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Council for Trade in Services

REPORT OF THE MEETING HELD ON 26 NOVEMBER 2004

Note by the Secretariat¹

1. The Council for Trade in Services held a meeting on 26 November 2004 chaired by Ambassador Peter Brño (Slovak Republic). The agenda for this meeting is contained in document WTO/AIR/2449.
2. The Chairman said that under Other Business, he intended to make two brief statements regarding the chairpersons of the subsidiary bodies to the Council for Trade in Services for 2005 and the date of the next formal meeting of the Council.
3. The Chairman suggested that the agenda be adopted as circulated with the addition of the items raised under Other Business and that the agenda item E be addressed before the agenda item B as requested by a delegation.
4. The Council so agreed.
- A. ANNUAL REPORT OF THE SUBSIDIARY BODIES TO THE COUNCIL FOR TRADE IN SERVICES
5. The Chairman stated that in accordance with WTO reporting procedures, the Council for Trade in Services was to consider the annual reports of its subsidiary bodies. He drew the Council's attention to the following reports which had been adopted by the respective bodies during the course of the current week: the Report of the Committee on Trade in Financial Services (S/FIN/12); the Report of the Committee on Specific Commitments (S/CSC/10); the Report of the Working Party on Domestic Regulation (S/WDPR/7); and the Report of the Working Party on GATS Rules (S/WPGR/14). Indicating that the four reports were purely factual and self-explanatory, he suggested that the Council take note of these reports on the understanding that they would be annexed to the annual report of this Council and form an integral part of it.
6. The Council so decided.
- B. ANNUAL REPORT OF THE COUNCIL FOR TRADE IN SERVICES TO THE GENERAL COUNCIL
7. The Chairman reminded Members that in accordance with WTO reporting procedures, the Council for Trade in Services was to report in November each year to the General Council on the activities in the Council as well as in the subsidiary bodies. He drew the Council's attention to the draft Annual Report of the Council for Trade in Services on its activities in 2004, contained in

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

document S/C/W/244. He indicated that this Report was factual and self-explanatory and that the annual reports of the subsidiary bodies would be annexed to this Report for submission to the General Council. He then proposed that the Council for Trade in Services adopt the draft Annual Report to the General Council, contained in document S/C/W/244.

8. The Council so decided.

C. NOTIFICATIONS MADE TO THE COUNCIL PURSUANT TO ARTICLES III:3 AND VII:4 OF THE GATS

9. The Chairman drew the Council's attention to three notifications pursuant to Article III (Transparency) by Uruguay, contained in documents S/C/N/306-308, and two notifications pursuant to Article VII (Recognition) from Armenia, contained in document S/C/N/304-305.

10. The representative of Japan requested Armenia to provide detailed information of the agreements referred to in its notifications, and if possible, in writing.

11. Given Armenia's absence, the Chairman asked the Secretariat to forward Japan's request to Armenia. He proposed that the Council take note of these notifications and the statements made.

12. The Council so agreed.

D. REPORT TO THE COUNCIL BY ALBANIA – IMPLEMENTATION OF SPECIFIC COMMITMENTS IN TELECOMMUNICATIONS SERVICES

13. The Chairman recalled that at its meetings held on 5 December 2003 and 1 March 2004, the Council for Trade in Services had examined Albania's waiver request regarding the postponement of the implementation of its GATS commitments in international public voice telephone services. Based on the report (S/C/21) of the Council for Trade in Services, the General Council had granted to Albania the waiver by decision taken on 17 May 2004, contained in document WT/L/567. According to the General Council's decision, Albania was to provide a status report on its preparations to fulfil its GATS commitments no later than the last formal meeting of the Council for Trade in Service in 2004.

14. The representative of Albania informed the Council that his government had taken steps to fulfil its commitment of removing the exclusivity of Albtelecom in international public voice telephone services. In the Albanian telecommunication market, there were actually more than 80 operators. Albtelecom and 37 rural operators provided fixed telephony services with about 255 subscribers. AMC and Vodafone were mobile operators with 1.1 million subscribers. 29 suppliers provided internet services to 30 thousand users. About 20 operators had been licensed to provide value-added services. In addition, 5 operators were providing the service of prepaid telephone cards and another 15 operators had been licensed to supply this service.

