

Council for Trade in Services

REPORT OF THE MEETING HELD ON 19 MARCH 2002

Note by the Secretariat

1. The Council for Trade in Services held a meeting on 19 March 2002. The agenda for the meeting is contained in document WTO/AIR/1738. The Chairman proposed that the Council adopt the agenda as circulated.

2. The Council so agreed.

A. ARTICLE II (MFN) EXEMPTIONS

**(I) PROCEDURES FOR TERMINATION, REDUCTION AND RECTIFICATION
OF ARTICLE II (MFN) EXEMPTIONS**

3. The Chairman drew the Council's attention to the Revised Draft Procedures for the Certification of Terminations, Reductions and Rectifications of Article II (MFN) exemptions (S/C/W/202/Rev.1), which the Secretariat had prepared on the basis of an emerging consensus at an informal meeting held on 22 February 2002.

4. The representative of India stated that the revised draft contained a number of important changes, such as on the early termination of Article II exemptions, as well as an additional sentence in paragraph 4, which would limit the grounds on which Members could object to proposed reductions or rectifications of MFN exemptions. His delegation required more time to reflect on these changes.

5. The representative of Cuba stated that her delegation also required further time to study the revised draft procedures.

6. In reply to a question by the representative of Turkey, as to whether there should be a deadline for the removal of objections, a representative of the Secretariat stated that the objective of the procedures was to allow for changes to a treaty to take place. As with all modifications to treaties, such changes could only be effected on the basis of consent of the other parties to the treaty. The specified time period to register an objection allowed Members to verify that the proposed reduction was actually a reduction of the level or scope of the MFN exemption. Likewise, in the case of a proposed rectification, the time period for objection allowed Members to verify that the proposed change was a true technical rectification. Where an objection was raised it was up to the parties to resolve the issue. A modification could not be effected unless the objection was withdrawn and all Members thereby agreed to the proposed change.

7. The representative of Japan stated that the envisaged procedures for termination, rectification and reduction of MFN exemptions should be put into place before the start of the "request – offer" process. He supported the additions made in paragraph 4 of the revised draft, specifying that a Member may not object on grounds of loss of preferential treatment resulting from the proposed

modification. As regards termination of MFN exemptions, two possible situations could be the basis for such a request: one was the termination of the measure itself, the other case being a situation where a Member had changed its understanding of whether a given measure required a listing of an MFN exemption. In the latter case, a member may retain the actual measure, but may remove it from its list of MFN exemptions. While his delegation supported the revised procedures generally, he considered it useful to seek clarification under which of these two scenarios termination would be sought by the requesting Member. This could be done through a small insertion under paragraph 2 of the revised draft, stating that notifications on the termination should contain the reasons for the termination.

8. The representative of the United States stated that the third sentence in paragraph 4 was not appropriate for inclusion into the procedures. The sentence could introduce an element of uncertainty into the certification process, as Members might disagree as to the basis for other Members' objection. Further, paragraph 6 of the draft related to the entire set of procedures, and not only to one section. He suggested to make this more explicit in the text.

9. The representative of Poland welcomed the revised draft procedures. While her delegation could go along with the draft in the proposed form, she wondered whether the draft should address the possibility of changes to MFN exemptions that were necessary in cases where Members introduced a new classification to any given sector.

10. The representative of New Zealand welcomed the revised draft which his delegation was ready to adopt without further changes. On the question raised by Poland, he believed that changes to MFN exemption lists due to changes in classification were already covered by the draft.

11. The Chairman stated that in light of the suggestions made by some delegations, as well as the request for additional time by others, further consultations would be required. These consultations should be held with a view to clarifying the situation and arriving at a consensus on the draft, so that a decision could be taken by the Council at its next formal meeting.

12. The Council so agreed.

(II) OTHER ISSUES ARISING FROM THE REVIEW

13. The Chairman recalled that during the review of MFN exemptions, a number issues had arisen which delegations had subsequently discussed in the Council. At the last meeting Korea had presented a communication, contained in document S/C/W/204. Earlier in the process, papers had been submitted by Mexico (S/C/W/196), Hong Kong, China; Japan and Korea, (S/C/W/173), and Hong Kong, China, (Job No. 7775).

