

**Committee on Subsidies
and Countervailing Measures**

**CHAIRPERSON'S REPORT TO THE COUNCIL FOR TRADE IN GOODS
ON TRANSITIONAL REVIEW OF CHINA**

1. The Committee on Subsidies and Countervailing Measures undertook the seventh transitional review of China pursuant to paragraph 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432) at its regular meeting held on 29 October 2008.
2. Annex 1A to the Protocol requires China to submit information on the following to this Committee: "Pricing Policies": (a) "application of existing or any other price controls and the reason for their use"; and (b) "pricing mechanisms of China's state trading enterprises for exported products". China submitted the information in this respect on 16 October 2008, which has been circulated in document G/SCM/N/182.
3. Questions submitted in the context of the 2008 transitional review have been circulated in documents G/SCM/Q2/CHN/40 (European Communities) and G/SCM/Q2/CHN/41 (United States). The Statements made in the context of this transitional review at the meeting of 29 October 2008 are reflected in the minutes of the meeting, the relevant paragraphs of which are annexed.

Excerpt from the minutes of the regular meeting of the Committee on Subsidies and Countervailing Measures held on 29 October 2008, to be circulated as document G/SCM/M/66

E. TRANSITION REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION

1. The Chairman recalled that paragraph 18 of the Protocol of Accession of the People's Republic of China to the World Trade Organization provided that all subsidiary bodies, including this Committee, "which have a mandate covering China's commitments under the WTO Agreement or [the] Protocol shall, within one year after accession, review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of [the] Protocol."

2. China was to provide relevant information in advance of the review, including information specified in Annex 1A to the Protocol. China could also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in the Protocol, in subsidiary bodies which had a relevant mandate. This Committee was required to report the results of the review promptly to the Council for Trade in Goods. The review was to take place after accession in each year for eight years, with a final review in year 10 or at an earlier date decided by the General Council.

3. The Chairman noted that there were no procedures set out for the conduct of the transitional review in the Protocol, except that China was to provide relevant information in advance of the review. In this regard, Annex 1A specified that China was requested to provide information on the following to this Committee in accordance with Article 18.1 of its Accession Protocol: "Pricing Policies": (a) "application of existing or any other price controls and the reason for their use"; and (b) "pricing mechanisms of China's state trading enterprises for exported products". The notification of China provided for in Annex 1A has been circulated in document G/SCM/N/182, dated 20 October 2008. The European Communities and the United States had submitted questions in the context of this transitional review, which had been circulated in documents G/SCM/Q2/CHN/40 and 41.

4. The delegate of the European Communities saw the transitional review as a useful supplement to bilateral discussions with China on its subsidies policy, including China's observance of WTO obligations and its commitments under the Protocol of Accession. China became a Member of the WTO in 2001 and its first subsidy notification in 2006 represented an important step towards observing the fundamental principle of transparency as required under the *SCM Agreement*. As had been reiterated on several occasions, China had still not completed its first subsidy notification submitted in 2006, although it had been called upon by several WTO Members to do so. This in and of itself raised the question whether China was willing to fully abide by its WTO obligations. This was further emphasized by the fact that China had not yet submitted the new and full subsidy notification which had been due by 30 June 2007.

5. The delegate of the European Communities noted that subsidies provided by sub-national governments was an area specifically highlighted by Members in paragraph 173 of the Working Party Report on China's accession to the WTO. As a result it might be expected that discussions on subsidy issues would focus more on substance rather than on China's implementation of specific commitments that it had made in its Protocol of Accession.

6. As a consequence of these shortcomings, the European Commission continued to uncover subsidy schemes which had not been notified. According to information the European Commission had, China subsidized the development of name brands for export at both the federal and the sub-

federal level of government. These subsidies appeared to be contingent upon export and were therefore inconsistent with Article 3 of the *SCM Agreement* as prohibited subsidies.

7. By continuously failing to update its insufficient subsidy notification or to submit a new and full subsidy notification in due time, WTO Members were left with only one of two options: to accept China's disregard for the legitimate interests of WTO Members and WTO obligations regarding transparency and notification requirements; or, to initiate formal dispute settlement proceedings - a path that the European Communities, and - one would assume - China, would prefer to avoid.

