

MINUTES OF THE MEETING HELD ON 2 OCTOBER 2009

Chairman: Mr. Barney RILEY (New Zealand)

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The Committee adopted the agenda as reproduced in WTO/AIR/3423. An annotated agenda was circulated in document JOB(09)/109.

1. Periodic report of the Committee to the Council for Trade in Goods (G/MA/SPEC/42)

1.1 The Chairman drew attention to document G/MA/SPEC/42 which contained the draft periodic report of the Committee. He noted that this report, which would be finalized in the light of the discussion that would take place at this meeting, would be submitted to the Council for Trade in Goods (CTG) for examination. He noted that there were no requests for extensions of HS96 waivers so no factual information on this issue had been provided in the Annex.

1.2 The Committee took note of the periodic report¹ and agreed to forward it to the CTG for appropriate action.

2. Extension of the HS2002 waiver (G/C/W/624)

2.1 The Chairman recalled that a number of Members were given an extension or granted a new waiver, through the form of a "collective decision", in order to introduce HS2002 changes domestically and to subsequently introduce these changes to their respective schedule of concessions and to undertake negotiations if required. This waiver decision was contained in document WT/L/744 and would expire on 31 December 2009. Further he noted that as Nicaragua and Chinese Taipei had certified documentation resulting from the HS02 transposition exercise, their names had been removed from the annex. However, there still remained a number of Members covered by this waiver who had yet to complete the HS2002 exercise and he proposed that the waiver be extended for another year. If the Committee was in agreement, he proposed that the Committee forward the draft waiver decision to the CTG for approval.

2.2 The Committee agreed to forward the draft decision to the CTG for approval.

3. Extension of the HS2007 waiver (G/C/W/625)

3.1 The Chairman recalled that a number of Members had been granted a waiver through the form of a "collective decision" in order to introduce HS2007 changes domestically and to subsequently introduce these changes to their respective schedule of concessions and to undertake negotiations if required. This decision was contained in document WT/L/745 and would expire on 31 December 2009. Given that the HS2007 exercise was far from over, he proposed that the waiver be extended for a year. If the Committee could agree to that, then he proposed that the Committee forward the draft waiver decision to the CTG for approval.

3.2 The Committee agreed to forward the draft decision to the CTG for approval.

4. Introduction of HS96 changes to schedules of concessions

(i) Submission of HS96 documentation

4.1 The Chairman drew attention to document G/MA/TAR/2/Rev.43. He noted that this document differed from the previous version insofar as references to the document symbols which contained waiver extensions granted to Argentina and Panama had been included. He also informed the Committee that Panama had now concluded the process, and its certified documentation had been circulated in WT/Let/648.

4.2 The Committee took note of the document and the statement.

¹ Issued as G/MA/240.

- (ii) *Decision on Procedures leading to the verification and certification of HS96 changes relating to the schedules of 64 Members (WT/L/756)*

4.3 The Chairman recalled that this decision was adopted in the General Council on 27 May 2009. As required by it, the Secretariat had now posted the HS96 files on the website and notice of this posting had been circulated in document G/SECRET/HS96/CTS/1 dated 3 August 2009. In accordance with the procedures, the Committee would meet approximately six months from the date of the notification to conduct a multilateral review of these files; i.e. early next year.

The Committee took note of this statement.

5. Introduction of Harmonized System 2002 changes to schedules of concessions using the CTS Database (WT/L/605)

- Report by the Secretariat on the status of work

5.1 A representative from the Secretariat (Mr. Jurgen Richtering) stated that a revised full report was issued as JOB(06)/8/Rev.10 on 25 September 2009. The status of the HS2002 transposition was shown on the first page of the report. It showed that: 3 draft HS02 files remained to be prepared; 7 draft HS02 files had been recently completed and sent to Members for their first review; 76 HS02 files were released for multilateral review most of which were approved by all Members; 32 HS02 files which were certified (of these one file was in the pipeline to be certified).