15. The representative of Albania stated that further liberalization was his government's main objective in the telecommunication sector. For this purpose, the Policy Paper for the Development of the Telecommunication Sector had been amended by stipulating that international telephony services would be open to competition by 1 January 2005 so as to fulfil Albania's commitment to create a fully liberalized telecommunication market. He indicated that Albania's telecommunication sector was in transition from a monopolistic market into a liberalized and competitive market. In order to achieve a sustainable development and to increase efficiency in this sector, taking into consideration of deregulation and institutionalization of regulatory entities, the policy-making and regulatory institutions were working in co-operation with international consultants to prepare a study. This study would touch upon Albania's actual telecommunication market, wireless frequencies band, fixed telephony services in the urban area as well as new telecommunication services. Therefore, measures

necessary to improve and to further develop Albania's telecommunication market would be identified, which would address issues such as interconnection, tariffs, costs of telecommunication services, the major supplier's obligations, and management of frequencies. This study would not only help to prepare the new policy paper on telecommunication services, but also contribute to relevant amendments to the Telecommunication Law. Improvements would take place in the following aspects: access to electronic networks and interconnection; licensing on electronic communication networks and services; normative framework on electronic communication networks and services; universal service and users' rights in the exploitation of electronic communication networks and services; and policy/regulatory framework on radio-frequencies. Regarding privatization, the government of Albania had taken several steps such as amendments to the Law on Privatization and other legal acts in order to increase company shares. To ensure a transparent process and a broad and competitive participation, a privatisation promotion plan had been approved, which included publishing privatisation announcements in three international newspapers, addressing a Prime Minister's letter to foreign governments, distributing investment invitations through foreign embassies in Tirana and Albanian Missions abroad. In conclusion, the representative of Albania stated that his government was determined to continue liberalization in a most efficient way with a view to achieving a sustainable economic development and to enhancing its citizens' living standard.

16. Thanking Albania for its detailed statement, the representative of the European Communities indicated that much information provided by Albania was related to reorganization and privatization of its telecommunication sector. Noting that Albania's commitment was to open this sector to competition by 1 January 2005, she was pleased to see that this had been included in the policy document. She believed that this was also what would happen.

17. Thanking Albania for updating information on its progress in liberalizing telecommunication services, the representative of the United States noticed that this sector would be open to competition by 1 January 2005. Noting that Albania's report provided a description on the general steps that had been taken, she hoped that each of these steps would indeed allow that to happen. She looked forward to a subsequent update during the next services cluster confirming what Albania had stated at the meeting.

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

19. The Council so agreed.

E. TRANSITIONAL REVIEW UNDER SECTION 18 OF THE PROTOCOL ON ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

20. The Chairman stated that Section 18 of the Accession Protocol of the People's Republic of China provided for an annual review of the implementation by China of the WTO Agreement and of the related provisions of China's Accession Protocol. The Committee on Trade in Financial Services and the Council for Trade in Services were two of the bodies in which this Review was to be conducted. When it concluded its review, the Committee on Trade in Financial Services was to submit a report to the Council, which would form part of the Council's report to the General Council. The General Council would conduct its own review. He noted that the Committee on Trade in Financial Services had conducted and concluded the transitional review under Section 18 of China's Accession Protocol on Tuesday 23 November 2004, and that a report had been submitted by the Chair of this committee, contained in document S/FIN/13. He proposed that the Council take note of the report from the Committee on Trade in Financial Services on the understanding that it would form part of this Council's report to the General Council.

21. The Council so decided.

22. The Chairman drew the Council's attention to a communication made by China, contained in document S/C/W/249, which provided information required by Annex 1A of the China's Accession Protocol.

23. Turning to the review by the Council, he said that the Council would follow the same procedure as the one used in the previous reviews. He would first invite China to respond to the comments and questions which were contained in the communications from Japan (S/C/W/241), the European Communities (S/C/W/242), the United States (S/C/W/243), and Chinese Taipei (S/C/W/245). Members would then make comments and pose supplemental questions, and China would have opportunity to respond.

