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Council for Trade in Goods

MINUTES OF THE MEETING OF THE COUNCIL FOR TRADE IN GOODS 22 NOVEMBER 2002

Chairman: H.E. Ambassador Supperamaniam

The meeting of the Council for Trade in Goods was convened by airgram WTO/AIR/1967 and the proposed agenda for the meeting was contained in document G/C/W/439. The agenda was adopted.

I. REVIEW OF THE OPERATION OF THE TRIMS AGREEMENT UNDER ARTICLE 9

1.1 The Chairman recalled that the Council initiated the review under Article 9 of the TRIMs Agreement in October 1999. Members had had as a basis for their discussion a background study jointly produced by the WTO and UNCTAD Secretariats on trade-related measures and other performance requirements (G/C/W/307 and Add.1). In addition, the Council had received a new

communication from Brazil and India concerning the review of the TRIMs Agreement, which had been circulated in document G/C/W/428.

1.2 The representative of Brazil said that Brazil and India had jointly circulated a proposal to amend Article 4 of the TRIMs Agreement with reference both to the mandate set out in paragraph 12(b) of the Doha Ministerial Declaration and to the mandate contained in Article 9 of the TRIMs Agreement for its own review. It was on the basis of this latter mandate that this proposal had been presented at the Council for Trade in Goods. Since the end of the Uruguay Round and the entry into force of the WTO Agreements, the argument against the use of trade-related investment measures had lost much of its theoretical strength. Doubts had been raised about the *a priori* prohibitions of TRIMs based on the assumption that such measures would always have trade-distortive effects. This had not been supported by conclusive empirical evidence. The recent joint study elaborated by the WTO and UNCTAD Secretariats (G/C/W/307) in the context of the review of the Agreement was enlightening in this regard. If it was true that this study did not add up to a decisive argument in favour of local content, trade balancing and export performance requirements, it did, however, weigh against any kind of general assumption that such measures necessarily distorted trade.

1.3 Examples abounded of successful recourse to investment measures to address developmental objectives as well as to offset trade-distorting effects of certain forms of corporate behaviour. In the case of developing countries such effects might in practice affect the efficient allocation of resources in a more decisive way than investment measures. Other currently WTO-compatible measures had revealed themselves to have a much more distorting effect on international trade than those related to investment. This was so in sectors of interest to developing countries, like agriculture. One of the major problems in the implementation of the TRIMs Agreement was that it had actually established equal obligations for all Members, irrespective of their stage of development. In practice, the blatant disparities among Members, ranging from technological capabilities to social, regional and environmental conditions, made it difficult if not impossible for the TRIMs Agreement to generate balanced benefits for all.

1.4 Trade-related investment measures could be appropriately used to correct the present disparities rather than aggravate them. They could be an important element to enable developing countries to extract the benefits from trade and investment liberalization while preventing the negative effects of investment cycles, including with regard to restrictive business practices and to ensure the stability of trade flows in situations of external financial weaknesses. This had been shown by a number of studies, including the WTO/UNCTAD joint paper, which pointed out that TRIMs had been important policy tools for developed countries in their early stages of economic development. These studies also showed that, in many cases, the use of TRIMs by developing countries in the context of their industrial polices had been successful, taking into account the particular macroeconomic and other characteristics of individual countries. This was the case of Brazil as regards, for example, the mechanism used in the 1970s and 19802 (BEFIEX) to induce national and foreign companies to export part of their production relative to their imports. The disciplines of the TRIMs Agreement had disregarded all these factors. Apart from transitional periods, which had already expired, they incorporated no specific meaningful clauses for special and differential treatment.

1.5 Hence the need, as stated in the proposal, for flexibility in the TRIMs Agreement in order to allow developing countries to resort to trade-related investment measures in order to achieve specific technological, regional and economic and environmental development objectives. To that effect, he called for an amendment to Article 4 of the Agreement as specified in paragraphs 11 and 12 of their paper, allowing developing countries to use trade-related investment measures in order to: (a) promote domestic manufacturing capabilities in high value-added sectors or technology-intensive sectors; (b) stimulate the transfer or indigenous development of technology; (c) promote domestic competition and/or correct restrictive business practices; (d) promote purchases from disadvantaged regions in order to reduce regional disparities within their territories; (e) stimulate

environment-friendly methods or products and contribute to sustainable development; (f) increase export capacity in cases where structural current account deficits would cause or threaten to cause a major reduction in imports; and (g) promote small and medium-sized enterprises as they contribute to employment generation. This was an issue of extreme importance for the Governments of Brazil and India, as well as for a large number of developing countries that were known to share similar concerns. In the context of the mandated review of the TRIMs Agreement, he hoped that this Council would be in a position to debate the proposal in a straightforward and objective manner.

1.6 The representative of India supported the last statement by Brazil and highlighted certain points from the joint paper. The negotiating mandate for TRIMs under the Uruguay Round required that "following an examination of the operation of GATT Article related to the trade-restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade". In other words there was to be an examination of the operation of GATT Articles relating to the trade restrictive and distorting effects and thereafter provisions were to be elaborated. However, in effect no objective criteria to identify and evaluate the trade-restrictive and distorting effects of investment measures were identified during the negotiations. The development dimension was effectively confined to an additional three years of transition period in the case of developing countries, and five years for least-developed countries. It was therefore important to keep this perspective in mind in the review of the Agreement, which included the possibility of amendment to its text. Second was the strong development dimension underlying both the Marrakesh Agreements as well as the Doha Ministerial Declaration. Ultimately, Members had entered this exercise in order to use trade as an instrument for overall development in all parts of the world to ensure that the less privileged regions also were able to maintain and sustain a high rate of growth. It was therefore important that there was sufficient policy autonomy and flexibility available to developing countries to ensure that growth took place in such a manner that it contributed to a higher standard of living, more incomes, higher effective demand, overall growth. This in fact was an essential aspect of the multilateral trading system itself, because it was only through balanced growth all over the world that one achieved substantial and growing markets which meant prosperity for all, both in the developed and the developing countries.

1.7 With regard to the impact of performance requirements on development, the experience of many developing countries would suggest that TRIMs in the case of developing countries, if implemented properly, might be trade-stabilizing and development-enhancing. What his delegation was looking for was not a binding commitment that everyone should use these measures, but that there was sufficient policy flexibility and autonomy to use these measures where it would contribute to development. Empirical studies had shown that affiliates of certain transnational corporations bought the bulk of their imports from parent companies and other affiliated companies, leaving only a small proportion for unaffiliated suppliers within the host countries or in third countries. UNCTAD's Trade and Development Report 2002 had highlighted the poor record of generation of value-added and linkages by transnational corporations. It was also an undeniable fact that performance requirements were an integral part of the growth strategy of all developed countries until recently. This fact had been brought out in the WTO and UNCTAD Secretariat joint study as well as various other studies. It was important, therefore, that flexibility to maintain TRIMs remained available to developing countries in the conditions cited in paragraph 12 of the joint proposal to ensure that investment contributed to the achievement of development policy goals. The transition period of five years had not been helpful because of the inherent assumption behind such a provision that developing countries would not only have entered a sustainable growth path during this period but also would have caught up with the developed countries. The Uruguay Round negotiations had failed to build in the developmental dimension in an effective manner into the TRIMs Agreement. The fact that only one least-developed country notified a TRIM clearly reflected that trade-related investment measures were suitable for use by countries when they reached a particular stage of development. Many low-income countries and LDCs had been denied the use of this policy instrument even before certain sectors in their development process had reached the threshold of benefiting from TRIMs.

Local content requirements contribute to a number of economic gains for the national economy such as value-addition in the economy through greater utilisation of domestic resources, increased employment opportunities, upgrading of technological levels and diversification of the economy as a whole. Developing countries needed to have policy space to pursue their technological, social and industrial development. It was in this context that Brazil and India had proposed that Article 4 of the TRIMs Agreement be amended to provide necessary flexibility to implement development policies and also redress the imbalance in the TRIMs Agreement.

