

WORLD TRADE ORGANIZATION

RESTRICTED

G/MA/M/33

19 November 2002

(02-6419)

Committee on Market Access

MINUTES OF THE MEETING HELD ON 23 SEPTEMBER 2002

Chairman: Joshua Phoho Setipa (Lesotho)

<u>Agenda of the meeting</u>	<u>Page</u>
1. Periodic Report of the Committee to the Council for Trade in Goods including factual information on waivers expiring on 31 October 2002.....	2
2. Submission of HS96 documentation.....	2
3. Submission of HS2002 Documentation.....	2
4. Modalities and operation of the Integrated Data Base.....	4
(a) Status of submission of the required documentation (G/MA/IDB/2/Rev.15).....	4
(b) Report by the Secretariat.....	5
5. Consolidated Tariff Schedules Database - Report by the Secretariat.....	5
6. 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).....	5
7. 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	6
8. Transitional review under paragraph 18 of the Protocol of Accession of the People's Republic of China	6
9. Ecuador – New Panama Canal Transit Tolls (G/MA/W/37)	24
10. Draft Report (2002) of the Committee to the Council for Trade in Goods (G/MA/SPEC/22)	27
11. Other Business.....	27
(a) Date of the next meeting.....	27

The above agenda as reproduced in document WTO/AIR/1893 dated 13 September 2002 was adopted with the inclusion of one item under "other business". An annotated agenda was circulated in an informal document (Job No.(02)/123) dated 20 September 2002. Discussion on items 6 and 7 of the agenda as reproduced above was suspended.

1. Periodic Report of the Committee to the Council for Trade in Goods including factual information on waivers expiring on 31 October 2002

1.1 The Chairman drew attention to document G/MA/SPEC/21 which contained the draft periodic report of this Committee. He indicated that this report, which would be finalized in the light of the discussion that would take place at this meeting, would be submitted to the Council for Trade in Goods for examination at its meeting of 1-2 October 2002. As was customary, the report contained in its Annexes I and II tables summarizing factual information on the waivers under process submitted by the Members concerned. In this context, he requested the Committee to take note of the requests that had been presented by these Members concerning their respective waivers and of the reasons for doing so. All the waivers expired on 31 October 2002.

1.2 From Annex I of the document G/MA/SPEC/21, he noted that to date seven Members had forwarded requests for waivers in connection with the introduction of HS96 changes to their schedules of concessions. Factual information provided by these Members concerning their request and the accompanying draft decisions had also been circulated.

1.3 The representative of Malaysia enquired as to the status of Malaysia's waiver.

1.4 A representative of the Secretariat responded that Malaysia's waiver was for one year and would expire on 30 April 2003.

1.5 Details concerning Members which had requested an extension of their respective waivers for the transposition of their schedules in the Harmonized System following the introduction of the Harmonized System, and the renegotiation of their schedule were contained in Annex II of document G/MA/SPEC/21. These extensions concerned Sri Lanka and Zambia respectively. The requests and the draft decisions related to these extensions had been circulated.

1.6 The Committee took note of the statements and agreed to forward the requests and draft decisions to the Council for Trade in Goods for action.

2. Submission of HS96 documentation

2.1 The Chairman drew the Committee's attention to document G/MA/TAR/2/Rev.29 which reflected the present situation concerning the submission of required documentation. From the document, it could be noted that the submissions of ten Members, whether they had requested an extension of waivers or not, remained pending due to ongoing consultations and/or negotiations.

2.2 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 12 June 2002, an informal meeting of the Committee was held on 26 July 2002 to review the status of HS96 submissions. An informal list entitled Revision 13 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 14 of the informal list detailing the situation of HS96 submissions could be issued along with the fax convening this meeting.

2.3 The Committee agreed to the Chairman's proposal.

3. Submission of HS2002 Documentation

3.1 The Chairman drew attention to document entitled "Status of HS2002 submissions-Revision 2" circulated as G/MA/TAR/4/Rev. 2. It reflected the status of submissions of HS2002 documentation, as of 17 September 2002. At the Committee's informal meeting on 26 July 2002, he

had indicated that the fact that a large number of HS2002 submissions had been notified at the same time had presented the Secretariat with difficulties regarding the preparation and issuance of the verification sheets within the time-limits set out in the procedures for the incorporation of HS2002 changes into schedules of concessions (WT/L/407). The situation had been rendered more difficult due to the absence of the person responsible for the preparation of the HS2002 verification sheets. However, this was a special situation which was temporary. In this regard, he requested the Committee to show some understanding and patience, and note that these were exceptional circumstances.

3.2 On this subject, he recalled that a number of Members had been granted waivers through the form of a "collective decision" in order to introduce HS2002 changes domestically and to subsequently undertake the exercise of introducing these changes to their respective schedule of concessions. The draft waiver decision was adopted by the General Council on 13 May 2002 of this year (WT/L/469). The waiver, for all Members, with the exception of two Members, began on 1 January 2002 and would expire on 31 December 2002. Given the situation, as described previously, it would be difficult for these Members to complete the transposition exercise within the time-limit of the waiver and consideration might need to be given to an extension of the waiver. This situation was also applicable to Romania which was granted a waiver through a decision adopted by the General Council on 8 July 2002 (WT/L/477). He proposed that he hold consultations regarding this matter.

3.3 The representative of Japan stated that his delegation had three points to raise. First, Japan had submitted on 20 September 2002 its entire HS2002 documentation and he hoped that it would be circulated to Members as soon as possible, and that document G/MA/TAR/4/Rev.2 would be accordingly updated. Second, although the Chairman had requested Members to show some understanding in this difficult situation, Japan had concerns about the delay in the HS2002 exercise, especially about the significant delays in the production of electronic verification sheets because of resource constraints on the part of the Secretariat. There were some time-lines in the General Council decision contained in WT/L/407. For example, the Secretariat was supposed to "prepare a verification sheet which will be circulated or made available to all Members at the latest four weeks after the circulation" of the HS2002 documentation of a Member. However, so far there had been delays of about five months as could be noted from the document. In this regard, his delegation wished to request the Secretariat to take the current situation more seriously and to take necessary measures including reinforcing Secretariat staff members dealing with electronic verification so as to accelerate this exercise. Third, he wished to explain Japan's particular situation briefly. To enable the entry into force of Japan's draft schedule incorporating the HS2002 changes, his delegation, after obtaining a certification by the Director-General, needed to submit the certified draft schedule to the Diet for approval. Japan therefore needed a longer time-period than other Members to implement the HS2002 changes. The annual regular session of the Diet normally started in late January 2003. Before that time his delegation wished to complete the multilateral process on its draft schedule. To address Japan's concern in a practical way, he wished to propose a sort of priority treatment in this exercise. Japan's proposal was that a Member having concerns about the delay in this exercise could request priority treatment from the Secretariat. If such a request was made, the Secretariat may accord appropriate treatment including changing the order of the waiting list for electronic verification taking into account the needs of such a Member making a request and other factors related to this exercise. His delegation hoped that Members would pay favourable consideration to this practical proposal.

3.4 The Chairman noted that, as he had indicated before, the difficulties faced by the Division were temporary and unavoidable. The Secretariat was working hard to try to complete the work.

3.5 The representative of China informed the Committee that the technical work on the HS2002 documentation was almost complete and her delegation would be submitting the documentation shortly.

3.6 The representative of the United States stated that her delegation had provided a revised HS2002 schedule for circulation to Members. It also intended to submit a rectification regarding the implementation of the second pharmaceutical update which would weed out a number of outstanding issues raised in the electronic verification process. She encouraged Members to submit their schedules.

3.7 The representative of Philippines sought clarification as to whether Japan had submitted its entire schedule or only the tariff items affected by the HS02 changes. She had understood the procedures to require the submission of only those tariff items affected by the HS02 changes. On a second point, document G/MA/TAR/4/Rev.2 listed Members which had made HS2002 submissions and for whom verification sheets had already been circulated. In previous meetings there had been requests for these countries to submit improved schedules incorporating comments contained in the Secretariat verification sheet. She had understood that only once this was done would Members having reservations on those submissions begin filing their reservations. In short, she wished to know what the procedure was once Members had submitted revised HS2002 documentation incorporating comments made by the Secretariat.

3.8 In response to the question by the Philippines, the representative of Japan clarified that Japan's HS2002 submission contained only those tariff lines affected by HS02 changes. He had used the word "entire" because Japan had initially submitted HS2002 documentation on 10 September 2002, but the documentation was considered incomplete by the Secretariat because of the lack of concordance tables. The present submission contained the concordance tables which is why he had referred to it as "entire".

3.9 In response to the Philippines, a representative from the Secretariat stated that there had been a first multilateral review in which certain questions were raised on the first five HS2002 submissions. Some revised HS2002 submissions had now been received. The intention would be to prepare new verification sheets on these revised submissions. However, at this stage priority was being given to the HS2002 submissions on which no verification sheets had as yet been prepared. As to the question on queries, from the discussions, she had understood that queries on HS2002 submissions could be put forward at any stage by any delegation. However, it had been considered more useful if such queries came after the consultative process between the Secretariat and the delegation concerned had concluded as sometimes the queries covered issues which were also addressed in the Secretariat verification sheet.

3.10 The representative of Norway informed the Committee that her delegation was still consulting with the Secretariat and was in the process of preparing the necessary documentation which it hoped to submit as soon as possible.

3.11 In response to a question raised by Australia, the Chairman stated that he hoped to hold the next multilateral review as soon as some verification sheets were available.

3.12 The Committee took note of the statements and agreed to the Chairman's proposal to hold consultations on the HS2002 waiver.

4. Modalities and operation of the Integrated Data Base

(a) Status of submission of the required documentation (G/MA/IDB/2/Rev.15)

4.1 The Chairman stated that document G/MA/IDB/2/Rev.15 presented the situation of PC IDB submissions as of 17 September 2002. Since the document had been finalized the Secretariat had advised him that the following new submissions had been received: Costa Rica (imports 2001); Estonia (imports 2001); and Slovenia (imports 2001). He reminded Members that the deadline for

furnishing the 2002 tariff information was 30 March 2002, and 2001 trade information was 31 October 2002.

4.2 The representative of Australia stated that his delegation had submitted applied tariff data of 2002 and it aimed to submit the tariff concordances with respect to national correlation to the IDB very shortly. Australia's IDB submission did not include bound tariff data. However, his delegation had advised the Secretariat that this information was now available in Australia's consolidated tariff schedule submission. It had suggested to the Secretariat that this data be imported from that submission. His delegation had also informed the Secretariat that it should be able to obtain requisite import data for Australia each year under the agreement that the Australian Bureau of Statistics had with the UN and the WTO for the supply of trade data.

