

## Committee on Trade in Financial Services

### REPORT OF THE MEETING HELD ON 4 JUNE 2002

#### Note by the Secretariat<sup>1</sup>

1. The Committee on Trade in Financial Services held a meeting on 18 March 2002. The agenda is contained in airgram WTO/AIR/1809.

#### A. APPOINTMENT OF THE NEW CHAIRPERSON

2. The Chairperson, Mr Jan-Peter Mout (Netherlands) said that according to the rules of procedure for meetings of the Committee, the hand-over of the chairmanship should have taken place at the end of the last meeting. However, since the Chairman of the Council for Trade in Services had not yet finalized his consultations on the chairmanships of the subsidiary bodies by then, it was decided that the hand-over would take place at the beginning of the following meeting. Accordingly, he proposed that the Committee elect Mr. Syed HABIB Ahmed, from Pakistan, as Chairman of the Committee on Trade in Financial Services. Mr. Syed HABIB Ahmed was then elected by acclamation

#### B. ACCEPTANCE OF THE FIFTH PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES EMBODYING THE RESULTS OF THE FINANCIAL SERVICES NEGOTIATIONS

3. The Chairman recalled that seven WTO Members had not yet ratified the Fifth Protocol, namely Bolivia, Brazil, Dominican Republic, Jamaica, Philippines, Poland, and Uruguay.

4. The representative of Uruguay said that the Protocol was still before the Commission of International Affairs of the House of Representatives. He reiterated that the content of the offer presented by Uruguay under the Fifth Protocol had already been incorporated in Uruguay's legislative framework. He added that the Ministry of Foreign Affairs had included the Fifth Protocol among the priority bills under consideration by Uruguay's Parliament.

5. The representative of Bolivia said that, after having overcome some internal difficulties regarding the commitments made under the Fifth Protocol, the Government submitted the said Protocol to the Legislative Authority so that the ratification procedure could start. The Bolivian Government is making every effort to encourage legislators to ratify this legal instrument as soon as possible.

6. The representative of the Philippines said that the process of domestic ratification was still under way in the Committee of the Senate, which was responsible for ratifying all international agreements. Thus far, no objections or reservations had been expressed regarding the ratification of the Protocol.

7. The representative of the Dominican Republic said that domestic ratification procedures were following the normal course. She repeated that this was one of the priorities of the current authorities, and she hoped that the acceptance could be formalized in the near future.

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<sup>1</sup> 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.

8. Before closing the discussion on this item, the Chairman reminded delegations of the importance Members attach to the acceptance of the Fifth Protocol by all participants concerned, and encouraged those seven Members to accelerate their internal procedures for the acceptance of the Protocol.

9. The Committee also took note of the statements made and decided to revert to this agenda item at the next meeting.

#### C. TECHNICAL ISSUES

10. The Chairman informed the Committee that the questions posed by Thailand at the last meeting regarding classification issues raised in Canada and Switzerland's negotiating proposals had been circulated in document Job(02)/47. He also recalled that in the discussion on organization of future work held at the last meeting, almost all delegations considered that, in keeping with paragraph 16 of the Guidelines and Procedures for the Negotiations (S/L/93), subsidiary bodies should be used to their maximum capacity. It was also pointed out that subsidiary bodies should not be precluded from taking up technical issues raised in the negotiating proposals submitted to the Council for Trade in Services in Special Session. Thailand's initiative regarding classification issues was a clear example in that regard. Taking into account that replies provided by Switzerland were preliminary, and that those provided by Canada were given orally at the Special Session of the Council for Trade in Services, the Chairman encouraged these delegations to provide further information regarding these issues or repeat the replies given in the other forum for the benefit of discussions in the Committee.

11. The representative of Switzerland confirmed the replies given at the last meeting to the two first questions posed by Thailand. He took this opportunity to answer the third question regarding real-life examples of the convergence between insurance and banking activities. In that regard, he pointed out that long-term savings (e.g. pension schemes) were probably the best known example. Financial institutions offered a whole range of products, from pure life insurance to long-term savings account, the first one being an insurance product, the latter a banking product. This fitted perfectly in the sectoral classification contained in the Annex on Financial Services. Modern financial products however combined those products into single mixed products, such as investment funds linked to life insurance. He agreed with Thailand that the current negotiations needed to focus on concrete problems experienced by financial service suppliers operating in foreign markets. That was why Switzerland's intention was to raise those issues in the context of the bilateral negotiations, in the hope of clarifying the issues. That would allow Switzerland to turn to the Committee with concrete problems that might need to be discussed.