14. The representative of Poland echoed comments made at an earlier meeting by the delegations of Switzerland and the European Communities on paragraphs 11 and 14 of the communication of Mexico. In her view, the lack of a concrete date for the termination of MFN exemptions did not require Members to eliminate such exemptions after ten years. Such exemptions were, however, subject to negotiations. The Annex on Article II Exemptions allowed Members to maintain exemptions for a longer period than ten years. Commenting on the document of Korea, she agreed with the view expressed in paragraph 13, that the removal of exemptions was voluntary. She concurred that increased transparency with regard to the inscribed exemptions was needed. She also agreed with other delegations that MFN exemptions could under no circumstances grant less favourable treatment than set out in the Member's schedule of specific commitments. Her delegation was flexible as regards directing the work concerning the MFN exemptions to the Committee on Specific Commitments.

15. The representative of Hong Kong, China recalled his delegation's paper, contained in Job No. 7775, on MFN exemptions which purported to grant less favourable treatment than the Member's schedule of specific commitments. He believed that such exemptions were *ultra vires* and had no legal effect. To date, no delegation had indicated any problems with the content of that paper. If Members found the conclusion drawn by Hong Kong, China acceptable, he suggested that those exemptions in question should be deleted. He invited Members having problems with this position to make their views known.

16. The representative of Mexico stated that it was precisely the lack of agreement in the interpretation of MFN exemptions without termination date that had prompted his delegation to submit its paper. In principle, the possibility of exceptions which went beyond the timeframe of ten years did exist. He recalled that at the end of the Uruguay Round the principle agreement had been to limit MFN exemptions to ten years. However, as it was difficult for some Members to commit to this, it was agreed that some exemptions could run over a longer period. However, where this was the case, that period had to be expressed explicitly in the exemption.

17. The representative of the European Communities stated that it was difficult to reconcile the diverging views on the question whether the duration of ten years was the maximum or an indicative period. He reiterated, and supported the same point made in the Korean submission, that Members could either voluntarily relinquish the exemptions, or address them in the course of the upcoming negotiations. This would be the most promising way to deal with the question of MFN exemptions, in light of the diverging views on this matter in the Council.

18. The Chairman suggested that given the lack of new submissions, the issue could be taken up again upon request by any Member, or upon receipt of any new communication.

19. The Council so agreed.

B. PROPOSALS FOR A TECHNICAL REVIEW OF GATS PROVISIONS

20. The Chairman recalled that the Council had continued its discussion on proposals for a technical review of the GATS at the December meeting. At that meeting, Brazil had presented a paper, contained in Job (01)/165, on MFN, national treatment and "like circumstances". The ensuing discussion had brought up several issues where greater clarity could be provided to the Agreement. The Chairman stated that if a technical review were to underpin the mandated services negotiations, substantive work would have to be carried out over the coming months, and a clearer view was necessary of how and to what extent that work should proceed. He requested that delegations address in their interventions those issues that had formed the core of the Council's work on this issue, i.e. Articles XVI, XVII, and XX:2; Article XVI, paragraphs 1 and 2; Article XXVIII(g) and paragraph 5(b) of the Annex on Financial Services; and MFN, national treatment and like circumstances. He further suggested that Members in their comments also address how and to what extent the Council's work on the proposals for a technical review should continue.

21. The representative of Mexico, referring to the different definitions of the term "service supplier" in Article XXVIII(g) and paragraph 5(b) of the Annex on Financial Services, stated that his understanding from previous meetings was that the Secretariat believed that both definitions could co-exist, given that one referred specifically to the financial sector.

22. A representative of the Secretariat stated that the definition of "financial service supplier" in paragraph 5(b) of the Annex on Financial Services served two purposes: defining what a supplier of financial services was, but also stipulating that such service suppliers did not include public entities. The objective of having such a provision in the Annex was to build on the definition of Article XXVIII (g), and to relate it in specific terms to financial services. The difference in wording in the

Annex providing that a "financial service supplier" meant "any natural or juridical person of a Member wishing to supply a service" as opposed to the definition contained in Article XXVIII (g) would not necessarily suggest any substantive difference between the two terms. Reference to a service supplier in the Agreement did not necessarily imply that that service supplier had to already have acquired the status of a service supplier in the country in question.