4.3 The Committee took note of the statements.

(b) Report by the Secretariat

4.4 The Secretariat introduced its report which is reproduced in Annex 1.

4.5 The Committee took note of the report.

5. Consolidated Tariff Schedules Database - Report by the Secretariat

5.1 The Secretariat introduced its report which is reproduced in Annex 2.

5.2 The Committee took note of the report.

6. 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)

6.1 The Chairman recalled that at the last formal meeting of the Committee on 12 June 2002, the Committee had agreed that the Secretariat should prepare more empirical examples as proposed in St Lucia's paper circulated as document G/MA/W/30. At its informal meeting of 26 July 2002, the Committee held a discussion on this subject on the basis of additional empirical examples prepared by the Secretariat which were circulated in document Job(02)/94. At the end of the discussion, it was agreed that consultations should be held to see how to advance the process. He drew attention to the fact that in accordance with paragraph 1.2 of document WT/MIN(01)/17 the Committee had to make recommendations to the General Council "as expeditiously as possible but in any event not later than the end of 2002."

6.2 His sense from the discussions held so far on the subject was that everyone had sympathy for the situation of small and medium-sized economies and the difficulties they faced. However, on how to proceed on this question there appeared to be divergent views. Some delegations were of the view that there was no need to continue discussing this subject in the Committee as it would be addressed in the context of the negotiations on agricultural products. For others, it was more of a systemic issue which should continue to be addressed in this Committee. His conclusion from the discussions was that the Committee could continue do some more work on this issue. In this connection, he proposed that the Committee suspend discussion on this item and that it meet informally in the near future to have a frank and thorough discussion of this item. The recommendations to be made to the General Council would be determined from the discussions at the informal meeting and any subsequent meeting on this subject and would need to be considered formally by the Committee at its resumed formal meeting.

6.3 The Committee agreed to the Chairman's proposals and suspended discussions on this agenda item.

7. 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

7.1 The Chairman recalled that discussions were held on this implementation issue at the Committee's informal meeting of 26 July 2002. A background paper by the Secretariat entitled "Negotiating Rights under Article XXVIII of GATT 1994" was circulated as Job (02)/93. Following the discussion, it was agreed that St Lucia would submit a paper to help advance the process. However, it had come to his attention that it might be difficult for St Lucia do this in the very near future. Additionally, the Committee needed to make a report to the TNC on this matter before the end of the year.

7.2 From the discussions he had held with delegations it appeared that there needed to be a better understanding of this issue and its implications, and a greater clarity of its scope. He proposed that while awaiting St Lucia's submission, those delegations interested in this subject put forward some thoughts on the matter in writing in order to advance discussions. To this end he proposed that the Committee suspend consideration of this issue in order to pursue discussions, and to reconvene in the future in order to consider its report to the TNC.

7.3 The Committee agreed to the Chairman's proposal and suspended discussions on this agenda item.

8. Transitional review under paragraph 18 of the Protocol of Accession of the People's Republic of China

8.1 The representative of China thanked the Chairman for giving him this opportunity to address the Committee on the implementation of China's commitments on market access under the framework of paragraph 18 of China's Protocol of Accession. He hoped that this introduction would help Members better understand China's efforts and achievements in this regard.

8.2 However, before his introduction, there were two points that he wished to add. The first concerned the information that China had provided for this transitional review. China had submitted to the Committee the information requested in Annex 1A of China's Accession Protocol, quantitative restriction notification and 18 rules and regulations relating to China's commitments in market access for goods and import licensing, namely implementation rules on administration of automatic import licensing of machinery and electronic products; measures on administration of import of machinery and electronic products; implementation rules on the administration of import quotas of machinery and electronic products; implementation rules on the administration of import of specific machinery and electronic products; interim measures on the administration of import quotas of natural rubber; implementation rules on the administration of import tariff rate quota of wool and wool tops of 2002; the quantity, conditions of application and allocation methods of import tariff rate quota of important agricultural products of 2002; interim measures on the administration of import tariff rate quota for agricultural products; implementation rules on the administration of automatic import licensing of important industrial products; measures on the administration of import licenses for goods; circular of the state development planning commission of the People's Republic of China no.3, 2002; measures on the administration of automatic import licensing of goods; the allocation methods for import quantity of automobile tires under import quota and application procedures in the year 2002; the allocation methods for import quantity of processed oil under import quota and application procedures in the year 2002; the allocation methods for import quantity of fertilizer under tariff rate quota and application procedures in the year 2002; decree on the adjustment of the import quotas (non-state trading) for processed oil, automobile tires and crude oil of 2002; the allocation methods for import

quantity of processed oil under import quota and application procedures in the year 2003; the allocation methods for import quantity of automobile tires under import quota and application procedures in the year 2003.

8.3 Secondly, the Chinese delegation at this meeting was large, comprising of experts from the State Development Planning Commission, the State Economic and Trade Commission, Ministry of Agriculture and Ministry of Foreign Trade and Economic Cooperation who stood ready to respond to Members' questions and exchange views with them in this meeting. This fully demonstrated China's sincerity in honouring the commitments made and the importance China attached to this transitional review process.

8.4 The past 15 years had seen China's lengthy and painstaking experience of negotiations for the accession to the WTO and the integration of one of the biggest developing countries in the process of profound social and economic reforms into the multilateral trading system. The accession had presented itself as a huge challenge not only to China but also to the WTO. During the accession negotiations, China had made extensive and far-reaching commitments under the intrinsic demands of China's economic reform and opening-up policy, as well as the requirements posed by the WTO rules and other Members. It was fair to say that the implementation of these commitments entailed enormous difficulties. He wished to make clear however, that China was a responsible country and had made its utmost efforts to open its market with a view to fully implementing its commitments.

8.5 His introduction would focus on 4 aspects. The first was the streamlining of legislative and administrative documents and practices in order to make them in line with the WTO rules. After accession, a massive action to enact, amend and annul laws, regulations, rules and administrative measures, totalling 2,300 pieces, was launched to bring the trade related policies and measures at all levels in China into conformity with WTO rules. As of April 2002, the Ministry of Foreign Trade and Economic Cooperation, for example, had annulled 381 administrative measures and 178 rules at the Ministry level. Apart from that, to ensure compliance with the commitments made in the accession process and for reasons of transparency, opportunities for comments were provided for in the laws, regulations and administrative measures before their implementation. The WTO Notification and Enquiry Centre had also been established as a focal point to provide accurate and reliable information on China's trade policy to WTO Members, enterprises and individuals both in China and abroad.

8.6 Secondly, regarding the tariff rate, on 1 January 2002, China had dramatically lowered the simple average of import duties from 15.3% to 12%, covering 5,332 tariff headings, which accounted for 73% of all the headings. Among them, the tariff rate for industrial products had dropped from 14.7% to 11.3%, while that of agricultural products (excluding fishery products) had dropped from 18.8% to 15.8%. Furthermore, China had also reduced the number of the products subject to provisional duties from 523 to 209. With all these efforts, China had fulfilled its commitment on tariff reduction made in the accession process.

8.7 Thirdly, on tariff rate quota, relevant government agencies in China had promulgated a series of rules and administrative measures governing the tariff rate quota (TRQ) regime for industrial and agricultural products including grain, cotton, vegetable oil, sugar, wool and wool tops and chemical fertilizer with a view to administering the TRQs in a transparent, predictable, uniform and non-discriminatory manner. These rules and administrative measures contained specific provisions on valid terms, administrative procedures and requirements, allocation (and reallocation) of TRQs etc. China had also provided relevant information to the WTO on provisions of volume and (or) value of the quota or tariff rate quota made available, reallocated quota or TRQ applied for, the volume and/or value of requests for the allocation or reallocation denied, fill rates for the quota or the TRQ etc. The new TRQ system implemented by the Chinese government had provided more extensive, stable and predictable market access opportunities for WTO members.

8.8 Lastly, he drew Members' attention to the efforts China had made with regard to non-tariff measures (NTMs) including quantitative restrictions. NTMs had been greatly reduced since China's WTO accession. From the beginning of 2002, a number of products including grain, vegetable oil, sugar, wool, cotton, chemical fertilizer, tobacco and its products, acetate tow, polyester fillet, acrylic fibre, polyester fiber, color television sets and TV kinescope, radios, tape recorders and their main parts, audio and video tape duplication equipment, refrigerators and their compressor, recording equipment and its key parts, air conditioners and their compressor, open-end spinning machines, wine, color sensitive material were no longer subject to either quota or import licensing. As for automobile tires, motor vehicles and their key parts, import quotas and licensing administration of part of their HS headings had been eliminated. China had also eliminated NTMs on machinery and electric products under 159 tariff headings according to the commitment in Annex 3 of the Accession Protocol. To speed up the process of trade liberalization, China had removed 3 products (84743100, 85291090, 90311000) from NTM administration three years ahead of the time designated in Annex 3. In 2002, the number of products subject to import licensing administration had been reduced from 35 in the previous year to 12, and the products in 8 digit tariff headings subject to import licensing administration was reduced from 502 to 170.

8.9 The allocation and reallocation of the quotas had been administered in line with the provisions of the Agreement on Import Licensing Procedures and the Working Party Report (WPR) on the Accession of China. Examples, among others, were natural rubber, machinery and electronic products, processed oil and automobile tires. The import quota quantity of natural rubber in 2002 was set at 567,000 tons, which was in strict conformity with the growth rate stipulated in Annex 3, and this quota quantity had been allocated in full. The annual 15% growth rate of quotas for machinery and electronic products listed in Annex 3 had been carried out faithfully. And the import quota quantity for processed oil and automobile tires, based on China's committed level, had also been fully allocated. Now relevant administrative bodies were processing the unused quotas returned as well as the applications for reallocation.

8.10 The implementation of China's commitments made in the WTO accession process was an integral part of China's opening up and economic reform policy. China had been faithfully fulfilling its commitments which well reflected China's relationship with other Members, on a friendly and mutually benefiting basis. China, as a developing country, was facing enormous difficulties and capability constraints in implementing the WTO Agreement and honouring its commitments. It was therefore China's sincere hope that WTO Members would adopt a long term approach and pragmatic attitude toward China's implementation process.

8.11 To conclude, China believed that this review was an opportunity for effective information exchange and clarification between China and other Members. It was hoped that this review would facilitate China's implementation process in a proactive manner with helpful comments from other Members.

8.12 The representative of the European Communities thanked China for the information circulated in document G/MA/W/39 and for the responses provided. However, not all her delegation's points had been addressed, and her delegation was keen on obtaining replies. She was extremely pleased to see the number of delegates from China attending this meeting which demonstrated the importance that China attached to this exercise. She was also pleased to hear the statement by China that it was a responsible country keen on fully implementing its commitments. Those commitments had enabled China to accede to the WTO. She was also very impressed by the effort made by China during the year. Translating all the provisions and legislations was not an easy task. What remained were problems which required solutions more than responses. Although there were some positive instances such as the one concerning the management of tariff quotas on fertilisers, her delegation had some specific concerns, and she wished to begin with tariff commitments. It had been very difficult for her delegation to carry out a systematic check of such commitments because it did not have an electronic copy of China's tariffs. This had meant undertaking a manual check which was not easy.

Generally, she was satisfied with what she saw. She had not seen big problems, although her delegation had thought that on 1 January 2002, the phased-in tariff rate committed to for 2002 should have been applied but that had not been the case. She wished to know why this delay had come about.

