

WORLD TRADE ORGANIZATION

G/L/807
4 December 2006
(06-5820)

REPORT OF THE COUNCIL FOR TRADE IN GOODS ON CHINA'S TRANSITIONAL REVIEW

1. The Council for Trade in Goods (CTG), at its meeting on 20 November 2006, carried out the Transitional Review of China pursuant to paragraph 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432).

2. The United States, Japan and the European Communities submitted questions and comments in writing to China on the CTG-specific information requirements contained in Annex 1A of the Protocol and on matters raised before subsidiary bodies. These questions and comments were circulated in documents G/C/W/560, G/C/W/561, and G/C/W/568 respectively. The Annex 1A information provided by China to the Council for the review was circulated in document G/C/W/569.

3. The review proceeded in two stages. First, the CTG took note of the reviews that had been carried out in the CTG subsidiary bodies. Second, the Council reviewed the information provided by China concerning specific parts of Annex 1A of the Protocol and the questions raised by certain Members. The statements made at the meeting of 20 November 2006 are reflected in the minutes of the meeting in document G/C/M/86. The relevant paragraphs which reflect the discussion under agenda item III are annexed.

ANNEX

IV. TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

A. REPORTS OF THE SUBSIDIARY BODIES OF THE COUNCIL FOR TRADE IN GOODS

4.1 The Chairman informed Members that, in accordance with paragraph 18 of the Protocol of the Accession of the People's Republic of China in document WT/L/432, this Council was to report to the General Council on the Transitional Review. He suggested proceeding in two stages. The CTG subsidiary bodies had, as required, transmitted their reports to the CTG. As a first step, he would give Members the opportunity to make general comments on those reports and then he would propose that the Council take note of these Reviews. Then, he would move on to the CTG's own Transitional Review in which the CTG was required to review the information provided by China pursuant to designated parts of Annex 1.A of the Protocol.

4.2 He reminded Members that the following CTG subsidiary committees had carried out the Review: Market Access - the report was contained in document G/MA/194; Agriculture - the report was contained in document G/AG/23; Customs Valuation - the report was contained in document G/VAL/60; Sanitary and Phytosanitary Measures - the report was contained in document G/SPS/43; Technical Barriers to Trade - the report was contained in document G/TBT/20; Import Licensing - the report was contained in document G/LIC/15; Rules of Origin - the report was contained in document G/RO/62; Anti-Dumping - the report was contained in document G/ADP/15; Subsidies and Countervailing Measures - the report was contained in document G/SCM/119; Safeguards - the report was contained in document G/SG/82; and TRIMs - the report was contained in document G/L/792.

4.3 The representative of the United States recalled that this was the fifth Annual Transitional Review Mechanism for China, after which more than one-half of the required reviews would have been completed. After five years it might be helpful to remind Members why the TRM was required in the first place. Unlike prior acceding Members, China was allowed to accede to the WTO without having its trade regime in order. China had to issue, revise or repeal thousands of law, regulations and other measures. This process began shortly before China acceded and continued well into China's WTO membership. China was also granted numerous transition periods in its accession agreement, meaning that it did not have to adhere fully to certain WTO disciplines until those transition periods were over. The TRM was designed to help Members understand and assess the progress that China had made in adopting and complying with WTO disciplines. From that perspective, the United States believed that the TRM continued to be a useful mechanism. It helped to provide needed additional transparency for China's trade regime, and it allowed Members to seek and obtain clarifications regarding China's various trade policies and practices. It also provided Members with a multilateral forum for conveying their expectations and concerns with China's implementation and compliance efforts. In that regard, the TRM was a useful supplement to bilateral discussions with China.