23. The representative of Hong Kong, China was interested in all technical review issues that had been raised so far, and stated that his delegation might contribute further thoughts on these issues. His intervention at this meeting related to Brazil's paper which addressed fundamental issues concerning the interpretation of two very important provisions in the GATS. He requested clarification on the following questions from either the delegate of Brazil or from the Secretariat: Brazil had suggested that if the concept of "like services" was interpreted to apply across modes, then the MFN obligation under Article II would require affording the same treatment to services and service suppliers across different modes. This, it was argued, would be contradictory and ambiguous with regard to the architecture of the GATS under which the Members scheduled their specific commitments by modes. The delegate of Hong Kong, China wondered whether this would indeed be the case. Would the requirement to accord "treatment no less favourable" necessarily mean the same treatment across all modes, as obviously the circumstances of these services or these service suppliers were different. Another question related to Brazil's suggestion that the problem was the definition of "likeness". Was it perhaps rather a problem of how commitments were scheduled? As far as national treatment limitations were concerned, Members were already scheduling those according to different modes. The specification of the modes under which Members made their commitments already qualified the commitments. His delegation believed that this qualification would entail that Members were required to afford "like" treatment only to services and service suppliers within the same mode.

24. The representative of Brazil considered that a technical review generally had merit. He supported examination of the relationship and overlap between Articles XVI and XVII. Secondly, the relationship between paragraphs 1 and 2 of Article XVI should be looked at. With regard to the definition of "service supplier" and "financial service supplier", his delegation believed that this was not a relevant issue. There was no contradiction between the two definitions, since the definition contained in Annex of Financial Services applied only to that sector.

25. Another issue of interest was of course the one on MFN, national treatment, and like circumstances on which his delegation had presented a paper at the last meeting. Even though it might seem obvious to everybody that the structure of the Agreement, i.e the definition of trade in services by four modes of supply, allowed Members to exercise extreme discrimination between each one of these modes of supply. A Member could leave one of these modes totally unbound and make a full commitment on market access and national treatment in another mode. Many Members had done so in practice. However, the text of Article XVII did not corroborate that perception, as it spoke of "treatment no less favourable" that had to be given to services and services suppliers.

26. His delegation's concern was informed by dispute settlement reports relating to services, specifically by the findings in the Panel Report on "Canada – Certain Measures Affecting the Automotive Industry". The Panel Report was useful to illustrate to Members one of the aspects his delegation was addressing in its paper. Paragraph 10.307 of the Panel Report stated the following: "We note that the CVA requirements in the MVTO 1998 and SROs do not discriminate between domestic and foreign services and service suppliers operating in Canada under modes 3 and 4. This observation, however, does not suffice to conclude that the requirements of Article XVII are met. In our view, it is reasonable to consider for the purposes of this case that services supplied in Canada through modes 3 and 4 and those supplied from the territory of other Members through modes 1 and 2 are 'like' services. In turn, this leads to the conclusion that the CVA requirements provide an incentive for the beneficiaries of the import duty exemption to use services supplied within the Canadian territory over 'like' services supplied in or from the territory of other Members through

modes 1 and 2, thus modifying the conditions of competition in favour of services supplied within Canada. Although this requirement does not distinguish between services supplied by service suppliers of Canada and those supplied by service suppliers of other Members present in Canada, it is bound to have a discriminatory effect against services supplied through modes 1 and 2, which are services of other Members."

27. He drew Members attention to paragraph 6 of Brazil's paper, where reference was made to the interpretation of like services and service suppliers on the basis of the approach of "aims and effects" which was also referred to as "like circumstances". The concept of "like circumstances" should be understood such that the services and service suppliers must be within the scope of application any given regulation, but needed not necessarily be required to comply with it, as otherwise this would allow extreme discretion on the part of the regulator, thus affecting the very standard of treatment that would be expected.

28. The representative of the United States was not convinced of the appropriateness or need for a technical review of any of the provisions raised by Members to date with the possible exception of Article XX:2. However, others had already noted the difficulties with this Article in the discussion of the scheduling guidelines in the Committee on Specific Commitments. It was not clear that more progress could be made in this body. In general, it was questionable whether a so-called technical review could be conducted in the middle of negotiations.