24. The representative of China stated that since the conclusion of the previous transitional review, China had made several rules and regulations facilitating liberalization in service sectors, which included the *Implementing Rules of the Regulations on the International Freight Forwarding Services*, *Rules on Foreign Investment in the Sector of International Maritime Transportation*, *Rules on Foreign Investment in Advertising Enterprises*, *Rules on Foreign Investment in the Commercial Sector*, and *Policy on the Development of Automobile Industry*. She underlined that these rules and regulations not only were in conformity with China's WTO commitments, but also contained some voluntary liberalization measures, which shown that China took a positive attitude towards market opening in services. She indicated that as China implemented its commitments, the volume of its trade in services had been growing. In 2003, China's total import and export of services had exceeded USD 100 billion for the first time in history, reaching USD 102 billion, which made China the 9th biggest economy in services in the world. More specifically, in 2003, China's total import of services had reached USD 55.3 billion, and its total export of services USD 46.7 billion, respectively representing an increase of 19 % and 18 % compared with the previous year. China thus had a trade deficit of USD 8.6 billion in services in 2003, which represented an increase of 26 % compared with the previous year. From January to June 2004, China's total import of services had reached USD 32.27 billion, 27 % higher than the same period of 2003. These statistics could serve as a strong testimony to the level of liberalization of China's service market. The year of 2004, the third year of China's accession to the WTO, had seen a rapid growth of FDI in services. From January to June 2004, 3,920 new foreign-invested service enterprises had been established in China, representing an increase of 12.5 % compared with the same period of the previous year, which accounted for 24.5 % of the total FDI made in China, namely, USD 8.29 billion, 6 % higher than the same period of the previous year. More specifically, China's distribution services had received USD 4.4 billion of FDI until October 2004, with 282 foreign-invested distribution enterprises established, which had opened 3,852 stores with a total operating surface of 8.03 million square meters. Many important retailers such as Wal-Mart, Carrefour and Metro had entered into China's market and were developing rapidly. For example, Wal-Mart and Carrefour were allowed to open over 55 large stores each. In legal services, China's Ministry of Justice had approved 26 new foreign law firms to set up representative offices in 2004, which came from WTO Members such as the US, EC, Singapore, Japan and Korea. In accounting services, since its accession to the WTO, China had approved the establishment of 3 Chinese member firms and 9 branches of international accounting firms. In education services, 59 Sino-foreign cooperative educational institutions and programmes had been approved in 2004, which had made the total of this type of institutions and programmes 851. With respect to construction services, in 2004, China's Ministry of Construction had granted Class 1 qualification to 42 construction enterprises, and approved the establishment of 17 engineering design joint ventures, 2 urban planning service joint ventures and 32 Class 1 foreign-invested real estate enterprises. In medical services, from China's accession to the WTO till July 2004, China's Ministry of Health had approved the establishment of 52 medical joint ventures. The representative of China emphasized that China's efforts in implementing its WTO commitments and in expanding liberalization had been broadly recognized and appreciated by foreign investors and WTO Members.

25. Responding to questions on *construction services*, the representative of China first addressed the issue of residency requirements. He referred to paragraph 14 of the Guidelines for the Scheduling of Specific Commitments under the GATS, which stated: "regarding the need to schedule residency requirements, it should be decided on a case-by-case basis. ... If the residency requirement is not discriminatory, it would be subject to the disciplines of Article VI:5." He indicated that China's *Construction Law* and its *Regulations on the Administration of Construction Engineering, Surveying and Designing* required all professional technicians engaged in construction activities to obtain professional qualification certificates. This requirement equally applied to foreign service suppliers in accordance with the principle of national treatment. Foreign service suppliers were required to stay in China for a certain period of time so as to ensure that they would be able to accomplish their duties and to deal with technical problems arising from engineering work. This requirement also took into consideration the strong geographic characteristic of construction project management in order to ensure the quality and safety of projects. With respect to the question relating to wholly foreign-invested construction enterprises mentioned in Decree 113, he referred to the *Circular on Questions Concerning Administration of Qualification of Foreign-invested Construction Enterprises* (Jianshi No. 159-2004). He confirmed that foreign companies' global experience was taken into account when they applied for qualifications in China. He further confirmed that limitations on the number of foreign project managers had been removed. Decree 113 had been elaborated in accordance with China's commitments in construction services. A foreign investor might enter into China's construction market in two ways: either setting up a wholly foreign-owned enterprise, or creating a joint venture. China had made no other commitments except these two types of entities. Construction companies operated in China based on the grading system established by China's Ministry of Construction. In accordance with Decree 113, both foreign-invested and domestic construction enterprises were to acquire relevant qualifications for a certain grade in order to undertake corresponding projects. In this regard, full national treatment had been accorded to foreign-invested construction enterprises, including equal registered capital and qualification requirements. In accordance with China's WTO commitments in construction services, wholly foreign-owned construction enterprises were allowed to undertake four types of construction activities.