4.4 After five years of WTO membership, China should have implemented almost all of the commitments that it had made in its accession protocol. Among the few commitments left to be phased in were particularly important ones in the area of financial services, scheduled for implementation in less than one month. At present, the United States' expectation was that China should be acting and should be treated as a full member of the international trading system. China was reaping the benefits of that membership, and it should be fulfilling all of the responsibilities that went with that membership. Looking back over the last five years, China had made significant progress in implementing specific commitments as well as in adhering to the ongoing obligations of a WTO Member under the WTO agreements. At the same time, however, serious areas of concern remained on several fronts. Many of the Reviews carried out by the subsidiary committees this year

had generated productive exchanges and demonstrated that China had put a lot of time and effort into reviewing and considering Members' questions and in preparing responses. He recalled, in particular, the useful exchanges that took place before the Anti-Dumping, the SPS, and the TBT Committees. One or two other reviews, however, were significantly less productive. That of the Market Access Committee stood out in this regard, which was why his delegation was re-asking several of the questions it had originally submitted for that Review.

4.5 He highlighted some of the concerns that the United States attempted to raise through the TRM exercises. One common theme emerged from several of the committees, including the Market Access, the TRIMS, the Import Licensing, and the Subsidies Committees. China had increasingly resorted to industrial policies that limited market access by non-Chinese origin goods, or that allocated substantial governmental resources to support increased exports. The objective of these policies seemed to be to support the development of Chinese industries that were higher up the economic value chain than the industries that made up China's current labour-intensive base, or simply to protect less competitive domestic industries. He mentioned six examples of these industrial policies. First, China had issued a comprehensive auto policy that included provisions discouraging the importation of auto parts and encouraging the use of domestic technology. It also required new automobile and automobile engine plants in China to include substantial investment in research and development facilities, even though China expressly committed in its WTO accession agreement not to condition the right of investment on the conduct of research and development. While China pointed out that industrial policies like this one were not in themselves binding, the problem was that they often led to the implementation of measures that appeared to conflict with WTO rules. One obvious example involved the April 2005 regulations on auto parts tariffs that served to prolong prohibited local content requirements for motor vehicles; those regulations were currently being challenged by the United States, the EC and Canada in a WTO dispute settlement case.

4.6 A second example of another major industrial policy concerned China's steel industry. This policy called for the state's management of nearly every major aspect of China's steel industry. The United States and China had engaged in a productive dialogue in this area, which had increased each side's understanding of the other side's concerns. Third, it had become clear that China was using export restrictions on key raw materials such as coke and fluorspar in an attempt to bolster the competitiveness of downstream producers. China's export restrictions kept the domestic Chinese price for these raw materials artificially low, so that downstream producers could gain a significant price advantage over foreign competitors. Fourth, increasingly, China had also pursued unique national standards in many areas of high technology, even where established international standards already existed. Often, the goal seemed to be to foster the extraction of technology or intellectual property from foreign rights-holders. Fifth, it appeared that excessive government subsidization continued to benefit a range of domestic industries in China. Notably, some of this subsidization involved prohibited export subsidies or prohibited import substitution subsidies. The United States and other Members had repeatedly called for China to withdraw these prohibited subsidies, but so far China had not acted.

4.7 Finally, a troubling trend had emerged over the last year, as China struggled with increasing foreign competition within China. Instead of looking for the market to dictate outcomes, China increasingly was resorting to policies that combined restrictions on foreign investment with promotion of domestic companies. This approach was evidenced by the *State Council Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries*, issued in June 2006. This document called for new controls on foreign investment for 16 types of equipment manufacturing, such as the manufacturing of semiconductor equipment, aircraft engines, pollution control equipment and textiles machinery. It combined these new controls on foreign investment with a number of initiatives designed to promote and develop domestic companies and to expand their market share in China. As was evident from the Reviews in the Agriculture and the SPS Committees, government intervention was also a problem in the agricultural sector. Trade in the agricultural sector was beset