29. On the paper presented by Brazil, he first requested clarification as to Brazil's intention with the paper. It was presented under the agenda item "proposals for a technical review," but it was not clear whether Brazil was actually proposing changes to any of the GATS provisions noted in the paper. Secondly, while Brazil suggested that "likeness" could never apply across modes, his delegation considered that the particular circumstances of a case might need to be examined to determine "likeness". Thirdly, Brazil referred to what it believed were differences between the GATS concept of "like services and service suppliers" and the concept of "in like circumstances" used in bilateral and plurilateral free trade agreements. The United States was party to both sets of agreements and did not see a difference between the two concepts. He therefore disagreed with the approach in at least some of the conclusions drawn by Brazil. He commented further that paragraph 5 of Brazil's paper appeared to suggest that all service suppliers operating within the same sector would be considered "like" service suppliers. He was not convinced that this would always be the case. Paragraph 6 of the paper stated that services and/or service suppliers would be considered "like" only if they were subject to the same regulatory framework. Again he was not convinced that those were the criteria that defined "likeness".

30. The representative of Canada reiterated his delegation's support for a technical review to would examine specific issues raised in submissions by Members. In line with the general understanding, such a review would be aimed primarily at ensuring legal consistency and improving the clarity of some GATS provisions. It should not address the substantive content of GATS obligations.

31. Commenting on Brazil's paper, he recognized the validity of some of the points made, such as the legitimacy of regulating a given service in different ways depending on how it was provided i.e. through different modes. The GATS provisions as currently drafted could not be seen as preventing Members from doing so. The notion of specifying the degree of commitments by mode of supply was relevant only for Part 3 obligations such as market access and national treatment. He could see nothing in Article II that would support the conclusion that situations could be distinguished based on the mode of supply. With regard to the quote from the Panel Report on "Canada – Certain Measures Affecting the Automotive Industry" which Brazil had offered to illustrate its points, he stated that the issue of "likeness" under the GATS had yet to be truly addressed by a Panel and the Appellate Body. In other cases, such as "Japan – Alcohol" the Appellate Body had made it clear that the determination

of likeness was to be made on a case-by-case basis. Thus, contrary to what Brazil appeared to suggest in its paper, there was no automaticity as to what was "like". The Appellate Body Report had made clear, on page 23 that "no one approach to exercising judgment will be appropriate for our cases. The criteria in 'border tax adjustments' should be examined but there can be no one precise and absolute definition of what is 'like'. The concept of 'likeness' is a relative one that evokes the image of an accordion. The accordion of 'likeness' stretches and squeezes in different places as different provisions of the WTO Agreement are applied. The width of the accordion in anyone of those places must be determined by the particular provision in which the term 'like' is encountered as well as by the context in the circumstances that prevail in any given case to which that provision may apply". The Panel in "Canada – Certain Measures Affecting the Automotive Industry" had followed the same kind of logic, limiting its conclusion that services supplied in Canada through mode 3 and 4, and those supplied from another Member through mode 1 and 2, were "like" services to the purpose of the case. Hence, the Panel had confirmed that the concept of "likeness" had to be assessed on a case-by-case basis.

32. He further considered that the questions raised by Brazil went far beyond a mere technical review of certain provisions of the GATS but touched upon core legal elements of two of the most important obligations of the GATS. The amendment or modification of the GATS that seemed to be implied in Brazil's paper in order to define "likeness" by referring to the concept of "like circumstances" could give rise to incompatibilities and inconsistencies in the application of GATS Articles. Before transplanting into the GATS concepts from other trade agreements, one needed to take into account the differences in structure between the GATS and such other trade agreements.

33. The representative of the European Communities supported a technical review that examined some of the issues that had been mentioned, such as the relationship between Articles XVI and XVII. As the substantive phase of the negotiations was approaching, he welcomed any clarity that could be brought to those Articles and to the scheduling of commitments.