12. The representative of Canada said that Canada had four initial objectives in the area of financial services. Firstly, Canada would like to seek greater market access and national treatment opportunities. Secondly, Canada would like to see the clarification of classification issues that might exist. Thirdly, Canada would like to strengthen transparency disciplines. Finally, in order to encourage the scheduling of additional commitments by a maximum number of countries, Canada suggested the use of phase-in commitments. Regarding classification issues and the questions raised by Thailand, he said that there were in fact two issues of interest. The first one was related to the multitude of classification systems in financial services. During the last round, Members adopted a number of different classification systems. Most Members had adopted the classification contained in the Annex on Financial Services; while others applied national classification methods. What Canada proposed in that regard was in the context of these negotiations Members applied a uniform classification system. Canada's preference was that Members used the classification contained in the Annex on Financial Services. The second issue that Canada had in mind was the clarification of classification issues related to the evolution of financial services since the conclusion of the Uruguay Round. Although Canada believed that the classification contained in the Annex on Financial Services was comprehensive, it was not clear whether some new activities that had emerged since the last round of negotiations were captured by the existing classification. Examples of those activities

included the following: trading systems; venture capital; electronic bill presentment; and securitisation. All these new activities suggested that further refinement of the existing classification system in the Annex on Financial Services might be warranted. Experts in Canada were thinking about this issue. Although they had not arrived at any conclusion yet, Canada was willing to discuss this issue further at the Committee or elsewhere as appropriate.

13. The representative of Thailand shared Canada's and Switzerland's concerns regarding classification issues. She added that recent technological developments gave rise to some financial activities, which if not entirely new, were difficult to place in the current sectoral classification. She hoped that issues raised in the bilateral negotiating context could be later fed into the multilateral process in order to have an open discussion among all Members.

14. The representative of Thailand also sought confirmation from the Committee as to whether certain issues that might arise in the requests to be received in the near future (e.g. on classification) could be addressed under this agenda item.

15. In reply to that question, the Chairman said that this agenda item was broad enough to allow for discussion of any technical issue that Members might want to raise. In case of doubt as to the exact nature of the issue, it was always possible to include specific items in the agenda at the request of any Member.

16. The Committee took note of the statements made, and decided to revert to this agenda item at the next meeting.

#### D. RECENT DEVELOPMENTS IN FINANCIAL SERVICES TRADE

17. The Chairman recalled that at the last meeting, delegations had an interesting exchange of views, triggered by an informal paper submitted by the United States on regulatory transparency (JOB(01)/161). He also reminded Members that his predecessor concluded by stating that it would be useful to continue this discussion since further work could be done on this particular issue in the Committee.

18. The representative of Canada said that given the recent passage of new financial sector legislation in Canada, his delegation would be able to provide the Committee with information about how the process of regulatory reform had been conducted. This information would be provided at a future meeting.

19. The representative of the United States expressed its satisfaction that at the last meeting a number of Members, including Australia, Canada and Japan, emphasized the importance of developing transparent regulatory frameworks. Transparency regarding consultation with the public was beneficial and helped avoid unintended consequences of regulations. This issue was of particular relevance in the financial sector, which was highly regulated, and where lack of transparency could effectively mean lack of market access. Transparency in developing and applying regulation was also an important contributing factor to financial market stability. He said that the questions raised by some Members as to whether financial services transparency issues were different from horizontal transparency and whether it was appropriate to carry out financial services-specific discussions was not entirely relevant. In fact, given the existence of a discrete regulatory community in financial services, a highly regulated sector, as well as substantial history in developing transparency procedures, the best place to initially share ideas was in a financial service-specific forum. Later in the day, Members could weigh outcomes and see how they compare with horizontal work. Finally, regarding a question posed at the last meeting by the delegation of Brazil, he said that the United States had developed and applied transparency in development and application of regulations at all levels of government.