8.13 Next, she wished to address the issue of quotas, more particularly in the area of cars. Admittedly, this might be an issue only because her delegation had very scant information from China, and she was ready to stand corrected if the Chinese authorities could provide data. The allocation for quotas for 2002 had been delayed, and her delegation did not understand why. Moreover, her delegation failed to understand why the Chinese authority seemed to include CKD (completely knocked-down kits) for vehicles and SKD (semi knocked-down kits) for vehicles as part of the quota. This was an issue that needed to be addressed. Her delegation had a problem concerning the issuing of licenses for those who wanted to distribute both local cars and foreign cars together. Moreover, her delegation had problems concerning certification and classification. There were certain parts of cars that got systematically classified in the high value section of the classification.

8.14 On quotas in general, there were a series of elements that did not tally with what were in the minutes of the WPR especially the timing for the issuance of licenses. The timing did not seem to correspond to what was agreed in paragraph 129 of the WPR. Sometimes extensions of licenses were not mentioned in the regulation. The allocation of these licenses did not occur at a central focal point, but there seemed to be a two-tier system where there was the central authority and a local one. This was inexplicable given the commitments entered into by China, but it was also extremely perplexing in terms of transparency. Once again this might be the result of a lack of information, however, these issues had been raised in reports by people working in China. The provisions which were implementing the accession commitments undertaken by China contained elements which concerned the proportion of quota applied to new applicants. In this regard, there seemed to be certain discrimination when provisions provided for priority to be given to "applicants with strong productions, sales and service abilities." Additionally, an applicant who did not exploit his quota to the full should have a "proportionate reduction" but the regulation issued by China used the word "deduction". The mechanism that her delegation had thought had been agreed to during the accession negotiations was not present. She had other more specific queries concerning parts and machinery, but at this stage, she preferred to focus on the main difficulties. Her delegation had not discerned in the regulations issued by China a clear will to abolish domestic content requirements. There were new arrangements but they did not seem to live up to China's commitments. There was also the problem of separate distribution channels which had nothing to do with quotas but on which a separate discussion was required. Her delegation would be extremely grateful to the Chinese authorities for a clear explanation on all these aspects.

8.15 Another area of concern for her delegation was export restriction. As regarded export restrictions, she noted that Sections C. 1 and 2 of the WPR basically dealt with these issues i.e. export charges, taxes, export licensing etc. Her delegation was extremely satisfied to see China signing up to a long list of commitments concerning export restrictions in the accession negotiations. China had listed in Annex 6 some 84 products which were subject to export duty. However, the problem was that certain other products which were not part of the list were subject to a restriction. In this connection, she wished to refer to refractory bauxite under HS heading 2606. China which was a net exporter and supplier of brown fused alumina was somehow applying export restrictions to refractory bauxite. This problem was becoming urgent and her delegation would be extremely grateful if the Chinese authorities could provide clarifications as well as solve the problem. The treatment of another raw material, copper, had raised concerns in the EC. The VAT regime launched in China in 2000 provided for a VAT free import concession. If one were to make a rough calculation, this concession actually covered the cost of processing. The fact that the concession was applied to increasing annual quotas for copper concentrates demonstrated that the regime being used was possibly running foul of China's commitments. Here, the Chinese authorities in addition to clarifying

the matter should see if such a system was in accordance with their obligations in terms of the application of internal taxes to imports.

8.16 Tariff problems also existed and they seemed to stem from the fact that the Chinese authorities had opted to use specific duties rather than *ad valorem* rates. That was not a problem in itself. However, it became a problem when the bound *ad valorem* rates in China's schedule were breached and this had been the case for some products, including for Chapter 37. She would not go into details. However, the reports received from industry for some sectors were extremely worrying.

8.17 On the questions received from the Chinese authorities, one concerned the allocation of a quota increase that was decided in the accession negotiations. There was a slight delay in this allocation of the 5% which was the increased amount. A regulation had already been drafted to take care of this increase and in this respect, both the increase for 2001 and 2002 together would be taken care of. This regulation was in its final stages but it was just the increase that needed to be settled. Her delegation was intended to provide the reply in writing.

8.18 What China was doing was impressive, and solutions would be found for these problems, if they were truly problems. For the time being, she was still missing information but from the reports received, it appeared that these problems existed and in particular the problem of quotas for cars was especially of concern to her delegation. Her delegation was willing to cooperate and was ready to provide information or details. At the same time, her delegation hoped to have China's replies by a date which would enable her delegation to study the replies and to complete the TRM by the end of the year. She would propose a date towards the end of October 2002. This would provide enough time to the Chinese delegation to provide information and to respond to questions of substance that had been raised. Throughout the exercise there had been a sense that there were gaps in information. However, she understood that there were problems of translation for the Chinese authorities.

8.19 Another representative from the European Communities stated that he wished to draw Members' attention, particularly China's attention, to the situation resulting from the application of the MFN clause to exports from French overseas territories. The clarification of the conditions for the granting of MFN to overseas territories was indispensable. These were the overseas territories of the French Republic with whom the Community had close association relations. The French delegation would be introducing this specific point which it would be addressing to the Chinese authorities in order to clarify the situation as to the overseas territories. However, this concern was shared by all of the Community and wished to stress solidarity in this respect.

8.20 The representative of France thanked the representative of the European Communities for the solidarity expressed regarding the overseas territories on behalf of whom he was speaking now. The overseas territories were not part of the EC but they did have very close ties with the Community. Although it was not an exhaustive list, he was referring to the following territories: New Caledonia, Wallis and Futuna, French Polynesia in the Pacific, the French Southern and Antarctic lands, Mayotte in the Indian Ocean, St Pierre and Miquelon which were next to Canada. As France was a founding Member of the WTO, these territories were subject to the rights and obligations in the WTO. China's accession to the WTO should have meant the automatic granting of most-favoured-nation treatment to the overseas territories of the French Republic. Yet this had not been the case so far, in particular, for exports from New Caledonia to China. It emerged from bilateral contacts with the Government of the People's Republic of China that China would be prepared to accord the benefit of the MFN clause to these territories and exports from these territories as of 1 January 2003. So, he requested China to confirm that it would indeed be according, at the latest, as of 1 January 2003 most-favoured-nation treatment to products from the overseas territories of the French Republic, and in particular from New Caledonia.

8.21 The representative of China stated that with regard to allocation of the car quota, he recalled that China had already allocated the quotas of car and the key parts of automobile according to its

commitment in the accession protocol and WPR. On the components of car and key parts of the automobile, the value for the quota of automobile and the key parts included CKD vehicles and SKD vehicles because China had negotiated this. The value of the quotas was based on the import statistics from the year 1995 to 1997 which incorporated automobile parts and CKD vehicles and SKD vehicles. From January to August 2002, China had imported a lot of automobiles. The total number according to China's customs statistics was worth US\$4.8 billion which was 32% higher than that in the previous year. China had already fulfilled its obligation regarding the allocation of the quotas on automobile and key parts and according to China's statistics the total value of China's quota for automobile and key parts was US\$7.9 billion this year and the real import would reach this limit. The Communities had made a reference to the so-called two tier system for the application for the quota allocation. No two tier system existed. The agency at the provincial level had the function of assisting the central administration to collect information and to verify the information presented by the applicants. Because China was so huge, in order to guarantee the efficiency and accuracy for the allocation of the automobile quota and other quotas, this was an effective way to guarantee allocation of quotas in a timely manner by the central government. On the use of the term "deduction" of quota, in relevant regulations, he recalled that in the accession negotiations this issue was discussed at length in order to guarantee the full utilisation of quota. Many Members had suggested that China's laws and regulations should have a penalty clause if a quota holder could not fulfil his import. So pursuant to the request of WTO Members, China had included such a clause in the relevant regulations. With regard to local content requirements, he could confirm that after accession China had eliminated this requirement because it was inconsistent with the TRIMS Agreement. On export restrictions, the EC representative had referred to Annex 6. To his knowledge Annex 6 only dealt with export tariffs, not export licensing. In the WPR, specifically paragraphs 157 to 165, the representative of China had clarified China's position on export restrictions. In line with Article XX and XXI of GATT 1994, it was legitimate for China to maintain export restrictions for certain products, so it was China's legal right. For the two specific items, China would check to see if they existed in the list of export licencing products which, in fact, had been provided to the WTO. China could confirm that if these products were not on the list then they were not subject to this export licencing restriction. But if they were on the list they were subject to this restriction. The representative of the Communities had also mentioned VAT issues. China applied VAT on a non discriminatory basis. Both imported products and domestically produced products were subject to the same VAT so there was no problem of national treatment. On the tariff issue, with regard to the relationship between the specific tariff and *ad valorem* tariff, China shared the view of the EC that the use of these two kinds of tariff was not a problem. The problem was if the specific tariff was higher than the bound *ad valorem* rate. His delegation would discuss with relevant Members this issue of specific duties outside the TRM framework at a more technical level. China regretted that the Communities had delayed implementation of the growth rate of the quota, and urged the Communities to take action to implement the commitments they had undertaken in China's Accession Protocol. On the issue raised by France, and the Communities on the MFN status for overseas territories of France, China had no problem granting MFN treatment to any WTO Member. With regard to the situation of overseas territories, this was a new issue. China had spent some time following accession to consult with other Members and the WTO Secretariat on how to deal with this issue. Now, he could confirm that China would grant most-favoured-nation treatment to products from the overseas territories of the French Republic, including New Caledonia as of 1 January 2003. With regard to the last comment made by the Communities concerning written replies, according to China's understanding of the TRM, China had no obligation to provide responses in written form. In fact, before this TRM, China had received a lot of questions from certain Members. These questions had helped China in its preparation of relevant information for the WTO. His delegation believed that the information submitted by China addressed appropriately the concerns raised by these Members. Should additional questions be raised beyond what China had covered in its submitted information, he would provide the necessary answers during the course of this review.

8.22 The representative of the European Communities thanked the Chinese delegation for its willingness to respond to her questions. As regarded the issue of the quota, it was obvious that

China had allocated quotas but they had been allocated with a lot of delay. China had promised that for the year 2003, China would publish the quota allocation by mid-October 2002. Moreover, there was a complete lack of transparency in this exercise for quotas. She would have liked to have greater details concerning quota requirements remaining in effect after China's accession, applied tariffs, trade data etc (bullet points on page 2 of G/MA/W/33). It was important to get this exercise right from the start. As regarded CKD and SKDs, China was right to classify them with parts, but not with finished vehicles, and this was precisely the point. Her delegation did not understand how this classification came about. As regarded local content, China had indicated that whatever was required had already been done. However, she was not convinced. There were two sets of concerns to which she had already referred in her introduction. There were concerns which were associated with the absence of the right type of information and which might disappear once such information was provided. Then, there were concerns which were not only a matter of providing good replies or responses, but also a matter of solving the problem. In this respect, for all the issues that she had raised, she unfortunately had not found satisfactory replies in the paper submitted by China. In that paper China was quoting what she would describe as the success stories of implementation. Now, there were other problems which had been brought to China's attention and she hoped that by the end of October 2002 her delegation would have a reply to these problems if not a solution. She was pleased to hear that China would see whether the list of 84 products included the products that she had mentioned. As regarded the issues pertaining to national treatment, she was sceptical of China's reasoning. In any case, she was grateful for the willingness with which the Chinese delegation had responded to her request for clarification.