34. The representative of Brazil stated that the intention of the paper had not been to turn the GATS upside down. Far from that, his delegation had merely aimed at clarifying a basic issue. He did not take issue with Canada's point that "likeness" had to be established on a case-by-case basis. However, the paper was motivated by the necessity to set at least a minimum of parameters given that under the GATS trade occurred by four different modes. Conversely, in the goods area, to which Canada's quoted example from the Appellate Body referred, there was only one way of trading, i.e. across the border. He further did not think that setting basic parameters of mode specificity would entail that service suppliers should be considered to be "like" whenever they were operating under the same jurisdiction. Services suppliers could be "unlike" even if they were operating within the same sector, depending on the service they were providing. This was a point that the Panel had addressed in the "*EC Banana III*" Report with regard to distribution services.

35. The Chairman concluded that most delegations agreed that a technical review was generally of value. As far as particular issues were concerned, numerous delegations had mentioned the use of examining Articles XVI, XVII and XX:2.

36. The representative of the United States stated that his delegation saw merit in examining Article XX:2, not, however Articles XVI and XVII.

37. The representative of Uruguay stated that there was still a lack of clarity on the possible provisions which required clarification through a technical review.

38. The Chairman suggested that informal consultations be held to allow delegations to further clarify, with a view to reaching consensus, subjects that could form part of a technical review.

39. The Council so agreed.

C. REVIEW OF THE UNDERSTANDING ON ACCOUNTING RATES IN TELECOMMUNICATIONS

40. The Chairman recalled that the Council, at its December meeting, had continued its discussion of the review of the Understanding on Accounting Rates in basic telecommunications, on the basis of two submissions by Australia, in Job(01)/73 and Job(01)/111. In addition, Australia had submitted a new communication contained in Job(02)/25.

41. The representative of Australia stated that the discussions over the course of the review had indicated that Members needed more information in order to determine if the conditions giving rise to the Understanding remained valid. Therefore, she proposed that the Secretariat coordinate a survey of Members practices relating to accounting rates. The results of such a survey would help Members to evaluate the extent to which a removal of the moratorium would give rise to MFN issues. In particular, she proposed that Members respond to three questions: (1) Did the Member government regulate (i.e. impose 'measures') in relation to the determination of particular cases or categories of telecommunications accounting rates? (2) If so, how were these measures disclosed? (3) If measures were discretionary, what criteria determined whether or not government regulation would be applied? (e.g. did all bilateral accounting rate agreements require approval? Did only certain methods of settlement require approved rates? Did only certain scheduled services attract application of measures, while other services did not? Did measures apply only when a party requested arbitration? Were parallel rates applied to like services from all providers in the market?).

42. Regarding the first point, she acknowledged that almost all countries had some form of generic legislation for the regulation of accounting rates with reserved powers for government intervention on *inter alia* public interests grounds. The purpose of the question was not to uncover that type of information, but rather to learn about the extent to which those powers were applied in an arbitrary *ad hoc* and discriminatory manner to specific cases. The whole issue was discrimination and not whether a country applied accounting rates or not.

43. The representative of Uruguay requested clarification as to whether Australia's invitation to provide information for the purpose of a survey extended only those Members who had made commitments under the Fourth Protocol of basic telecommunications

44. The representative of New Zealand endorsed Australia's paper and vowed to provide responses to the questions posed.

45. The representative of Australia clarified that the invitation to respond to the three questions was addressed to all Members, not only those who were signatories of the Fourth Protocol.

46. The representative of Mexico reiterated his delegation's position that the conditions that had given rise to the understanding remained in effect. He considered the review concluded and therefore could not agree to any further continuation of the exercise.

47. The representative of Brazil was not convinced of the desirability that the Secretariat coordinate the proposed survey of Members practices. In keeping with the principles of the WTO, it should be a Member driven exercise. Members could voluntarily provide the information on the basis of the questions posed by Australia.

48. The representative of Cuba reiterated the view that the "raison d'être" of the moratorium continued to exist. The accounting rates system was the principle system used in developing countries. She supported Mexico's view that the Council should not be continuing the exercise of the

review. She agreed with the comments made by Brazil to the effect that Members could voluntarily provide the information considered relevant, as indeed some Members had already done last year.