8. In light of this the delegate of the European Communities encouraged China to commit to a specific timeline for the submission of information on its sub-federal programmes and of its next new and full subsidy notification.

9. Furthermore, the delegate of the European Communities requested China to provide it with comprehensive information on the subsidy schemes that had been specifically addressed at this meeting regarding the development of name brands for export and regarding subsidies in its semi conductor industries, and to immediately notify those schemes or to terminate them.

10. The delegate of the United States said that this was the seventh annual transitional review mechanism for China. The United States believed that the transitional review mechanism continued to be a useful mechanism. The transitional review mechanism helped to provide needed additional transparency for China's trade regime so that Members could better understand and assess the progress that China had made in implementing and complying with its WTO obligations. One of those obligations was to provide a complete subsidy notification.

11. After nearly five years as a WTO Member, China had submitted its first subsidy notification. While this was a positive step, the notification was largely incomplete as it failed to include a single sub-central government measure. In explaining the incompleteness of its notification, China had stated that it was "internally discussing how to gather information in an efficient and an effective manner." While for some WTO Members the absence of sub-central government measures may not be important, that was not true in the case of China.

12. The United States had highlighted in prior submissions to this Committee that provincial and local authorities in China played a very important role in implementing industrial policy, including subsidy policy. Therefore, the notification of sub-central government measures by China was imperative. For example, it had recently been reported that one of China's provincial governments was providing assistance to four textile companies so they could avoid bankruptcy. This demonstrated the important role of local governments, as well as China's commitment to maintain production in an industrial sector in which it was already a dominant supplier worldwide.

13. The delegate of the United States continued that a second obligation China assumed when it joined the WTO was to immediately eliminate all export subsidies. The United States and other WTO Members had raised numerous questions over the years with respect to what appeared to be unreported subsidy programmes at various levels of government that were all contingent upon export performance. The United States had also raised these same concerns bilaterally, based on evidence of legal measures that clearly appeared to provide prohibited export subsidies. Notably, all of these programmes were implemented well after China became a WTO Member. China had not taken steps to address the concerns of the United States or similar concerns expressed by other WTO Members. Most disturbingly, publicly available legal measures at the central and local governments clearly indicated that some of these programmes appeared to have been formulated and adopted under the direction of the central government. Given that the end of the period of the trade review mechanism was drawing nearer, it was particularly troubling to see China taking what seemed to be new steps backwards rather than forwards, by implementing what appeared to be new prohibited subsidy

programmes, at nearly all levels of government, promoted and sanctioned by the Central Government. Continuation down such a path was not tenable. China needed to meet its obligations to provide a full subsidy notification covering all levels of government, and to terminate without delay any prohibited subsidies in place.

14. A third obligation China undertook when it became a WTO Member was that it "would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises", as set forth in paragraph 46 of the Working Party Report accompanying China's WTO Protocol of Accession. The delegate of the United States noted that China was currently consolidating state ownership of large or strategically important state-owned enterprises ("SOEs") under the State Assets Supervision and Administration Commission ("SASAC"). The approximately 150 SOE holding companies owned by SASAC controlled thousands of companies across a wide range of industries and accounted for most of the profits in the SOE sector. A recent paper issued by The General Office of the State Council (GBF [2006] No. 97) stated that the dominant position of public ownership would be maintained, and established a mechanism by which profits from SOEs would fund the re-organization of state-owned enterprises, consistent with national industrial policies and planning. Given the government's heavy reliance on industrial policies and the government's explicit goal of maintaining a leading role for SOEs in China, the United States asked China how it intended to proceed with its plans for SOEs and, at the same time, meet its WTO obligation to operate its SOEs solely on a commercial basis without government interference.

15. The delegate of the United States noted that the last section of the US submission included several questions regarding domestic support for China's agricultural sector. Many of those questions were asked in the committee meeting of the Committee on Agriculture. At that meeting China asserted that many of those questions were more appropriate for this Committee. The United States was now repeating those questions with the expectation that China would provide a clear and complete response.

