

Committee on Market Access

MINUTES OF THE MEETING

Held in the Centre William Rappard on 12 June 2002

Chairman: Joshua Phoho Setipa (Lesotho)

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The above agenda as reproduced in document WTO/AIR/1820 dated 31 May 2002 was adopted with the addition of items under 13. An annotated agenda was circulated in an informal document (Job No.(02)/55) dated 7 June 2002.

1. Election of the Chairperson

1.1 The Chairperson stated that the Rules of Procedure for meetings of the Committee on Market Access provided that the Committee elect a Chairperson at the end of the first meeting of the new year. The Chairman of the Council for Trade in Goods had completed consultations on a slate of names for appointment as Chairpersons of standing bodies in accordance with the established guidelines for appointment for officers. On the basis of the understanding reached, she proposed that the Committee elect Mr. Joshua Phoho Setipa (Lesotho) as Chairperson of this Committee.

1.2 The Committee elected Mr. Phoho Setipa (Lesotho) as Chairman and Mr Trevor Matheson (New Zealand) as Vice-Chairman.

2. Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions – Request for a Waiver from Romania – Schedule LXIX (G/L/553, G/C/W/383)

2.1 The Chairman drew the Committee's attention to the waiver request circulated in document G/L/553 and accompanying draft waiver decision circulated in document G/C/W/383 from Romania. This request was made in connection with the introduction of HS2002 changes in Romania on 1 January 2002. The relevant HS2002 documentation was submitted and circulated on 4 June 2002 as G/SECRET/HS02/ROM/1.

2.2 The Committee agreed to forward the waiver request (G/L/553) and the draft waiver decision (G/C/W/383) to the Council for Trade in Goods for approval.

2.3 The representative of Romania thanked the Committee for having considered the request positively.

2.4 The Committee took note of the statement.

3. Submission of HS96 documentation

3.1 The Chairman drew the Committee's attention to document G/MA/TAR/2/Rev.28 and Corr.1 which reflected the present situation concerning the submission of required documentation. From the document, it could be noted that the submissions of fifteen Members, whether they had requested an extension of waivers or not, remained pending due to ongoing consultations and/or negotiations.

3.2 He reported on the informal consultations that had been taking place on the subject of the HS96 transposition exercise. Since the last formal meeting on 15 March 2002, an informal meeting of the Committee was held on 26 April 2002 to review the status of HS96 submissions. An informal list entitled Revision 12 detailing the situation of HS96 submissions was faxed to all Members when this informal meeting was convened. He stated that this process was useful in achieving progress and proposed that another meeting of this kind be held in the near future. A Revision 13 of the informal list detailing the situation of HS96 submissions could be issued along with the fax convening this meeting.

3.3 The Committee agreed to the Chairman's proposal.

4. Submission of HS2002 Documentation

4.1 The Chairman referred to document G/MA/TAR/4/Rev.1 which reflected the situation with respect to the circulation of HS2002 documentation. In accordance with the procedures for the incorporation of HS2002 changes into schedules of concessions, adopted by the General Council on 18 July 2001 and contained in document WT/L/407 the Committee had met in a dedicated informal session to undertake a multilateral review of the proposed HS2002 changes of some Members on 26 April 2002. The submissions by Australia, Canada, Norway and the US were reviewed with the assistance of the electronic verification sheets prepared by the Secretariat. It was evident that in all four cases the issues identified in the Secretariat verification sheets were more complicated than had been anticipated and would necessitate more discussions between the Member concerned and the Secretariat. An exchange of views then took place as to the need to amend the Decision contained in document WT/L/407 in light of this unexpected situation, and the need to reconcile it with paragraph 4 of Attachment B of the same Decision which envisaged the submission of specific queries from other Members "to the greatest extent possible by the first multilateral review session." The view was expressed that it would be more useful if specific queries from Members were received once discussions between the Secretariat and the Member concerned had been finalized on a schedule. Because, as had been witnessed by the specific queries submitted under this exercise, there was an overlap with the points raised in them and in the Secretariat's verification sheet. As a result, Members agreed that in future multilateral reviews of this nature, the Member concerned i.e. the Member whose schedule was the subject of verification should give an indication of the status of its discussions with the Secretariat and give a signal to Members when the process between the Secretariat and itself had concluded so that Members could begin submitting specific queries, if they had any at that stage. With such a system, it was also the view of the Members present at that meeting that there would be no need to amend the decision contained in document WT/L/407.

4.2 The representative of the United States stated that the first multilateral review of the US HS2002 submission had revealed a substantial number of problems with the US submission. He informed the Committee that his government would submit shortly a revised HS2002 submission which he hoped would address those problems.

4.3 The representative of Australia stated that like the US, his delegation had been working closely with the Secretariat to rectify some of the problems that had been identified through the electronic verification of Australia's HS2002 changes. His delegation hoped to be able to submit the revised documentation that would address the issues. His delegation also needed to submit a complete loose-leaf schedule under the Article XXVIII procedures. He enquired as to when the next multilateral review would take place as his delegation wished to provide its documentation in advance of that review.

4.4 The Chairman indicated that the next multilateral review would be scheduled for the latter half of July 2002.

4.5 The representative of Brazil referred to the Chairman's summary of the discussions of the first multilateral review of the HS2002 process. His delegation agreed fully with the general thrust of that summary particularly regarding the lack of a real need to amend the decision on the procedures. However, there was one point on which his understanding differed slightly. The sense he had got from the discussion was that Members would not be precluded from submitting their comments immediately following the submission of HS2002 documentation on the understanding that the notifying Member was also free to wait until it had concluded the process with the Secretariat before replying to the other Members' comments. In other words, he wished to register Brazil's understanding that Members were free to submit comments and reservations on a HS2002 documentation immediately after its submission.

4.6 The Committee took note of the statements.

5. Modalities and operation of the Integrated Data Base

(a) Status of submission of the required documentation (G/MA/IDB/2/Rev.14)

5.1 The Chairman stated that document G/MA/IDB/2/Rev.14 presented the situation of PC IDB submissions as of 24 May 2002. Since the document had been finalized the Secretariat had advised him that the following new submissions had been received: Barbados' 2001 imports and tariffs; Chile's 2001 imports; Cuba's 2001 and 2002 tariffs; Hong Kong, China's 2001 and 2002 tariffs (including current bound rates and correlation tables); Iceland's 2001 imports; New Zealand's 2001 imports; El Salvador's 2002 tariffs; Slovenia's 2002 tariffs (including current bound rates). He reminded Members that the deadline for furnishing the 2002 tariff information was 31 March 2002, and 2001 trade information 31 October 2002.