5.2 Regarding the certification of files that were approved, he pointed out that the number of certified files would be much higher if more Members signalled approval for their own files. He further noted that some Members' files stayed on the agenda of more than two dedicated sessions. A number of files from today's dedicated session fell into this category. There were two reasons: (1) the concerned Member did not react quickly to take into account the comments received in spite of the Secretariat's assistance which could be provided in order to prepare a revised version of the Member's file.; and (2) the comments, in specific and detailed form, were often not transmitted to the Member concerned during or soon after the meeting by the Member making the reservation. Although the Secretariat took note of the HS02 files with comments/reservations made by Members during the multilateral review meeting, the weak point was the follow-up activity of making sure that the comments raised were effectively delivered to the Member concerned. In many cases nothing happened between the end of the meeting and the next meeting 4 to 6 months later because of a lack of communication. As a result, no progress was made between meetings since the comments raised first needed to be included in a revised version of the HS02 file before the file was reviewed again in a multilateral meeting.

5.3 It was clear that there needed to be more "discipline" in the follow-up activities if Members wanted the process to conclude successfully. The Secretariat wished to help facilitate the exchanges between Members. That was to say by reminding them when there was a question they needed to respond to or when they had a reservation or comment to elaborate. It would be done informally, probably in the shape of a phone call or email; the main objective being to have these issues on delegations' radar screen more often than just a few weeks before an informal dedicated session.

5.4 In reference to document JOB(06)/8/Rev.10, the representative of the Bolivarian Republic of Venezuela noted that footnote 8, on page 3 read as followed: "The Bolivarian Republic of Venezuela had requested an extension of the 60-day period until 2 June 2009 to provide comments on its file." He wished to point out that only a few days after that request, his delegation had submitted comments. He had already flagged this to the Secretariat, but wished to flag it again as this had not been reflected in the document.

5.5 The representative of Canada supported the suggestion made by the Secretariat about following-up with delegations between the informal meetings to facilitate the transposition process. He also wished to take this opportunity to reaffirm to the Committee Canada's understanding that the purpose of this HS transposition exercise was to make the necessary changes to the tariff nomenclature in the Members' schedule of concessions as a result of changes to the HS tariff code as determined by the WCO. In other words that the transposition exercise was not meant to result in an increase in the level of a Member's tariff binding.

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

6. Introduction of Harmonized System 2007 changes to schedules of concessions using the CTS Database (WT/L/673)

- *Transposition of Members' CTS Files to the HS2007 Nomenclature – Notes on Methodology (JOB(09)/24 and Add.1)*

6.1 The Chairman recalled that at the informal meeting of 26 March 2009, the Committee had considered the document JOB(09)/24 by the Secretariat. In this document, the Secretariat had provided some practical solutions aimed at simplifying as much as possible the structure of Members' WTO schedule of concessions, while preserving their rights and obligations. The basic idea was to develop common rules that could be applied to all schedules that the Secretariat was going to process and verify. There were no comments at that meeting on this document. The Secretariat had subsequently circulated an addendum to that document which was considered at the formal meeting of 28 April 2009. Following an intervention, the Committee had agreed that document JOB(09)/24 and its addendum would be considered approved provided that no comments were forthcoming by any Member within two week from the date of the meeting. However, comments were submitted and the documents remained unapproved.

6.2 On another matter but also linked to the HS07 exercise, he noted that the Committee had agreed at its April meeting that those Members preparing their own files should submit such files by 31 October of this year. Only Australia and Canada had submitted such documentation, actually already by the time of the original deadline in 2007, and the Secretariat had examined the submissions and provided comments to those delegations.

6.3 A representative from the Secretariat (Mr. Jurgen Richtering) stated that in light of the comments received from Members on the HS2007 methodology the Secretariat had raised the issues in consultations with several Members. In these discussions, it had become clear that apart from some specific technical issues there was also a more general concern relating to the timing of the HS2007 transposition exercise in the light of the ongoing DDA negotiations. A conclusion of the DDA negotiations was likely to lead to modifications in the nomenclature of Members' schedules. This would thus modify the basis on which the HS2007 transposition would take place compared to the situation at this point in time. As a result, the Secretariat would be obliged to restart the transposition process with the new DDA schedules. Therefore, from the Secretariat point of view, it made better sense to put the current HS07 transposition exercise on hold for the time being and to review the situation again at the next meeting of the Committee. In this context, it was also worth mentioning that up to now no further HS transpositions had been received by the Secretariat.