26. With respect to questions relating to *legal services*, the representative of China first addressed the concern over one of the conditions imposed on foreign law firms: "the need to start legal services operation" (paragraph 4 (a) of the communication from the EC). He was of the view that this was an issue of regulation rather than an ENT. He stated that there were in total 192 representative offices of foreign law firms in China and that 35 licenses had been issued in 2004. This fact shown that there was no quantitative restriction on foreign legal service suppliers. He indicated that this requirement reflected the principle of prudence. Expertise and experience were needed in legal services in order to protect customers' rights and interests. The requirement of submitting a feasibility study report was in light of the same spirit. Regarding the requirement of "one partner per office", he explained that China's legal services market, quite different from that of developed Members, had not yet matured and that a sound service mechanism had not yet been established. This requirement was for the purpose of protecting consumers' interests. Responding to the request for clarification on the balance between "Chinese law practice" and "information on the impact of the Chinese legal environment" (paragraph 4 (b) of the communication from the EC), he referred to China's Schedule of specific commitments. He indicated that "Chinese law practice" was excluded from China's commitments in legal services and that the business scope of representative offices of foreign law firms were limited to five types of activities as listed in the market access column. While foreign law firms in China could provide information on the impact of the Chinese legal environment, they were not allowed to provide specific legal opinions and/or certification relating to the application of Chinese law.

27. Turning to *telecommunication services*, the representative of China first explained the requirement regarding a main Chinese partner (holding more than 30 %) in a joint venture (paragraph 12 of the communication from the EC). Given the strong technicality of the telecommunication industry and the emergence of new services and technology therein, the *Regulation on Administration*

of *Foreign-invested Telecommunication Enterprises* required the major foreign party of a foreign-invested telecommunication enterprise to satisfy relevant qualification requirements in order to better protect the interests of investors and consumers and to ensure a healthy development of the telecommunication industry. It was for this purpose that the major Chinese partner in a joint venture was required to hold more than 30 % of the total capital. With this requirement, major Chinese investors would take more obligations while foreign investors would have less risks. In response to the request for providing information on inter-connection and leading telecommunication operators, the representative of China stated that the *Regulations on Telecommunications*, the *Regulations on the Interconnections Between Public Telecommunication Networks (Decree 9 of the Ministry of Information Industry (MII))* and other relevant regulations had been publicized and could be found at the website of MII: www.mii.gov.cn. In accordance with these regulations, leading telecommunication operators were to develop rules on interconnection, to submit them to the MII for approval prior to implementation, and to provide interconnection within the required time limit. They were not allowed to deny interconnection requests made by other telecommunication operators or private network operators. Nor were they allowed to, without permission, restrict the right of users to choose telecommunication services provided by other operators. Leading telecommunication operators were required to ensure that the quality of the inter-network connection service they provided to other telecommunication operators was the same as they provided within their own networks or to their subsidiaries or branches. In addition, they had the obligation to coordinate with users with telecommunication network code number resources. In accordance with the *Regulations on the Interconnection Between Public Telecommunication Networks*, leading telecommunication operators were those who possessed necessary basic telecommunication facilities, whose market share was over 50 % in fixed local telephone services, and who were able to impose substantial impact on the market access of other telecommunication operators. With regard to the restriction on the resale of telecommunication services, the representative of China stated that this restriction also applied to domestic operators. Given the actual development level of China's telecommunication market, it was still premature to remove this restriction. On international telecommunication gateways, he indicated that China had made no commitments in this regard and that, as listed in China's Schedule, all international telecommunication services were required to go through gateways established with the approval of China's telecommunications authorities. Concerning the question on the code and protocol conversion (paragraph 11(c) of the communication from the US), he stated that given the rapid development of science and technology, the classification of telecommunication services was by no means an easy task for any WTO Member. The approach to classification was to be based on each Member's development level, economic situation and administrative measures, which varied greatly across the world. The code and protocol conversion was applied when technical criteria or standards in telecommunications were not unified. Its purpose was to ensure the interconnection between networks or services using different codes and protocols. As technical criteria had been gradually unified at the international level, there was no demand for this service in China. This was why the MII's Catalogue had omitted the "code and protocol conversion" from the list of value-added services. With respect to the inquiry on the number of applications by foreign telecommunication service suppliers and the number of denial and approval of such applications, he referred to the communication made by his delegation, contained in document S/C/W/249, which provided information required by Annex 1A of the China's Accession Protocol.