by uncertainty, largely because of selective intervention in the market by China's regulatory authorities. Capricious practices by Chinese customs and quarantine officials could delay or halt shipments of agricultural products into China, while sanitary and phytosanitary standards with questionable scientific bases and a generally opaque regulatory regime frequently frustrated traders in agricultural commodities. China's continuing ban on imports of U.S. beef and beef products was an area of particular concern. It was this excessive government intervention, evident in so many areas of China's economy, that gave rise to many of the United States' most difficult trade issues with China. This government intervention was a reflection of China's unfinished journey from a centrally planned economy to a free-market economy governed by the rule of law. At the same time, even acknowledging that incomplete transition, there were some types of measures that China simply should not be resorting to as a mature member of the international trading system. Local content requirements, export restrictions and prohibited subsidies – China should have abandoned its use of these types of measures some time ago. The United States looked forward to its continuing bilateral dialogue with China on these and other issues. The United States continued to prefer using that route, where possible, to resolve its outstanding concerns.

4.8 The representative of the European Communities said that China was now approaching the end of its own transitional period for implementing its accession commitments. It was clear that China had reaped enormous benefits from its membership of the WTO and its access to the rules and transparent trading environment provided by the WTO and its Members. China was now a major trading partner for all and with that came a responsibility to show leadership and commitment, and demonstrate its own stake in the proper functioning of the WTO. Transparency was an essential element of this organization; the special scrutiny provided for in the Transitional Review Mechanism was approved by China as part of its protocol of accession, and as part of its deal in 2001. Against that background, while his delegation obviously welcomed the constructive dialogue, engagement, and information provided by China in a number of areas and committees under the TRM, his delegation was still concerned, as were others, about a number of areas where there was a lack of co-operation by China in this year's TRM exercise. His delegation had been underwhelmed by the nature of Chinese responses to its questions, and was frankly disconcerted when China's representative at the Market Access Committee recently said that the TRM was a discriminatory practice with which China would not co-operate. He hoped that that statement could be reflected upon and retracted at this meeting. In short, his delegation would welcome more concrete and detailed replies from China to the questions that his delegation had raised than had been the case in recent months. His delegation had circulated a document (G/C/W/568) which set out questions to which his delegation wished to see a response from China. He wished to flag six areas of particular concern to the EC where it was particularly interested and vigilant to see substantive responses from China.

4.9 First, in respect to transparency, his delegation would like to have more information from China about the way in which it had been implementing its commitment to provide advance notice of significant changes to its trade regulations and to allow third countries to comment on those proposed changes. A second area related to export restrictions. His delegation invited China to notify the quantities associated with its various export restrictions on goods; to transmit to the WTO the justification, where there was one, for such export restrictions; and for those restrictions where, as far as his delegation could see there was no justification, like coke and rare earth, his delegation invited China to notify the EC and the WTO when and how it intended to bring those regimes in line with the WTO rules. A third area concerned China's compulsory certification system, i.e. approval system, for industrial goods. His delegation encouraged China to review that system and to develop and implement it in a way that was less costly for exports to China, less burdensome in terms of procedures to be followed, and more proportionate in terms of the requirements imposed upon products seeking entry to the Chinese market. Fourthly, regarding the automotive industrial policy, his delegation invited China to review the severe limitations on foreign participation in joint ventures. It asked China to indicate when it planned to accede to the 1958 UNECE "Agreement Concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can

be fitted and /or be used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions", which would represent an international standard and reduce technical barriers to trade in this sector. Fifthly, regarding the steel industry development policy, he asked China to indicate its plans for enacting implementation measures and which Ministries were responsible for preparing the measures in question. His delegation also welcomed any information China might provide regarding any intentions to restrict or allow foreign majority investments in the steel sector. Finally, his delegation invited China to indicate its current thinking on the preparation for accession to the WTO Government Procurement Agreement.