6.4 The Chairman thought that the Secretariat's proposal appeared reasonable. He wondered whether the Committee could agree to put on hold the HS2007 transposition work and re-assess the situation at the next meeting of the Committee in 2010.

6.5 The Committee so agreed.

6.6 In light of this, the Chairman further proposed that the Committee re-consider document JOB(09)/24 and its addendum at the time it agreed to move ahead with the HS2007 exercise; and that it look into the question of the deadline for those Members submitting their own HS07 files also around that time.

6.7 The Committee so agreed.

7. Modalities and operation of the Integrated Data Base

(i) *Status of submission of the required documentation (G/MA/IDB/2/Rev.30)*

7.1 The Chairman drew attention to document G/MA/IDB/2/Rev.30 which presented the situation of IDB submissions as of 24 September 2009. In this connection, he noted that the Committee had taken two decisions in July, on enhancing notification compliance and on broader dissemination, which it was hoped would improve the status of submissions to the IDB as well its visibility and usage.

7.2 The Committee took note of the document.

(ii) *Report by the Secretariat on the status of work*

7.3 A representative from the Secretariat (Mr. Jurgen Richtering) stated that since the circulation of the Status of Submissions document, G/MA/IDB/2/Rev.30, the Secretariat had received the following submissions: Albania 2008 imports; Cape Verde 2008 imports and 2009 tariff data; Malawi 2008 and 2009 tariff data; Indonesia 2008 imports and 2009 tariff data; Peru 2009 tariff data; Singapore 2009 tariff data; Thailand 2007 and 2008 imports and 2008 and 2009 tariff data. The following Members had not yet submitted any information to the IDB: Cambodia, Central African Republic, Chad, Democratic Republic of the Congo, Guinea Bissau and Viet Nam.

7.4 The Secretariat had loaded information onto the IDB Internet File Transfer Facility on a monthly basis. Currently, 875 country-periods, covering 115 out of 125 Members and seven acceding countries, were available on the website.²

7.5 On technical assistance, since the last meeting of the Committee in April 2009, the IDB and CTS were presented at the following regional NAMA workshops: Malaysia for Asian economies; Jamaica for the Caribbean; UAE for Arab countries; and Colombia for Latin American countries. The IDB and CTS were also presented in the regional Trade Policy Course in Swaziland.

7.6 On software development, following the decision of the Committee at its last meeting to allow public access to the IDB and CTS as of January 2010 (with certain access conditions), the Secretariat was working to have a public version of the internet analysis facility (IAF). Members would have continued access to the full version of the IAF. The Secretariat would also incorporate tariff data at the detailed level in the Tariff Download Facility.

7.7 The representative of the United States referred to the decision adopted by the Committee in July (G/MA/239) which laid out ways by which information could be secured by the Secretariat for those Members who had either not submitted to the IDB or who had significant gaps in their submissions. He was curious about how the decision was being implemented.

² The information provided by the European Communities covers its 27 member States as of 1 January 2007; the information provided by Switzerland covers also Liechtenstein.

7.8 A representative of the Secretariat (Mr. Jurgen Richtering) stated that the Secretariat had only recently started to compile an inventory of sources. The focus of work in his section (the IDB section) had been to catch up with the back log in respect of processing IDB submissions. However, he would report more at the next meeting on the Committee on how the Secretariat was implementing this decision.

7.9 The representative of Argentina noted that his delegation had provided information to the IDB and he wished to make sure that it had been duly registered.

7.10 A representative of the Secretariat (Mr. Jurgen Richtering) stated that this matter could be clarified with his colleague who was responsible for IDB submissions.