8.23 The representative of France thanked the Chinese delegation for the very precise and clear reply concerning his delegation's question.

8.24 The representative of Japan thanked the representative of China for his introductory statement which was useful and requested China to circulate the statement. In accordance with Section 18 of the Protocol on the Accession of the People's Republic of China, which set out the process for the TRM, Japan wished to make the following comments on the issues of China's market access. Japan welcomed China's efforts to meet its commitments under the WTO Agreement and its Protocol of Accession to the WTO. Japan understood that China had been obliged to change a number of trade-related laws and regulations to implement its obligations since becoming a WTO Member at the end 2001. Such efforts undoubtedly required a significant amount of time and human resources. Japan generally welcomed China's efforts so far to implement a wide range of commitments under the WTO. Japan held the view that the TRM would contribute to China's implementation of WTO rules and its Accession Protocol, if operated in a meaningful and productive manner. Japan had submitted its comments one month before this meeting and in the comments Japan had requested China to respond in written form in advance of the meeting. Japan intended to make this TRM meeting as meaningful as possible by clarifying facts and China's views on some market access-related issues beforehand. However, it was regrettable that China's response had not yet been provided, so Japan once again requested a prompt written response from China. He wished to provide a brief outline of some of the most important issues for Japan which had also formed part of the questions submitted to China a month ago.

8.25 On tariffs: (1) concerning certain photographic and cinematographic goods, while China had made tariff commitments regarding 35 photographic product line items in HS37 on an *ad valorem* basis, those items were currently subject to specific import duties (levied on a yuan/square meter basis), which resulted in a tariff burden that was excessive of the bound rate. Japan had requested that those excessive duties be lowered to the level of the bound rate in an expeditious manner;. (2) on beer, while China had committed to an *ad valorem* tariff rate on beer in HS 22, it was currently levying a specific duty. Japan held the view that China should observe the bound rate in line with China's Schedule of Concessions and Commitments on Goods.

8.26 On quantitative restrictions on imports, and on (1) import quotas on motor vehicles, the Communities had already referred to this issue but Japan wished to also discuss this issue because it was important. China had announced that \$7.9 billion was allocated for the 2002 quota, but the value of automobiles, engines and auto bodies imported from April to July 2002 was \$1.3 billion, according to China's Customs Statistics. In response to the EC, China had referred to \$4.8 billion. There was a difference in the numbers and his delegation wished to have a more detailed breakdown of this figure. Japan had received information from several sources in the Chinese automobile market that Chinese consumers were showing increasing interest in imported automobiles. Japan was concerned about whether allocation of import quotas for automobiles and key parts was implemented appropriately. Japan wished to review whether or not China was in conformity with the provisions of the WTO Agreement and its Protocol on the Accession, after receiving replies to the following questions. First, Japan requested China to provide the following information with respect to Article 1, paragraph 4 and Article 3, paragraph 5(a) of the Agreement on Import Licensing Procedures: (1) the eligibility of the applicant, and in particular, the relationship to trading rights; (2) information (both on the basis of the application and the actual allocation) on the value of import quotas for complete vehicles, CKD, and parts, broken down, by country of origin, engine displacement, and company; (3) according to paragraph 4 of "Implementation Rules on the Quota Administration on Imports of Machinery and Electrical Products", the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) was responsible for examining and supervising the status of allocation of import licences. Japan wished to have relevant information on the current status of the import quota allocation distributed by the following entities: all provinces, autonomous regions, municipalities directly under the central government and those with independent budgetary status, coastal open cities, and external economic trading management departments of special economic zones and State Council-related machinery/electrical product import/export administrative offices; (4) according to paragraph 129 of the WPR, August was the application period, and allocation would be made no later than 60 days after closure of the application quota. Japan requested confirmation that the quotas for 2003 would be allocated by 30 October 2002. Second, on the reallocation of unused quotas, Japan requested that unused quotas for this year be returned and reallocated as specified in the WPR. Third, regarding concern over priority consideration to new entrants in quota allocation, Japan requested that China give priority consideration to new entrants in allocating quotas, as it had committed to. So, Japan wished to have information on the actual record of the allocation to new entrants as evidence. Fourth, regarding rules concerning the quota system for motor vehicles, Japan requested China to specify the following points in its "Implementation Rules on the Quota Administration on Imports of Machinery and Electrical Products", in order to embody the scheme provided for in the WPR. The following five elements needed to be included in the regulation: (1) priority consideration to be given to new entrants, enterprises with foreign ownership equal to or less than 50 percent, and enterprises with foreign ownership greater than 50 per cent in allocating quota; (2) an import licence to be issued in most cases within three working days, and in exceptional cases, within a maximum of ten working days, after a request for the licence; (3) an import license to be extended once, upon request, for up to three months, if the request was made before 15 December of the current quota year; (4) the procedures for requests for extension mentioned in (3) above; and (5) methodology of quota reduction for holders failing to return unused quota, and the date of reduction. Fifth, on the extension of period for quota allocation, paragraph 129 of the WPR provided that import licenses would be extended once, upon request for, up to three months, if the request was made before 15 December. Japan requested China to ensure that for this year, the effective period for all quotas and related import licences be extended by three months, since the allocation of the quota had been delayed for three months. Finally, sixth, on import prohibition policy of used goods, Japan requested China to modify its import prohibition measures on used industrial electric products to conform to the WTO Agreement.

8.27 On trading rights, Japan had a strong interest in the smooth implementation of the phased liberalization of trading rights to which China had committed in its Protocol of Accession. Japan requested China to announce the schedule for liberalization and related procedures well in advance. He added that all the issues that had been mentioned related to questions that Japan had submitted to

China one month ago. Since no replies had been received, his delegation had had to make clear its position on these issues. His delegation had not received written responses to the questions submitted to China, and Japan considered it necessary to conduct the review based on an examination of China's responses in written form. Therefore, Japan requested China to address these issues one by one in today's meeting and give responses to Japan's comments. Furthermore, Japan wished to have additional opportunities to further clarify facts and exchange views based on today's oral responses and written replies to the questions to be supplied later. Japan therefore, requested that the TRM process be continued after today's meeting.

8.28 Finally, he wished to refer to the information provided by China in accordance with Annex 1A of the Accession Protocol. Since, Japan had only received it at the end of last week, his delegation had not yet examined it adequately. However, it was regrettable that the description of the implementation of quota allocation in 2(c) did not include adequate concrete information. Japan wished to revert to this point after examining it in more detail.

8.29 The representative of China stated that on the question from the Communities on the delay of implementation of the quota allocation, China acknowledged that the allocation of quota for the year 2002 was delayed when compared with China's commitment in its Protocol because 2002 was the first year of China's accession. China had had a heavy burden to draft and promulgate the regulations supervising the allocation of these quotas. There was also the obligation to provide a period of time for the public to comment on these relevant regulations. There had been a dilemma in that Members were asking China to promulgate those regulations in a timely manner, but the private sector was requesting sufficient time to examine and comment on these regulations. At the beginning of this year, China had received a lot of comments from different WTO Members and different enterprises both in China and abroad. His authorities had incorporated into the regulations many of the constructive and useful suggestions. For the implementation of the quota allocation, as this was the first year, a period of time was required to allow applicants to get used to this new regime. As China had already committed to abolishing the so called two tier system, the authorised agency needed a period of time to get familiar with its new functions, to collect the information and verify the information provided by the applicants. As a result of this, the allocation of quotas was delayed. However, he could confirm that China would allocate the quotas of next year within the time-frame that China had committed to in its schedule.

8.30 With regard to the questions raised by Japan, he reiterated China's position that written replies from China went beyond the mandate of this review mechanism. He had no problems providing oral responses. He could agree to Japan's request that China's opening statement be circulated. On tariff issues, Japan had referred to the application of specific duties on photographic and cinematographic goods. The basic point was that if the specific duty was equivalent to the bound *ad valorem* duty, there was no violation of China's commitments as contained in its schedule of concessions. If Japan had specific questions concerning the price based on which a specific duty was calculated on photographic products or beer, China had no problem having a technical discussion. In fact, China's experts were prepared to do that. He urged Japan to take a constructive and positive approach to deal with these specific issues. With regard to quantitative restrictions on automobiles, he had quoted recent statistics obtained from China's Customs. If Japan was interested, more specific data could be obtained from China's Customs because all this information was published. He could also confirm that allocation of quotas would be finalized within sixty days. In China's circular of the allocation of quotas, China had already stipulated that this year's quota for electronic machinery could be extended to the first three months of the next year, but China had no intention to extend the return of unused quota. During the process of allocation, China had already reserved a proportion of the quotas for new entrants, in order to fulfil its obligations in the WPR. With regard to the suggestion made by Japan that China incorporate the language in paragraph 130 of the WPR, China had already incorporated these principles in the Implementation Rules of Administration of Import and Export Machinery and Electronic Products. For example, Articles 5 and 6 contained elements of paragraph 130 of the WPR. However, it was not necessary to copy the language of the WPR into China's

domestic regulations. China's obligation was to maintain the consistency of its domestic laws with the WPR and the Accession Protocol. If there were any inconsistencies, they could be pointed out. For the used goods issue, it was legitimate for China to have restrictions and prohibition for several used goods in order to protect human beings. In recent years, China had imported some used vehicles from Japan and there had been many accidents in China. So it was legitimate for China to take action to avoid these accidents from occurring again. On the last question on trading rights, since its accession China had begun to liberalize trading rights in accordance with its commitment in the Protocol. During the three-year transitional period, China would continue its efforts to liberalize trading rights and after these three years, China would grant trading rights to all enterprises in China.

8.31 The representative of the United States thanked China for its submission received the previous week. It represented a good start as an overview and her delegation welcomed efforts that China had made to be responsive at this meeting and realised that this was indeed a huge task. Her delegation had forwarded China's document to Washington for review and her delegation would also submit to China as soon as possible a few additional questions or requests for clarification. Once again, her delegation would find it useful to have the responses in writing. Her delegation had heard China's views on this matter, but continued to believe that it was a challenge for those Members which had to try to assess the situation to do that without written responses. It was a challenge for the Committee to try to develop a report and it was an enormous problem for Members to try to figure out how to ensure that answers to questions had been obtained. Many of the questions were very detailed and went beyond the general responses that China had provided at this meeting. It would be difficult for her delegation to understand how to proceed. Her delegation had thought that it was operating on the basis of receiving written submissions and written information in advance, and written responses to its questions. She did not know how one could receive information in advance if it was not in writing, so that was a matter that her delegation continued to be concerned about. Her delegation's questions focused on the type of information that it thought was most relevant to China's implementation of the WTO Agreement and China's Protocol that was required in this TRM, which was an essential part of China's accession package. China's agreement to provide information under this review was a part of that commitment, and again she requested that some mechanism be found to ensure that detailed responses which would allow an assessment be provided. Her delegation welcomed the additional information that was provided by China the previous week. However, it was so late that her authorities had not really had time to digest it. So her delegation was hoping to have that additional time, and to have some other means to try to submit additional questions to China. Her delegation noted from several responses that China had given that it would be willing to follow up with certain questions bilaterally, and while her delegation always welcomed the opportunity to discuss these important issues bilaterally, it was her delegation's strong view that both the questions and answers submitted in the context of this review should be made available multilaterally and should be reflected in the permanent record of this discussion. Other Members might have an interest in knowing China's responses to the questions posed by the US delegation and her delegation certainly had an interest in knowing China's responses to some of the questions raised by others, and indeed the follow-up answers that China might be providing.

