considered that China had faithfully honoured its accession commitments. A 30-day period for comment between promulgation and entry into force of all laws, regulations and rules was provided to any individual, enterprise and to other WTO Members. China's *Foreign Economic and Trade Gazette* was the only official journal designated by the Chinese government to publish all the trade-related laws and regulations. The digital version of the Gazette was published on MOFCOM's website and was e-mailed to domestic and foreign users free of charge. The Chinese government had also established an enquiry point and an enquiry website at MOFCOM and AQSIQ to provide comprehensive and convenient inquiry services to any individual, enterprise and WTO Member. This was in line with notification obligations at the WTO. In addition, to honour China's commitments, the Legal Affairs Office of the State Council annually published Chinese-English versions of the collection of laws and regulations and had set up an official website to publish drafts of regulations promulgated by central government agencies, including CIRC, CSRC, CBRC and MOHRSS.

37. She considered that China had improved its legislative procedures and enhanced legislative transparency. All the ministries and agencies under the State Council had to conduct public opinion solicitation in writing or by way of symposia and international workshops to provide an opportunity for interested parties to offer their comments and opinions with regard to drafts and revisions of laws and regulations. In recent years, drafts of more than 30 laws and regulations had undergone public opinion solicitation via media such as websites, newspapers and television. She added that the draft of the Insurance Law was a good example of transparency procedures.

38. The representative of Canada took particular note of two responses provided by China, namely, the update on the status of the moratorium for the approval of sales offices of insurance companies, and the clarification provided with regard to the relationship between the measures on overseas investments of insurance funds and those governing insurance asset management companies. He underlined also China's commitment to permit branch expansion of insurance firms consistent with the phase-out of geographical restrictions, the last stage of which had taken place in 2004. Canada had observed, however, that branch and sub-branch approvals for foreign-invested firms remained lengthier than for domestic firms, but took note of the explanations provided by China on that issue.

39. The representative of the European Communities clarified that paragraph 3 of their submission had been introduced by mistake. Additionally, she explained that question 7 referred to a draft bank card policy under consultation that might indeed imply a potential policy change. While taking note of China's confirmation with regard to the equal applicability of requirements for foreign and domestic insurers; she nonetheless observed that, according to the European insurance industry, domestic firms could apply for several branch licences simultaneously while foreign insurers were constrained to apply for one branch licence at a time. The European Communities would welcome a clarification from China as to whether the application and review requirements did apply equally to both foreign and domestic insurers, not only on a *de jure* basis but also on a *de facto* basis.

40. She then turned to banking services. Article 8 of the Measures for the Administration of Investment Shareholding provided that the percentage of equity investment of a single overseas financial institution in a Chinese-funded financial institution could not exceed 20 percent. Therefore, she added, foreign ownership might exceed 20 percent, but not from a single foreign institution. She sought further clarification on this point.

41. The representative of the United States requested more thorough responses to some of the questions raised by his delegation in its written submission.

42. The representative of Japan said that two of the questions raised in the submission had not been clearly answered, namely question 3 on reinsurance services, and question 6 regarding the *Administrative Methods on Equity Interest in Insurance Companies*.

43. The representative of China replied to the question raised by the European Communities on the data location of bank cards by explaining that, since RMB cards had only recently been opened up for business for foreign-invested banks having the status of legal entities, these banks did not have a data processing system to support this new line of business. Therefore, setting up data processing systems in China should be deemed a "new establishment" rather than "relocation." She noted that foreign banks could choose to establish a new data processing system or outsource this business to a specialized agency established in China. She added that the draft Regulation on bank cards was still under consideration, but that the requirement for commercial banks to localize their computer systems in China had not been changed.

44. With regard to the questions on the foreign equity caps in banking, she said that China allowed the establishment of wholly-owned foreign-invested banks. The 20 percent cap was a limitation on investment in Chinese banks. If the aggregate of foreign investment in Chinese financial institutions was less than 25 percent, that investment was not subject to the rules on the *Administration of Foreign-Invested Banks*. However, if the foreign investors wished to raise their aggregate shareholding in a Chinese bank above 25 percent, that would be regarded as the establishment of a new joint venture, and the transaction would require approval by the CBRC according to the rules for the *Administration of Foreign-Invested Bank* and the *Detailed Rules for the Implementation of the Regulation*. Therefore, in her view, the measures mentioned constituted autonomous liberalization by China, and were fully consistent with China's WTO commitments.

45. In response to question 8 by the United States, she said that the financial sector was very vulnerable to risks. As a matter of fact, China had been shocked by the developments in the American International Group (AIG), which had been granted grandfather rights in China. She further observed that the GATS' Preamble stipulated that Members had the right to strengthen supervision and regulation, and that the recently concluded G-20 summit also recognized the importance of regulation and supervision and called for joint efforts in this area. She added that China would stick to the policy goal of financial security and the strengthening of market supervision. In response to question 4 by the United States, she clarified that the China Post Life Insurance Company had been approved, but had not been established yet.

46. Finally, she repeated her replies to questions 3 and 6 by Japan.

47. The representative of Japan said that, as indicated in question 3 of her country's submission, *Administration of Reinsurance Business Regulations* required direct insurance companies to seek, from at least two reinsurance companies in China, reinsurance offers amounting to more than 50 percent of the reinsurance to be ceded. She welcomed China's clarification that this was not a compulsory requirement. However, according to information provided by the Japanese insurance industry, this requirement was perceived as compulsory *de facto*, and actual activities were affected by this measure.

48. She welcomed the comment by China – with reference to Japan's question 6 – that the draft *Administrative Methods on Equity Interest in Insurance Companies* were still under consultation. However, she also noted that this draft stipulated that any approved foreign financial institution was not allowed to make investments or hold shares in China's insurance companies. Concerns remained therefore regarding the consistency of this measure with WTO disciplines.

49. The representative of China requested Japan to send its comments on the draft measures to the Chinese competent authorities through the pertinent bilateral channels.

50. By way of conclusion, the Chairperson invited the Committee to take note of the statements made. Secondly, he requested the Secretariat to prepare a report, to be presented to the Council for Trade in Services. It would be a factual report, stating basically that:

- (a) pursuant to section 18 of the Protocol on the Accession of the People's Republic of China, the Committee conducted a review of the implementation by China of the WTO Agreement and of related provisions of the said Protocol, in the meeting held on 1 December 2008;
- (b) written communications had been received from four Members, namely Canada, the European Communities, Japan, and the United States; and
- (c) the details of the discussion, including all the interventions made at the meeting, would be found in the meeting report, to be issued as document S/FIN/M/57.

51. The Committee so decided.

F. DATE OF THE NEXT MEETING

52. The Committee agreed to hold its next meeting together with other services subsidiary bodies. The exact date would be announced in due course.

G. OTHER BUSINESS

53. There was no issue raised under this agenda item.