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

8. Consolidated Tariff Schedules (CTS) Database

- *Consolidated Tariff schedules Database formats for tariff commitments as well as specific commitments in agriculture in HS2002 nomenclature (JOB(09)/32)*

8.1 The Chairman recalled that the Secretariat document JOB(09)/32 was put before the Committee at its formal meeting of 28 April. The document presented revised formats that would be used in the new version of the CTS database in the HS2002 nomenclature. It covered Members' tariff commitments as well as specific commitments in agriculture in the HS2002 nomenclature. In light of the intervention made at that meeting, the Committee had agreed that document JOB(09)/32 would be considered approved by the Committee provided no comments were forthcoming by any Member within two weeks from the date of that meeting. However, comments were submitted by two delegations concerning the agriculture section. The Secretariat was now looking at preparing a revised version of that document taking on board some of those comments. In the meantime, he understood that the Secretariat had included in the new CTS database, the information of Members with no specific commitments in agriculture as the comments had mainly concerned the format of the additional agricultural commitments.

8.2 In relation to JOB(09)/32 and the concession table appearing on page 3, the representative of Thailand wondered whether it would be possible to include a field which indicated the source of the concession. She was making this proposal as it would help determine whether the concession resulted from a transposition exercise or from some other source.

8.3 A representative of the Secretariat (Ms. Alya Belkhodja) responded that this information was already included. There was the "Present Instrument" field which reflected the name of the legal document containing the present concession. Then there was another field called "Source" which provided information on the source of the concession, i.e. whether it was a concession emanating from the HS96 or HS2002 transposition exercise or alternatively whether it originated from *inter alia* the ITA or the Uruguay Round.

8.4 The Committee took note of the statements.

9. Improving the timeliness and completeness of notifications

- *Report by the Chairman*

9.1 The Chairman recalled that the Committee had been dealing with this issue since the start of the year. Quite early on, on the Decision on reverse notification of non-tariff measures, Members had agreed that six months before a review of these notifications was supposed to take place (which was

every two years at the same time as the review of quantitative restrictions), the Chairman would send a letter to Members drawing their attention to the fact there was a venue for such types of notification and that the Committee would be assessing such notifications at its meeting which would take place in six months. So, the letter would be going out soon in order for this issue could be on the agenda of the spring meeting.

9.2 In respect of IDB submissions, the Committee had adopted the decision contained in document G/MA/239 entitled "Framework to enhance IDB notifications compliance". This new framework was expected to improve the status of submissions to the IDB.

9.3 On the Decision on Notification Procedures for Quantitative Restrictions, he recalled that a number of consultations were held. The last one was held on 25 May of this year. At that consultation, one step which was proposed in order to move the discussion forward was to see where quantitative restrictions were notified in-house. This would give the Committee clarity on the measures that had only this decision as a venue for notification. The Secretariat was still gathering information concerning this matter. Once the information was gathered he intended to hold consultations, provided that negotiations did not get everyone too busy.

9.4 The Committee took note of the report.

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

- Questions and/or Comments submitted to China by the European Communities (G/MA/W/97), Japan (G/MA/W/96) and the United States (G/MA/W/98)

10.1 The Chairman noted that the Committee would be conducting its eighth transitional review. With respect to the review, a number of comments/questions had been put to China from Japan, the European Communities and the United States. China had also circulated information.

10.2 The representative of China took note of the documents/questions submitted by Japan, US and the EC under this agenda item. A study of these questions indicated that most of them concerned the export regulatory regime of China. China believed that questions of this type were not within the mandate of this agenda item of this Committee, and wished to remind the delegations concerned to revisit the relevant paragraphs of the Protocol of Accession and its annexes. He had also understood that last year, questions of this type were discussed in the context of the transitional review in the CTG and did not understand why delegations had difficulties in raising this set of issues in that forum rather than this one.

10.3 With regard to the issue raised by US on the value-added-tax (VAT) applied to diammonium phosphate (DAP). China was of the view that it was difficult to agree with the US claim that the VAT policy for DAP was discriminatory. In China DAP was directly applied to manure, while MAP was mainly used to produce compounds or special fertilizers. Therefore, MAP and DAP were not directly competitive or substitutable products in China. There had also been domestic production of DAP in China since 1965 and the VAT had been in place both for domestic and imported products. Therefore China's view was that imported DAP enjoyed national treatment.