8.32 In its submission of 30 August 2002, her delegation had raised 22 questions. Most of these questions related to what her delegation saw as some inconsistencies between the commitments it had understood that China had made and detailed provisions of the regulations. In the area of fertilizers, her delegation shared concerns expressed by a number of Members on the delays in allocation that had occurred and wanted to try to ensure that there was no repeat of the challenge that was faced this year by US traders. It was very costly in a number of instances to US traders and while her delegation understood that in the first year there were some difficulties, her delegation had some concerns about dates that were actually built into the regulations as being inconsistent. She suggested that perhaps China might be able to reflect upon those areas where her delegation saw differences in the dates of the commitments and differences in the regulations and give her delegation a response on how it planned to remedy this situation. Her delegation also saw an instance where China had based allocation of TRQs on end-user demand and consumer requirements, and her delegation would be

interested to see how this reconciled with what her delegation believed to be China's commitments. There were issues relating to rights to trade and how quota holders without trading rights identified potential importers and were able to function in the system. Approximately half of her delegation's questions were in the area of fertilizers and her delegation would welcome China's more detailed responses to those questions in the discussions at this meeting. Her delegation had also a number of questions with regard to industrial quotas. She appreciated that some information had been provided on the area of automobile quotas, however, her delegation shared some of the same concerns as Japan and the EC with regard to administration of quotas in the automobile area. While her delegation noted that some of this information was provided, it felt that there was more relevant information that her delegation would like to have from China. In another area, her delegation noted that China committed to publish all measures affecting trade in goods, services, TRIPS, the control of foreign exchange, and to provide a reasonable period for comment to those measures that were implemented. Her delegation wished to have some more information on China's plans for ensuring that, in the future, all of China's Ministries would publish and provide a reasonable period of time for comment on trade-related measures prior to their implementation. China had agreed to a very detailed procedure for quota allocation, and this was of keen interest to the US and yet it did not seem to be present in the regulations, in particular that relating to Implementing Measures for Quota Management of Machinery and Electrical Product Imports. Her delegation sought confirmation that China planned to fully reflect these provisions in its regulations and to ensure that the quota was allocated in accordance with those provisions. Also with regard to the Regulations on Implementing Measures for Quota Management of Machinery and Electrical Product Imports, there was a provision which guaranteed the need of scientific research, education, culture, sanitation and other social causes, and while the US respected China's interest in pursuing educational and other social objectives, her delegation believed that Article 9.1 went well beyond the criteria for quota allocation that China had agreed to in its WPR. Her delegation wished to have clarification on this point as well. China had committed that any entity that would possess the right to trade in the quota year should apply for a quota allocation and license to import such products, but her delegation saw that there were additional restrictions that might apply to this quota allocation that were not provided for, for example the question of management right, and without an adequate definition her delegation wished to have further clarification on that particular point. Her delegation was also concerned with the issue of multiple application requirements because it believed that China had specifically committed not to impose such application requirements. Her delegation had highlighted that such a situation appeared again in the Implementing Measures for Quota Management of Machinery and Electrical Products and her delegation wished to have clarification on how this might be rectified. Article 13 of the same implementing measures prevented a quota holder from making changes to trade means, use of products, name of products, price, equipment conditions, etc. after an import licence had been issued. Her delegation did not understand how these provisions were in conformity with China's commitments. Her delegation understood that these would not be separately reflected and that as long as a quota holder stayed within the relevant quota category, all the rest was subject to commercial terms of trade, so clarification there would be helpful. Her delegation, in fact, wished to have China's responses to points raised in the area of quota allocation.

8.33 With respect to the several other areas, such as value-added taxes applied to certain fertilizer products, her delegation believed that there was a partial rebate for domestic producers of urea, and it had created a discriminatory situation. Some clarification on this issue would be useful. With regard to consumption tax applied to imported goods, her delegation had not seen an amendment of the provisional regulations on consumption tax and believed that China was still using a different tax base to compute the consumption tax for imported products and domestic products. If this was not the case, her delegation wished to have information on that, because otherwise there might be a GATT Article III problem. It would be useful for China to focus on this issue and remedy it. In the area of ITA, China had committed that upon its accession it would participate in the ITA and eliminate tariffs on all information technology products. China had not yet become a participant in the Committee, nor had it implemented its commitments in accordance with the ITA, because it appeared to be requiring importers to obtain end-use certificates from the Ministry of Information Industries on 15 ITA

products in order to receive ITA reduced or duty-free treatment. The experience of all ITA participants was that ITA coverage was determined on the basis of classification only, not through the use of end-use certificates, so her delegation sought information on China's intentions in that regard. Finally, with regard to the questions already raised, she noted with interest that China was about to submit its IDB information and the updated information was welcome. This information was very important for the negotiations. She had some additional questions: 1) how would China ensure that any entity that had the right to import any product might serve as the importer for non-state trading TRQ products, and that the importation and delivery of the product to the quota holder could be completed without any involvement of the state trading enterprise? A further question was how would China ensure that all entities who used or distributed fertilizer might apply for a TRQ? Whether an entity wished to apply for a TRQ reserved for importation through state trading enterprises or non-state trading enterprises, the requirements should be the same. For example, foreign enterprises should be able to apply for and receive TRQs reserved for importation through either state trading enterprises or non-state trading enterprises. She welcomed very much the opportunity to hear China's responses to these detailed questions. They were very important in determining how China was proceeding to implement its commitments. There was enormous work underway in China and her delegation appreciated that this was a very difficult task, but also felt that in order to make this review a valid process, her delegation had to have thorough answers to these questions in order to be able to assess and to help where it could.

8.34 The representative of China stated that he had already indicated his delegation's position with regard to requests for written replies from China. For the other specific issues raised by the US beginning with the delay of allocation of fertilizer quotas, he had already explained the reasons for the delay and had informed the Committee that the new circular had already been promulgated, so next year's allocation would take place without delay. About the discrepancy between China's commitment and the date for the allocation of the quota, China took note of this issue and would need to check on it. As far as he was aware, there was this discrepancy because his authorities had wanted to ensure consistency between the allocation of fertilizer quotas and the regulations on import and export of goods. For the allocation of these fertilizer quota according to end-users' interest, there was no discrepancy between the interest of end-users and the overall balance of national economic development. It was the language of this regulation. For the public comment regarding machinery and electrical products, as he had mentioned earlier, China had been in a dilemma after accession. On the one hand China had needed to promulgate this regulation as soon as possible in order to implement it on time, on the other hand a period of time needed to be reserved for public comment. For fertilizer, for agricultural TRQ regulations, China had already reserved a period of time for public comment but machinery and electrical products, in order to implement the regulations on time, on 20 December 2001 China had promulgated the implementation rules on the administration of import quotas of machinery and electronic products. However, before the promulgation, hearings were held in the different agencies of China. In the future, China guaranteed that for any regulation concerning trade policies it would provide a period of time for public comment. With regard to the criteria regarding scientific research, education, culture, sanitation and other social good causes contained in the Implementing Measures for Quota Management of Machinery and Electrical Product Imports, no preferential treatment was provided to this kind of a request under this criteria. The next question was about paragraph 130 of the WPR. In fact, paragraphs 128 and 130 of the WPR should be linked. China had stipulated the criteria for the allocation for electronic and machinery products based on those two paragraphs. So if a question was raised on the basis of paragraph 130, it was worth keeping in mind paragraph 128. The criteria regarding the administration of electronic and machinery products was to guarantee the maximum utilisation of the quotas. With regard to the local authorized agency for the allocation of electronic and machinery products, he repeated that a two-tier system did not exist in China. The authorised agencies had only the function of collecting information and assisting the central Government to verify the information provided by applicants. China was so huge that if all applicants went to Beijing, to MOFTEC, to obtain quota allocations, it would be difficult for the central Government to verify the situation. It would result in a delay in the allocation and up to three or four months would be required to allocate those quotas. That was why authorised agencies

were asked to assist the central Government in verifying the situation and to collect the basic information. This was a measure adopted by the Chinese Government to guarantee the timely allocation of the quotas and the implementation of its commitments according to the Protocol and the WPR. The US had also mentioned that Article 13 of the implementation rules on the administration of import quotas of machinery and electronic products prevented quota holders from changing the contents of this import licence after its issuance. In fact, quota holders could apply to make changes, and this was not a burdensome procedure for the quota holders. Quota holders were requested to follow this procedure so that customs could supervise these imports, obtain the right information and the statistics. On the issue of the fertilizer VAT issue, actually his authorities had discussed this issue bilaterally with the United States. His authorities were not convinced by the argument raised by the US that the different fertilizers (MAP, DAP) were competing in the same market. China had domestic production of the two fertilizers, so the same policy was applied to the product, no matter whether it was imported or made in China. So, there was no violation of GATT Article III. For the consumption tax, his delegation was told by the Ministry of Finance that China provided the same treatment to domestic products and imported products with respect to consumption tax. The formula applied to calculate the consumption tax was equivalent to both domestic products and imported products. So once again there was no violation of GATT Article III. On the ITA, China regretted that it could not participate in the ITA Agreement. Since China's accession to the WTO, it had already implemented its commitment under the ITA. However, some Members had blocked China becoming a participant to the ITA. It was a strange situation in that if China could not enjoy the rights of this Agreement why was it being asked to implement the obligations. Nonetheless, China had already reduced tariffs under the ITA. On the question raised by the US on the end-use certificates for 15 ITA products, this was a measure to assist the customs to verify that those products were subject to the scope of the ITA. It was only a technical procedure to ensure proper implementation of the ITA, so China did not believe it to be inconsistent with China's commitment under the ITA. Regarding the IDB, China would submit its schedule in electronic version this week, so it could help Members analyse China's tariff schedule. On non-state trading enterprises, during China's accession negotiations, China had discussed the state trading issue, trading rights issue and the distribution issue with Members. It was agreed that for three years after China's accession, China would maintain the system of approval for trading rights, i.e. importing rights and exporting rights. Within five years China would have a different kind of restriction on domestic distribution in its services schedule. If enterprises had import rights but no distribution rights, they could import products but could not distribute their products in China.