16. The delegate of Japan noted that while Japan had not submitted written questions in the context of this year's transitional review, Japan shared some of the concerns expressed by other Members in their written submissions. The fact that some of the questions in those written submissions had also been posed in 2007 showed that the responses from China were not sufficient to address Members' concerns. In this regard, as a general matter, Japan hoped that China would respond to questions clearly and in an adequate and timely manner.

17. Japan had an especially strong interest in developments in China's banking and financial sectors, and shared the concerns of the United States in this regard. Japan considered that if Chinese state-owned commercial banks provided loans to uncreditworthy enterprises, or supplied lending on terms and conditions inconsistent with market considerations, such loans and lending constituted subsidies within the meaning of the *SCM Agreement*. China had explained that as a result of the reform of the banking and financial sector, Chinese state-owned commercial banks now provided loans on a commercial basis. However, the details with respect to this reform were not clear. For example, as pointed out by the United States at paragraphs 10-12 of document G/SGM/Q2/CHN/33, it was unclear how Chinese state-owned commercial banks could take lending decisions on a commercial basis given that those banks were also required to act consistently with China's national industrial policy. Japan requested China to provide a clear explanation on this point.

18. The delegate of Canada thanked the United States and the European Communities for their communications and looked forward to reviewing China's answers. Canada agreed that the notification process was important for transparency purposes and had been a key element of the work of this Committee. In the context of previous transitional reviews, Canada had raised concerns with respect to China's industrial policies and subsidy programmes, in particular in the iron and steel sectors. Those concerns remained. Canada therefore shared the interest of some other Members in

having more information regarding programmes identified in the written submissions from the European Communities and the United States, including programmes that supported name brands in international markets, issues relating to SOE operations in China, VAT rebates and VAT exemptions.

19. The delegate of Mexico echoed the concerns of previous delegations, noting that not much was known about the subsidy programmes at various levels of the Chinese Government. The implementation of programmes which appeared to be prohibited subsidies under Article 3 of the *SCM Agreement* was also a concern. Mexico would be paying close attention to the answers provided by China to these concerns.

20. The delegate of China took note of the statements made by the previous speakers. Before responding to the written questions from the United States and European Communities, the delegate of China wanted to make some general comments.

21. The delegate of China firmly rejected any implication that China had failed to fulfil its transparency commitments in the area of subsidies. China had always made it clear that preparation of subsidy notifications would involve tremendous difficulties – this had been made clear to the Working Party when paragraph 173 of the Working Party Report was drafted, which was why, in that same paragraph, China had committed to "progressively work towards a full notification of subsidies, as contemplated by Article 25 of the *SCM Agreement*. The Working Party took note of this commitment." The delegate from China repeated the phrase, "China would progressively work towards a full notification of subsidies, as contemplated by Article 25 of the *SCM Agreement*." This was what China had committed to do and this was exactly what China had been doing ever since its accession and it is what China would continue to do. It was never an easy task to finalize the first new and full notification of China's subsidy measures and programmes at the central government level in April 2006, only a few years after China's accession. The notification had contained comprehensive information covering the period 2001 to 2004. China would never agree that finalising this notification in 2006 amounted to a failure to honour its accession commitment. On the contrary, China believed its efforts were a reflection of its commitment to the fundamental principle of transparency. This was especially true given its serious capacity constraints as a newly acceded developing country Member. There had been delays in the subsidy notifications from some developed Members, in sharp contrast to the efforts made by China.

22. China's efforts would continue, even though it was not in a position at this moment to submit a second or updated New and Full notification. The main reason for the delay was the major reform of China's internal tax policies, which resulted in adjustments to the policies and measures contained in China's first notification. It would not be sensible to waste precious resources and limited capacity to notify things that were undergoing changes. China intended to present to Members a comparatively complete picture of the changes. China was continuing to work on an updated notification, and to the extent possible would endeavour to cover the period from 2005 to 2008 in this second updated notification.

23. As to the question whether the second notification would cover the sub-national level, the delegate of China stated he had no answer at this stage. But, China had a feeling that the effects of subsidies provided at the sub-national level might be magnified. In preparing China's written responses to the written questions from the United States regarding its first notification, as contained in document G/SCM/Q2/CHN/28, China endeavoured to verify those sub-national measures identified by the United States. But, many of those measures were outdated, had already been eliminated, or had not been understood correctly.