10.4 On the issue of the medicine reimbursement catalogue raised by the EC, he noted that China was in the process of modifying the catalogue of medicine for basic medical insurance, occupational injury insurance and maternity insurance. He expected the new catalogue to be published soon. However, he wished to draw Members' attention to the fact that the Government agencies in China were only responsible for the organisation of the process of modifying this catalogue, while the application and recommendations for medicines were done by a group of experts which consisted of

more than 300 consultants and 20,000 experts. The expert group would decide whether some medicines including innovative new medicines should be listed in the catalogue or not on the basis of coverage, capacity, health, economic assessments and other appraisal thresholds and criteria.

10.5 With regard to the issue raised by the EC on China Compulsory Certification (CCC) Regulation. China took note of the concern expressed by the EC, but believed that this question of certification was within the mandate of the forthcoming transitional review of the TBT Committee. Therefore his delegation would be ready to deal with that issue in that Committee.

10.6 The representative of Japan stated that the transitional review was an important opportunity to ensure transparency and a regulatory update of the state of China's implementation of its commitments under the WTO and to mutually improve the understanding of the interests and concerns among Members. In this regard, his delegation wished to thank China for its efforts. However, as pointed out in document G/MA/W/96, Japan was of the view that there still remained a number of unresolved issues of which many related to export restrictions and export taxes. Concerning the communication from China, Japan appreciated that China had provided this document. However, he had seen the document only recently and needed to consult his capital in order to see whether it answered Japan's questions and concerns.

10.7 The representative of the European Communities noted that this was the eighth transitional review under China's Protocol of Accession to the WTO. The EC continued to find it a useful instrument as it embodied the fundamental principle of transparency in the WTO. In this respect, it gave China the opportunity to demonstrate its commitment to this principle and allowed Members to better understand and assess progress China had made in complying with WTO rules and disciplines. The EC saw it as a mutually beneficial and supportive process.

10.8 In EC submissions to previous such exercises as well as to this one, his delegation had raised concerns and questions regarding Chinese trade restrictive measures that negatively affected EC companies' ability to trade with China. His delegation appreciated the responses given by China in previous transitional reviews and the comments made today. However, many of those responses had often remained quite general in nature and had not always addressed the specific concerns expressed by the EC. In particular the questions relating to Chinese measures that continued, in his delegation's view, to be incompatible with China's WTO accession commitments and WTO rules.

10.9 He wished to highlight some of the main areas of concern raised in the EC submission (G/MA/W/97) which had been circulated to Members well ahead of this meeting. First on the issue of the export restrictions, as pointed out, China continued to impose export restrictions in the form of export duties, export quotas and minimum export prices on a large and expanding number of raw materials. This was a continued cause for concern from the EC perspective. This reason was that China was the main source and sometimes the only source in the world for many of these raw materials which were very important inputs for EC's manufacturing industry. China's export restriction on rare earths, several non-ferrous metals, potassium chloride, ammonium phosphate and a number of other raw materials were in his delegation's view not consistent with Article XI of the GATT and China's commitments under its Protocol of Accession to the WTO. In this respect the EC wished to recall the following commitments:

- To eliminate all taxes and charges to export unless specifically provided for in Annex 6 of the Accession Protocol. Annex 6 listed 84 products at 8-digit level with a maximum duty rate that could be applied. According to his information, China applied export duties on 373 tariff lines at 8-digit level.
- Part of the commitments also was to eliminate upon accession export restraints unless they could be justified under WTO rules (paragraph 165 of the Working Party Report). To date

although there had been discussions in previous transitional reviews on this issue, no detailed justification for keeping those measures had been heard.

- Lastly China had also committed to notify any possible export restrictions to the WTO.

10.10 His delegation had raised these concerns since the start of the transitional review and in numerous bilateral occasions including at the political level. On 23 June 2009, the EC and US had requested WTO consultations with China on export restrictions on a number of key raw materials. He underlined that the EC continued to seek an amicable and mutually satisfactory solution with China. During this transitional review, his delegation would be grateful to receive answers regarding China's intentions to remove the export restrictions on raw materials in accordance with its accession commitments.