8.35 The representative of Canada thanked China for its efforts in meeting the challenges relating to this first year of China's membership in the WTO, and in terms of the regulatory transition period and adjustments that needed to take place. He welcomed the intervention and initial statement made by China in which China had renewed its commitment to fully implement its commitments as part of the Accession Protocol. Canada had submitted two very specific questions in document G/MA/W/36, one on tariff and value-added tax preference for frontier traffic and the second one on the variable duty rate for newsprint. Canada also had an interest in the questions raised by other Members and the communications they had submitted prior to the review mechanism. Canada had examined the information provided by China in document G/MA/W/39, but had not had a chance to review all the information provided with respect to the TRM exercise that would take place in the Import Licensing Committee. However, the intervention made by the Chinese delegation, and the information submitted today had not provided responses to Canada's two questions. So his delegation would be grateful if China could provide the responses to those questions in the context of this review. If it was not possible to provide answers at this meeting, he requested China to indicate in which form and under which time-frame it would be able to provide answers to Canada's questions. His delegation noted that in certain instances China had made reference to the possibility of discussing certain questions raised in the context of the TRM bilaterally. As Canada had an interest in several of the questions raised by other delegations, his delegation would try to build on what the US had said previously, that questions raised multilaterally could be addressed in a multilateral context. This TRM

was a very useful exercise, not only for China but for all WTO Members, and Canada looked forward to continuing this dialogue with China.

8.36 The representative of China stated that on Canada's second question on variable duties on newsprint, he could confirm that from 1 January 2003, China would apply the *ad valorem* tariff to these tariff lines. China recognized that this was a commitment made by China in its market access schedule that China would replace the variable duty upon accession. This was different from the case raised by Japan on the photographic products, because on those products China had not made a specific commitment. With regard to frontier traffic, border trade, according to China's understanding this issue should be dealt with at the Council for Trade in Goods, but his delegation had no problem in providing the information here. Canada had raised the following question: "What did China consider to constitute the frontier area? What are its geographical limitations?" Currently more than 130 frontier counties in ten frontier provinces and autonomous regions were subject to this frontier area. On the second question, the goods used daily by the residents living in the frontier area were subject to tariff and VAT preferences. As to the rules of origin in place to identify goods being imported as originating from the frontier area of adjacent countries, China imported goods from the 15 neighbouring countries under frontier traffic or border trade. The fourth question raised by Canada was whether China encouraged goods to leave the frontier areas. China did not encourage imported goods under border trade to leave frontier areas. The last question on frontier traffic concerned the definition of a "small" company in the context of this policy. Companies dealing in border trade or frontier traffic were called "border trade companies" and so the term "small" companies was not used in China.

8.37 The representative of Argentina, in response to China's questions raised in G/MA/W/38, stated that regarding the undertakings entered into by Argentina under Annex 7 of China's Protocol of Accession, specifically with regard to safeguard measures which were in force at the time of the Protocol, as foreseen in Ministerial Resolution 862/1999, the measure expired on 31 July 2002. As regarded the application of specific duties to goods coming from China, as specified in Annex 7 of the Protocol of Accession, the time-frame which was agreed upon is under the national decree through the Ministry of the Economy 825. In view of this information, Argentina had met the commitments entered into under Annex 7 of the Protocol of Accession of the Republic of China to the WTO.

8.38 The representative of Hungary, in response to China's questions raised in G/MA/W/38, informed the Committee that all the information requested by China was available in different notifications made by Hungary to different WTO fora, namely the TMB, the CRN and the Committee on Import Licensing. She was willing nevertheless to provide some brief information on the operation and administration of the system of quantitative restrictions maintained by Hungary. A government decree constituted the legal basis for the application of quantitative restrictions. The Ministry of Economic Affairs and Transport was responsible for enforcing the decree and issued the relevant decrees for the administration of the quotas twice a year. The three groups of products subject to the quotas affecting imports from China were footwear made from leather and leather substitutes, clothing, other clothing and accessories. All products subject to restrictions were listed by customs tariff headings in the decree of the Ministry of Economic Affairs and Transport. The quota was announced in two equal instalments in each half-year. The coverage of the quota had not changed either in 2001 or 2002. The values or quantities of the quotas in 2001 and 2002 were in full conformity with the quota increase provisions set out in Annex 7 to the Protocol on the Accession of China to the WTO. The removal of the restrictions maintained by Hungary according to Annex 7 of China's Accession Protocol was scheduled for 2005. For more detailed information, she referred to Hungary's notification made to the Committee on Import Licensing (G/LIC/N/1/HUN/4 and 5).

8.39 The representative of Mexico, in response to China's questions raised in G/MA/W/38, stated that there was no provision in Annex 7 of the Chinese Accession Protocol which related to quantitative restrictions applied by Mexico.

8.40 The representative of China stated that Article 17 of China's Accession Protocol covered "quantitative restrictions" and "other measures", and the measures maintained by Mexico were "other measures". Those measures had an impact on market access, so it was necessary to discuss these issues in this context. His delegation was looking forward to a response from Mexico.

8.41 The representative of Poland, in response to China's questions raised in G/MA/W/38, thanked China for submitting the questions concerning measures provided for in Annex 7 of its Accession Protocol. These questions had been forwarded to Warsaw, and as soon as his delegation received a response, it would submit it to the Chinese delegation and to other WTO Members.

8.42 The representative of the Slovak Republic, in response to China's questions raised in G/MA/W/38, stated that the licensing system of the Slovak Republic was regulating the administration of quantitative restrictions. The licensing system was governed by the decree of the Ministry of Economy No. 15 from 1998 on the conditions of the issuance of the licences for export and import of goods and services. The authority responsible for the issuance of licences was the Ministry of Economy. The licensing system of the Slovak Republic was notified last week to the WTO Committee on Import Licensing and all relevant documents were available in the Market Access Division. With respect to the safeguard measures applied from 1 February 1999 in the form of quantitative restrictions for the import of footwear (HS 6401 to 6405), she stressed that this measure was introduced due to the enormous increase of imports of footwear. The quantitative quota was liberalized by 25 per cent in 2002 in comparison to 2001 and currently stood at 3 million pairs. Her authorities had reviewed the application of these measures and decided to withdraw this measure applied to China's imports of footwear as from 1 January 2003. The quantitative restrictions to China would apply only until the end of this year.

8.43 The representative of Turkey, in response to China's questions raised in G/MA/W/38, stated that he had not received any detailed responses from his authorities. Furthermore, he shared the view expressed by Hungary as regarded information already supplied to the different bodies of the WTO which could be useful in this process. However, as soon as he received more detailed information, he would submit it.

8.44 The representative of China encouraged all relevant Members to implement their commitments under Article 17 of China's Accession Protocol, and stated that it was important in order to keep the TRM process balanced. Additionally, he requested that the responses be reflected in the minutes of this meeting.

8.45 The representative of Chinese Taipei thanked China for its efforts so far on this TRM. While, attaching great importance to this review process in terms of overall benefits to the WTO, his delegation recognized the difficulties China might have in meeting all the obligations. His delegation would be submitting a number of written questions very shortly. The main areas of concern were in the implementation of tariff concessions, tariff quota administration, quota allocation and import licensing procedures. His delegation had questions similar to those already raised by previous speakers but at this stage he would only mention the main areas of concern. However, he wished to point out that the fact that many speakers had raised the same issues showed that these were important areas of concern. On the tariff side, his delegation had the same concerns as Japan concerning beer and photographic film products. In its schedule of concessions, China had committed to remove the variable duty on these products including newsprint. However, it was his delegation's understanding that such a variable duty was still imposed on newsprint. He wished to know whether his understanding was correct. If the variable duty still existed then he wished to know when it could be removed. According to China's schedule of concessions, China had committed to apply a 6.8 tariff rate to paper-made products. However, China still imposed variable duties on two of those paper-made products. Again, his delegation wished to confirm whether its understanding was correct and if so when this duty could be removed. On tariff quota administration, his delegation had the same concerns as those raised by the US which was that in the enactment of the Implementing

Measures for Quota Management of Machinery and Electronic Products Imports, the public was not given the opportunity to give comments. His delegation requested China to provide the public with such an opportunity as it had agreed to do in its Protocol of Accession. On quota allocation, his delegation had the same problem with fertilizers but his delegation had heard the explanation from China. However, on quotas for processed oil, his delegation understood that China had agreed that quota on processed oil by non-state enterprises would be 4 million metric pounds at the time of accession. His delegation understood that this quota was mainly given to fuel oil, and some to diesel but nothing to gasoline and other fuels. On ITA end-users' certification, his delegation shared the concerns of the US. On import licensing, the Japanese delegation had mentioned that used electronic goods were prohibited. His delegation wished to know when such a prohibition could be lifted. As indicated earlier, his delegation would submit the questions in written form shortly.

8.46 The representative of Australia thanked China for submitting the information provided on tariff rate quotas and non-tariff measures as listed in Annex 1A to its Accession Protocol. His delegation noted with interest the information provided in sections 1, 3 and 4 of Annex 1A on tariff quota rate volumes made available in 2002, on the volume of requests for allocation denied and on the import volume and fill rates of tariff rate quotas by 31 July. This showed that with the exception of wool, all agricultural product tariff quotas were oversubscribed and in most cases the volume of requests for allocation denied with several times the volume of tariff rate quota available. By comparison, and notwithstanding that they cover the period to 31 July, the fill rates for some products were shown to be extremely low. His delegation asked China for a general comment on why it considered the fill rates were generally so low given the heavy oversubscription of many of the tariff rate quotas.

8.47 The representative of China stated that with regard to the questions raised by Chinese Taipei, according to his understanding the TRM on Market Access would end today and China only committed itself to have this kind of review once per year. So after this meeting, his delegation would reject any kind of questions in written form in this TRM context. With regard to the questions raised by Australia as to why the fill rate was so low and why the quantity denied so large. It was the first year of China's accession and many applicants wanted to get more quotas and the quantity asked by the applicants was much more than the quantity China had committed to under its WTO commitments. So that was why there was a discrepancy, and the low fill rate for certain products was because of the situation of demand and supply in the market. So China could not control the fill rate, it could only guarantee the full allocation of the quotas.

8.48 The representative of Chinese Taipei stated that on a question on procedure, how did the Chairman intend to handle the questions his delegation had raised orally and which had not been responded to?