5.2 The representative of the United States stated that at the recent Market Access seminar where IDB issues and other trade databases were discussed, it was clear that without sufficient submissions to the IDB of tariff and trade information it would be impossible for the WTO Secretariat to provide the kind of technical assistance that developing country Members were going to find necessary, if they were going to participate in the non-agricultural market access negotiations. So, his delegation appealed to those Members to make up to date submissions to the IDB.

5.3 The representative of Australia shared the views expressed by the United States. Australia attached importance to all WTO Members making regular submissions to the IDB. This was very important data that would be used for the negotiations and would be particularly important for developing country Members.

5.4 The representative of Colombia stated that her authorities had submitted to the Secretariat the relevant data for exports and imports 2001. She supported the comments by the US and Australia to the effect that all Members should make every effort possible to submit up to date information to the IDB. It was a very important instrument particularly in view of the up-coming negotiations.

5.5 The representative of the European Communities shared the views of delegations who had spoken of the importance of the IDB. The IDB was a very valuable instrument and in this regard it was necessary that it be as complete as possible and he encouraged Members to make the required submission. He pointed out that the national correlations for 2002 had been submitted and that this would need to be accordingly reflected in document G/MA/IDB/2/Rev.14.

5.6 The representative of Chile agreed with what had been said by other delegations concerning the IDB and its value for on-going negotiations, particularly for developing countries. However, this tool was not only important for market access negotiations on non-agricultural products but also for negotiations on agriculture because the coverage of the database included both areas.

5.7 The representative of New Zealand endorsed the earlier comments by the US, Australia, EC and Chile regarding the importance of the IDB and the significance of having updated and timely submissions to the IDB. He thanked the Secretariat for confirming that it had received New Zealand's 2001 import data. He also pointed out that on page 8 in regard to New Zealand, there was a list of "no's" under the bound column. It was his assumption that New Zealand's recent CTS submission provided all that data and he would be willing to discuss with the Secretariat as to how that could be reflected in this IDB document.

5.8 The representative of Ecuador informed the Committee that his delegation had submitted to the Secretariat on 12 May 2002 a communication which contained information relating to bound

tariffs from 1996 until 2002. So he asked the Secretariat for clarification as to why this was not reflected in document G/MA/IDB/2/Rev.14.

5.9 The Secretariat responded that it would need to look into the question.

5.10 The Committee took note of the statements.

(b) Progress Report on the Work done by the Secretariat including technical assistance

5.11 On IDB dissemination the Secretariat reported that it had continued to load information onto the IDB Internet site on a monthly basis. As of 12 June 2002, there were 334 country periods on the site, of which 322 were in the approved area. Eighty-two Members and four acceding countries or territories were represented. As a reminder, the passwords for accessing the IDB Internet sites (File Transfer Facility and Internet Analysis Facility) would be changed on 17 June 2002. The new passwords were communicated to Heads of Delegations by letter on 17 May 2002.

5.12 Release 8 of the CD-ROM would be distributed to delegations during the week of 24 June 2002. It contained information for 269 country periods. As usual, two copies of the CD-ROM would be provided to each delegation. Any delegation requiring extra copies was requested to contact the Secretariat.

5.13 On the use of IDB information since March 2002, following a request from the EFTA Secretariat, simple tariff averages of applied duties from the IDB for a range of countries and for selected HS chapters were prepared by the Secretariat. For the UK government, the Secretariat prepared tariff averages of current bound and applied duties for all available countries for HS chapter 30, i.e. pharmaceutical products. In addition, several ad hoc requests by delegations were answered.

5.14 On, trade policy review information, since March 2002 four Members had approved the use of their Trade Policy Review (TPR) files for the IDB. A reminder letter had recently been sent under the signature of the Chairperson of this Committee to 12 Members whose authorization to use Trade Policy Review (TPR) files was still outstanding.

5.15 On follow-up actions stemming from the 2000/01 Multilateral Appraisal of the IDB and related technical assistance activities, to improve the IDB submission rate it was intended to contact participants in IDB national and regional workshops and IDB focal points in cases where IDB submissions had not been forthcoming or had been sporadic. It should be mentioned that delegations were notified via the Central Registry of Notifications every 6 months if IDB submissions had not been forthcoming. A copy of the CRN letter could also be forwarded to national focal points.

5.16 On IDB technical assistance, since March 2002 IDB statisticians had conducted a national seminar in Pakistan, and a regional seminar in Oman for Arab Members and Acceding countries. The Oman regional seminar was followed by two days of consultations with national officials in Oman. Eleven out of the 16 Member countries and Acceding countries who were invited to the seminar attended. The result of this activity was positive. A number of countries submitted data to the IDB and all participants were instructed on notification procedures and the use of IDB and CTS information.

5.17 During Geneva Week, several hands-on sessions on the IDB were offered to non-resident delegates. At the recent Market Access Seminar, participants were offered two hands-on IDB training sessions. Both sessions were fully booked. IDB statisticians were also present throughout the three day seminar to respond to questions and give advice.

5.18 One member of the IDB team was currently in Mongolia conducting a national IDB seminar. A video-conferencing session with Chile would be held this Friday 14 June 2002. As for the remainder of 2002, the Statistics Division had the following activities in the pipeline: Regional seminars for French speaking African Members; Caribbean Member countries for which the Secretariat was seeking cooperation with the Inter-American Development Bank; participation in a United Nations Statistical Division seminar on improving African trade statistics. National IDB activities in Bangladesh, Burundi, the Dominican Republic, India, Lithuania. To accelerate the selection process for regional seminars, the Division would be following the suggestion put forward by the Technical Cooperation Division which was to address invitations to Heads of Delegations and copies thereof to national focal points. IDB training for the Trade Policy Courses continued as well as IDB workshops and presentations for delegations in Geneva on request. Looking forward, technical assistance was on the agenda of the recent annual meeting of the Inter-agency Task Force on international merchandise trade. It was decided that as a first step towards ascertaining the feasibility of conducting joint activities that each agency's planned activities would be posted to the Task Force EDG. As for 2003, the Technical Cooperation Division had called for submissions for next year's Technical Assistance plan by the end of July 2002. It was emphasized again by senior management that ad hoc requests would be accepted only on an exceptional basis. Therefore it was important that delegations inform the Statistics Division or the Technical Cooperation Division before the end of July 2002 deadline of any requests for technical assistance that were foreseen for the year 2003. It was also intended to plan a range of regional seminars and workshops covering the main regions. They would focus on the supply of IDB data and the use of IDB and CTS information.