24. The delegate of China asked whether the United States and the European Communities could reassure WTO Members that they had notified all subsidy measures at the sub-national level that they were obliged to notify to this Committee. In the case of the European Communities, *de minimis* aid

was governed by Articles 87 and 88 of the EC Treaty. Regulation No 69/2001 of 12 January 2001 deemed that state aid measures granted to any single enterprise not exceeding EUR 100,000 over any period of three years would not meet the criteria under Article 87(1) of the EC Treaty, and would therefore not fall under the notification requirement of Article 88(3) of the EC Treaty. As such the European Communities would not notify to this Committee subsidies granted to any single enterprise under EUR 100,000 over any period of three years. The delegate from China invited the Committee to compare that to China's measures mentioned by the European Communities in its written questions. Even if the measures identified by the European Communities in its questions to China were all verified, an enterprise in China that complied with the criteria would be awarded RMB 30,000 annually, or RMB 90,000 over three years – how did that compare to the *de minimis* level of EUR 100,000 in the case of the European Communities, a developed Member. With the exchange rate standing at 1 Euro to 10 RMB were China's subsidies at the sub national level really a big problem?

25. Turning to the specific questions, the delegate of China noted that he had been informed by his authorities that the *Circular on Carrying out Evaluation of Products to be recognised as China World Top Brand of 24 March 2005* was no longer being implemented. Regarding the questions from the European Communities on the semi-conductor industries, details of China's measures regarding this particular industry were already contained in the first New and Full notification, specifically item 57 in document G/SCM/N/123/CHN. Noting the specific comment on page 3 of the written questions from the European Communities stating that " ... China applies a 3 per cent value-added tax rate on China-made chips", the Chinese delegate verified that no such policy was in place in China.

26. The United States had asked whether there was any mechanism in place in China for reviewing new Central Government subsidy programmes. The representative from China confirmed that the Central Government followed consultation procedures when formulating policies and developing measures in order to ensure WTO consistency. As to the efforts regarding subsidy programmes of local government, a comprehensive programme on legislation review was launched nationwide around the time of China's accession to the WTO. As part of that process a special circular was issued by the State Council in September 2001 requesting all local governments to review local regulations, rules and administrative measures in line with the principles of uniform application, non-discrimination and transparency. To ensure consistency within the legal framework and uniform implementation of trade policies across the country, the *Regulations on Submission of Regulations and Rules for Record* was promulgated at the end 2001. This included the requirement that all rules and regulations be submitted to the Legislative Affairs Office of the State Council for review within 30 days of promulgation. This afforded the opportunity to identify and remedy any inconsistencies between the local rules and regulations with the laws and regulations of the Central Government. In addition, anyone could write to the Legislative Affairs Office of the State Council to initiate a review process whenever they identified an inconsistency in the legislation.

27. Regarding the question on the relationship between industrial policies and subsidy programmes, the delegate of China clarified that they were not necessarily inter-linked. Industrial policies were usually general, reflective of a general policy direction and implemented through specific administrative measures. Subsidy programmes were found in administrative measures which might or might not be related to industrial policies. It was on these specific administrative measures providing for subsidies that China had made its subsidy notification. Generally speaking the financing of the subsidy programmes would remain at the level of government initiating the subsidy.

28. Turning to the questions on state-owned enterprises, China thought using the word "consolidation", as the United States had done in its written questions, could be misleading. More appropriate phrases to describe the process might be "streamlining" or "rationalisation". China clarified that this process was not a subsidy programme. It was a process that reflected the efforts of the Chinese Government to further reform its state owned enterprises along the market economy

principles, which included ensuring that decisions of those enterprises were based solely on commercial considerations, and that the role of the State as an investor and shareholder was separated from that of the managerial board of those enterprises as the decision maker. The State Assets Supervision and Administration Commission, or SASAC took on the role of the investor or shareholder on behalf of the State and aimed to preserve and increase the value of the state-owned assets. It did not seem necessary to go into detailed analysis of the directives mentioned by the United States as in light of the mandate of the Committee concerning the transitional review those directives were not directly relevant. However, the delegate of China wished to highlight some points of those directives in order to reflect the policy direction of the Chinese government regarding its reform of state-owned enterprises, as he had just mentioned. For example, state-owned enterprises, other than those of national security interest, would be promoting a diversified investor structure; state-owned enterprises were encouraged to go public and be listed on stock market; and investors, including foreign investors, were welcome to take up shares in those enterprises.