49. The representative of the United States stated that his delegation viewed the purpose of the "gentlemen's agreement" as providing Members with the certainty they needed to maintain differentiating accounting rates by agreeing not to challenge the MFN consistency of the accounting rates through dispute settlement. While not opposed to the standing agreement, his delegations did not see its continued necessity as more and more telecommunications markets had become competitive and the relevance of accounting rates, which were vestiges of a monopoly era, had declined substantially. Any extension of the gentlemen's agreement must not stray from its original purpose, which was to refrain from challenging accounting rates on a MFN basis.

50. The representative of Australia stated that the proposed survey was meant to be a voluntary exercise and that she would be grateful if the Secretariat could compile the responses and circulate them, either before the July meeting, or if more time was needed after the summer break. She took issue with the assertion by some delegations that accounting rates were the principle method for most developing countries to terminate or have settlements with developed countries. There was considerable evidence that the use of accounting rates was becoming less and less predominant and that the majority of developing countries no longer used this method as their principle way of settling accounts with developed countries, or with each other. The proposed survey might help to highlight the incidence of how accounting rates were used, and cases where they might be discriminatory. Her delegation was interested in addressing this issue during the course of the review.

51. The representative of Cuba concurred that a great number of countries were indeed using new systems in the termination of international traffic. Nonetheless, the accounting rate method continued to be the most customarily used method. The ITU had confirmed that understanding.

52. The Chairman suggested that the Council take note of Australia's contribution and the statements made. He suggested that Members further reflect on this issue. In the meantime, delegations could of course voluntarily reply to the questions presented by Australia, and the Secretariat could circulate the replies for all Members information.

53. The Council so agreed.

D. IMPLEMENTATION OF COMMITMENTS BY THE PEOPLE'S REPUBLIC OF CHINA – STATEMENT BY THE UNITED STATES

54. The Chairman stated that the United States had requested that this item be put on the agenda of the Council's meeting.

55. The representative of the United States stated that his delegation had requested the opportunity to discuss China's implementation of its commitments under the GATS, specifically those commitments regarding insurance and express delivery services. He raised these issues at this meeting, and would seek similar opportunities in other WTO bodies as necessary, for several reasons. First, unlike most acceding parties to the WTO, China had not been required to demonstrate that its domestic laws and measures conformed to its commitments prior to its date of accession. Largely in recognition of this special treatment, WTO Members had established a unique review process to monitor China's implementation of its WTO commitments. This process was called the Transitional Review Mechanism. That mechanism would meet annually for eight years, with a final review scheduled to take place in year ten. WTO Members were to raise their concerns regarding China's implementation throughout the course of the year within the relevant WTO bodies and Committees. Any concerns Members wished to raise would subsequently be reflected in the annual review at the end of the year.

56. Second, the United States believed that China's government had every intention to honour its WTO commitments. That said, China would undoubtedly experience technical difficulties in revising its central and sub-central legal system, especially given the scope and range of its specific commitments. The United States and other WTO Members were providing considerable technical assistance to China through official and non-governmental channels to aid the government in making the transition to a rules-based system. Equally important to China's implementation efforts was Member-driven, expert surveillance from bodies such as the Council for Trade in Services. It was his responsibility to highlight problems as they arise, to bring problems to the attention of those in China's State Council that were ultimately responsible for China's WTO compliance. In this way, the United States believed it was more apt to resolve problems before they led to formal dispute settlement procedures.

57. Turning to insurance services, his delegation had carefully reviewed China's new insurance regulations that had become effective on February 1. He had several concerns. First and foremost was the denial of the right for foreign non-life insurers to branch and sub-branch, which had immediate and serious consequence to United States commercial interests. This was not the same issue that arose between his and the Chinese delegations at the end of China's accession negotiations last fall. The issue he was concerned about would also affect others WTO Members' companies operating in China. China had very clearly scheduled a commitment to allow non-life firms to establish as branches in China upon accession and to permit internal branching in accordance with the lifting of China's geographic restrictions (see WT/ACC/CHN/49/Add.2). In addition, China had committed in paragraph 313 of the Working Party report that "the qualifications for foreign insurers applying for a license to enter China's market would not apply to foreign insurers already established in China that were seeking an authorization to establish branches or sub-branches" (see WT/ACC/CHN/49, paragraph 313). In the specific case that concerned the United States at this juncture, a non-life insurer that was established as a branch in Shanghai had requested permission to sub-branch in Guangzhou, a city that had opened to foreigners upon accession. Despite China's very clear GATS commitments, China's insurance regulatory authority insisted that non-life firms who wished to branch or sub-branch could not do so unless they first establish as a subsidiary. Establishing as a subsidiary was costly, and did not make sense when the firm was already in the market as a branch. The specific firm was committed to China's market and had been operating within China's laws for many years. It merely wanted to expand its business as it did elsewhere, and as China's government very clearly had agreed to permit under its WTO obligations.