1.8 The representative of Colombia stated that Colombia shared the ideas as regards the co-existence of the mandated Article 9 review and paragraph 12 of the Doha Declaration. The CTG was the appropriate forum or framework for readjusting trade-related investment measures. As already stated in the TRIMs Committee, the theoretical weakness which led to prohibition of TRIMs now called for an adjustment in multilateral rules. The proposal called for a transformation of the present framework, which might be called an objective prohibition, into a more flexible framework, which would take into account the development goals for which TRIMs measures had been instituted. On the one hand, this recognised the positive effect of TRIMs, whilst at the same time upholding the principles of the Agreement such as transparency and standstill. She believed that the inclusion of development objectives as suggested in the paper could be combined with a certain limitation in scope following the standstill model and including a monitoring mechanism.

1.9 The representative of Cuba said that Cuba shared the different ideas set out in the paper. His delegation also believed that TRIMs might have a positive impact in favour of development and were not always trade-distorting. Developing countries should be able to resort to such measures with the objective of contributing to economic growth.

1.10 The representative of Pakistan supported the points made by India, Brazil and others. Restricting trade investment measures was aimed at those which had a negative impact on trade. Experience in Pakistan, borne out in studies, had shown that given a few years of, say, a local content requirement being in existence, prices of locally produced goods had substantially come down and stabilized and they had become more competitive. For example, in the automotive industry, Pakistan had made a commitment that local industry must have 60% local content requirement, or 50% in some cases, and originally when producing those auto parts they were more expensive than the imported ones. But in five years' time the prices of those parts had substantially come down, with positive effect for local industry. Pakistan had also started exporting those parts because they had become competitive. Compared to TRIMs, other WTO Agreements like agriculture and textiles had been given much more adjustment time. The study had shown that even in the case of developed countries, such as the UK, governments had made use of TRIMs for a long time. Developing countries should also be able to continue to use them.

1.11 The representative of the European Communities said that the EC believed that trade and the TRIMs Agreement should be conducive to development. The proposed review and the amendments proposed should lead to more development and should therefore be taken into serious consideration by Members. Extensive reference had been made to the joint WTO/UNCTAD study which allegedly had the proof that there was no case that TRIMs were trade-distorting. For the time being he was not yet convinced that one could draw such conclusions from the study. He asked that Pakistan give another example. The argument that some time ago others might have successfully used TRIMs would also have to be seen in the light of ongoing globalization and a highly increased mobility of production factors, so what worked 20 or 30 years ago would not necessarily work again. He would not say that the chance that it might work in bigger markets like Brazil and India was bigger than the smaller markets, where investment was attracted by the market size. Lastly, one should also look at those cases of countries which had abolished their TRIMs and what the effect was there. There were some cases of very successful economies which had abolished their TRIMs in the last couple of years, and that had to be taken into account for a full picture. Some countries have made enormous efforts

to abolish their TRIMs because they believed they had to adhere to the TRIMs Agreement and he would question whether rolling back these commitments would be what they had expected and would be fair in the context of the overall efforts of WTO Members. Regarding the point that other forms of corporate behaviour or government measures were more trade-distortive, meaning that one needed to have more flexibility for TRIMs, actually meant that the intention was to balance downward the state of play in the WTO, which was questionable. India and Brazil had put forward a number of points in their paper where they wanted to see amendments. Was it the case that the sort of measures laid out in the proposal in that paragraph were not possible at this stage under the TRIMs Agreement? He doubted whether they were TRIMs-incompatible. Was the TRIMs Agreement in its scope not actually rather limited as it stood today? The example from Brazil about export production requirements which had worked very well in recent times might not be TRIMs-incompatible. He would like to know more about the individual proposals and individual cases because he did not believe that the scope of the TRIMs Agreement was very large and, second, there was flexibility. The Agreement could deal with very specific cases in the WTO where countries had had strong views on maintaining TRIMs or extending their periods of application for TRIMs. Other WTO Members had looked at these issues in a balanced manner and were able to find solutions in a balanced manner.

1.12 The representative of the United States said that during the October TRIMs Committee meeting, Brazil had asked why the TRIMs Agreement had been negotiated if it simply reiterated obligations that were already in Articles III and XI of the GATT. This was an important question. The legal relationship between the GATT and the TRIMs Agreement was enunciated in Article 2 of the TRIMs Agreement. The TRIMs Agreement did more than just restate existing GATT obligations: it provided an illustrative list of the kinds of trade-related investment measures inconsistent with GATT Articles III and XI; it required Members to notify non-complying measures; it provided developing countries with special and differential treatment in the form of transition periods, giving Members additional time in which to fully comply with an obligation all had accepted upon signing the GATT; and it established a monitoring body of experts to ensure that Members abided by their commitment to remove prohibited TRIMs.

1.13 Brazil had also asked during the last TRIMs Committee meeting why the United States believed further discussions on implementation proposals could undermine the extensions granted the year before under TRIMs Article 5.3. He felt that the proposal made by India and Brazil in their 9 October paper would, indeed, undermine the spirit of the extensions. A number of developing countries had been granted additional time to bring their domestic regimes into compliance with TRIMs obligations. Every country that had properly requested additional time had received it. If other countries had problems meeting these fundamental obligations, he expected those Members to similarly request extensions. He was concerned that some of the implementation proposals that had been made would undermine TRIMs obligations by providing sufficient exceptions to their application so as to render them useless. If that was the intent of some of these proposals, he would continue to object to such an approach as inconsistent with both the Article 9 mandate and any Doha mandate.

1.14 The US continued to believe that the intent of the Article 9 review was not to decide whether measures disciplined by the TRIMs Agreement did or did not have harmful effects. Nor should this review be seen as an opportunity to lower the standards established in the TRIMs Agreement. Current commitments on TRIMs, including the required elimination and termination of notified TRIMs (absent an agreement to extend the transition period) must be maintained. Brazil and India had presented a proposal under tiret 40. However, he firmly believed that blanket exceptions to the TRIMs Agreement were inappropriate, and agreed with the EU that proposals of this nature would undermine the foundations of the GATT system. He believed that there existed suitable flexibility under both the TRIMs Agreement itself and the GATT waiver provision to address individual development needs on a case-by-case basis. The US had shown willingness to address specific problems as needed, and had met the demand to come up with a package approach to extensions that

would not put one country in a better situation than another. He remained unconvinced that any of the current proposals, including the new one from India and Brazil, would not undermine the decisions on TRIMs extensions taken the previous year. Furthermore, he joined Canada in their scepticism that there was any need to modify the balance of rights and obligations contained in the TRIMs Agreement.

1.15 The representative of the Philippines had a sympathetic attitude towards the proposal of India and Brazil, especially with the intervention of India that the clarification of Article 4 need not be binding on all Members but would provide policy space for developing countries to pursue development objectives. Indeed the TRIMs experience world wide was varied. For example, under prevailing circumstances certain measures were more effective in certain countries. There was no "one-size-fits-all" experience. Studies, depending on who commissioned them, would either praise strengths or condemn them as trade-distorting and efficiency-lowering tools of economic policy. Many decisions and so-called givens in the WTO did not need to be backed up by studies and some of them, like the ATC, even defied sound economic rationale. The TRIMs issue could only be resolved at the political level and the Philippines believed that the challenge India and Brazil presented in their paper was very timely. In response to the US, the Philippines were bound by the conditions agreed to in the extension of TRIMs achieved last year.