29. The delegate of China noted that due to the late arrival of written questions, the relevant authority had not been in a position to respond to the questions on land administration. He also added that China did not see the relevance of the questions to the mandate of this Committee, particularly those concerning the National Land Superintendency. The delegate of China wished to reiterate that a basic principle adhered to by China in its economic reforms was to allow the market to play its fundamental role in the allocation of resources, noting that in China land for industrial purposes could now only be provided through public bidding procedures.

30. The delegate of China noted that the economic reforms in China had led to fewer price controls on goods and services. These days only a very small number of goods and services continued to be subject to state pricing, or government guidance on pricing due to their importance and sensitivity. Information provided to this Committee in accordance with Annex 1A reflected this situation. In the meantime the reform process was on-going – for example, price controls on coal and grain had been eliminated in the last few years. While the reform of fuel pricing in China would not be completed overnight, the policy direction was clear.

31. On questions regarding the agricultural sector and China's new Enterprise Income Tax Law, the delegate of China responded that chapter one of the legislation answered the question posed by the United States regarding the definition of "enterprise". Given misunderstandings that might be derived from translation the delegate from China suggested that the United States consult the official English version of this particular law for the details. As to the questions concerning the projections of values of income tax exemptions, China was not in a position to do such projections. The amount of tax forgone as a result of the implementation of preferential tax policies was not available as China did not have a statistics system for tax expenditure. Therefore, at this point, such projections were impossible. Other available details on exemptions would be included in future notifications. Noting that the final Article of the legislation was Article 60, the delegate from China wondered if there had been a mistake in the question from the United States given reference to a non-existent Article 86.

32. The delegate of China referred to a previously raised question on which he had provided a response, on the VAT exemptions for agricultural products produced by Chinese farmers. He reiterated that China did not believe there to be any discrimination in applying such exemptions. China had explained repeatedly its views on this issue, including in written responses during its trade policy review. This exemption of VAT in China applied to the products directly produced by Chinese farmers and the corresponding stage of tax levying in a foreign country was when a foreign farmer sold his/her products. He asked whether the United States or the European Communities could clarify whether any tax was levied on farmers in the United States or in EU Member States when a farmer sold his/her products. It seemed not only were farmers exempt from taxes in those countries, they were also heavily subsidized.

33. Finally, with respect to China's export VAT rebate, the delegate of China stated that the rebates were implemented according to legislated rebate rates, none of which were in excess of the original rates levied. As such China did not believe there was any inconsistency with the requirements of the *SCM Agreement*.

34. The delegate of the European Communities thanked China for its replies and its explanations, particularly on semi conductor industries and noted he would follow up on the information provided. China had interpreted paragraph 173 of the Working Party Report as allowing it to delay submission of its notification to this Committee. The European Communities strongly disagreed with this interpretation. Transparency was a fundamental principle of the WTO and the delayed submission of a subsidy notification would severely undermine the usefulness of such a notification to Members. To be useful subsidy notifications needed to be timely.

35. As to China's name brand programmes, the European Communities agreed with the view that notifications needed to be made irrespective of the amount notified. The delegate of the European Communities noted that China had also asked a question regarding the European Communities notification. The European Communities was prepared to answer any question put to it on its notifications and would be prepared to terminate any prohibited subsidies found in Europe.

36. The delegate of the United States agreed firmly with the European Communities on the meaning of paragraph 173 in China's Working Party Report. It was very disturbing to hear China suggest that, in effect, it had no obligation under Article 25 of the *SCM Agreement* to make subsidy notifications, but rather could meet its obligations by merely continually working toward a full notification. The delegate of the United States noted that he had been very involved in China's accession negotiations and recalled that Members of the Working Party had asked and expected China to provide a full notification of its subsidies at the time of its accession. China provided a notification in Annex V of the Working Party Report, but as many Working Party members noted at the time it was incomplete. Working Party Members had asked China to work progressively to complete that notification. That did not amount to an alteration of China's obligation under Article 25 of the *SCM Agreement* regarding future notifications. Seven years into China's WTO membership, the expectation was that China should now have notified all of its subsidies, including subsidies at the sub-national government level. While China had mentioned that it was a developing country Member and therefore needed more time to put together its notification, China's Protocol of Accession did not label China as a developing country Member, nor did it provide for developing country treatment for China under the *SCM Agreement*. China was not given the right to invoke any of the developing country provisions in the *SCM Agreement* in its Protocol of Accession.