5.19 On resources, the Statistics Division had been allocated a post for a statistician for one year under the recent fast-track recruitment process. A statistician with good experience in the statistical support of tariff negotiations had been recruited. His duties would consist of assisting the division in technical assistance delivery, development of the Internet Analysis Facility (IAF) functionalities and addressing users' needs regarding IDB and CTS.

5.20 On software development, the IDB IAF prototype software (<http://iaf.wto.org/>) was made available to Members on 19 April 2002. It allowed users to browse IDB information on-line. It contained facilities for selecting products and applying tariff and trade criteria, similar to those available with the IDB CD-ROM. At present, two reports could be compiled - a detailed tariff line report and a report showing tariff averages, imports and other statistical indicators. A third report - tariff and trade profiles, was almost complete and would be transferred to the Internet site shortly.

5.21 As mentioned at the last formal meeting of this Committee, the IAF was potentially a very powerful analytical tool that would assist all Members to fully exploit the information in the IDB. The Secretariat had obtained extra budgetary funding, partly from the UK government and partly from the Global Trust Fund to assist with the IAF software development. The IAF would be progressively enhanced to operate from linked IDB and CTS information, to provide additional reports and to provide downloading facilities. A consultant programmer was also evaluating the possibilities for permitting the IAF to operate from a "snapshot" of the database to be distributed on DVDs, in order to address the needs of users that had unreliable telecommunication facilities. If feasible, this "portable IAF" could eventually replace the IDB CD-ROM.

5.22 In order to ensure that the IAF fully met user requirements, feedback from Members was very important. Feedback and information on any problems that might arise in using the Internet facility could be sent to the Secretariat via the IDB e-mail account (idb@wto.org). Suggestions for additional features would also be welcome. Within the Secretariat, focal points had been identified in various Divisions. They were being used to identify analytical requirements for incorporation in the IAF and improvements that could be introduced in the software. In this context, on 19 June 2002 from 14.00 hrs to 16.00 hrs a demonstration of the IAF would be held. It would consist of an introduction to the Facility and a presentation of future development plans. It should also provide an opportunity for

delegations here in Geneva to provide feedback on the IAF current facilities and to offer suggestions as to future requirements. The workshop would be in English. Questions and answers, however, could be in all three WTO languages.

5.23 The representative of Chile thanked the Statistics and Technical Assistance Divisions for the video conference that would take place on between Santiago and Geneva on 14 June 2002. The conference was to cover the tools that could be used for the future negotiations on market access on agriculture and non-agricultural products. This was an alternative form of technical assistance through which financial costs were reduced.

5.24 The representative of Oman expressed her government's appreciation to the WTO Secretariat for sponsoring the IDB regional seminar that was held in Oman.

5.25 The representative of Switzerland asked if additional workshops could be organized after the one scheduled for 19 June 2002.

5.26 The Secretariat responded that additional workshops could be organized.

5.27 The Committee took note of the report and the statements.

6. Consolidated Tariff Schedules Database Project - Report by the Secretariat

6.1 The Secretariat reported that it had completed the processing of all developing country Members' CTS tariff and agricultural commitments files, including the two latest Members, China and Chinese Taipei. Since the March 2002 formal meeting of this Committee, the Secretariat had incorporated the comments received from Bulgaria, India, Lithuania and Singapore into their database files. The revised files have been sent to the Members concerned for approval. Comments forwarded by Czech Republic and Japan were being included in their database files. With respect to the 11 Members who had committed to prepare their CTS database files themselves, the CTS tariff and agricultural commitments files of eight Members were completely finalised. They were Australia, Canada, the EU, Hungary, New Zealand, Norway, Switzerland and the US. Still outstanding were: 1) the draft agricultural file of Venezuela. She had been informed that the review of their draft agricultural commitments was continuing with the intention of completing the approval process as soon as possible; 2) the tariff submission of Iceland. Iceland had forwarded its final tariff submission to the Secretariat, including the ITA tariff concessions. There were still some correlation issues that needed to be addressed. However, these problems should be resolved in the near future through cooperation between the Secretariat and the delegation of Iceland; 3) a data base file incorporating the tariff and agricultural commitments of Poland had not yet been submitted to the Secretariat. All finalised CTS database files had been posted to the Internet File Transfer Facility web site.

6.2 The representative of the United States stated that at the informal meeting preceding this meeting, there had been no objections to switching on the CTS database. He did not think that a formal decision by the Committee was necessary but a statement from the Chair to the effect that the Statistics Division should be instructed to provide access based on the dissemination policy that the Committee was going adopt under the next agenda item would be an appropriate measure. The CTS database was going to be a work in progress because it would be constantly updated for changes. This database was to be as accurate a reflection of the current situation of Members' obligations in this area as possible, so continuing scrutiny was necessary but that was a long-term effort.

6.3 The Chairman indicated that he had intended to bring up this subject under the next agenda item.

6.4 The representative of Venezuela stated that as the Committee was aware, Venezuela had not yet finalised its data on agricultural products. Venezuela had explained that this was due to the changing of posts in the Ministry which had affected the people responsible for the updating of the data. A special team had now been set up to do the work. However, until such a time that Venezuela's comments were submitted to the Secretariat, Venezuela's agricultural data could not be considered approved. She therefore requested clarification from the Secretariat. If the CTS database was to start up what would be the treatment given to Venezuela's data and what would be the policy for its dissemination? Her delegation wanted to have a guarantee to the effect that Venezuela's data would be included on a provisional basis and that its dissemination would be limited.

6.5 The Secretariat responded that technically speaking the situation of Venezuela would be covered by paragraph 10 of the dissemination policy of the CTS database. The files in the CTS would be disseminated on the internet file transfer facility and on this site there were two areas similar to the IDB, the provisional and the approved area. The file of Venezuela would initially be posted to the provisional area and when it was finalized it would be moved to the final approved area.