1.16 The representative of Switzerland noted that this paper proposed amending Article 4 of TRIMs by allowing specific measures for developing countries which cover a very wide field and does not limit itself to economic policy measures. Reference was made to different aspects of regional policy, industrial and environmental policy, transfer of technology and implementation. This was a wide spectrum and the dialogue which had been launched by Brazil and India with their paper should continue. However, TRIMs could not be used as a substitute for regional, industrial, transfer of technology, environmental or employment policies. On the basis of economic analysis and specialized literature, in many cases TRIMs could be costly especially with regard to the allocation of resources. The benefits obtained in the short term could in the long term bring about improper allocation of resources and could even involve a regression with regard to a situation which would have been obtained in the absence of TRIMs. In keeping with what the EC had said, he said that disciplines on TRIMs were not different from Articles III and XI of GATT 1994. The TRIMs Agreement was a transitory derogation which allowed countries to place their economic policies in non-conformity with Articles III and XI. There was flexibility in the TRIMs Agreement which should respond to the important needs of developing countries through provisions provided for in the TRIMs Agreement.

1.17 The representative of Canada believed that the modification to the TRIMs Agreement proposed by India and Brazil under Tiret 40 was not warranted for a number of reasons. There was already great flexibility in the TRIMs Agreement (Article 4 and Article 5) which was complemented by the flexibility contained in exceptions under GATT 1994 and in Art. IX of the WTO Agreement (i.e. waiver). This flexibility had recently been demonstrated through, for example, the extension of a number of transition periods. His delegation believed that investment was important for development. The productive capacity of an economy was enhanced through investment. In this regard, he noted that the joint WTO/UNCTAD study demonstrated the significant and positive relationship between, *inter alia*, FDI and domestic manufacturing efficiency (G/C/W/307/Add.1, para. 104). The type of measures advocated by the Indian/Brazilian proposal were trade distortive as recognized in the Preamble of the TRIMs Agreement. Furthermore, they negatively affected both host countries and investors in that they could cause private investors to abandon plans for a projected investment because the cost of the requirements outweighed or negated the returns, profits or operating efficiencies for the investor. He also drew Members' attention to the fact that India's and Brazil's proposal promoted measures which resulted in a misallocation of resources. The joint WTO/UNCTAD Study demonstrated that TRIMs and performance requirements resulted in a misallocation of resources, and that they were costly and inefficient (G/C/W/307/Add.1, paras. 94-99).

Costly and inefficient measures such as those proposed by Brazil and India were contrary to the developmental objectives they sought to promote in the first place. In Canada's view, the proposal failed to demonstrate that the TRIMs Agreement was not sufficiently flexible, and that it was necessary to modify Article 4 of the TRIMs Agreement as proposed by India and Brazil.

1.18 The representative of Pakistan welcomed the EC statement that if there was a good case for extension it would be looked into sympathetically. But Pakistan really had to fight very hard to get the extension, and they were given an understanding that it could not come back for a next time. In the case of Pakistan, his Government had done away with 75 per cent of TRIMs. In the case of electronic industries they were no more required. But there was a certain crucial time for which one needed TRIMs and that was what developing countries were asking for.

1.19 The Council took note of the statements made and agreed to revert to this item at the next meeting.

II. DISCUSSION OF IMPLEMENTATION ISSUES BY THE TRIMS COMMITTEE – REPORT TO THE COUNCIL FOR TRADE IN GOODS

2.1 The Chairman recalled that, at its meeting of 7 May 2002, the CTG decided to assign to the TRIMs Committee the responsibility for conducting work on the outstanding implementation issues contained in tirets 37 to 40 of document JOB(01)/152/ev.1. The TRIMs Committee was also requested to report regularly to the CTG on progress on this matter. The Council had received the final report of the TRIMs Committee on work on outstanding implementation issues, contained in document G/L/588. He also recalled that, in accordance with paragraph 12(b) of the Doha Ministerial Declaration, the CTG was required to report to the Trade Negotiations Committee on the relevant outstanding implementation issues before the end of the year for appropriate action.

2.2 As the Chairman of the TRIMs Committee was not present in Geneva the CTG Chairman had been asked to introduce the report on his behalf as follows:

> Pursuant to the Council for Trade in Goods' decision of 7 May 2002, the TRIMs Committee conducted discussions of outstanding implementation issues related to the TRIMs Agreement, as contained in tirets 37 to 40 of document JOB(01)/152/Rev.1, at its meetings of 21 May, 10 July and 14 October 2002. The TRIMs Committee was also requested to report regularly to the CTG on its work on this matter. Accordingly, the Chairman of the Committee submitted oral reports to the Council after each meeting of the TRIMs Committee at which the issue was discussed. In discussions throughout this year, the Committee had a useful exchange of views on the substance of the relevant tirets as well as on a joint proposal, which was recently submitted to the Committee under tiret 40. However, differences remained on how best to address the outstanding implementation issues. This is reflected in paragraph 4 of the report, which states that one view was that the discussion on the relevant tirets had been exhaustive, while another view was that further discussions were warranted. The report went on to reflect in a factual manner Members' positions on each of the relevant tirets. Finally, he drew the Council's attention to the relevant sections of the minutes of the TRIMs Committee's meetings, contained in documents G/TRIMS/M/13, 14, 15 and 15.Add.1, which provide a full account of the discussions under this topic.

2.3 The Council agreed to the Chairman's proposal that the Council take note of the report and transmit it as its own report to the Trade Negotiations Committee in accordance with paragraph 12(b) of the Doha Declaration.

III. TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

3.1 The Chairman said that as had been agreed in the Council for Trade in Goods, China's Transitional Review was to take place at this meeting. In accordance with paragraph 18 of the Protocol of the Accession of the People's Republic of China in document WT/L/432, the Council was to report to the General Council on the Review. He suggested proceeding in two stages. First, the CTG subsidiary bodies were required to transmit their reports to the Council for Trade in Goods. This they had done and he proposed that the Council take note of the reviews that had been carried out in the CTG subsidiary bodies. Second, the Council was required to review the information to be provided by China in designated parts of Annex 1A of the Protocol.

Reports of the CTG subsidiary bodies

3.2 The Council took note of the following reports by the CTG subsidiary bodies which had carried out the review:

Market Access (report contained in document G/MA/117 and in the minutes of the meeting as contained in document G/MA/M/33); Agriculture (G/AG/15); Customs Valuation (G/VAL/48); SPS (G/SPS/22); TBT (G/TBT/W/192); Import Licensing (G/LIC/10); Rules of Origin (G/RO/54); Anti-Dumping (G/ADP/8); Subsidies and Countervailing Measures (G/SCM/49); Safeguards (G/SG/58); TRIMs (G/L/586).

3.3 The representative of Japan said that Japan welcomed China's efforts to faithfully implement its commitments under the Protocol on the Accession into the WTO and WTO Agreements. They recognised that thanks to the leadership of the Chinese Government, tariff reductions, issuance of permissions for foreign capital participation, as well as the instalment of appropriate legal instruments over a wide range of issues were taking place, generally in a smooth manner. These efforts of China contributed significantly to the economic growth of China through an increase of direct foreign investment into China and through an increase in exports by foreign corporations based in China. Japan, however, did have some concerns over China's implementation of commitments for tariff concessions (photographic films, beer and poultry meat) and over implementation of import quota commitments (automobiles and their components). There were also some policy management areas where more transparency was called for (for example, concerning the alteration of industrial policy on automobiles, and criteria to apply to safeguard measures). Japan looked forward to China's further effort in fully fulfilling China's commitments under the WTO Agreement. He refrained from repeating the questions that had already been tabled by Japan at the respective subsidiary Committee meetings for the Transitional Review Mechanism, but nevertheless he registered his position that Japan was not yet fully satisfied with the explanations so far given by China concerning the issues thus raised. Japan therefore requested that the discussions in this Council as well as those in the subsidiary bodies be accurately reflected in the reports to be submitted to the Genera Council. In addition, for the issues of particular interest, Japan had submitted questions in writing to the subsidiary Committees around one month in advance of the meetings. It was regrettable that China did not respond to these questions in writing. While Japan understood the some of the difficulty China faces in its first year of accession for meeting a number of requirements, it was also essential to make sure that information be shared well in advance of the meetings, so that Members could exchange views on technical questions in an efficient manner. It was essential that all WTO Members share a common understanding on the procedures and the matter of substance in transparent manner. For the Transitional Review Mechanism next year and onwards, he certainly looked forward to China providing the necessary information further in advance of the meetings. Japan reiterated its government’s sincere support for China’s effort towards full implementation of the commitments

under the Protocol and relevant Agreements. Japan trusted that Chinese government would meet their expectations fully in the coming years for this undertaking.