37. The delegate of the United States noted concerns with China's suggestion that because some programmes at the sub-national government level were dated or eliminated they were not a big problem. The United States considered programmes implemented at the sub-national government level to be an enormous problem – it had identified, so far, more than sixty separate legal measures that appeared to provide export subsidies.

38. Following initial questions in 2006 on the export brand programme, the United States interpreted this programme as providing export subsidies at the central government level. The legal measure, at the level of the central government, set out the parameters of the programme and provided guidance to sub-central governments to implement programmes along the lines of the central government legal measure. The concern was that the central government in China did not appear to be aware of its WTO obligations as these legal measures clearly appeared to be prohibited export subsidies. The issue of primary concern was not necessarily whether China

was able to track down all of the provincial measures in question, but rather that the central government had formulated and implemented programmes that appeared to be prohibited. These programmes were implemented in 2005 and 2006, long after China became a WTO Member. The United States considered that the mechanisms China had in place with respect to insuring WTO consistency, both at the central government level and the local government levels were ineffective. The reviewers, MOFCOM, of the measures in China did not appear to understand the full nature of China's obligations under the *SCM Agreement*.

39. The delegate of the United States noted that China had asked whether the United States had notified all of its sub-central government measures. While not all sub-central government measures may have been notified, the United States stated that it had notified over 350 state programmes, which was 350 more sub-central government programmes than China had notified.

40. The United States welcomed the statement from the Chinese delegate that SASAC's role was limited to that of an investor interested in maximizing state-owned asset values. But, the directive cited by the United States in its written questions included repeated references to the fact that SASAC's efforts at streamlining ownership and in regulating investment activity in the SOEs was to be done in accordance with state industrial development policies. The directives also made clear that SASAC would determine both the core and non-core business of those large SOEs and would assign a priority to the allocation of investment to core businesses. How did SASAC intend to maximise asset values consistent with market principles if at the same time it was going to allocate or regulate investment behaviour in accordance with state industrial development policies? How could SASAC maximise asset values if the directive prioritised the allocation of investment into core business as dictated by SASAC, rather than core business determined by enterprises? The delegate of the United States noted that SASAC had explicitly stated that it would maintain control over those SOEs so that no strategic investor, whether foreign or domestic, would have effective control over the SOEs under SASAC purview.

41. Finally, regarding land, it probably went without saying that land was perhaps China's most scarce and valuable resource relative to labour. Given the scarcity of land and given its clear implications for both market entry and competition concerns, it would not be too much to ask why the Government had undertaken efforts to recentralize land administration at the provincial level. There were concerns about what that implied for transparency in land allocation in China.

42. The delegate of China took note of the comments and wished to respond to the points raised. On paragraph 173 of the Working Party Report, what he said should not be understood to mean that it was China's intention to delay its notification. Rather, China was applying maximum effort to do as it had committed to do, and was working towards providing a full notification. Secondly, regarding the point concerning the brands, China took note that some Members felt MOFCOM, as the reviewer, did not appreciate fully China's WTO obligations. But, there appeared to be a misunderstanding on this particular point. China had previously explained MOFCOM's policy in this regard, probably during the previous transitional review meeting or in written responses in its trade policy review – the focus of the policy was to promote the brands to participate in trade fairs and trade promotion activities. The delegate from China noted he was not an expert in company law, but wondered whether SASAC, as a shareholder and investor in a company, was prevented from expressing views on the company in which it had invested. He also noted that it appeared that major countries were nationalising company assets due to the ongoing financial crisis that had originated in the United States. In saying this the delegate from China did not mean to trigger a debate, but wanted to reiterate that in light of the mandate of the Committee, the discussion under this agenda item should focus on the WTO consistency of concrete and specific measures, rather than general issues such as the land administration system, SOE reform or financial assets nationalisation.