20. The representative of Chinese Taipei said six major pieces of financial-related legislation had been introduced last year. In that regard, he said that transparency was the cornerstone for a stable and sound financial system. He finally announced that at the next meeting his delegation would give a short presentation regarding the application of transparency provisions in the Chinese Taipei financial sector.

21. The representative of Mexico said that his delegation would share information regarding transparency in the financial sector at a future meeting.

22. The Chairman encouraged Members to make use of this agenda item, and to share information with regard to regulations in financial services, with particular reference to transparency.

23. The Committee took note of the statements made and decided to revert to this item at the next meeting.

E. PREPARATIONS IN CONNECTION WITH PARAGRAPH 8 OF THE PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

24. The Chairman said that this agenda item had been requested by the delegation of the United States. He added that paragraph 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. As indicated in that paragraph of the Protocol, the Committee on Trade in Financial Services was one of the bodies in which this review had to be conducted. The results of the Committee's review would then be reported to the Council for Trade in Services, which would in turn report those results to the General Council.

25. The representative of the United States said that China's WTO accession protocol gave the Councils and Committees, including this one, a specific role in developing the basis for the General Council's Transitional Review Mechanism later in the year. In the weeks preceding this meeting, the United States had been working with China and other WTO Members to establish a practical and pragmatic timeline for developing the information and receiving the notifications necessary to conduct this review. In particular, his delegation was seeking an understanding of when the required information allowing for time for an exchange of written questions and answers in advance of the meeting could be expected. In his view, the development of these guidelines should allow sufficient time for translation into all official WTO languages and circulation by the Secretariat. The United States main goal was to allow sufficient time to receive information and the answers to questions that would allow an adequate preparation for the meeting. He proposed a 90-60-30 day timetable. In other words, notifications/information would be provided 90 days in advance of the meeting; questions would be submitted to China 60 days in advance of the meeting; and answers would be provided 30 days in advance of the meeting. The United States was seeking to ensure that WTO standard practice for similar notifications and exchanges would apply to the procedures in question, and that understanding was reached on the application of such a standard procedure. He added that it would be worthwhile to consider how the Committee would deal with questions that China was not able to answer at the meeting. He finally said that his interest was to develop a cooperative framework to make the transitional review mechanism a meaningful and efficient exercise. The United States was not interested in renegotiating China's protocol commitments.

26. The representative of the People's Republic of China said that as a new member of the World Trade Organization, her country took its membership seriously. China was willing to fulfill its obligations and attached great importance to Paragraph 18 of its Accession Protocol and had been making great efforts -in preparations for the transitional review. With the understanding and support from its' trading partners, China was determined to do its utmost in trying to overcome the practical difficulties in this regard. However, as far as the transitional review is concerned, China had no more obligation than what has been stipulated in the Paragraph 18, and any attempt to go beyond that and increase the obligations of China under whatever pretext would be firmly rejected. Since Paragraph 18

had already established important guidelines on the frequency, procedure, scope and substance of the transitional review, it was inappropriate for any subsidiary body of the WTO to re-negotiate or re-define the terms of such reviews as provided in the Paragraph 18. According to Paragraph 18 of the Protocol, subsidiary bodies of the WTO which have a mandate covering China's commitments could conduct the said transitional review once a year. In her view, such a review might in principle take place at the last regular meeting of each subsidiary body concerned for that year. Once a specific regular meeting was chosen and the date was fixed for the transitional view to be included as one of its agenda items, the Secretariat should inform China of the schedule for the meeting as soon as possible, so that China could make necessary preparations. To facilitate the process of the transitional review, Members were welcome to raise relevant questions of their concern to China well in advance of the review, and China was prepared to do its best to address them under the Paragraph 18. On the other hand, China was also entitled, under the same Paragraph 18, to raise issues and questions of its concern to other Members who were maintaining prohibitions, quantitative restrictions and other measures against imports from China in a manner inconsistent with WTO rules and their commitments with regard to China's accession. She expressed her hope that through such an exchange of views and dialogue, a better understanding would be reached among Members on how to improve the implementations by all Members and facilitate a faster and sounder growth of trade between China and the rest of the world.