4.10 The representative of China expressed his delegation's appreciation for the efforts made by the various bodies and the CTG to draft their reports on the TRMs handled by those bodies. After reading all the reports, he believed that there was a need to consolidate the form by which the different bodies and the CTG were preparing their reports. His delegation liked the format of the report of the Committee on Market Access because it was simple, clear, gave no confusion about what happened, and gave a reference to where Members could find the WTO discussions on this issue. Other reports attached Annexes or paragraphs from the minutes of the meetings which his delegation believed was unnecessary. Therefore, his delegation took the opportunity to request that the subsidiary bodies follow the format of the Market Access TRM report for their next year's reports. It was better to make a reference to the document number in which the minutes of the relevant meeting could be found rather than annex paragraphs from the minutes to the report. Members' ability to find those paragraphs should be trusted. His delegation also wondered why some reports were from the Chair while others were from the Committees and wondered why there was such a discrepancy in the practice. It would also be desirable to have a consolidated report by the Committee or by the Chair. Here his delegation could be flexible but a unified practice in this regard would help Members to avoid any possibilities of confusion or questions about the format of the report.

4.11 Regarding the US and EC statements, he appreciated that there were different understandings of the functions and role of the TRM under Paragraph 18 of the Accession Protocol. The debate or divided views about the functions and roles of the TRM had always existed since the first year of transition. His delegation had a different understanding than that of some Members on the role and mandate of the TRM. Therefore, he could not agree with some of the assertions and allegations made by the US. For instance, the US said that the reason why it raised the same question in the CTG that it had raised in other subsidiary bodies was because the TRM in some subsidiary bodies was not productive enough. The US said that in some CTG subsidiary bodies the TRMs generated productive exchanges whereas in some other bodies, e.g. anti-dumping and SPS, there was a less productive exchange. His delegation had difficulty understanding what was the US definition of productiveness? Where in Paragraph 18 was this found? If Paragraph 18 said that China had to be productive enough to satisfy the US, China would be that productive. Otherwise, China would be put in a position of whatever it did or did not do, risking not being productive enough for certain Members. The same was true for the EC. The EC said that it wanted detailed responses. He would appreciate if the EC delegation could provide a definition of detailed response, which would help China to meet or satisfy EC requests. Otherwise, whatever efforts China made to participate in this exercise, Members could still say that it was not detailed enough, or not productive enough. He believed that if Members were requesting information under Paragraph 18, there was no way for China to satisfy them. China was prepared to participate in the TRM as Paragraph 18 mandated, no more or less productive. Members' requests that went beyond Paragraph 18 were beyond China's obligations to accommodate.

4.12 The US also alleged that China's agricultural trade was governed by great uncertainty and government intervention. Remarks of this kind were irresponsible and contrary to the facts. If US exports of agricultural products to China had made a record in terms of value and quantity and had been conducted in a state of uncertainty, it seemed that the US did not want to change this because it was good for the US. The US allegations that there was still too much government intervention in the agricultural sector was typical of the hypocrisy on the part of US trade policy. When government

intervention was in the interest of the US, it welcomed this intervention. When government intervention was perceived as not in the interest of the US it was seen differently. He had received many US delegations in China who were begging for government intervention to solve certain problems. Finally, he believed that some Members were raising the same questions as they had raised in some subsidiary bodies not because they were specifically related to any specific commitments in China's accession, or because China was not implementing certain specific commitments well, but because they had trade concerns. This was understandable. However, after reading the submissions by some Members to the CTG this year, he believed that they failed to understand the mandate of Paragraph 18, the purpose of the Transitional Review, or his delegation's responses. If the problem was one of language, his delegation was prepared to explain in more detail what it meant or to repeat what it had said in the subsidiary bodies.

4.13 The representative of the United States said that his delegation would not agree to the proposal that all subsidiary bodies change the format of their reports after 5 years of the TRM. The practice in most committees over the last 5 years was to have a brief factual report and attach the minutes of the meeting. His delegation found this a useful format particularly since China had refused since the beginning of the TRM to provide any written responses to any written questions. As to the Chinese delegations' request for a definition of what "productive" might mean, while it was not necessary to provide a definition, a basic idea of whether a review had been productive was whether or not China had ignored Members' questions. When China ignored the questions and continued to refuse to answer them when raised a second time, his delegation considered that to be unproductive. Lastly, with regard to the Chinese claims that the US was hypocritical in complaining about government intervention when it caused trade issues, yet seeking government intervention to resolve trade issues, he believed that this was a function of China's incomplete transition from a planned economy to a market economy governed by the rule of law. It was not possible at this stage for the Chinese Government to simply step out and let the market dictate outcomes. China's economy was not at that point yet. When problems did arise, they had to be fixed by further government intervention.