3.4 Regarding the auto sector already addressed in G/C/W/430, Japan had some reports that the State Development Planning Commission was planning to prohibit a retailer in China to deal in both imported and domestically produced automobiles. Japan had not yet received any response from China on this matter, and would appreciate it if China could confirm whether the GOC was to actually make such a regulation and, if affirmative, if the GOC could provide more information on the regulation. If the GOC was indeed to introduce such a regulation, Japan requested that the GOC pay due attention to the issue of consistency with Article III of GATT 1994. On the issue of tariffs on photographic films raised in the Committee on Market Access, he was aware that a provisional tariff reduction was in place for some tariff lines. He hoped, however, that a resolution would be reached as soon as possible to the whole issue including the other tariff lines in question.

3.5 The representative of the European Communities made preliminary comments on the process in the subsidiary bodies as a whole, fully recognizing that the comprehensive assessment of this exercise would take place in the General Council and not in the CTG. He underlined the huge efforts China had made in this first year of Membership, and he singled out in particular the field of legislative updates, for example in the field of trade defence, and in other areas. This had been appreciated by his delegation. He also had to say that he regretted that the CTG was not able to have a fixed timetable for the transmission of information in the TRM context. This was something which the EC had proposed to make everyone's lives easier before the start of the exercise. As a result, the EC and other WTO Members had put forward questions in advance of each meeting, a procedure which generally worked well. He also noted that in many cases oral responses, perhaps also due to time restraints and resource constraints within the Chinese administration, to these questions came forward only in the Committee meetings themselves. The EC appreciated the efforts which had been made to answer these questions, but it was not always possible to get full answers to the questions of other WTO Members, including the EC, and that situation was not wholly satisfactory. The TRM in the subsidiary bodies for all practical purposes was over for this year, and his delegation would continue to pursue a better understanding with China on the issues which the EC had raised. Members should now also reflect on how to ensure that the TRM process functioned more efficiently in the years ahead.

3.6 The representative of the United States said that the US would like to thank China for all its hard work in preparing for the many reviews that were conducted by the subsidiary bodies. He realised the time-consuming nature of the task facing China, particularly during this first year of the TRM, but he thought that this mechanism served a valuable purpose. The transparency brought about by the reviews helped other WTO Members to understand China's trade regime better, and it also helped China to gauge other WTO Members' expectations. The US also thanked China for the substantial efforts that it had put forth in implementing its WTO commitments. The obligations that China took on in joining the WTO were fundamental and far-reaching and they had required China to make numerous changes to its trade regime. His only comment on the reviews that had taken place in the 11 subsidiary bodies was a procedural one. The TRM would have worked much better if there had been some orderly procedures in place, as Japan and the EC had already indicated. He hoped that for next year's TRM there would be orderly procedures in place to make this mechanism more productive.

3.7 The representative of China, in response to the comments made, said that since the first Review by the TRIPS Council on 17 September, many WTO bodies had conducted their respective TRM on China, among them 11 subordinate bodies of the CTG. It was fair to say that China had faithfully implemented its commitment in the Accession Protocol. In preparation for the TRM it was worth noting that China had provided the relevant information as required by Annex 1A to the Protocol in a timely manner, apart from that the statement by China's head of delegation which

covered a wide range of information and delivered in such a way to give information. For the purpose of transparency and mutual understanding, the statement had also addressed the questions and comments from Members in a most comprehensive manner, which served as a clear demonstration of the cooperation and flexibility on the part of China for the smooth proceeding of the TRM. He noted that the TRM had been successful in providing a useful and effective channel for information exchange and mutual understanding between China and other Members. He hoped the efforts of China and the result of the Review could be looked at with an objective and just attitude. He reiterated that any request and practice beyond the provisions in the Protocol was not acceptable and would be flatly rejected by China, such as the Japanese request for written replies to their questions.

3.8 The representative of Chinese Taipei said that his delegation praised China for its efforts throughout the process in preparing general responses to the questions and comments tabled by his delegation and several others. His delegation had been proactively participating in China's first TRM exercise and, as one of the major trading partners of China, felt obliged to address a number of legitimate concerns in areas where China might have lapsed in its implementation of the Accession Protocol, and further his delegation strongly believed that the smooth implementation of the Protocol was in the best interest of all Members, including China itself. Although some of the responses were not by all means satisfactory, his delegation welcomed and appreciated the opportunity to exchange views with China, and looked forward to a successful exercise of China's first TRM.

CTG-specific Review

3.9 The Chairman said that China had submitted information as required under Annex 1A of the Protocol of Accession in document G/C/W/438. He also noted that the following documents had been received from Japan (G/C/W/430), the United States (G/C/W/435) and the European Community (G/C/W/437), which contained questions and comments with respect to the Transitional Review. He further stated that China was required to provide information to the CTG in accordance with paragraph 18.1 of the Protocol of Accession. The relevant information requirements were listed in Annex 1A of the Protocol, which he summarized as follows:

SECTION II. ECONOMIC POLICIES
1. Non-Discrimination
(a) the repeal and cessation of all WTO inconsistent laws, regulations and other measures on national treatment; (b) the repeal or modification to provide full GATT national treatment with respect to a number of products
SECTION IV. POLICIES AFFECTING TRADE IN GOODS
5. Export Restrictions
(a) any restrictions on exports through non-automatic licensing or other means justified by specific product under the WTO Agreement or the Protocol
9. State Trading Entities
(a) progressive abolishment of state trading in respect of silk measures; (b) access to supplies of raw materials in the textiles sector; (c) progressive increases in access by non state trading entities to trade in fertilizer and oil and the filling of quantities available for import by non state trading entities
10. Government Procurement
(a) laws, regulations and procedures; (b) procurement in a transparent manner and application of the MFN principle

3.10 The representative of China thanked the Chairman for the opportunity to address the Council on the implementation of China’s commitments with regard to trade in goods within the framework of paragraph 18 of China’s Protocol of Accession. A strong delegation, composed of the senior officials from relevant administrative authorities including the State Development Planning Commission(SDPC), the State Economic and Trade Commission(SETC), Ministry of Finance and the

Ministry of Foreign Trade and Economic Cooperation(MOFTEC), had been assembled to address the comments and concerns of other Members in this review. He hoped that candid exchange of ideas and effective clarification could be achieved through this annual mechanism. Following the "Information to be provided by China in the context of the Transitional Review Mechanism" as specified in the Annex 1A to the Accession Protocol of China, he expected that his introduction would help Members better understand the efforts and achievements China had made in this respect after its accession to the WTO.

Part one: The fulfilment of transparency obligations

3.11 He further said that in light of the requirements by Annex 1A, the information needed for this review had been submitted to CTG in advance of this meeting, which covered:

- the repeal or modification to provide full national treatment in respect of laws, regulations and other measures applying to internal sale, offering for sale , purchase, transportation, distribution, or use of: after sale service, pharmaceutical products, cigarettes, spirits, chemicals and boiler and pressure vessels;
- non-automatic licensing requirements for export under WTO agreement and accession commitments;
- increasing and extending trading rights and the conditions on the access to supplies of raw materials in the textiles sector;
- progressive increases in access by non state trading entities to the imports of crude and processed oil;
- the laws, regulations and procedures on government procurement and application of MFN principles.