6.6 The representative of Poland stated that his authorities were finalizing the preparation of the CTS files. He informed Members that Poland was going to submit its CTS file in the HS2002 nomenclature.

6.7 The Committee took note of the statements.

7. Draft Decision on the Dissemination Policy of the IDB and CTS Data Base

7.1 On the basis on the discussions held prior to this formal meeting, the Chairman proposed that the Committee adopt the decision contained in document G/MA/W/31, with the changes agreed to at the informal meeting, concerning the dissemination policy of the IDB and CTS database.

7.2 The Committee so agreed¹.

7.3 The Chairman also proposed that based on the discussions undertaken in the informal meeting preceding this formal meeting that the Committee agree to turn on the CTS database on the understanding that the Secretariat would provide regular updates as to the status of the submissions that were not completed and those that were outstanding.

7.4 The Committee so agreed.

8. Implementation-Related Issues and Concerns: Meaning to be given to the phrase "substantial interest" in paragraph 2 (D) of Article XIII of GATT 1994 (paragraph 1.2 of WT/MIN(01)17)

8.1 The Chairman recalled that at the last formal meeting of the Committee on 15 March 2002, in order to start the process and to assist the Committee in its consideration of this subject, the former Chair of the Committee had proposed that the Committee request the Secretariat to prepare a paper using empirical data (nothing complicated) illustrating how "substantial interest" would be taken into account if the Korean proposal were to be used. She had added that this paper was only meant to assist the Committee in its initial thinking of the subject, and did not prejudice the position of any delegation. The Committee had agreed to this proposal.

8.2 A discussion of this subject had taken place at the Committee's informal meeting of 26 April 2002 based on a Secretariat document circulated as Job (02)/34. At that meeting, and in light

¹ The adopted document was circulated as G/MA/115.

of the results of the Secretariat study, the point was made by one delegation on the appropriateness of the Korean proposal to determine Members eligible for new rights. In order to further advance discussions, the Chair had proposed that Members forward to the Secretariat concrete proposals concerning the parameters on which new studies by the Secretariat could be undertaken. In this connection, a fax dated 8 May 2002 was sent by the former Chair inviting Members to submit written proposals on a possible criterion to define "substantial interest" under paragraph 2(d) of Article XIII of GATT 1994. A submission was received from Saint Lucia which was circulated as document G/MA/W/30. He proposed that the Secretariat prepare additional examples basing itself on St Lucia's proposal, and that the Committee meet informally in order to discuss this matter once the Secretariat paper had been finalized.

8.3 The representative of Ecuador stated that during the informal consultations conducted by the Chairperson of this Committee at the request of the Chairman of the General Council, prior to the Doha Ministerial Conference, his delegation had expressed its position on the request made by another Member of the Organization to revise the meaning to be given to the expression "substantial interest" in Article XIII:2(d) of the GATT 1994. Ecuador's position on this matter had not changed since the pre-Doha consultations. In the days before Doha, Ecuador did not oppose transmitting the report made in a personal capacity by the Chairperson of the Market Access Committee to the Chairman of the General Council with a view to including it in the Ministerial Declaration on implementation issues. However, Ecuador agreed to this on the condition that the only decision taken in this respect should be that the matter should return to this Committee for further analysis without any conclusion being adopted.

8.4 At its latest meeting, the Committee was presented with a paper prepared by the Secretariat illustrating, through an empirical example on the basis of the proposal made by Korea, the implications that this proposal would have in the case of a specific product in a specific market. He thanked the Secretariat for this study, which in his view confirmed his delegation's initial position. It was not appropriate to state that there were doubts about the contents of Article XIII:2(d) of the GATT 1994. If anyone had any doubts as to this they should consult what the Appellate Body had to say on the banana case in paragraph 161 of its report. Obviously there were Members who did not like what the Appellate Body had said, but that was not a reason to alter the balance of rights and obligations under the GATT. The Appellate Body report clearly stated the correct interpretation of Article XIII:2(d) of the GATT 1994: it was clear that at the moment when a quota was allocated there were Members who had a substantial interest and others who did not. The Appellate Body made it clear what the rights of those with a substantial interest at the moment of quota allocation were. It also stated that the allocation of quotas among those not having a substantial interest must follow the principle of non-discrimination. The proposal to revise the meaning of the expression "substantial interest" was, in Ecuador's view, an attempt to alter the balance of rights and obligations under that Article and circumvent the principle of non-discrimination among those not having a substantial interest.

8.5 A practice had been followed for a number of decades whereby, in order to have a substantial interest at the moment when a quota was allocated, the criterion to be considered was whether a Member had at least 10 per cent of the import market for a specific product. On the basis of this practice many tariff quotas had been distributed and disputes resolved. And it was on the basis of this practice that the results of the Uruguay Round were agreed. To alter this practice had implications that went beyond those originally raised when the consideration of this item was proposed.

8.6 Lastly, the proposal raised situations that were hard to accept, such as the following: in the case of a country the economy of which basically depended on a single crop, that country would automatically have a substantial interest in all the markets of the world where quotas existed for that product. In other words, it would be in a more favourable situation than the main exporters of the product in question.

8.7 The representative of the United States stated that his delegation remained interested in pursuing this idea. There were some issues of fairness that had been raised which needed to be further examined. Although his delegation understood that the proposal concerned the future, this clearly would have an effect on the agriculture negotiations. For the Market Access Committee to be operating in isolation from the agriculture negotiators might potentially be a problem. It was clear that input would have to be solicited from them at some point.

8.8 The representative of Australia stated that his delegation was not adverse to the consideration of the proposal in this Committee, or to further empirical exercises. However, like the United States, his delegation believed that there was need to be mindful of the agricultural negotiations and the possible requirement of an input from the Committee on Agriculture. His delegation believed that the issues touched upon in the statement by Ecuador were germane to this debate and the consideration of the proposals. In fact many of the issues raised by Ecuador were of interest to his delegation.