4.14 The Chairman proposed that the Council take note of the statements made and of the subsidiary body reports.

4.15 The Council so agreed.

B. COUNCIL FOR TRADE IN GOODS-SPECIFIC REVIEW

4.16 The Chairman recalled that China was required to provide information to the CTG in accordance with paragraph 18.1 of the Protocol of Accession. The relevant information requirements were listed in Annex 1A. China had submitted information as required under Annex 1A of the Protocol of Accession in document G/C/W/569. He also drew Members' attention to the questions from Japan contained in document G/C/W/561; the questions from the United States in document G/C/W/560; and the questions from the European Communities in document G/C/W/568.

4.17 The representative of China said that some questions posed were exactly the same or similar to previous questions. China believed that it had given detailed, specific responses to these questions in the previous meeting as well as in meetings over the past 4 years. His delegation believed this was happening because Members had different interpretations of Paragraph 18 of China's Protocol of Accession or because Members were not being attentive enough to his delegation's statements and explanations. He requested that Members refrain from raising the same issues as those raised previously at this TRM. Export restrictions, whether in the form of export quotas or duties, as repeatedly stated on various occasions, were mainly aimed at protecting the environment and preserving natural resources, especially exhaustible natural resources. His delegation believed that measures in this regard were consistent with Article XX of GATT. In order to achieve this goal, China both implemented domestic production controls and export restriction measures. With respect

to the US question, China's Mineral Resources White Paper of 2003 outlined the state of China's mining industry. It was introductory material for the public media and public information instead of a formal government policy document. Therefore, there was no follow-up implementing measures to carry out in this White Paper. Regarding the automobile imports, according to the GCA No. 38 of 2006, this standard was used to distinguish whole year call for auto-parts. As stipulated in GCA No. 125, these would not be implemented until 1 July 2008, before which China would continue to maintain auto-mobile imports as in the past. As to the Government Procurement Agreement, China has made efforts in its participation in the accession of negotiations into this Agreement and was now preparing to start negotiations before December 2007. At present, a working team of 21 Government Ministries or Agencies, including the Ministry of Finance and Ministry of Commerce, had been established to work on the initial offer for the accession negotiation.

4.18 Regarding the transparency issue, the Chinese Government had faithfully implemented its accession commitments. All Ministries or Government Agencies, including the Ministry of Finance, AQSIQ, the General Customs Administration and the Ministry of Agriculture, etc. were requested to provide copies of their newly published trade-related rules to MOFCOM, which was now including all trade-related laws, regulations and rules in the Chinese Foreign Trade Co-operation Gazette. However, it should be noted that while the MOFCOM Gazette published a compilation of the trade-related laws, regulations and administrative measures, other Ministries or Agencies could still publish their own Gazettes and make their own policy known to the public. This was a more effective method for transparency, in his Government's experience. A public opinion solicitation process, and draft trade-related regulations were also published on the website of the respective government competent bodies, which provided an easy access for interested parties to make their voices heard. Public hearings, symposium and discussion groups also helped to make interested parties involved. On issues regarding importation and distribution of books, newspapers, magazines, pursuant to Articles 14 and 16(a) of the Revised Foreign Trade Law, the Chinese Government had the right to administer the importation and exportation of certain products to protect public moral, public interest and national security in accordance with Article XX of GATT 1994. Except for this issue, his delegation believed that the rest was more related to trade in services rather than goods. Therefore, he referred Members to previous discussions in the Council for Trade in Services for China's position in this matter.