28. With respect to *courier services*, the representative of China referred to China's GATS commitments in this sector, which stated "courier services except for those currently specifically reserved to Chinese postal authorities by law". China's Postal Law stipulated: "Posting and delivery services of letters and articles with characteristics of letters shall be exclusively operated by postal enterprises." He thus held that China's commitments in courier services were limited to the express delivery of articles. He, however, admitted that China's State Council did permit foreign operators to handle the service of international letters with the postal authorities' entrustment, given the fact that foreign operators, such as UPS and FedEx, had already been providing services in China. This act not only guaranteed the benefits of foreign operators but also complied with China's law and WTO

commitments. He recalled that China had provided explanations on this issue in the previous transitional reviews. Since then, foreign operators of express delivery services had followed relevant procedures to obtain the entrustment from China's postal authorities, and their business in China continued to grow. He hoped that the solved problem would not become a new problem. He underlined that the final version of the Postal Law would be in conformity with China's WTO commitments including its horizontal commitments. Regarding the questions on the draft Postal Law dated 19 July 2004, he stated that this draft was for the purpose of seeking comments in the law-revising process, not the final draft. Some of its provisions were still under consideration and review, and thus, there was no conclusion regarding some Members' concerns, such as whether express delivery of letters weighing less than 350 grams would be in the scope of monopoly, how express delivery would be appropriately defined, whether paragraph 2 of article 94 would be removed from the final draft, and how the licensing procedure and scope would be regulated, etc. He, however, confirmed that when preparing relevant provisions, China would take into consideration not only its actual conditions, but also the experiences of other Members and the comments made by all interested parties. He reiterated that the revised Postal Law would not violate relevant WTO agreements and China's commitments. With respect to the introduction of a review procedure for the regulator's decisions, he stated that China's administrative review and litigation system had provided a strict examination mechanism as well as procedures for administrative enforcement, which also applied to the review of the postal regulator's decisions. Concerning the scope of universal service, he confirmed that China would give a justifiable definition, based on its actual conditions and other Members' experiences. He noted that "the scope of universal service" and "the scope of the postal monopoly" were two different concepts, and therefore, would not be mixed up in the final draft of the Post Law.

29. Turning to the questions on *distribution services*, the representative of China first drew Members' attention to a Notice issued by China's Ministry of Commerce in the previous week regarding the procedure for the implementation of the *Regulations on the Administration of Foreign Investment in the Distribution Sector*. As to the *Regulation on the Administration of Direct Selling*, he noted that this instrument was still in the drafting process. He confirmed that these regulations would be implemented in line with China's commitments. Regarding the question on existing foreign-invested manufacturing enterprises' participation in the distribution sector by expansion of their business scope (paragraph 19 (a) of the communication from the EC), he confirmed that the distribution of goods by these enterprises after the expansion of their business scope would not be limited to those made by their parent companies. As to the measure that distribution services of several products for service suppliers with more than 30 stores were subject to an equity limitation of 49 % foreign ownership, he confirmed that it applied only to retailing services as indicated in China's GATS Schedule. On the issue of land use by foreign-invested enterprises, referring to China's land law and regulations as well as to its GATS commitments, he stated that the maximum term of land use for commercial purposes was 40 years. However, foreign-invested enterprises could apply for an extension of this term should they abide by China's land law and regulations. Regarding the requirement that foreign-invested enterprises had to pay 100 % of their registered capital when applying for opening new stores, he pointed out that this requirement equally applied to domestic service suppliers. Thus, foreign-invested enterprises did enjoy national treatment in this regard.

30. On *tourism*, one of the questions was related to the approval of foreign travel agencies. The representative of China referred to the *Administration Rules on Travel Agencies*, which stipulated that the examination and approval of the application for the establishment of a travel agency were subject to the development plan of the tourist industry. He explained that this requirement was for the purpose of regulating the whole travel agency market in China and did not constitute a market access limitation. He emphasized that this requirement applied equally to domestic travel agencies. So far there were 5 wholly foreign-owned travel agencies and 13 joint venture travel agencies in China. Regarding the question on the establishment of branches by foreign travel agencies, referring to the horizontal commitments in China's GATS Schedule, he indicated that the entry regarding the

establishment of branches by foreign enterprises was "unbound unless otherwise indicated in specific sub-sectors, as the laws and regulations on branches of foreign enterprises are under formulation".