3.12 Pursuant to Article XVII:4(a) of the GATT 1994 and paragraph 1 of the Understanding on the Interpretation of Article XVII of GATT1994, China had submitted its responses to the Questionnaire on State Trading. Apart from that, the list of products under export licensing requirements was provided to the Committee on Market Access. The texts of regulations and rules related to the import licensing were submitted under articles 1.4(a) and 8.2(b) of the Agreement on Import Licensing Procedures and were circulated in document G/LIC/N/1/CHN/1/Add.1. According to China's accession commitments, the enquiry point was set up by China and the establishment of it was notified to WTO. The trade related laws, regulations and measures could be accessed and retrieved from this point. The enquiry point, operating outside the framework of TRM and at the same time providing a useful supplement to it, served the common goal with this mechanism.

Part Two: Implementation of WTO obligations and commitments

1. Adherence to the principle of non-discrimination

3.13 In line with its commitments, to provide full national treatment to the imported products, the Chinese Government had repealed or modified the laws, regulations and other measures applying to internal sale, offering for sale, purchase, transportation, distribution, or use of: after sale service, pharmaceutical products, cigarettes, spirits, chemicals and boiler and pressure vessels.

- Regarding the after sales service, on 11 March 2002, the Ministry of Foreign Trade and Economic Cooperation annulled its Decree No. 3 of 1993 in its Public Notice No. 12 of 2002, and thereby fulfilled the commitment in this regard. The annulled Decree was on after sales service and was considered to be inconsistent with the principle of national treatment by a number of WTO members during China's WTO accession negotiations.
- Regarding cigarettes, administrative measures taken by the State Tobacco Monopoly Administration had already led to a substantial increase of the number of retail outlets for

imported cigarettes in China. The commitment of unification of the licensing requirements for both the domestic and imported cigarettes will be fulfilled by way of amending the Decree No. 2 of the State Tobacco Monopoly Administration, which was now under way. In the renewal of licenses in year 2003, a unified license would be issued for retail sale of both domestic and imported cigarettes, and the former special licence for retail sale of imported cigarettes as well as the requirement that only those outlets with the special licence were permitted to sell imported cigarettes would be abolished. Therefore, China would be able to fulfill the commitment of applying national treatment in this regard after the two-year transitional period.

- Regarding boilers and pressure vessels, the newly formulated Regulations on the Management and Supervision of Manufacturing of Boilers and Pressure Vessels would enter into force on 1 January 2003. Draft of the Regulations was notified to the TBT Committee of the WTO in May this year (G/TBT/N/CHN/1). Article 18 of the new Regulation specified a 4 year validity for the Certificate of Production, which applief equally to both domestic and imported products. The relevant standards on the charges are in the process of drafting and would be enforced after the endorsement by the Sate Development Planning Commission and Ministry of Finance. A uniform charging standard would be ensured for products both domestically made and imported.

3.14 He further stated that for pharmaceutical products, chemicals and spirits, a transitional period of one year was reserved as provided by China's accession protocol. During the course of this year, constructive measures had been taken to amend or abolish the related laws and regulations. Thanks to these efforts, the conformity with the national treatment requirements had been practically attained well ahead of the committed date.

- Regarding pharmaceutical products, the former Provisional Measures on Administration of Prices of Pharmaceutical Products had been replaced by Measures on Administration of Government Pricing for Pharmaceutical Products, with which the principle of national treatment was observed in procedures and formulas for pricing and classification of pharmaceutical products.
- Regarding spirits, new administrative measures were at the stage of formulation. The new measures on spirits would regulate the products and markets of spirits on the basis of safety and quality requirements, regardless the origin of the spirits.
- Regarding chemicals, specifically the registration procedures applicable to imported chemical products, the State Administration of Environmental Protection was now amending the Provisions on the Environmental Administration of Initial Imports of Chemical Products and Imports and Exports of Toxic Chemical Products in collaboration with MOFTEC and the General Administration of Customs, and the amended rules would be in conformity with the principle of national treatment and internationally accepted practices. The draft of the amended rules had been publicized by the State Environmental Protection Administration for public comments, with a view of its enforcement before the end of the transitional period. Moreover, the legislation on new chemical substances was also under way to align China's governing procedures with international principles.

2. Non-automatic export licensing requirements under WTO agreement and accession commitments

3.15 China maintained export administration of a small number of products for the purposes of protecting public interest, avoiding shortage in domestic supply, conserving the exhaustible natural resources, or undertaking obligations under international treaties or intergovernmental agreements, which were in conformity to GATT 1994. From 1 January 2002, China gave up export administration of Chinese chestnut, reed mat, red bean, honey, colophony, tung wood and the board (to Japan), vitamin C etc. There were now still 54 products subject to export administration, including live

bovine and beef (to Hong Kong, China and Macao, China), live swine and swine meat (to Hong Kong, China and Macao, China), fowls and meat (to Hong Kong, China and Macao, China), garlic, tea, wheat, corn, rice, liquorices roots and their products, rushes and their products, sugar, bauxite, light (dead)-burned magnesia, talc, fluorspar, rare earth, tungsten ores and products, antimony ores and products, tin, zinc, coal, coke, crude oil, processed oil, paraffin wax, artificial corundum, heavy water, ozonosphere depleting materials, chemicals under supervision and control, chemicals used to produce narcotics, sawn wood, silk, greige, cotton, woven fabrics, silver, platinum, certain steel products (to the U.S.), and etc. These export administrative measures had been notified to the WTO.

3. State Trading Entities

3.16 In accordance with the commitment made at China's accession to the WTO, the trading right for silk had been progressively liberalized since the beginning of 2002. The number of enterprises engaged in export trade of silk had increased from 43 of 2001 to 99 up till now. China would abolish the restriction on the trading right for silk at the latest on 1 January 2005 as committed. Under the current circumstances, China had not yet relaxed the trading right as well as the domestic distribution right of fertilizers and oil products. In order to fulfill the commitment and to progressively expand the non-state trading enterprises, China carried out a registration system for non-state trading enterprises to be engaged in the trade of fertilizers and oil products. The registration procedure was automatic and transparent, and the lists of registered enterprises were published and updated on a regular basis. The State Economic and Trade Commission had fully allocated the non-state trading import quota for fertilizers and oil products for the year 2002. However, it was hard to tell the real import performance of non-state trading entities because relevant statistics would not be available until early 2003. The related information could be found in the *Foreign Trade and Economic Cooperation Gazette* or via the website of MOFTEC.

3.17 The export price of state trading enterprises was decided by the enterprises themselves. It was usually constructed based on such costs as domestic procurement prices plus circulation costs (including warehousing, transportation, bank interests, inspection fees etc.), with prices of the international markets taken account of as reference. According to *the Law on Pricing of People's Republic of China* and Annex 4 of the accession protocol, only a small number of commodities and services were subject to the government pricing or the government guidance pricing, and the pricing policies were applied regardless of the ownership of the enterprises. Apart from those stipulated few, the prices of the rest commodities and services were determined by the market forces. To sum up, the policies and measures governing the state trading enterprises were promulgated in a transparent manner and administered in consistency with the WTO Agreement.

4. Government procurement

3.18 The Standing Committee of the 9th National People's Congress adopted the Law of the People's Republic of China on Government Procurement on 29 June 2002 at its 28th Session, and the Law would enter into force on 1 January 2003. The Law of the People's Republic of China on Government Procurement embraced the principles of being open, equal, fair, and effective, and therefore guaranteed that all the procurements of government entities as defined in the Law (military procurement excluded) were conducted in conformity with the MFN principle.

Part Three: Some clarifications on our policy related to trade in goods

3.19 He then drew Members' attention to some areas in China's trade policies where some additional explanation might be needed.

1. On the export restrictions on fluorspar

3.20 The export arrangement maintained by China on the fluorspar export was in consistency with the GATT 1994. Dating back to the end of 1970s, the fluorspar exploitation and processing had been put under rigid control. According to *the Law on Mineral Resources of People's Republic of China*, exploitation of the fluorspar was subject to a 15 per cent resource tax and compensatory charges for mineral resource.