8.9 The representative of Brazil stated that he supported the Chair's proposal to continue to address this issue in informal consultations. His delegation attributed particular importance to a positive response to implementation related issues and concerns. It seemed to his delegation that the current international scenario for the Doha Round was rather negative, and that this situation should not be aggravated by not responding to the legitimate concerns raised in these implementation issues. He had taken note of the statement by Ecuador and fully appreciated the concerns raised. It seemed to his delegation that Members might have to look more closely at the question of upsetting the balance of rights and obligations. The problem was precisely that smaller economies under the current interpretation of Article XIII had no rights and this was the problem. The focus that had been given to trying to find a solution to this problem through the Korean proposal had raised more difficulties than solutions. Seeking a solution for the specific problems of small economies in this issue should be based essentially on the intrinsic importance of that export to that country and not as a comparison to the situation of other exporters be they medium or large of the same product. So the focus had to be more on the weight of the exports of that particular product to the exporting country, than on this comparison on market share with other exporters. He took note of the submission of St. Lucia, and wished to revert to it at the future informal meeting.

8.10 The representative of India stated that at a systemic level, her delegation attached importance to concluding work on implementation issues within the timeframe allocated by Ministers at Doha. She took note of the statements made by the US and Australia regarding the linkage with agriculture negotiations. However, her delegation was of the view that the linkages had to be cleared up by each delegation in its own internal assessment. Her delegation was committed to working on this particular implementation issue with the proponents of the implementation issue. In the past, her delegation had supported the Chairman's consultations and also the three issues which were set out in the report by the Chairperson to the General Council prior to the Doha Ministerial Conference. Her delegation believed that those three elements contained a useful basis for the Committee to continue its work and to try and reach a conclusion. She also appreciated the point that was being made by Ecuador, regarding allocation of existing quotas in order not to disadvantage existing quota holders. However, Brazil also had a point when it said that it was important to focus on the weight of exports and try to seek a solution from that perspective. The two objectives were not necessarily conflicting and creative solutions were certainly possible. One of the ideas that had been floated in the paper by St. Lucia was for the Secretariat to use some other products as an example to further work on the Korean proposal. It was a good idea for the simple reason that it would help all Members think through in detail the various elements of the implementation issue without saying whether the Korean proposal was the right one. Empirical exercises had the potential of clarifying underlying issues and perhaps they could direct Members towards a solution which would not disadvantage existing quota holders and which at the same time would allocate certain rights to smaller economies which did not currently enjoy them.

8.11 The representative of St Lucia stated that like Brazil her delegation wanted to move away from an empirical analysis based on a relative comparison i.e. between Members, to one of the absolute, i.e. the importance of the product to the exporting Member. St. Lucia was proposing that the Secretariat do more empirical work in terms of five more products and on an absolute basis. In other words, assess the importance of the product to exporting Members and whether or not they would meet with what was jurisprudentially suggested to be a 10% criteria in terms of the absolute share of the importing market. If such an analysis were done, from the figures Members would be able to see the merits of the proposal which was being advanced. She stressed that she was referring to new quota allocations thereby taking account of Ecuador's concerns. Her delegation felt that it should be clear to all Members that if 70% of a Member's exports went into a single market, and quotas were to be allocated, then that Member should have a right to a quota like anyone else who had a 10% import share of that market, even if 70% of those exports only constituted 3% the import share. This was not an issue of comparing one Member to another, but an issue of absolute justice. This was the reason why St. Lucia was continuing with this subject, because it was not one which would directly benefit St. Lucia. For example, if one looked at the Secretariat's empirical study on coffee, Burundi and Uganda had over 40% of their exports made up of coffee. However, they would not qualify for import quotas under the traditional 1947 jurisprudence which had been brought into the new WTO era. It was this situation which St Lucia wished to address. If the Committee would agree to the Secretariat doing further empirical work it would certainly allow Members to see the clear merits of what was being advanced and the justice which had to be addressed in this implementation proposal.

8.12 The representative of Korea stated that Korea's proposal of a 10% benchmark was provided for the purpose of the exercise and was not necessarily an actual representation of substantial interest. It was necessary to have more empirical studies on various products. He also wished to examine further the points raised by Ecuador.

8.13 The Chairman proposed that the Secretariat undertake further empirical work based on the proposal by St Lucia and continue discussions at the next informal meeting.

8.14 The Committee agreed to the Chairman's proposal.

9. Outstanding Implementation Issues raised by Members: Tired 99 of Job(01)/152/Rev.1 – Measures designed to secure a Redistribution of Negotiating Rights in Favour of Small and Medium-sized Exporting Members in Trade Negotiations

9.1 The Chairman stated that the minutes of the Council for Trade in Goods meetings of 22 and 27 March 2002 reflected the following: "... with respect to tired 99, contained in the Compilation of Outstanding Implementation Issues Raised by Members (Document Job)(01)/152/Rev.1), he [i.e. the Chairman] proposed that this tired fell in the area of competence of the Market Access Committee which would take up the issue and report to the Trade Negotiations Committee by the end of 2002. He proposed that this issue be put on the agenda of the next meeting of the Market Access Committee so that it could be addressed in accordance with paragraph 12(b) of the Ministerial Declaration."

9.2 The Council for Trade in Goods had agreed to the Chair's proposal, and accordingly this subject has been inscribed in the agenda of today's meeting. Tired 99 referred to "Measures designed to secure a Redistribution of Negotiating Rights in Favour of Small and Medium-sized Exporting Members in Trade Negotiations"

9.3 The representative of St Lucia recalled that this tired stated that the "General Council shall adopt measures to secure a redistribution of negotiating rights in favour of small and medium-sized exporting Members in trade negotiations"; "trade negotiations" was a broad term. The mandate for

redistribution of negotiating rights in favour of a subset of the Membership, i.e. small and medium-sized exporting Members, in the limited circumstance of the renegotiation of tariff bindings derived from the Uruguay Round Understanding on the interpretation of Article XXVIII of GATT 1994. The Understanding represented the recognition of all Members of a basic reality that the evolution of the multilateral trading system had built in a disparity within the Membership which precluded the existence of a level playing field. She was surprised that the Chairman of the Council for Trade in Goods had referred the matter to the Market Access Committee, and unfortunately she had not been present at that particular meeting. Essentially, because it was not a discussion of initial negotiating rights within the particular confines of Article XXVIII. This issue should have actually been referred to the General Council, if not to the TNC. The purpose of introducing this issue prior to the Doha Ministerial was that the concept of engaging in any broader negotiations had to recognise that some Members were at a fundamental disadvantage in any system of request and offer. Some Members had no level playing field. Some could not even be present at the negotiations. As she had mentioned in the Services negotiations, if a Member was going to put a request to St Lucia then it would be necessary to provide *per diem* and travel allowance to St Lucia. There was a fundamental inequality to the rules. How could one talk about progressive liberalization in a Doha Development Agenda when her delegation, for example, had no meaningful way to advance St Lucia's rights in the course of the negotiations. This was the point of this particular implementation proposal. Her delegation had not been pushing for any Doha expanded negotiations, but they had arrived and the point of this proposal was to examine how negotiations could take place, with respect to those which had limited negotiating capital. How could St Lucia advance its interests at the negotiating table? The mandate was much broader than Article XXVIII and initial negotiating rights, it was conceptual, it was procedural, it was fundamental as to how one proceeded. It was extensive and underpinned the way in which the multilateral system operated and the way in which her delegation continued to be further marginalized in the process.