27. The representative of Canada said that the transitional review mechanism was an important provision of China's accession Protocol that would maintain transparency and build confidence among WTO Members that China's obligations were being met. China had issued a number of important regulations affecting financial services since accession that Members needed to examine in the context of the review. Canada had a number of concerns with China's implementation of commitments in its services schedule, in particular financial services. Canada had raised these issues bilaterally with the Chinese, and looked forward to examining them in greater detail in the context of the Transitional Review Mechanism. For example, recently published banking regulations imposed high and inflexible capital requirements for branches of foreign banks seeking to do renminbi-denominated business; insurance regulations were vague on internal branching procedures and the phase-out of geographic restrictions; and regulations governing foreign participation in the fund management sector had yet to be finalized. China would also have the opportunity in the Transitional Review Mechanism to give Members an appreciation of the large scope of its implementation efforts. Canada supported constructive measures that would begin this process soon. Members needed to ensure that sufficient time was available for the Committee and the Council for Trade in Services to conduct their reviews, as set out in Article 18 of China's Protocol of Accession., and in turn to report to the General Council in time for its December meeting.

28. The representative of the European Communities was also interested in ensuring that appropriate procedures were in place to allow the transitional review to take place. As China indicated, it was open to receiving questions in advance and to being able to reply to them. As a subsidiary body, the Committee would have to report to the Council for Trade in Services, which in turn would also have to provide an input to the General Council. Therefore, there was a need to ensure that the review was conducted in a timely fashion. A horizontal solution would help. In any case, she suggested that the Chairman would conduct consultations on this issue.

29. The representative of the People's Republic of China gave a preliminary response to the remarks made by Canada regarding China's banking regulations. He reminded in that regard that the Committee was dealing with the preparation of the transitional review mechanism, and not the review itself. It was inappropriate for the delegation of Canada to raise that issue under this agenda item, because, according to paragraph 18, this review could only take place once a year, during a regular session of the subsidiary bodies identified.

30. The representative of the United States requested the Chairman to consult informally with delegations in order to achieve a solution to this issue.

31. The representative of Uruguay said that this agenda item was supposed to deal with the preparations of the transitional review mechanism, that would be held at the end of the year. Discussion under this agenda item should then be limited to the preparations for that meeting. A horizontal solution would help, since several WTO subsidiary bodies were involved. He finally supported the idea of having consultations conducted by the Chairman.

32. The representative of Japan said that certain procedures were needed regarding the preparations for the transitional review mechanism.

33. The Chairman suggested that he would carry on consultations on matters related to the preparations of the review, taking into account the need to keep consistency with the organizational decisions that might be taken by the Council for Trade in Services; and the need to coordinate activities with the Chairperson of the Council for Trade in Services. The Committee so decided, and took note of the statements made.

F. DATE OF NEXT MEETING

34. Following the Chairman's suggestion, the Committee decided to hold its next meeting during the next cluster of services meetings, on 22 July 2002.

G. OTHER BUSINESS

35. Firstly, the Chairman informed the Committee that he had been conducting some informal consultations on the organization of future work. He got the impression that delegations' views had not changed since the last meeting, and that most delegations were focusing on the preparation of initial bilateral requests. Therefore, he announced that he would continue with these consultations in the coming weeks and, in light of the outcome of those consultations, he might include an agenda item on the Organization of Future Work for the next meeting.

36. Secondly, the Chairman informed the Committee that the briefing session by the International Monetary Fund would be held on 22 July 2002 in the morning. The Committee would then meet on the same date, during the afternoon. The programme for the briefing session, together with the relevant documentation, were being prepared by the IMF, with the cooperation of the WTO Secretariat, and would be circulated four weeks before the meeting.

37. The representative from the International Monetary Fund said that a strong team of experts were being put together for the briefing session to be carried out by the IMF and the World Bank. The session would last for three hours –two hours for the presentations and one hour for discussion. Key subjects to be covered by the session included the following: (a) what is the Financial Sector Assessment Programme and what does it involve?; (b) how do the IMF and World Bank make use of the FSAP findings? (c) what are the technical foundations underlying the FSAP work? (d) what are the operational linkages with other international financial system architecture initiatives? and (e) how does the FSAP relate to trade and financial liberalization issues? He confirmed that background documentation for the session would be circulated well in advance. Most likely, the text of the presentations themselves would also be available in writing beforehand.

38. The Committee took note of the statements made.

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