2. On preferential treatment to the imports through border trade

3.21 Products imported to China in the form of border trade enjoyed a 50 per cent reduction of import tariff and VAT. The scope of the imports covered the commodities produced and consumed by the habitants living along the border area. According to his understanding, the WTO did not provide for a clear definition for "border area". In the case of China, it could be loosely defined as the area no further than 25 kilometres away from the national boundary. But exceptions existed. In the western part of China, i.e. some border areas in Xinjiang Autonomous Region, even the nearest collective habitats lie hundreds kilometres away from the boundary. A rational trade policy could not exclude the people in these areas from the legitimate benefits of border trade. China's policy on border trade played an important role in the development of these areas and promotion of trade and economic exchanges with neighbouring countries. The trade authorities had always been closely monitoring the effects to the normal trade by the border trading. In light of related regulations on border trade, the scope of products under border trade would be adapted in case of the excessive impact it had on normal trade, and part of products would then be removed from tariff and tax reductions. His delegation had taken note of the concern of some Members on the import of boric acid. A comprehensive analysis and review would be conducted on this issue and China was going to make amendments to the related policy if it proved to be necessary.

3. On the Provisional Rules on Investigation of Foreign Trade Barriers

3.22 These rules were not concerned with the import administration, nor did they affect Members' exports to China. The rules were about the investigation made by the government of China when its products suffered unfair treatment in a foreign market so as to take necessary legal remedies in line with the principles of WTO. In that spirit, he thought the promulgation of regulations in this nature did not fall within the coverage of the relevant provisions in China's accession protocol, and this was not the right subject to be discussed in this Council. Having said that, he welcomed the comments from Members on this issue anyway, and would like to suggest a better channel, which was the enquiry point of China, to address their concerns of this kind.

4. On the non-discrimination issue with regard to automobile retailing

3.23 This was a question with bearings on a series of issues like the automobile quotas, import and export rights, and relaxation of distribution rights. At this stage, not all the enterprises were the holders of import and distribution rights of automobiles. China would formulate its distribution policies on cars in line with its WTO commitments and, at the same time, with the developmental demand of its auto industry. In this process, the opinions and comments from all circles would be taken on board and national treatment would be strictly adhered to.

5. On the allocation of the quota and TRQ

3.24 In response to a few specific concerns from some Members, he clarified that the circulars concerning the quotas for Machinery & Electrical products, fertilizers and TRQ allocation had been published respectively by the Notice No. (2002) 36 of MOFTEC, Notice No. (2002) 73 of SETC and Notice No. (2002) 4 of SDPC, which could be accessed through their official websites. The redistribution of the unused quotas was based upon the return of them by the original quota holders. For the year 2002, there were no quota returns for automobile, fertilizer and crude oil at this stage. The reallocation of unused quota for processed oil had been completed by 15 September, and the reallocation methods were set out in the Notice No. (2002) 51/52 of SETC. The reallocation of unused quota for agricultural products like wheat, soybean oil and rapeseed oil had been completed by October 15, under the SDPC Notice. (2002) 3.

Part Four: Comments on the implementation of WTO obligations by other Members

3.25 With reference to the Article 18 of the Accession Protocol, "China can also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in this protocol, which have a relevant mandate." Under paragraph 241 of the Working Party Report of China's Accession to the WTO which specified the commitments undertaken by the textile and clothing import restraining Members of the WTO, the United States was obliged to increase the growth rates of quotas in force on the day prior to the date of China's accession to the WTO by the respective growth factors provided for in the Agreement on Textile and Clothing (ATC), including the 25 per cent growth factor applicable to Stage 2 of the ATC implementation. However the United States had failed to fully implement its obligations by not applying the full 25 per cent growth factor to China. Since the issue remained unresolved after several rounds of bilateral consultations between China and the United States, China requested the Textile Monitoring Body to review this matter. The TMB concluded after its review (see G/TMB/R/90) in July that the United States should apply the 25 per cent growth factor in full to China and asked the United States to make the necessary adjustments to its methodology accordingly. So far the United States had not yet made such adjustments. Such a failure on the US side had adversely affected the market access available to China and upset the balance of rights and obligations between China and the United States under the ATC. The textile and clothing sector had played and would continue to play a significant role in China's economic and social development in terms of both job creation and poverty alleviation. China hoped that the United States would immediately take actions to remedy the above-mentioned problem and fully implement its commitments under the WTO. China also wished that the United States, as a key and long-standing Member of the multilateral trading system, could set a good example for new WTO Members and other Members as well by fully and faithfully implementing its commitments and obligations under the WTO Agreements.

3.26 The representative of Japan thanked the Chinese delegation for its statement and regarding the paper that Japan had submitted in G/C/W/430, Japan would hope that the Chinese Government would pay due attention to the issue of consistency with Article 3 of GATT when formulating the guidelines or laws regarding automobiles. Also on the issue of films, his delegation was aware that there were some provisional tariff reductions in place for photographic film products, but hoped that the resolution of this matter would be soon achieved and the issue settled as soon as possible.

3.27 The representative of the United States said that the information provided was precisely the type of information warranted under the TRM. It would have been helpful to have had information further in advance of the meeting. The US did not have all its experts present to review the Annex 1A submission from China which it had just received and it was difficult to respond to the points made in China's statement at this meeting, not having had the information in advance. With regard to border trade, the US appreciated China's statements and their commitment to look into the boric acid question and to review the consistency of that with WTO rules. On a point of clarification, he was not

sure from the statement whether or not the Chinese delegate was saying that all imports within a border area were subject to preferential treatment or whether there was just a list of specific products that would benefit. Turning to another issue, the export restrictions on fluorspar, Article XX of the GATT allowed an exception for export restrictions when made in conjunction with restrictions on domestic consumption or production. The export restrictions on fluorspar had been in place since 1994 and during that time China had produced two thirds of the world's fluorspar. The effect of the restrictions had been to increase the cost of fluorspar for foreign companies, and the other effect was to make China's domestic consumers of fluorspar (those who took the fluorspar and made it into hydrofluorocarbons and other products) much more competitive. They did not have to pay the increased cost that foreign companies did. He also noted that there were two types of export restrictions on fluorspar: a quota and a substantial export licence fee which had increased rapidly in the last couple of years. If the intent of these measures was to protect an exhaustive natural resource, the quota alone might be enough, but adding the licence fees which more than doubled the cost of the fluorspar did not seem to be consistent with the Article XX exception. He asked if the Chinese delegate's statement could be made a part of the record of this review.

3.28 The representative of the European Communities also wanted the statement in the minutes because to the information that came forward in China's submission (G/C/W/438) some points had been added in order to respond to the EC's questions. Having thanked the Chinese delegation, he referred to the automotive sector, where China had said that it would fully apply WTO rules. Did that mean at this stage that there was no intention to introduce a dual system of distribution different for domestically produced vehicles and imported vehicles?

3.29 The representative of China wanted to respond to the comments and follow-up questions raised by Japan, US and EU. With regard to the tariff on photographic films, as he had said in the Market Access and Import Licensing Committees, the parties could have bilateral discussions on these tariffs to see if the specific tariff was equivalent to the tariff rate China committed to in its Schedule. According to his information Japan had some difficulties in discussing this with his colleagues in other agencies, because they were not very happy with the Japanese attitude in the previous TRMs. But he could make efforts to arrange a meeting between Japan and officials from other agencies of China to conduct these bilateral discussions to see if one could find a solution that both sides could accept. With regard to the issues raised by the US, in terms of border trade he had given a clear indication that China could look at the situation to see if the border trade had a negative impact on normal trade, and could make adjustments according to the investigation. There was no list subject to border trade preferential treatment, but there was a negative list, for example for cigarettes, pharmaceuticals, automobiles, processed oil, steel. These kinds of products are not subject to preferential treatment. Those interested in a negative list could access it from China's enquiry point or from the MOFTEC website.