9.4 The representative of the United States stated that the proposal appeared like it went well beyond the mandate of this Committee. Some thought had to be given to whether it made sense to re-introduce this issue into the process at a higher level. On the specific element of tiret 99 and the redistribution of negotiating rights in favour of small and medium-sized exporting Members, his delegation viewed this as a difficult question. In order to make progress, this issue needed to be part of the overall negotiations. His delegation was willing to examine the issue in this Committee, participate in the discussions but this was a more difficult issue than the one that the Committee had considered under the previous agenda item. He noted that in the context of the Committee's review of paragraph 1 of the Understanding on the Interpretation of Article XXVIII of GATT 1994 that was completed in 2000, no specific proposals had been forwarded.

9.5 The representative of Switzerland stated that her intervention would be limited to Article XXVIII of GATT 1994, although the issue was much broader as stated by previous speakers. The idea of INRs was not new and was of essential importance to small and medium-sized exporting Members. This concept could be found in Article XXVIII of GATT 1994. Until now the INR concept was based on bilateral negotiations between two WTO Members. The problem was that these INRs had not been systematically put in schedules of concessions of Members at the end of the Uruguay Round. Therefore, the situation was not transparent because a Member was not aware with which other Member, on which tariff line, and at which level it had negotiated an INR. The sole exception was in the case of accession negotiations to the WTO. In addition, her delegation wished to make it clear that an INR was created through a bilateral agreement between two WTO Members which negotiated bilaterally in the sense of Article XXVIII of GATT 1994. The inscription into the schedule of concessions did not create INRs. The purpose of the inscription in the schedule of concession was to enhance transparency. This had been done since the beginning of the WTO in the framework of accessions. This should also be possible in the Market Access Negotiations envisaged in the Doha Ministerial Declaration. As regarded tiret 99, it would have to be discussed and agreed among all WTO Members.

9.6 The representative of St Lucia stated that St. Lucia was the initial proponent of tiret 99 and the issue had always been a difficult one for her delegation, because the initial discussion had focused solely on INRs. She was appreciative of Switzerland's contribution because the key issue had been that the whole concept of negotiating rights was built up on a bilateral process. This was a multilateral trading forum, however once the negotiations became bilateral, St. Lucia would lose any serious negotiating ability, unless it was negotiating with an equally small Member. This was an essential issue which had to be addressed in all market access negotiations – goods and services. This was the underpinning reason for raising the issue of redistribution of negotiating rights because INRs were based on a process which pitted unequal Members against one another.

9.7 The representative of Australia stated that one of the fundamental problems that his delegation had with this proposal thus far was that Members tended to confine the consideration of this to Article XXVIII, but now it was a broader issue which perhaps could not be handled in this Committee. Additionally, the issue addressed the question of redistribution of INRs and the term "redistribution" implied that a Member holding an INR could lose it in favour of a small and medium-sized country. He understood from St. Lucia's explanation that what was being referred to was the securing of INRs and not the redistribution of INRs already held by Members. If the issue were to be addressed in those terms it might allay some of the concerns of certain Members.

9.8 The representative of St Lucia stated that the term "redistribution" came from the text of the Uruguay Round Understanding on the Interpretation of Article XXVIII of GATT 1994, so it was not an alien notion. She agreed with Australia that the idea was not to deprive any Member of what it had.

9.9 The Chairman proposed that the Committee agree to send back the issue to the Council for Trade in Goods with the proposal that it be resubmitted to the General Council in order that a decision be taken on how best to address this item. The General Council could also be encouraged to reformulate the mandate that it would give to this Committee.

9.10 The representative of St Lucia stated that she could agree with the Chairman's proposal to send back to the Council for Trade in Goods the issue for submission to the General Council in order for that body to address the broader issues of this proposal which went beyond the mandate of this Committee. However, she was of the view that this Committee could continue consideration of those issues which fell within its purview in an informal meeting, and that it did not need another mandate from the General Council to continue discussions on questions which were within its mandate.

9.11 The representative of Pakistan agreed with St. Lucia's statement. As a subsidiary body to the Council for Trade in Goods, the Market Access Committee was well within its rights to examine the proposal. In his delegation's view the proposal did not go beyond the mandate of Article XXVIII, and Article XXVIII issues had always been dealt with in the Committee on Market Access. However, it could be a cross-cutting issue and as a subsidiary body, this Committee would be well within its right to give its input to the Council for Trade in Goods and subsequently the General Council.

9.12 The representative of Brazil agreed with the points made by the representatives from Pakistan and St. Lucia. There appeared to be a procedural obstacle to the Chairman's proposal. This was one of those outstanding implementation issues described under paragraph 12.b of the Doha Ministerial Declaration and this body was mandated to report to the TNC by the end of the year on that issue. It did not seem procedurally appropriate to ask the General Council to undertake an examination of this issue and report to the TNC which was a subsidiary body to the General Council. A decision had been taken in the Council for Trade in Goods to submit this matter for consideration to this Committee. It would seem to be waiving the Committee's responsibility to send the matter back to the Council for Trade in Goods without having had one substantive discussion on the subject. Therefore,

he would support the proposal that the Committee have an informal discussion on the issue. The Committee also needed to get some clarity as to what exactly it was trying to achieve with this issue. A background paper by the Secretariat on the contents of previous discussions on this topic, and on the technical aspect of the whole concept would be useful.