31. Regarding *maritime transportation services*, the representative of China first stated that the wholly foreign-owned shipping company was not prohibited in China. Foreign shipping companies could establish their subsidiaries based on the principle of reciprocity as indicated in China's MFN Exemption List. So far, foreign shipping companies had established 33 wholly foreign-owned subsidiaries and 137 branches in China. Then, he addressed the questions on Non-vessel Operating Common Carrier (NVOCC) as well as the scope of freight forwarding and NVOCC. Not thinking that the requirement for providing RMB 800,000 *yuan* as surety bond was burdensome, he explained that the surety bond was used for the payment of fines or debts incurred from non-performance or improper performance of obligations by an NVOCC, as an NVOCC did not possess any vessel. Non-vessel-operating services meant those international maritime transportation business in which a non-vessel-operating common carrier accepted shipments from the shipper as a carrier, issued its own bills of lading or other shipping documents, procured through international shipping operators the carriage of goods by sea against the payment of freight by the shipper, and assumed the responsibilities of a carrier. International freight forwarders meant those traders entrusted by consignors and consignees of export and import, who conducted international freight forwarding and related business for their clients and collected remunerations for their services in their own names or in the name of their consignors. In China, the competent authority regulating NVOCCs was the Ministry of Communications, and the competent authority regulating international freight forwarding was the Ministry of Commerce.

32. On aviation services, the issue of Computer Reservations Services (CRS) in particular, the representative of China indicated that the draft regulation on CRS would be soon ready for comments by both domestic and foreign CRS providers. This regulation was expected to enter into effect in June 2005.

33. In response to the concern on relevant provisions in China's Foreign Trade Law, the representative of China confirmed that Article 49 of this Law did not provide any specific safeguard measures. This article stipulated that the competent authorities of the Chinese government might establish pre-warning and emergency response mechanism for foreign trade so as to cope with any contingencies and unusual circumstances that might occur in the course of foreign trade and thus to maintain the security of national economy. This article was fully consistent with WTO Agreements. He further confirmed that Article 45 of this Law, which concerned trade remedies in services, would be applied in a way consistent with China's WTO obligations.

34. Thanking China for its responses to the questions, the representative of Canada wished to have a copy of China's statement.

35. Noting that the TRM was a very important exercise for both China and other Members, the representative of the United States recalled that it had been created partly because China had been allowed to accede to the WTO without having all its trade laws and regulations in order at the time of accession and thereby China had been allowed to have a certain transitional period. The TRM could help to clarify China's implementation efforts and convey to China what Members' expectations were. It also helped to clarify areas of agreement and disagreement. While expressing his delegation's appreciation for China's efforts in preparing the transitional review, he wished to highlight the concern underlying his delegation's questions which had covered various sectors including distribution services, express delivery services, transport services, telecommunication services and construction services. On distribution services, his delegation looked forward to reviewing the regulations referred to by China. Noting that China's commitments in direct selling services would become effective by 11 December 2004 and that the regulation on direct selling services was being drafted, his delegation was concerned about the direction the draft regulation was taking. One

problem of this draft regulation was that it might not be justified on the grounds of national treatment, because it only allowed sales representatives to door-to-door sell domestic goods, not imported goods. Another problem of this draft regulation was that China's market access commitments might be adversely impacted. The draft regulation appeared to limit the remuneration of sales representatives to 25 % of the retail price. It also included requirements regarding the number of fixed locations per municipality as well as certification of sales representatives. These provisions seemed to be inconsistent with practices in this area and would make it very difficult for direct sales to operate in China. His delegation hoped to be able to work with China to resolve these concerns before this regulation was finalized. With respect to express delivery services, noting that China was still drafting amendments to its Postal Law, he said that his delegation had a number of concerns in this area. The key concern was that the draft amendments tended to create the monopoly of China Post in express delivery of letters below 350 grams. His delegation was pleased to note China's assurance that old problems would not become new problems and that the final law would comply with China's horizontal commitments. Regarding telecommunication services, he stated that the questions raised by his delegation in this area reflected their concern with the slow pace of liberalization in general. The issues of particular concern from his delegation included high capital requirements, the re-classification of certain value-added services and basic services, choice of joint-venture partner. He indicated that three questions raised by his delegation had not yet been answered by China. They concerned the timetable for comments on the draft telecommunication law, the freedom to choose joint venture partner, and China's commitment in its Accession Protocol to further liberalize this sector in the new round of trade talks. On construction services, his delegation was concerned that China's Decrees 113 and 114 seemed to create capital, staffing and residency requirements which, his delegation believed, were burdensome and difficult to satisfy. His delegation was having dialogue with China on these issues and hoped to achieve mutual and agreeable solutions. Regarding legal services, he stated that his delegation shared many concerns raised by the EC.