3.30 With regard to the export restrictions on fluorspar, China had very strict, rigid controls on production and processing domestically. China not only collected the resources tax but also compensatory fees for exportation and processing domestically. China had this quota administration also and collected the export licensing fees because the exportation of fluorspar was subject to tendering. China used this tendering system to control the exportation of fluorspar, but believed this domestic regulation which controlled the exploitation and processing was effectively equal to its administration on export control for fluorspar. In terms of the issue raised by the EU on the distribution system for cars, there was no dual distribution system in China. As explained in his statement, now some retailers had no right to import cars from abroad and distribute them in the Chinese market. Taking into account a number of elements including the phase-out of quota administration, the liberalization of trading rights and the liberalization of the domestic distribution system, China intended to have a new distribution system in China which would abide by national treatment and allow retailers to enjoy their legitimate rights. When there was new information on this process China would inform the EC and other Members.

3.31 The Chairman thanked the delegation of China for the answers that it had provided and also those delegations that had raised questions. Regarding the form of the report of the Review he recalled there were no guidelines for the report in the Protocol of Accession of the People's Republic of China to the World Trade Organization. In several subsidiary bodies of the CTG that had undertaken the Transitional Review, a brief factual report had been prepared with references to the documents and attached to it the portion of the minutes of the meeting which related to the Transitional Review.

3.32 The Council agreed to his proposal to proceed in a similar fashion. The report, together with the reports of the subsidiary bodies, would then be transmitted to the General Council.

IV. REQUEST BY THE EUROPEAN COMMUNITIES – PANAMA'S DECREE ON IMPORT TARIFFS CHANGING THE TARIFFICATION FOR CERTAIN MILK PRODUCTS

4.1 The Chairman recalled that at the last meeting in October, the European Communities raised this issue under other business. It had subsequently requested that this item be formally put on the agenda of this meeting.

4.2 The representative of the European Communities reiterated his delegation's concern that recent adjustments to the Panamanian import tariffs for milk implied a breach of the tariff commitments negotiated at the time of Panama's accession to the WTO and confirmed in its Schedule. His delegation had communicated its concerns in writing to the Panamanian authorities and invited them to enter into bilateral discussions to clarify the situation. The EC was waiting for their response.

4.3 The representative of Panama confirmed that his delegation had met with the EC on this issue and would continue to cooperate in the hope of arriving at a solution as soon as possible to the satisfaction of all parties.

4.4 The representatives of the United States and Canada expressed their interest in knowing the outcome of the bilateral consultations at the appropriate time.

4.5 The Council took note of the statements made.

V. STATUS OF NOTIFICATIONS UNDER THE PROVISIONS OF THE AGREEMENTS IN ANNEX 1A OF THE WTO AGREEMENT

5.1 The Chairman said that as indicated on the cover page of document G/L/223/Rev.9, the Council adopted, at its meeting in October 1996, a recommendation by the Working Party on Notification Obligations and Procedures to maintain on an ongoing basis a comprehensive listing of notification obligations under the provisions of the Agreements listed in Annex 1A of the WTO Agreement and compliance with those obligations. The update was contained in the document G/L/223/Rev.9 and included all notifications made up to 30 June 2002.

5.2 The representative of Hong Kong, China informed the CTG of an omission in the status of notifications for the section on import licensing. The document had yet to reflect that Hong Kong, China had submitted in good time the annual questionnaire as required under Article 7.3 of the Agreement on Import Licensing Procedures. The Chairman said that an appropriate corrigendum would be issued.

5.3 The Council took note of the statement made and the information contained in document G/L/223/Rev.9.

VI. WAIVER REQUEST FROM CANADA, JAPAN AND SIERRA LEONE – KIMBERLEY PROCESS CERTIFICATION SCHEME FOR ROUGH DIAMONDS

6.1 The Chairman drew Members' attention to the communication in documents G/C/W/431 and Corr.1, which was a request for a WTO waiver concerning the Kimberley Process Certification Scheme for rough diamonds from Canada, Japan and Sierra Leone, and the Philippines, Thailand and United Arab Emirates. Australia and Brazil had also joined the list of requesting Members. Those delegations had also submitted a draft decision for the waiver in documents G/C/W/432 and Corr.1.

6.2 The representative of Canada was pleased to introduce this request for a WTO waiver, which it had co-sponsored with Sierra Leone, Japan, Thailand, the United Arab Emirates, the Philippines, Brazil and Australia. It was a rather unique request to deal with a unique situation: measures to implement Kimberley Process restrictions on trade in conflict diamonds. For Canada, this issue touched on two pillars of foreign policy: the ongoing concern with international issues of human security, and the importance of the multilateral trading system and the WTO in particular. The trade in conflict diamonds had had deadly consequences for the security and well-being of innocent civilians in affected countries in Africa. Under the UN Security Council, the Angola Sanctions Committee, which Canada was proud to be a part of, played a critical role in strengthening sanctions against UNITA and, ultimately, in ending the long and bitter civil war in Angola. The Security Council also imposed sanctions targeting the RUF rebels in Sierra Leone and the government of Liberia and paid serious attention to the exploitation of natural resources in the Democratic Republic of Congo. The UN General Assembly had adopted two resolutions (December 2000; March 2002) calling for the development of an international certification scheme for rough diamonds. Resolution 55/56 (2000) called on the international community to give urgent and careful consideration to devising effective and pragmatic measures to address this problem. Resolution 56/263 (2002) welcomed the detailed proposals for an international certification scheme for rough diamonds developed in the Kimberley Process and urged the scheme's finalisation and subsequent implementation as soon as possible.

6.3 Since May 2000, South Africa had led the Kimberley Process, which had brought together governments of diamond producers, exporters, and importers, as well as representatives from the diamond industry and non-governmental organizations to discuss additional practical measures to combat the trade in conflict diamonds. The result was a set of detailed proposals for an international system of certification that aimed to strengthen control over the legitimate trade in rough diamonds, thereby preventing conflict diamonds from entering into the trade. Under the scheme, rough diamonds could only be traded internationally among Kimberley Process Participants if they were accompanied by a Kimberley Process Certificate issued by Participants that effectively attested that the diamonds are conflict-free. In Interlaken on 5November 2002, Kimberley Process Participants called for the simultaneous launch of the Certification Scheme beginning on 1 January 2003. The diamond Certification Scheme that Kimberley Process Participants had agreed upon called for the prohibition of trade in rough diamonds with non-participants. This prohibition was essential to ensuring the effectiveness of the Kimberley Process scheme.

6.4 Domestic measures were necessary to implement elements of the Kimberley Process. Canada, Sierra Leone, Japan, Thailand, the United Arab Emirates, the Philippines, Brazil and Australia were requesting a waiver for these domestic measures under Article IX:3 of the WTO Agreement. This approach addressed the issue in an open and transparent manner, and provided legal certainty in relation to international trade obligations. Without a waiver the requesting Members could not be certain that the Certification Scheme would not be challenged. Canada took very seriously the

international trade in conflict diamonds, which could be directly linked to the fuelling of armed conflicts, the activities of rebel movements aimed at undermining or overthrowing legitimate governments and the illicit traffic in, and proliferation of, armaments especially small arms and light weapons. It also took its international trade obligations seriously. This waiver request reflected its commitment to both sets of obligations. Other Kimberley Process Participants continued to study the issue and he hoped that many would choose to associate themselves with this waiver request. The success of the Kimberley Process owed much to its inclusive nature, which had been characterized by strong cooperation between governments, the diamond industry and civil society. On behalf of the Kimberley Process Participants co-sponsoring this waiver request, Canada asked that Council for Trade in Goods add its support to the successful Kimberley Process and help to put an end to the devastation caused by conflicts fuelled by the trade in conflict diamonds by giving the waiver request expeditious and favourable consideration.