9.13 The representative of Chile stated that what was being proposed needed to be clarified before the Committee could move forward. St Lucia had stated that this was a broader question than that of initial negotiating rights in the context of Article XXVIII. However, was it a reference to the negotiating modality in the market access negotiations because then the discussions should take place in another forum. If one was referring to redistribution of initial negotiating rights, then one would be looking at a revision of Article XXVIII which should be done in yet another forum. Before asking the Secretariat for a document, it was important to see clearly what the proposals meant.

9.14 The representative of St Lucia stated that when this proposal was initially discussed, there had been an interesting debate on the whole concept of INRs. She had always said that the initial proposal was always broader, but she believed that this Committee could deal with what had been assigned to it and what fell within its mandate without waiting for a new mandate. As to the broader concern of multilateral versus bilateral which had already been built in to the modalities in the ongoing negotiations, she was not sure how to deal with that. Her delegation, however, could agree to sending back to the Council for Trade in Goods what was not within the mandate of this Committee. A Secretariat background paper would be useful in terms of pursuing the more limited aspect of the proposal.

9.15 The Chairman stated that this subject concerned more than just Article XXVIII or any market access related issue and that the Committee needed to hold further discussions to ensure that it agreed on what should be or could be addressed within this Committee and what would have to be referred back to a relevant body. In this connection, he proposed that informal consultations be held to address the procedural issues raised by Brazil and to continue discussions on what should be addressed in this Committee. In this connection, he also proposed that the Secretariat prepare a background note to facilitate discussions; and encouraged delegations, in particular, St Lucia to come up with written submissions on their understanding of the mandate which would also facilitate discussions. At the end of the process, the Committee would be in a better position to take a decision on how to move forward.

9.16 The Committee agreed to the Chairman's proposal.

9.17 In response to a query from St Lucia, the Chairman stated that the Secretariat would prepare a background document which he understood would be required by St Lucia to make its submission on the intention of its proposal. The basis of the informal consultations would be the Secretariat paper.

10. Japan - Information on China's tariff policy on Certain Photographic and Cinematographic Goods

10.1 The representative of Japan stated that upon accession to the WTO, the People's Republic of China (PRC) had made a commitment of tariff rates on 35 items in HS chapter 37 relating to photographic products on an *ad valorem* basis (levied on a yuan by yuan basis). However, the PRC currently levied on these items specific import duties (levied on a yuan per square meter basis). His delegation was aware of a multitude of cases in the year 2002 where the import duty exceeded the bound *ad valorem* rate as a result. From the perspective of ensuring the transparency and the predictability of a tariff system, it was desirable for WTO Members to apply the type of duty inscribed in their schedule of concessions. In this connection, he drew attention to the report of the Appellate Body for the case of Argentina's minimum specific import duties on textile products in 1998. The report concluded that a WTO Agreement did not automatically prohibit a Member from

using a type of import duty which differed from the one inscribed in the schedule. However, the Appellate Body did state that if the application of a type of a duty different from the one provided in the schedule of concessions resulted in the levying of duties which were in excess of what would otherwise have been the case, then this situation was inconsistent with Article II.1(b) of the GATT 1994. His delegation considered that China's current tariffs on certain photographic products were levied with duties above and beyond the levels of concession tariff rates and were inconsistent with Article II.1(b) of the GATT. This situation impaired benefits accruing to the contracting parties of the WTO including Japan. He hoped that the PRC would take the necessary procedural steps in line with its commitments upon accession and with the aforementioned article of the GATT without delay.

10.2 The representative of China understood that this issue had been raised for the first time in March 2002 and since then China and Japan had been engaged in bilateral consultations. So, at this stage there had been a thorough exchange of views on this issue and China would like to see these bilateral consultations continue so that a solution acceptable to both sides could be found. Japan was entitled to raise this issue in this Committee, however, he hoped that a solution could be found through bilateral consultations. He also wished to point out that it took process and time to find a solution on this issue, but his delegation was committed to continuing such efforts.

10.3 The Committee took note of the statements.

11. United States - China's TRQ Administration As Well As Application of the VAT to Fertilizer Imports

11.1 The representative of the United States stated that there were two issues: one had to do with VAT and the second had to do with Tariff Rate Quota (TRQ) allocations on fertilisers. On the former, as part of its accession, China had committed to permit access under tariff rate quotas for diammonium phosphate urea and NPK within quota tariff rates of 4%. China appeared to be undermining the promised market access through tax policies that discriminated between like and directly competitive fertilizer products. In July 2001, China's Ministry of Finance and State Tax Administration issued a joint circular exempting all phosphate fertilizers except diammonium phosphate and all nitrogen fertilizers except urea from the VAT. In other words, only phosphate fertilizer and only urea were assessed a 13% VAT. The VAT exemption favoured other phosphate fertilizers that China produced but did not import such as monammonium phosphate. Monammonium phosphate and other phosphate fertilizers competed directly and were substitutes for diammonium phosphate. Similarly urea was disadvantaged relative to products with which it competed. Moreover domestic producers of urea appeared to be able to avoid the tax through refunds thereby ensuring that the selective VAT primarily impacted foreign sourced urea. His delegation urged China to apply the VAT consistently with GATT Article III and to not impair the market access commitments China had made on fertilizer. In that regard, his delegation requested the Chinese delegation to explain the justification for the differential tax treatment and to provide more details about the refund policy for China's producers. On TRQ allocation, China's allocation of fertilizer TRQs for 2002 was delayed by several months and still appeared to be incomplete. Reports indicated that quota applicants had in many cases only received a portion of the quota they had applied for and which was originally approved. China was obliged to allocate the full TRQ amount agreed upon in China's accession agreement without restrictions on when during the calendar year it might be utilised. In addition, his delegation understood that holders of TRQs designated for importations through non state trading enterprises were being told that they must still arrange importation through state trading enterprises which would be contrary to China's accession commitments. The US sought China's assistance in ensuring that holders of non state trading enterprise TRQs might import through any enterprise possessing the right to trade in any product without the need to go through a state trading enterprise. His delegation also sought China's assurances that in reallocating TRQs later this year China would adhere to the schedule and other procedures for reallocation set forth in the working

party report and fertilizer TRQ headnote. In particular, he noted that China had to publish specific conditions for applying for reallocation by 1 August and had to complete the allocations by 1 October. Finally, his delegation wished to note its concerns regarding the underlying regulations applicable to TRQ administration. His delegation had delivered detailed comments to China regarding these regulations and had requested consultations to discuss the comments and details. His delegation looked forward to China's response to this request.