36. Thanking China for giving detailed answers, the representative of Japan stated that his delegation regarded the TRM as a very good exercise and attached high importance to it. Noting that China's economy was developing rapidly, his delegation thought that China's implementation of its commitments merited attention. He requested for a copy of China's responding statement. The written questions raised by his delegation covered professional services, computer and related services, telecommunication services, construction services, distribution services, tourism, transportation services and other issues. Referring to the questions relating to distribution services, he asked when the implementing rules or guidelines of the *Regulations on the Administration of Foreign Investment in the Distribution Sector* would be issued. His delegation hoped that the draft of these rules or guidelines could be published for public comments. On the issue of granting licences, his delegation urged China to pay attention to transparency and fairness. His delegation did not wish to see the situation in which licences were granted only to some foreign investors, licensing criteria and procedures were not clear, and the reasons for not granting licences were not made public. Concerning direct selling, his delegation wished to see the draft of the relevant regulation published for public comments.

37. The representative of the European Communities thanked China for its detailed responses and looked forward to the circulation of its statement. She thought the information provided by China in various sectors would help in the examination of how the progress was being made. Noting the draft of regulations was ongoing, she hoped that the final version of these regulations would be in full conformity with China's WTO commitments.

38. The representative of Chinese Taipei thanked China for its efforts in implementing its commitments and for its detailed responses. She thought that the TRM was a good exercise and that China's faithful implementation of its commitments was in the interest of all the Members.

39. In response to some Members' concern on China's legislative process, the representative of China stated that the draft telecommunication law had been submitted to the State Council for review. He further stated that Chinese government had to strictly follow the country's legislative procedure. On the concern over China's further liberalization in the telecommunication sector, he thought this was an issue to be discussed in another forum. Regarding distribution services, he reiterated that a Notice had been issued by China's Ministry of Commerce in the previous week regarding the procedure for the implementation of the *Regulations on the Administration of Foreign Investment in the Distribution Sector*. Concerning the request for a copy of his delegation's responses, he said that the statement made by the head of his delegation would be available to Members and that to provide the responses in writing was beyond the TRM. He reminded Members that his delegation had submitted a communication as required by Annex 1A of the China's Accession Protocol, which had been circulated in document S/C/W/249. He thought this document had provided substantive and comprehensive information regarding the implementation by China of its WTO commitments in services.

40. The representative of the United States sought further clarifications from China on the issue of choice of joint venture partner in telecommunication services.

41. Referring to the *Regulation on Administration of Foreign-invested Telecommunication Enterprises*, the representative of China reiterated that the major foreign party of a telecommunication joint venture was to satisfy relevant qualification requirements.

42. The Chairman thanked China for its responses and suggested that before moving on to the issue of the report to the General Council, the Council take note of the statements made and conclude the third transitional review pursuant to Section 18 of China's Accession Protocol.

43. The Council so decided.

44. Regarding the report to the General Council, the Chairman suggested that the Secretariat prepare a factual report stating: that pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China, at its meeting held on 26 November 2004, the Council for Trade in Services conducted the third transitional review of the implementation by China of the WTO Agreements and of the related provisions of the Protocol; that written communications had been received from four WTO Members, namely Japan, the European Communities, the United States, and Chinese Taipei; that the details of the discussion could be found in the meeting report; and that the report (S/FIN/13) from the Committee on Trade in Financial Services would form part of the Council's report.