43. The delegate of the United States noted his appreciation for China's response to his intervention. With respect to the famous export brand programme, it was very clear from the legal measures that in order to qualify for the programme a firm had to export products. The policy behind the programme was to encourage the exportation of Chinese branded products, and it was thus a very clear case of export contingency. The Chinese delegate had mentioned trade fairs and trade promotions, but this was of little interest at this point. The United States was interested in cash grants that were given to companies that had been recognized as the owners of famous export brands - cash grants that could have significant value.

44. On the issue of SOEs, from a separation standpoint and from a governance standpoint privatization of the SOEs would be the first best option, but if privatization was not an option there was not a concern with SASAC operating as an investor *per se*. Of course SASAC had a right as the owner to participate as an investor. The concern was more with the fact that the investment regulation and SASAC's ownership of those enterprises would be conducted in accordance with state industrial development policies. Because of the link to industrial policies it was not clear to what extent those SOEs would operate as extensions of the government rather than true commercial actors.

45. The delegate of the European Communities thanked China for its follow up responses. The European Communities appreciated that China had the same understanding of paragraph 173 of the Working Party Protocol as it had, and acknowledged China's effort to undertake to submit timely and complete subsidy notifications. He asked whether China could be more specific with regard to when it would make a complete subsidy notification.

46. On the brand names, China seemed to have understood it as more or less a trade promotion export problem. According to the information of the European Communities this was clearly an export subsidy programme rather than an issue of export promotion.

47. The delegate of China responded that on the brands issue, as had just been explained, the provision of assistance as contained in the MOFCOM policy was for the purposes of trade promotion. The delegate was not convinced that such trade promotion activity was a problem. Regarding the subsidy notification, China was in the process of preparing a second notification.

48. Finally, while on this particular occasion the delegate of China did not wish to enter into a debate on China's developing country status, he said that it was an undeniable fact that China was still a developing country and that China had all the rights that a developing country was entitled to in the WTO. He had been personally involved in China's accession process.

49. The delegate of the United States stated that China's Protocol of Accession was very clear on this point. In its Protocol of Accession China agreed not to invoke any of the development country treatment provisions that are normally available under the *SCM Agreement*.

50. Another delegate of China referred his colleague from the United States to paragraph 171 of the Working Party Report. The final two sentences read: "In line with this approach the representative of China stated his intention to reserve the right to benefit from the provisions of Articles 27.10, 27.11, 27.12 and 27.15 of the SCM Agreement while confirming that China would not seek to invoke Articles 27.8, 27.9 and 27.13 of the SCM Agreement. The Working Party took note of these commitments". It was clear from those sentences what China had committed to and that it did have developing country status.

51. The delegate of the United States wished to provide a clarification. The provisions of the *SCM Agreement* that were "reserved" were provisions that dealt with anti-dumping and countervailing duty investigations for which the investigating authority retained the authority to

determine whether or not an investigated importing Member was or was not, in the view of the investigating authority, a developing country. Those were not provisions that China could invoke. Those provisions referred to the investigating authority. With regard to the provisions that China itself could invoke, those were the ones that China had agreed in paragraph 171 not to invoke.

52. The delegate of China responded that China of course understood what those provisions meant, but the question to the United States was whether the United States was the only Member within the WTO who was entitled to judge the status of another Member? Was that a political signal being sent to China, and also to other Members, that China would not be entitled to any further S&D treatment for fishery negotiations, for fishing subsidies negotiations or whatsoever? The United States should be cautious – that position would be problematic for China, for the United States and for this organisation.

53. The delegate of the United States responded that China and the United States were going to have to agree to disagree and he just referred Members to the terms of china's Protocol of Accession to reach their own conclusions.

54. The Chairman thanked Members for their comments and questions. He stated that China's Protocol of Accession to the WTO did not contain specific guidelines on the report to be submitted by the Committee on the transitional review. Following the transitional review conducted at the meeting in October 2007 the Chairperson, acting on his own responsibility, prepared a brief, factual report, with references to the documents concerned, and attached the portion of the minutes of the meeting relating to the transitional review. He proposed that the Committee agree to follow the same procedure. It was so decided.