8.49 The Chairman responded that he would address this matter when he concluded discussions on this agenda item.

8.50 The representative of Japan stated that the responses by China to his delegation's questions covered a number of issues and it was not easy for him at this stage to react to those responses. However, he wished to make some comments and put forth additional questions. About tariffs on films, there was a reference to the difference between the tariffs on newsprint and photographic films, but according to Japan's understanding China had made a commitment of an *ad valorem* tariff rate under the WTO, so in order to satisfy that commitment Japan believed that China should change the specific rate to an *ad valorem* tariff. In that connection, although China was of the view that it was a technical question, Japan did not think so. It was a fundamental question concerning how to apply tariff rates and Japan requested the quick reform of the tariff regime by China. In that respect, his delegation wished to know what the time-frame would be for China to change the tariff regime. The next issue related to the figure of 4.8 billion dollars quoted by China corresponding to automobile imports under the import quota. Japan had two concerns about the number. According to Japan's

understanding, because this year's quota allocation was delayed the actual use of quota for this year started from April. So why did China provide a number that included the imports from January to March? Another concern was about the scope of the products included in the statistics. For automobiles only two key parts could be included in the import quota and his delegation did not know whether China had included more than two key parts. So Japan wished to have further clarification on the number of 4.8 billion US dollars. In that respect, his delegation had concerns about the actual import level compared with the committed figure of the import quota, and would appreciate China providing the data of how much actual quota was already distributed this year. China's response about the reallocation of this year was not clear. According to Japan's figures, the actual import for this year was quite low so Japan presumed that there could be possibilities of reallocation of import quotas and he believed that reallocation was going to start from September. His delegation did not at this moment have information about whether reallocation had started yet. His delegation wished to clarify this situation and wished to know when reallocation was going to start for this year. About new entrants, Japan had understood China's response to refer to a certain amount of reserves for new entrants. His delegation appreciated China providing the actual volume and value of reservation for this year for new entrants. In fact, because the quota allocation had already been made, he wished to know how much actual quota was reserved for new entrants for this year. About Japan's request to include certain elements of the WPR into the actual Chinese regulations, his delegation had not said that the same language should appear in the Chinese regulations, but he believed that those were important points. At this moment, the actual rule was not so clear in China's regulations. About the import restriction on used cars, China had referred to the reasons for the protection of human lives and he understood that this was a very important issue. However, his delegation did not understand why all used electronic products listed in the relevant list should be prohibited. There were a wide range of different types of used products, for example there could be used products that were used only for one year, and Japan did not understand how China was going to justify restricting all used electric products on the list. Finally, Japan shared the concerns expressed by the US on the end-user certificate requirements for 15 IT products.

8.51 The representative of China stated that for specific tariffs on photographic products, he wished to make China's position clear. China had no obligation to change specific duties for photographic products. If Japan wished to discuss the possible discrepancy of the level between the specific tariffs and the *ad valorem* tariffs, China could accommodate this request. For the question regarding import statistics on automobiles, the number he had mentioned of 4.8 billion US dollars was the total value of imports from January to August. However, most imports took place from April to August following the allocation of the automobile quota. The next question was about the allocation of quotas for automobiles. China had already allocated these quotas and the information had been provided to the WTO, but if Japan requested information going beyond the TRM and the WTO Agreement then his delegation had no obligation to provide it. With regard to reallocation, until now China had not received any return of these quotas, so China had no specific idea about how to reallocate it. Maybe Japan was correct that quota holders were so eager to import that the quotas were fully used. China had already committed itself and promulgated regulations in order that the validity of the quota would be extended for the first three months of the next year, so that quota holders would still have time to sign contracts and import. For the new entrants' allocation, his delegation had reserved ten per cent of the total quota for allocation for new entrants. On the used product issue raised by Japan, China did not have the technical measures to judge if these used cars were one year or ten years old. So, in order to protect human life, China introduced this restriction on these products. For the ITA, he had no further information to provide.

8.52 He added that China had no obligation to provide written responses to the questions raised by Members because this had not been stipulated in Article 18 of China's Protocol of Accession. China had taken a cooperative approach in this TRM. His delegation had wanted to use this opportunity to exchange views with Members, to share information with Members and to listen to comments and suggestions made in the context of this mechanism to help China improve its implementation. China also understood the practical difficulties that Members were facing because of time constraints.

Maybe Members believed that the meeting did not provide sufficient time. China believed that this was a legitimate concern, and his delegation wished to accommodate such a concern. However, the transitional review mechanism was a transitional review mechanism. Today Members had to finalize China's transitional review mechanism on market access, but other channels for the exchange information were open. Chinese experts on electronic machinery administration, on fertilizer allocation, on agriculture and TRQ administration and import licensing administration were present. In order to take advantage of their presence and to show flexibility and good will, his delegation was proposing to convene an informal meeting outside of the transitional review mechanism process, and subsequent to the market access, import licensing and agriculture transitional review. Through this informal meeting Chinese experts could provide more information to the questions raised by any interested Members. He hoped that suggestion could be accepted by the Members. He stressed that this informal meeting had no legal linkage with the ongoing transitional review, and it would be held for reasons of transparency and information exchange.

8.53 In response to a question raised by the Chairman, the representative of China stated that his delegation would invite interested parties to participate in this meeting, and his delegation would chair this exercise of information exchange.

8.54 The representative of the United States thanked China for the offer to provide some additional responses informally. She had to say, however, that for the US there was great interest in this process. There was great congressional interest and great interest on the part of the US business community. The informality of the proposal would not allow the US to have included in the report of the Chairman the additional responses which her delegation felt were important. She appreciated that China was trying to make an effort but her delegation still needed to have a formal record of the discussions including China's responses. Her authorities strongly believed that more should be available in writing, so she was not able to go along with that proposal as a formal solution to the problem.

8.55 The representative of Japan appreciated the proposal by China about informal opportunities for further discussions and clarification, but supported the delegation of US about the need for further formal opportunities to continue discussions.

8.56 The representative of China stated that if the Members could not go along with the proposal he had made then he withdrew it.

8.57 The Chairman proposed that on the basis of the discussions held at this meeting, he would put together a report for the Council for Trade in Goods. This would be a factual report, clearly indicating and referring to the documents that had been circulated as part of this agenda item and also clearly referring to the part of this meeting's minutes that would cover the discussions and also cover the questions and answers that were raised in this meeting.

8.58 The representative of Japan stated that it would be difficult for Japan to consider the TRM over. His delegation had understood that Members needed additional opportunities to continue this transitional review mechanism. Would those future discussions also be included in the report? His delegation felt that additional discussions should be included in the report.

8.59 The representative of China stated that according to China's understanding of Article 18 there was no procedure for the adoption of the report. The only stipulation was for one review per year. So, he believed that the Committee should conclude this agenda item today. If there was another review, it was for next year. His delegation would not participate in any review again this year.

8.60 The representative of the United States stated that her delegation shared the views of Japan. At this point, she believed that her authorities would conclude that the Committee had not completed

this transitional review process. Therefore, she was not in a position to indicate that the process was over from the US perspective.

8.61 The Chairman stated that this was a very difficult issue procedurally for the Chair, but he realized that delegations had strong views and different interpretations on the procedure for this process. He proposed that the Committee turn to informal mode and hold consultations.

8.62 The Committee so agreed and broke into informal mode.

8.63 Following resumption of the formal meeting, the Chairman thanked all delegations for the active discussion held at the meeting and for their patience and tolerance. He intended to prepare a factual report of the proceedings. The report would refer to the minutes of this meeting which would reflect all points, issues and interventions of delegations. It would also clearly refer to and highlight the documents that were prepared for discussions of this agenda item. This report he would submit to the Council for Trade in Goods for consideration at its next meeting.

8.64 The representative of Japan wished to have some clarification about the nature of the minutes and the report. She had understood the Chairman as stating that the minutes of this meeting would reflect the discussions, statements and sentiments raised by delegations under this agenda item. Was her understanding correct that the report itself would not reflect the more detailed parts of the substantive discussions or the sentiments raised by the delegations such as the point that there may have been some differences of interpretation of the TRM exercise, and that instead, the report would be a very simple description of the factual exchanges?

8.65 The Chairman responded that, in his own assessment, if the Committee were to try and make the report as comprehensive as possible, it ran the risk of trying to interpret what Members had said. This meant that the Committee would have to come back to clear that report which would be a never ending process because consensus would not be possible on what was said by some delegations at this meeting. That was the reality. On the other hand, the minutes would reflect in a factual manner what had transpired at this meeting. The report would outline that the agenda item was considered but for more substantive coverage of the proceedings the minutes would need to be referred to.

8.66 The Committee took note of the statement.

9. Ecuador – New Panama Canal Transit Tolls (G/MA/W/37)

9.1 The representative of Ecuador stated that the Panama Canal was of major importance for world trade in linking the Atlantic and Pacific Ocean. This importance went beyond simply the interest of a small country such as Ecuador. Therefore, his government had thought it useful to bring this matter to the attention of the Committee. His delegation was concerned that the new toll structure was not in line with paragraphs 3 and 4 of Article V of GATT 1994 which stated that the tolls collected should be commensurate with the service rendered in order to facilitate free trade that Panama had to provide as a WTO Member. His delegation was concerned that the Canal Authority had drastically changed the transit toll structure that had been in force for more than eight decades by invoking a market oriented policy when there were no other inter-oceanic links as an alternative that could compete with the Canal. From the Canal authority website, one could see that in the first 9 months of 2000, 581 million balboas were earned with 213 million as the net profit which was equivalent to 36.35%. Ecuador was also struck by some statements made by the Panamanian authority which qualified the Canal as a natural resource from which financing should be obtained for alternative planning. In light of the foregoing, his delegation had submitted some questions to the delegation of Panama which had been circulated in G/MA/W/37. His delegation had one additional question which was "What was the profit that Panama expected to obtain as a result of the new rise in tolls for crossing the Canal?".

9.2 The representative of Panama stated that the Panama Canal provided inter-oceanic transport service for vessels of all nations of the world. The Panama Canal was administered by the Panama Canal Authority (PCA) which was an autonomous legal entity under Panamanian law established under Panama's constitution and which as a private entity administered, operated, conserved, maintained and modernised the Panama Canal and its related activities. The PCA had its own funds and administered those funds. It charged for services rendered, for inter-oceanic transport of vessels as well as other related services on the basis of prices established taking into consideration both the market and the cost to provide these services. These prices were applied to national and foreigners alike without any discrimination.

9.3 On acceding to the Marrakesh Agreement, and on the specific commitments of Panama on services, the Republic of Panama had established its horizontal commitments which applied to all services. That was to say that there would be no binding on market access in the geographical areas covered by the Panama Canal Treaties. In other words, there was no specific obligation for the services provided through the Panama Canal. The Republic of Panama had other means of inter-oceanic transport for goods such as the Panamanian railway and road transport using the existing infrastructure. The government of the Republic of Panama guaranteed freedom of transit and transshipment of goods in full compliance with Article V of the GATT 1994 for all transport provided by the PCA by railway, road or port. As established in the interpretative notes to paragraphs 3, 4 and 5 of Article 33 of the Havana Charter which corresponded to Article V of GATT 1994, the word "charges" as used in the English text of these paragraphs should not be understood to include transportation charges (cf. Havana Reports, page 72, paragraph 13). In any case, these charges were covered by paragraphs 2 and 4 of Article III which required full compliance with the principle of national treatment which in turn was fully met by all means of transport offered for the transit of goods across the Republic of Panama.