45. The Council so decided.

F. IMPLEMENTATION OF ARTICLE VII OF THE GATS

46. The Chairman recalled that the Council had continued to discuss issues relating to the implementation of Article VII of the GATS at its previous meeting. Given the fact that delegations had expressed their interest in further discussions under this item, the Council had agreed to revert to this item. Noting that many issues had been raised at the previous meetings under this item, he invited Members to consider how to better structure discussions. He reminded Members that at the previous meetings, discussions had tended to focus on the following issues: (1) improving notifications under Article VII; (2) delegated authority; (3) transparency; (4) information sharing.

47. Given the request by the delegation of India prior to the meeting, the Chairman proposed that the Council revert to this item at its following meeting.

48. The Council so agreed.

G. DERESTRICTION OF DOCUMENTS

49. The Chairman recalled that this item had been placed on the agenda of the Council's previous meeting at the request of the delegation of the European Communities. This item concerned the European Communities' request for continued restriction of parts of the minutes (contained in document S/C/M/73) of the Council's meeting on 24 June 2004, and thus involved the application of the General Council's Decision on Derestriction of Documents (WT/L/452). A few Members had expressed concern over this issue at the previous meeting. The Council had agreed that the Secretariat would temporarily keep minutes S/C/M/73 restricted and that the Council would revert to this item.

50. The Chairman said that he had held consultations on this item. Delegations he had consulted with had suggested a manner in which the Council might apply paragraphs 2 (c) and 2(d) of the General Council decision in the type of situation before the Council. He thought the approach might have offered a practical solution to the issue raised under this item. To this effect, he proposed the following. With respect to future discussions which might take place under the agenda item mandated in paragraph 1 of document S/L/80, the Council would agree that paragraphs 2 (c) and 2(d) of the General Council decision contained in document WT/L/452 would be applied in the following manner. The record of the discussion relating to Article XXI would be circulated in an informal document shortly after the meeting. The minutes of the meeting would note, under the relevant agenda item, that the "Statements made under this agenda item are contained in an informal document and will be circulated as an addendum to the meeting report after the conclusion of the negotiations under Article XXI and the certification of any changes to the relevant schedule of commitments." As stated in the minutes, after the conclusion of the negotiations and the certification of any changes, the statements contained in the informal document would be re-issued as an unrestricted addendum to the meeting minutes. The formal minutes would be circulated and derestricted in accordance with paragraph 2 (c) of the General Council decision contained in document WT/L/452. With respect to the current case, *i.e.* the minutes contained in document S/C/M/73, the Council would instruct the Secretariat to ensure that the minutes would reflect the application of the General Council decision in the manner outlined above.

51. The representative of Ecuador wished to add two points to the approach proposed by the Chairman. First, the document recording the discussion would be circulated *immediately* after the meeting. Second, any informal document or addendum would be in three working languages.

52. While supporting the Chairman's proposal, the representative of Australia noted that the proposed arrangement would not prejudice any General Council's reviews and amendments of the derestriction procedure.

53. The representative of the United States stated that her delegation supported the Chairman's proposal. She understood that the proposed solution was consistent with the General Council decision on derestriction (WT/L/452). In addition, she noted that this solution might also have implications for negotiations under GATT Article XXVIII, given the horizontal nature of the issue. Therefore, it would be important to have the overriding issue rectified by the General Council regarding paragraphs 2 (c) and 2 (d) of the General Council decision on derestriction (WT/L/452).

54. The Chairman proposed that the Council take note of the statements made and adopt the approach he outlined above.

55. The Council so agreed.

H. OTHER BUSINESS

56. Referring to his remarks at the beginning of the meeting, the Chairman reminded Members that in accordance with the rules of procedure (WT/L/31 and S/L/15), the outgoing chairperson of the Council would normally conduct consultations on the appointment of the new chairpersons of its subsidiary bodies, and the election of the new chairpersons of the subsidiary bodies was to take place at the first meeting of the year and was to take effect at the end of that meeting. For this purpose, he announced that he would conduct consultations on the list of new chairpersons of the subsidiary bodies at the beginning of the new year.

57. With respect to the Council's next meeting, the Chairman said it was expected to take place during the next cluster of services meetings, which had been tentatively scheduled from 7 – 25 February 2005. The exact dates for the Council's regular session and its dedicated session on the MFN exemptions review would be communicated to delegations in due course.

58. The Chairman suggested that the Council take note of the statements made and adjourn the meeting.

59. The Council so agreed.