10.11 Turning now to the CCC, this was also an issue that his delegation had raised on a number of occasions as it continued to impede EC exports to China. The EC welcomed the fact that China had previously reviewed this mechanism and included some improvements. However, the fundamental complexity in the length and the cost of the procedure remained. In this respect, his delegation also welcomed the recent notification made by China to review this mechanism again and looked forward to working very closely with China in order to see how the certification scheme could be further simplified and based more on a risk-based approach as mandated by Article 2.2 of the TBT Agreement. His delegation had seen that the CCC had very wide coverage and that it basically treated all types of products across-the-board without due account of the inherent risk of those products. His delegation wished more specifically in this transitional review to ask China to give positive consideration to proposals to simplify the system pending a more fundamental review of the system. Those proposals were detailed in paragraph 2.5 of the EC submission.

10.12 Turning to the third point which was related to pharmaceuticals and the national drug reimbursement list (NDRL). His delegation had raised this issue on a number of occasions and he took positive note of the statement by China that they were now reviewing the national drug reimbursement list. He looked forward to receiving more detailed information on that as soon as possible.

10.13 The representative of the United States stated that most of his delegation's comments were related to China's export restrictions. His delegation shared the comments that had already been made on the subject. His delegation noted China's statement that it would be more appropriate to discuss this issue in the CTG and looked forward to submitting the questions in that forum and obtaining a response at that time.

10.14 The representative of Cuba offered greetings and congratulations to the government and people of China for the anniversary celebrated the previous day. It coincided almost perfectly with the creation of the GATT. China in a very short time had become a strong and growing economy, a peaceful power and more importantly for most of the Members a partner acting in solidarity with those countries that had not yet found the path to development. China had done so much more than any other country in such a short period of time and the only thing that Cuba felt was satisfaction and a need to express heartfelt thanks for the strong relations that China maintained with Cuba. China was one of Cuba's main partners. China was a key partner for almost all Members of this organisation. He thanked China for what it had done to meet its commitments when entering the WTO which had been of benefit to the Cuban economy in the difficult situation it had been going through because of lack of access to its main and closest market.

10.15 The representative of Korea referred to document G/MA/W/99 and stated that as it had been circulated only shortly before this meeting, his capital had not had sufficient time to review it. If there were comments or questions arising from that review, they would be transmitted to China.

10.16 The representative of China thanked Members for their comments, in particular for the kind words from Cuba. China was ready to continue this dialogue with Members. China believed that it was in the interest of all through their joint efforts that bilateral and multilateral trade continued to grow.

10.17 The Chairman believed that all delegations wishing to take the floor had done so. Regarding the report³ of the review to the CTG, as in previous years, it would be a brief factual paragraph indicating that the review had taken place, an acknowledgment of the documentation submitted pursuant to the review, and a reference to the discussions that took place, as reflected in the minutes of this meeting.

10.18 The Committee took note of the statements.

11. Draft Report (2009) of the Committee to the Council for Trade in Goods (G/MA/SPEC/43)

11.1 The Chairman noted that the Committee was required to submit annually a report on its activities to the CTG. A draft report, covering the activities of the Committee in 2007, was circulated in document G/MA/SPEC/43. The report would be updated in light of the meeting⁴.

11.2 Further, he noted that following the previous year's procedure, the updated draft report would be sent to Members by fax, and if no comments were forthcoming within a certain time period then it would be considered adopted. If there were minor changes, a revised report would be circulated with the changes marked clearly and if no comments were submitted within a certain time frame, the revised report would be considered adopted.

11.3 The Committee so agreed.

12. Election of the Vice Chairperson

12.1 The Chairman noted that he had completed his informal consultations on a Vice-Chair, and on that basis, he proposed to elect Ms. Juntra Siriuthaikorn (Thailand) as Vice-Chair of this Committee by acclamation.

12.2 The Committee elected Ms. Juntra Siriuthaikorn as Vice-Chair.

13. Other Business

- *Date of the next meeting*

13.1 The Committee took note that its next meeting would take place in the spring of 2010.

³ Issued as G/MA/241.

⁴ Final report was circulated as G/L/896.