4.19 As clarified in the Subsidies and Countervailing Measures Committee, the VAT rebate for steel exports was definitely not an export subsidy. There was no prohibitive clause in the SCM Agreement to prevent Members from using a policy tool such as a VAT rebate rate lower than a VAT rate. Since his colleague had made a detailed explanation of the VAT rebate on domestic equipment purchases, he did not want to elaborate, but encouraged Members to read the minutes of the SCM Committee meeting of 25 October 2006. This was a measure to balance the tax burden between domestic and imported products rather than give preferential treatment to domestic products. Pursuant to Article 18 of Annex 1A of the Protocol of China, his delegation did not regard reform of State-Owned Enterprises as relevant to the mandate of the CTG Transitional Review Mechanism. Members should be aware of China's resolution to further this reform. This was definitely not a privatization process but aimed at introducing a more corporate structure and having enterprises operating according to the market economy. For investment issues, the State Council had issued an opinion on the revitalization of industrial machinery manufacturing industries. While the State Council opinion provided guidance in the development of domestic industry, it was not compulsory or binding. So far no implementing measures had been enacted. As for the matter of merger and acquisition regulations raised by the US, as stated in the TRIMs Committee, China did not regard this as related to the TRIMs Agreement or covered under the mandate of the CTG. China was entitled to improve its FTA regime and, in this respect, it saw no inconsistency with the WTO Rules and its accession commitments. Nor did China see any necessity to discuss this in this Review. With regard to border trade, he requested the Member who raised this question to go through Announcement No. 50 of 2003 published by the General Customs Administration, and later Announcements No. 27 and

39 which eliminated the preferential import duty for border trade. At present China did not maintain any import preferential treatment for border trade. As for steel policy, China's stance remained the same and there were no plans to implement this policy.

4.20 The representative of Japan did not think it was necessary to explain her delegation's questions in a detailed manner because they were self-explanatory and, as the Chinese delegation had pointed out, some of them were repeated from last year and from subsidiary body questions. Her delegation had re-submitted them because it was not satisfied with the answers from the past exercises and it was not convinced that China had fully carried out its commitments under the Protocol of Accession. Her delegation wished to briefly respond to the responses provided by China. As for the customs duties regarding complete automobile features, China answered that the current policy would continue until 1 July 2008. Her delegation would like to know the situation after that date. As for export restrictions on cokes and fluorite, China was conducting both domestic control and export restrictions. Her delegation was interested to know how effectively China was conducting the domestic control. Her delegation had requested some data and would appreciate if China could submit some data in its reply. As for distribution services, her delegation had submitted these questions because, in last years exercise, China had confirmed that these issues were taken up in the CTG. However, her delegation was flexible and was waiting for the response on this issue in the Council for Trade in Services. Her delegation looked forward to hearing good news from the China in the area of government procurement.

4.21 The representative of the United States said that his delegation, in its written submission, raised some new questions as well as resubmitted previous questions posed in the Reviews of one or more subsidiary committee reviews. The repeated questions were ones for which China provided incomplete answers or no response. One of those repeated questions addressed the importation of books, newspapers, periodicals, electronic publications and audio-visual products. China did not allow foreign enterprises to import these products, even though the accession protocol gave them this right. Previously, China had justified these import restrictions under Article XX of GATT. The question in the US submission was not one that had been answered. His delegation knew that China had raised the Article XX exception, but his delegation's asked China to explain why these import restrictions were necessary. Why could not China's public moral objective be achieved in a less trade-restrictive manner? A second area of enquiry in his delegation's submission involved export quotas and export duties maintained by China on raw materials such as coke and fluorspar. China addressed the issue of the export quotas. His delegation's question pointed out that China had added export duties on these very same products to further discourage exports. China did not address the export duties and his delegation would like an explanation of the trade-policy objectives. Another enquiry involved VAT rebate on steel. China explained that these were not export subsidies. His delegation did not allege that that was the case, but asked a series of questions such as what was the trade-policy objective of these rebates, whether China provided those rebates for steel-making raw materials and semi-finished steel products, and on other steel products. None of those questions had been answered.