6.5 The representative of the United States said that the Kimberley Process Certification Scheme was a crucial part of the international effort to combat trade in diamonds that had fuelled bloody conflicts in Africa, while at the same time protecting the legitimate diamond trade. The completion of the Scheme was a major achievement. As the participants recognized in the Ministerial Declaration that launched the Scheme, it was necessary to ensure that the Scheme be implemented in a WTO-consistent manner. The US intended to take this direction seriously and expected that other participants would do the same. To that end, the US welcomed the waiver request introduced by Canada and the other Members which would ensure that the Scheme could be implemented within the framework of international trade rules. While his delegation was still examining specific aspects of the request, it supported the request in principle. The goal of all who developed the UN-endorsed certification Scheme had been to ensure that the Scheme be as comprehensive as possible and that all rough diamond trading countries and economies participate. The US had no desire to exclude any country or to unduly burden the legitimate trade. Therefore, his delegation would be interested to hear from any WTO Members that traded in rough diamonds but had not yet declared an intent to implement Kimberley.

6.6 The representative of the European Communities said that the EC was fully committed to the promotion of international peace and security, and equally committed to the proper functioning of the multilateral trading system. The EC was interested in the Kimberley Process and we are interested in putting the Kimberley Certification Scheme in operation as quickly as possible for 1 January 2003. Nevertheless, the EC was still in the process of considering not the Kimberley Process Scheme itself but various important and sensitive issues as they transpired through the waiver request which had been forwarded by Canada and others. It was to that extent that the EC would like to have more consultations with Canada and the other proponents of the waiver before it could deliver a specific and definitive opinion on the waiver request.

6.7 The representative of Chinese Taipei referred to the request for a waiver in order to allow Kimberley Members to take measures necessary to regulate the import and export of rough diamonds in conformity with the WTO legal framework. His Government also recognized the humanitarian nature of this issue and appreciated the efforts of some WTO Members intending to bring the Kimberley Process Certification Scheme into practice. Considering that the request was made known to Members only recently, his delegation was still in the process of consulting with domestic agencies and industries on this matter. Therefore he wished to have more time to consider this matter and discuss this issue in the next meeting.

6.8 The representative of Switzerland said that Switzerland also gave its support to the Kimberley Process and subscribed to its objectives. Like the EC and Chinese Taipei, Switzerland was at present examining some of the aspects of the request made by Canada. He believed that more time was needed before the CTG could take a final decision. This time could be used to establish consultations with the delegations having put forward this request for a waiver.

6.9 The representative of India stated that India was fully committed to the Kimberley Process Certification Scheme and would be launching the Certification Scheme as of 1 January 2003. In principle India was also in agreement with the request for a waiver put forward by Canada but was having the specifics examined in capital and would like more time before coming back to this issue.

6.10 The representative of Israel joined others in stating that Israel was fully committed to the Kimberley Process. Israel also welcomed the proposal of the waiver brought forward by Canada and other Members and would like to be part of any consultations that would take place.

6.11 The representative of Costa Rica welcomed the request made for a waiver as presented by Canada and other WTO Members. Like the EC, Chinese Taipei and others, Costa Rica was in the process of considering this request in capital and hoped to see more consultations take place to have a better understanding of the positions taken.

6.12 The representative of the Czech Republic also underlined that the Czech Republic was fully committed to the implementation of the Kimberley Process. His capital was still in the process of studying and considering specific elements of the request for a waiver and supported the proposal of the EC for more consultations among delegations. His delegation would be in favour of a solution which might be common for all participants in the Kimberley Process.

6.13 The representative of Norway said Norway was fully committed to the Kimberley Process Certification Scheme for Rough Diamonds and in accordance with its national legislation, the necessary domestic measures would be adopted in Norway prior to the launch of the Certification Scheme on 1 January 2003. With regard to the request for a waiver, he supported the request for consultations as proposed by the EC.

6.14 The representative of China said that China was fully committed to the Kimberley Process and wanted the Certification Scheme to start as smoothly as possible. His capital was still considering the proposal by Canada and would like to join the consultations at a later stage.

6.15 The representative of Korea associated himself with the comments and views of other delegations. He understood the humanitarian and security goals of the Kimberley Process and recognised the exceptional circumstances of trade in conflict diamonds. However, he needed more time to get a consensus recommendation because of the comprehensive nature of this Kimberley Process.

6.16 The Chairman said there had been a useful and informative exchange of views but it was clear that a number of delegations required time to reflect on this request. He proposed that the Council take note of the statements made and suggested that Canada carry out consultations and that the CTG revert to this item at the appropriate time.

6.17 It was so agreed.

VII. INTRODUCTION OF HARMONIZED SYSTEM 2002 CHANGES INTO WTO SCHEDULES OF TARIFF CONCESSIONS – DRAFT WAIVER

7.1 The Chairman drew Members' attention to the draft waiver circulated in document G/C/W/436, which has been made in connection with the introduction of HS2002 changes into WTO Schedules of tariff concessions.

7.2 The representative of the United States said that the US wanted to join in the consensus approving this waiver. There were a number of countries that had implemented the HS2002 changes but had not yet notified those changes to the WTO. It was necessary for that to happen in order for

these schedules to be approved and for countries to be consistent with their international obligations in this area.

7.3 The representative of Mexico said that it had not been possible in this document to take into consideration the particular situation of two Members who should have benefited from three months' more that were given to the other Members listed in Annex A. In case in the future requests were made for extensions relating to HS2002 changes, he urged that parity be given due consideration.

7.4 The representative of Argentina supported Mexico's statement.

7.5 The CTG recommended that the draft waiver decision contained in G/C/W/436 and Corr.1 be forwarded to the General Council for adoption.

VIII. CONSIDERATION OF ANNUAL REPORTS OF SUBSIDIARY BODIES OF THE COUNCIL FOR TRADE IN GOODS

8.1 The Chairman said that pursuant to the "Procedures for an annual overview of WTO Activities and for reporting under the WTO" (WT/L/105) which were adopted by the General Council on 15 November 1995, all bodies constituted under agreements in Annex 1A of the WTO Agreement were required to submit annually a factual report to the Council for Trade in Goods, and the Council was to take note of these reports. The Council took note of the following reports without discussion.

8.2 Committee on Market Access: document G/L/582; Committee of Participants on the Expansion of Trade in Information Technology Products (G/L/577); Committee on Agriculture (G/L/594); Committee on Customs Valuation (G/L/590); Textiles Monitoring Body (G/L/574); Committee on Sanitary and Phytosanitary Products (G/L/592); Committee on Technical Barriers to Trade (G/L/580); Committee on Import Licensing (G/L/573); Committee on Rules of Origin (G/L/593); Committee on Anti-Dumping Practices (G/L/581); Committee on Subsidies and Countervailing Measures (G/L/585); Committee on Safeguards (G/L/583); Working Party on State Trading Enterprises (G/C/W/591 and Corr.1); Committee on Trade-Related Investment Measures (G/L/588).

IX. ADOPTION OF THE ANNUAL REPORT OF THE COUNCIL FOR TRADE IN GOODS TO THE GENERAL COUNCIL

9.1 The Chairman drew attention to the draft report of the Council circulated in document G/C/W/433. In accordance with the "Procedures for an annual overview of WTO Activities and for Reporting under the WTO" (WT/L/105) which was adopted by the General Council on 15 November 1995, it was agreed that "The respective sectoral Councils should report in November each year to the General Council on the activities in the Council as well as in the subsidiary bodies" and that the reports of the sectoral Councils should be "factual in nature, containing an indication of actions and decisions taken, with cross references to reports of subordinate bodies and could follow the model of the GATT 1994 Council report to the CONTRACTING PARTIES".

9.2 The Council agreed to adopt the draft report, subject to the updating required to take account of the Council's work at this meeting. (The report was subsequently circulated as document G/L/595).

X. OTHER BUSINESS

10.1 The Chairman announced that the next CTG meeting would take place on Friday, 6 December and would be devoted to trade facilitation. The agenda for the meeting would close on Monday, 25 November at noon. The meeting was then closed.

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