

Council for Trade in Goods

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

1. The Council for Trade in Goods, at its meeting on 22 November 2002, carried out the first Transitional Review of China pursuant to paragraph 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432). Preparations in connection with the review had been discussed at several meetings of the Council in 2002. At its meetings on 24 May, 13 June, 23 July and 2 October, the Council took note of the statements made with respect to China's Transitional Review which was due to take place in the CTG on 22 November 2002.
2. Pending information required for the Transitional Review, the European Communities, United States and Japan submitted questions and comments in writing to China on the CTG-specific information requirements contained in Annex 1A of the Protocol. These questions and comments were circulated in documents G/C/W/437, G/C/W/435 and G/C/W/430 respectively. The information provided by China to the Council for the review was circulated in document G/C/W/438. The statement made at the review by the head of the Chinese delegation was subsequently circulated in document G/C/W/441.
3. The review proceeded in two stages. First, the Council for Trade in Goods took note of the reviews that had been carried out in the 11 CTG subsidiary bodies. Second, the Council reviewed the information provided by China concerning specific parts of Annex 1A of the Protocol. The statements made at the meeting of 22 November 2002, where discussions under the Transitional Review took place, are reflected in the minutes of the meeting in document G/C/M/66. The relevant paragraphs which reflect the discussion under item III are annexed.

ANNEX

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 General 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 applied 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 State 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 magnesite, 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.