58. As a second point, the United States had concerns with the lack of transparency in the relevant laws and regulations. The measures were somewhat difficult to decipher because they had to be read in conjunction with three other insurance laws, and it was unclear which law took precedence. The new law was drafted without a great deal of clarity, which was particularly a concern with respect to insurance licensing. Requirements seemed to be open-ended, permitting considerable bureaucratic discretion and very little certainty to the foreign insurer seeking to operate lawfully in China's market. He understood China's insurance regulatory authority was planning on issuing additional, supplementary rules and he would therefore appreciate the opportunity to review these measures before they became effective.

59. In addition to these two core concerns, the United States was not convinced that China's very high and redundant solvency requirements were appropriate. The United States had shared China's requirements with those state insurance regulators who had experience in foreign insurance markets, including China, and they had reached the same conclusion. United States regulators were as concerned as China's in meeting their prudential responsibilities, and United States consumers were as concerned as China's in safeguarding their policies. However, solvency standards could be established in such a way that was reasonable, objective and non-discriminatory. From a practical perspective, most large multinational insurers might be able and willing to meet the new solvency requirements. But the question was whether the Chinese joint venture partner (which was required for

life insurance) would be able to come up with such an extraordinary amount of cash. If not, then foreign insurers would effectively be limited from participating in the market, unless they paid their partner's cash contribution in addition to their own. China had opened its insurance markets under the WTO, but it might be concluded that the price of admission had just doubled.

60. He hope that the insurance regulators from China would consult with their counterparts in the United States to bring China's requirements in line with other trading partners. His delegation, was ready to assist in this effort, as were United States regulators.

61. In conclusion, he urged China to comply with its WTO obligations and allow non-life insurance companies to branch without setting up a subsidiary, under conditions of transparently prepared and applied laws and regulations.

62. Turning to express delivery services, the United States representative stated that since its accession to the WTO on 11 December 2001, authorities in China had issued measures that cut back on the activities and market access of foreign-invested firms that had been licensed and operating in China for some time. These actions called into question China's compliance with its horizontal commitment on acquired rights and undercut China's commitments related to express delivery services. On 24 December 2001, China had issued a regulation that required express delivery companies which were already licensed by MOFTEC to provide the services in question, to file so-called "entrustment" applications with China's postal authorities in each province where they currently operated. This requirement was problematic for several reasons: the requirement of filing in each province and locality was overly burdensome; and the postal authorities had broad discretion in acting on the applications that were filed. Given that the postal authorities were direct competitors with foreign-invested express delivery companies, his delegation was very concerned that they would exercise their discretion in a way that restricts trade.

63. A second measure, issued in February, went even further. It placed new, unwarranted restrictions on the services that had previously been provided by foreign-invested express delivery companies. Since well before China's accession, United States companies had been licensed to provide international express delivery services (except for private letters). With the new measure, China was cutting back on these previously licensed services in several respects: most notably, foreign-invested express delivery companies would only be able to handle certain documents or packages weighing more than 500 grams or make deliveries for which they were charging a higher price than China Post's Express Mail Service, or EMS.

64. The measure thus limited the acquired rights of existing foreign service suppliers in China by narrowing the scope of activities and operation of existing licensed enterprises in China. He urged China to modify or rescind these two measures immediately

65. The representative of Canada stated that his delegation shared the interest that the United States had expressed in the implementation of China's commitments, particularly as far as insurance services were concerned. Canada was currently considering China's new regulation with respect to insurance and was evaluating this regulation's consistency with China's WTO commitments. The China Insurance Regulatory Commission (CIRC) had not yet been available to discuss these issues, but his delegation looked forward to cooperation between the China Insurance Regulatory Commission and Canada's regulatory authorities in future.