9.4 In response to the first question raised by Ecuador, the Panama canal was an industrial complex with more than 88 years of operation and it required a rigorous maintenance and investment programme and in order to continue to provide efficient and safe service for international trade in the medium and long term, it required financial planning whose price structure was a fundamental element in order to ensure the necessary funds for constant modernisation and improvement. The Panama Canal Authority provided detailed explanations regarding the change to its toll structure to government representatives of Ecuador and other interested countries which participated in the consultations and public hearing process which were conducted between 7 June-19 July 2003. Furthermore, this information was published in the Panama Canal Register on the 7 June 2002 as well as in the local press and on the Canal website. The Constitution of the Republic of Panama clearly stated that "The tolls and rates set by the Authority shall take into consideration the conditions of safe, uninterrupted, efficient, competitive and profitable Canal service". This meant that the tolls charged in the Canal had to provide an adequate level of profitability and sufficient resources in order to ensure the viability and competitiveness of the Canal in the medium and long term. For the information of Committee Members, Panama had attached the documentation which was available on the Canal web site and which was distributed to those who had attended the public hearing.

9.5 In response to questions 2 and 3 from Ecuador, the toll system was designed long before the Canal was inaugurated and its main purpose was to recover the operating and investment costs. The system was designed in such a way that the total cost could be distributed proportionally among the vessels transiting through the Canal. In its 88 years of operation, the Panama Canal had increased its tolls eight times by a cumulative total of 114.2 per cent. The original toll charged for vessels in 1914 was \$1.20 per net ton, the present rate was \$2.57 per net ton. The recent changes introduced to the toll system maintained the same system to measure the vessels. However, they established a differentiated scale based on vessel size, whereby a higher rate was payable on the first 10,000 tons, a slightly lower rate on the next 10,000 tons and a still lower rate on all tons thereafter. This change was based on the fact that in terms of costs the Canal operations required a large amount of fixed assets for operation, which were virtually equal for all vessels whatever their size. The scaling of

prices guaranteed a better distribution of transit tolls to cover fixed costs. This type of differentiation corresponded to the current operating conditions and the services provided by the company that was administering the Panama Canal. The size of vessels used in international trade was determined by the shippers according to their own interests and was dependent upon factors which were totally out of control of the Panama Canal. Other international canals such as the Suez Canal had historically used differentiated transit tolls structures based on vessel type and size. The document which would be distributed contained a table giving this information.

9.6 On questions 4 and 5, historically the Canal tolls were calculated to cover most of the fixed costs relating to the transit of vessels. Part of the services provided for vessels transiting the Canal were not covered by tolls, but rather by charges specifically designed for each service, the use of which depended on the requirement of each particular vessel. These included measurement service, transit reservation system, pilotage, channel fee, transiting vessel inspection service, security charge for transiting vessels, chemical inspection services, sanitary inspection service, moorage and anchorage, shifting berth and wharfage, salvage service, embarkation and disembarkation at locks, shuttle advisor service, public relations service, provisions for employees aboard vessels, on-line vessel information service, small vessels and launch service.

9.7 Under the new structure, the use of towing locomotives was classified as a related service for which specific rates were charged according to their individual use by each vessel. This scheme would enable the costs of locomotives to be established according to their level of use. Like tugboats and line handler service, locomotive services had evolved in keeping with vessel configuration and size and their costs had increased significantly over the years. The first towing locomotives purchased in 1914 cost \$13,000 each; the fleet was replaced in 1965 at a cost of \$115,000 per unit and was being replaced again (100 locomotives) at a cost of \$2.1 million per unit, which coupled with the replacement of the entire lock tow track and energy supply system, brought total investment to over \$350 million. This system of vessel positioning was also the greatest consumer of electric power in the whole Canal system. The document to be circulated provided some example of charges for the use of locomotives.

9.8 For question 6, Panama considered that the maritime transport service rates charged by the PCA were fair and consistent with WTO rules and other international treaties governing Panama Canal operations. The GATT provisions were not incompatible with the price increases recently established by the Panama Canal, insofar as the new structure was applicable to all vessels which transited the Canal irrespective of flag, route, type of cargo, value of cargo, country of origin or destination.

9.9 As to the last question by Ecuador which was raised at this meeting, he would refer the question back to his authorities.

9.10 The representative of Ecuador thanked Panama for the replies which were useful in continuing an analysis of these issues.

9.11 The representative of the United States thanked Panama for the thorough responses. There had been some concerns raised in the US on this subject, and her delegation looked forward to seeing the responses in written form so that her authorities could consider them more carefully.

9.12 The Committee took note of the statements.

10. Draft Report (2002) of the Committee to the Council for Trade in Goods (G/MA/SPEC/22)

10.1 The Committee agreed that the updated report which took into account the discussions at this meeting would be circulated to all Members for their comments. If no comments were forthcoming, the report would be considered as adopted.

11. Other Business

(a) Date of the next meeting

11.1 The Committee noted that the next meeting of the Committee was scheduled to take place on 26 March 2003, subject to confirmation.

Annex 1

Integrated Data Base - Report by the Secretariat

IDB dissemination:

The Secretariat has continued to load information onto the IDB Internet site on a monthly basis. As of 16 September 2002, there were 348 country periods on the site, of which 339 were in the approved area. Eighty-three Members and four acceding countries or territories are represented.

A revision of the June 2002 version (Release 8) of the CD-ROM was sent to delegations on 23 July 2002. This revised CD-ROM contains a correction of an error that was discovered after the June 2002 version had been distributed. It contains information for 269 country periods. As usual, two copies of the CD-ROM have been provided to each delegation. Any delegation requiring extra copies is requested to contact the Secretariat.

Implementation of the IDB/CTS dissemination policy (Document G/MA/115)

The 4 intergovernmental organizations designated as authorized users under paragraph 2(d) of document G/MA/115 have been given full access to the IDB and CTS after accepting the conditions of use and publication of the information in the two databases. They are the IMF, ITC, UNCTAD and the World Bank. In addition, the OECD has just made a formal request for full access to the IDB and CTS in accordance with paragraph 5 of the abovementioned document. This request will be circulated to Members of the Committee for consideration at its next meeting.

Three out of the four acceding countries designated as authorized users of the IDB/CTS (see paragraph 4(b) of G/MA/115) have also been given full access to the IDB/CTS after having accepted the conditions of use and publication of the information in the two databases.

Publication of IDB and CTS data

Since the June 2002 meeting IDB and CTS data have been used for WTO documents as follows:

- Following a request by the European Communities, document G/C/W/406 was produced assembling tariff indicators on HS Chapters 51-63 for selected Members. It is based on IDB for MFN applied duties and on CTS for final bound duties.

Two documents were produced for the Negotiating Group on Market Access.

- The first one, Data Availability and Software Tools for Tariff Negotiations, TN/MA/S/2, gives an overview of available trade and tariff data, including IDB and other comparable databases maintained by other international organisations. It also contains an overview of various software tools within and outside the Secretariat suitable for trade and tariff analyses.
- The second one, WTO Members' Tariff Profiles, TN/MA/S/4, presents tariff profiles based on IDB - applied duties and CTS final bound duties for all WTO Members, data availability permitting. Following a request from Members, an EXCEL version of the detailed tables will be made available on the IDB Members' web site by the end of the month. A revised version, taking into account comments raised by Members, will be issued for the next meeting of the Negotiating Group in November.

Technical Assistance

Since the last meeting of the CMA, two national IDB workshops have taken place, one in the Dominican Republic, undertaken in conjunction with a TPR mission and one in India. In addition, one IDB staff made presentations at the two African Trade policy courses in Casablanca and Nairobi.

The following activities are still to be undertaken up to the end of 2002:

Regional workshops for:

- French speaking African Members (December);
- Caribbean Member countries (November)
- participation in a United Nations Statistical Division workshop on improving African trade statistics (December).

National IDB activities:

- Bangladesh;
- Burundi;
- Lithuania (October)

For the two outstanding regional workshops, a component on Market Access issues will be added following requests from several Members made in the context of their TA requests for the year 2003.

For the year 2003 the TA plan is currently under internal review. The IDB/CTS component incorporates requests from delegations. In 2003 the emphasis of TA activities will shift from the traditional IDB data submission training towards the use of IDB and CTS data and Market Access issues in cooperation with the Market Access Division. A range of joint Statistics/Market Access Division regional workshops are planned.

Software development

The second release of the IDB Internet Analysis Facility (IAF) prototype software (<http://iaf.wto.org/>) will be made available this week. The new software release includes 3 additional reports (tariff and trade profiles, principal products and principal suppliers) and downloading facilities for 2 reports (tariff line detail and tariff and trade profiles). The application has also been revamped to improve response time. The IAF log records show that 50 Member governments have thus far made use of the facility, some of them quite extensively. The dissemination database has also been updated to include more recent information.

A consultant has evaluated possibilities for permitting the IAF to operate from a "snapshot" of the database distributed on DVDs, to address the needs of users that have unreliable telecommunication facilities. This approach appears to be feasible. Additional resources will therefore be sought for this project. The Secretariat estimates that the project will require around 6 months of programming time.

The group of WTO divisional representatives met to review and identify additional requirements for the IAF. The IAF was also presented to delegations on 10 July, resulting in additional suggestions. From these suggestions, the Secretariat has drawn up a blueprint for future development, including post-project development. Another presentation of the software and development plans will be held for delegations tentatively on 8 October. The exact date and venue will be communicated shortly. While the demonstration will be in English, questions and answers can be provided in all three WTO languages.

Annex 2

Consolidated Tariff Schedules Database – Report by the Secretariat

CTS on line

Following the adoption of the combined IDB/CTS dissemination policy by the Committee on the 12 June, (see G/MA/115) the CTS files were made available to Members through the IDB Internet site on the 9 July. The CTS files of all WTO Members, including Poland, are now in the IDB File Transfer Facility.

Still outstanding are:

- Comments from Venezuela: Venezuela is reviewing the data in order to complete the approval process;
- Iceland: The correlation between the tariff commitments' legal nomenclature and their transposition into the national tariff nomenclature for 2000 has to be finalized by Iceland. The correlation table links the tariff commitments' legal nomenclature and their transposition into the national tariff nomenclature for 2000 and is a key element for linking the CTS file with the IDB.

Work in Progress

Updates

The Secretariat has updated the data contained in the CTS by incorporating information on Members' commitments from documents issued after the processing of the CTS files. This phase involved the revision of 36 files and was completed in July 2002.

Incorporating additional comments

The Secretariat also received additional comments from Bulgaria, the Czech Republic, Costa Rica and Singapore on their CTS files. In addition a number of Members have made comments to the Secretariat following the publication of the Members' tariff profiles document. These comments are being incorporated into the respective database files.

Standardization of the database files

Before the CTS database can be linked to the IDB at the tariff line level, all CTS files have to be standardized. The Secretariat started work on the CTS standardization in August 2002.

Linking the IDB and the CTS

The files of three Members, Switzerland, Norway and Canada have already been linked to the IDB at the tariff line level. A standard IDB/CTS concordance table and a table containing the unbound tariff lines have been created and tested for this purpose. Standardized and updated CTS files will be progressively linked to the latest tariff and trade submissions in the IDB. The CTS/IDB link will be updated to 2000 and 2001 if correlation tables can be established or have been provided by the Members concerned. The Secretariat will contact Members if additional information is required.

CTS CD-ROM

The Secretariat has initiated the arrangements to reproduce a CD-ROM containing the approved CTS files in Access and text formats. The CD-ROM should be ready around mid-October.