11.2 The representative of Canada shared the US concerns about China's allocation of not just tariff rate quotas on fertilizers but TRQs in general. In particular Canada was concerned by reports that import certificates had not been issued to quota holders. This appeared to be blocking utilisation of allocated quota. Such certificates should be issued automatically under the terms of the agreement on import licensing. In addition, his delegation continued to have some concerns regarding the regulations implementing the fertilizer TRQ. The regulations did not, in Canada's view, reflect three clear commitments by China. First, that its TRQs would be administered to reflect consumer preference and end-user demand. Second, that end-users, not private trading companies, were to be allocated non state enterprise quota and third that any entity with trading rights might import products allocated to private companies. Canada requested China to address these concerns.

11.3 The representative of Australia stated that his delegation like the US and Canada attached great significance to proper administration of China's TRQ administration system for state traded and designated traded products alike. In accordance with China's commitment as outlined in its protocol of accession, they should be done so that the conditions were transparent and efficient so that quota access could be granted and there could be full utilisation of all quotas in line with China's commitments.

11.4 The representative of China stated that some of the difficulties in this regard arose from a different understanding of the commitments and the relevant regulations governing the administration of China's TRQ. China as a WTO Member adopted a very serious and responsible attitude in implementing its obligations under its accession protocol. Accordingly, since the beginning of this year, China had already made a tremendous effort in this regard and this should be recognized by Members. However, if in the process of implementation some problems occurred due to a difference in the understanding or interpretation of the relevant commitments and the regulations concerned, it was understandable. It was also understandable that in a process of implementation some issues of a technical nature could not be avoided. With regard to the issue of fertilizer VAT as raised by US delegation, as far as he understood, both China and the US had been engaging in consultations in Beijing on this matter. He had also taken note of the statements by Canada and Australia and would forward them to the capital.

11.5 The Committee took note of the statements.

12. United States – Preparations in connection with paragraph 18 of the Protocol of Accession of the People's Republic of China

12.1 The representative of the United States stated that this was an issue that most WTO Committees had to deal with. Pursuant to China's protocol of accession, there was a provision that a transitional review mechanism would operate through the Committees. Each Committee being responsible for items that were under its purview. There were issues that needed to be settled on how this transitional review would operate in this Committee. In particular, his delegation sought an understanding of when it could expect the required information that was specified in the Protocol allowing for time for an exchange of written questions and answers in advance of the meeting. His delegation's main goal was to allow for sufficient time to receive information and answers to questions in order to be adequately prepared for the meeting. His delegation had proposed a 90-60-30 day formulation in which the notification would be submitted by China 90 days in advance of the

meeting at which the review would take place, questions would be posed to China 60 days in advance of that meeting, and China would respond to these questions 30 days in advance of the meeting, so that there would be adequate time for final preparation for the meeting itself. His delegation sought to ensure that WTO standard practice for similar notifications and exchanges would apply to the procedure in question and that an understanding was reached on the application of such a standard procedure. His delegation also noted that the development of these guidelines should allow for sufficient time for translation into all official WTO languages and circulation by the Secretariat of the notifications made. It would also be worthwhile to consider how the Committee would deal with those questions that China was not able to answer at that meeting. He noted that this Committee's review of China's implementation had to occur far enough in advance of the November Council for Trade in Goods meeting to allow for the circulation of the Committee's report and its subsequent submission to the Council for Trade in Goods in accordance with standard practice. His delegation welcomed the opportunity to work formally and informally with China and other Members so that these details could be resolved in advance of the next meeting, and accordingly requested the Chairman to conduct informal consultations.

12.2 The representative of China stated that as a new WTO Member, China took its membership very seriously and China was willing to fulfil its obligations under Paragraph 18 of its Accession Protocol. It had been making great efforts in preparation for the transitional review. With the understanding and the 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 was concerned, China had no more obligation than what had been stipulated in Paragraph 18 and any suggestion to go beyond that and increase the obligations of China in terms of specific time-frames, procedures or whatever, would be rejected. Since Paragraph 18 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 try to renegotiate or redefine the terms of such reviews as provided for in Paragraph 18. According to Paragraph 18, the subsidiary bodies of the WTO which had a mandate covering China's commitments could conduct the transitional review once a year. China was of the view that 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 review to be included as one of its agenda items, the WTO Secretariat should inform China of the schedule for that meeting as soon as possible so that China could make the necessary preparations. To facilitate the process of the transitional review, Members were welcome to raise relevant questions of concern to China well in advance of the review and China was prepared to do its best to address them under Paragraph 18. On the other hand, under the same Paragraph 18, China was also entitled to raise issues and questions of concern to other Members who were maintaining prohibitions, quantitative restrictions and other measures against imports from China in a manner inconsistent with the WTO rules and their commitments with regard to China's accession. It was hoped that through such an exchange of views and dialogue better understanding would be reached among the WTO Members on how to improve implementation by all Members and to facilitate the faster and the sounder growth of trade between China and other WTO Members. In this regard, China was ready to work very closely with this Committee and make every positive contribution it could towards the procurement of the Committee's objectives.

12.3 The Chairman proposed that the transitional review as provided for under Article 18 of China's Protocol of Accession take place at the Committee's 23rd September 2002 meeting. He also proposed to undertake some informal consultations in the interim.

12.4 The Committee agreed to the Chairman's proposals.

13. Other Business

(a) Canada – China's variable tariff on newsprint

13.1 The representative of Canada raised his delegation's concerns with regard to China's variable tariff on newsprint. China's 2002 customs tariff contained a complex formula for calculating a variable tariff rate for newsprint. During accession negotiations, China had committed to converting this variable rate to an *ad valorem* tariff at 11% in 2002, falling to 5% by 2006. As China had broken out this HS96 tariff item into 3 HS 2002 tariff items, 84.01.0000, 84026110, and 84026910, the commitment now extended to all 3 tariff items. Canada sought the immediate conversion of the variable duty rate tariff to the scheduled *ad valorem* tariff in accordance with China's goods schedule.

13.2 The Committee took note of the statement.

(b) Date of the next meeting

13.3 The Committee noted that the next meeting of the Committee was scheduled to take place on 23 September 2002, subject to confirmation.