66. The representative of the European Communities shared the United States' concerns with regard to recent regulations adopted by the Chinese authorities on express delivery services. In particular, he was concerned with the obligation for already licenced companies to submit to a new licensing procedure at municipal level as well as to confirmation at provincial level throughout China. Secondly, the new regulations were limiting or narrowing the scope of activities that international

express service suppliers were previously allowed to conduct in China. He sought confirmation from the Chinese authorities that they intended to implement the commitments they had undertaken upon accession to the WTO. Pending the process of approval of the new licensees the current scope of activities of express delivery service suppliers must not be reduced, and after issuance of the new licences, the scope of permitted service activities must remain the same as before the entry into force of these new regulations.

67. On insurance services, his delegation believed that the issues raised by the United States indicated a larger, more general, problem related to the lack of clarity of the Chinese implementation of its insurance commitments. The most recent regulations did not contain any concrete criteria on the basis of which internal branching was to be decided. The regulations also included a number of very vague provisions, set unspecified criteria, and frequently made cross-references to other unspecified laws which made it very difficult for operators to appreciate the exact conditions for operating in the Chinese market. The European Communities had repeatedly encountered strong difficulties in finding ways of communicating its views to the Chinese regulator, yet hoped for such an occasion in the near future.

68. The representative of Switzerland supported the statement made by the European Communities.

69. The representative of Japan welcomed the accession of the Peoples' Republic of China to the WTO. He strongly hoped that China would implement its commitments. He considered the possibility of extending technical assistance to China, as his delegation had done in the past. He was particularly interested in the question of branching in the insurance sector which previous speakers had referred to, as well as the question of transparency and the application and implementation of China's commitments on an MFN basis.

70. The representative of China took note of the statements made by the previous speakers. Due to the complexity of the matter, he refrained from making any substantive comments. His delegation had explained to the delegation of the United States that the matter raised was not as simple as described in today's statement and the real situation needed to be clarified. He considered that the statements made by the previous speakers, including that of the United States were not part of the transitional review mechanism as laid down in the Protocol on China's Accession. There was only one annual review within the provisions of Section 18 of the Protocol. Therefore, none of the statements made at this meeting should be included in the annual review within the framework of the transitional review mechanism. He stated that the delegate from the United States had earlier explained to him that his statement was not part of that review.

71. The Chairman suggested that the Council take note of the statements made.

72. The Council so agreed.

E. APPOINTMENT OF NEW CHAIRPERSON OF THE COUNCIL

73. The Chairman first reported on the consultations on the Chairpersons of the subsidiary bodies of the Council for Trade in Services. The result of extensive consultations, held in various formats, had yielded the following proposals for Chairpersons for 2002: Committee on Financial Services: Mr. Habib (Pakistan); Working Party on GATS Rules: Mr. Chan (Hong Kong, China); Committee on Specific Commitments: Mr. Bergström (Sweden); and the Working Party on Domestic Regulation: Mr. Rodrigues dos Santos (Brazil). He hoped that this proposal of a slate of names could be accepted, bearing in mind also that the appointments had already been due at the meetings of the subsidiary bodies that were held during the previous week. Formally, the appointments would take place only at the next meetings of the subsidiary bodies, i.e. in mid-year. Any work to be carried out in the

meantime fell officially under the mandate of the present Chairs. He suggested that the designated Chairs and the present Chairs work out a smooth transition. For all practical purposes, he suggested that the incoming chairs should work as if they had been appointed already.

74. The Chairman then moved to the appointment of the Chairperson of the Council for Trade in Services. He stated that the rules of procedure for the Council for Trade in Services stipulated that the Council elect its Chairperson for each year at the end of its first regular meeting of that year. Therefore, and in accordance with the outcome of the consultations conducted by the Chairman of the General Council in this regard, he proposed that the Council appoint Ambassador Mary Whelan (Ireland) to be its Chairperson.

75. The Council so agreed.