4.22 In the interest of transparency, his delegation sought to understand the new regulations on mergers and acquisitions that were in effect from August 2006. China previously refused to provide any clarification for the TRIMs Committee because it said that the US had not linked its questions to violations of particular provisions in the TRIMs Agreement. His delegation had hoped China would reconsider its position and provide the requested clarifications. He reminded China that the Chair of the TRIMs Committee had stated, in paragraph 46 of the Minutes that, "he wished to recall that this exercise in this Committee was an exercise in transparency, based on co-operation and would allow all Members to understand better the Chinese legislation on a whole series of matters connected to investment". It was not a challenge to the compatibility of the Chinese legislation. His delegation believed that all Members were interested in seeing that the discussions in the Committee were as precise and cooperative as possible. There were other WTO fora where the compatibility of the legislation of Members with the WTO rules could be challenged. His delegation was simply looking

for responses to its questions in the interest of transparency. The US saw a variety of updated information on the operation of state-owned enterprises in China. China had maintained that this was not relevant to the Committee when the questions were posed there, and now China maintained that it was not relevant to the CTG. His delegation wondered where this information would be relevant and asked if China could reconsider its position and answer the questions. His delegation noted that in March 2006 China tried to implement its commitment to establish a single official journal. At that time China's State Council issued a notice directing all central, provincial and local government entities, to send copies of all their trade-related measures to the Ministry of Commerce for publication in the gazette. The US welcomed this move and would like an update on the progress that was being made by the Central, provincial and local Government entities following the directive in this notice.

4.23 The representative of the European Communities took note of China's suggestion that because of different interpretations of the Protocol of Accession, or because Members were not listening properly to China's explanations, Members were not fully satisfied and were asking the same questions. His delegation believed that Members asked the same questions again because they were looking for factual replies to factual questions. On this, there was no question of differing interpretations. It was a famous Chinese who said that truth should be sought from facts – this was what Members were trying to do in this exercise. He provided the example of export restrictions to show the way in which Members had been asking questions according to the letter and spirit of paragraph 18 of the Protocol and of the specific commitments entered into by China in this Protocol. China had undertaken to eliminate, upon accession, export restrictions unless they could be justified under WTO Rules (Paragraph 165 of the Working Party Report). China had also accepted a legal obligation to notify any possible export restrictions to the WTO, in particular the quantities associated with those restrictions. On these issues, his delegation had not yet received full factual information and asked China, in line with its commitments when it joined the WTO, to present a comprehensive table which would identify the products, the export restrictions, the quantities, export taxes, if appropriate, and any other restrictions on the products in question. His delegation had repeatedly sought such information. His delegation welcomed China's replies on a number of points. But certainly in the area of export restrictions, the information was lacking. He noted that in China's submission, China said that it would circulate, "in a couple of days", information relating to the restrictions applied in 2006. It was almost the end of 2006 and this information, particularly on the quantities of the restrictions, would have been useful had it been available much earlier in the year.

4.24 The representative of Cuba said that, in his delegation's view, this examination seemed a little discriminatory. Other recently acceded Members, as well as original Members of the WTO were not subject to such detailed scrutiny in each of the WTO Committees. It also seemed discriminatory to refer to government subsidy problems, as some Members had. For many years and in many cases there had not been any changes as established by the Agreements in the matters of domestic assistance. This was a system of double standards. At the same time, to question supposed restrictions on exports or imports when one important Member of the WTO maintained a large number of restrictions on the imports and exports of various other Members which had not been notified nor did they comply with the MFN principles. This was once again a question of discrimination and double standards. His delegation wanted to share these views for obvious reasons and ventured to hope that these other Members would provide full information about their import restrictions and export subsidies.

4.25 The representative of China thanked Cuba for its statement and its strong sense of justice. China was used to discrimination; this was not the only place China was being treated discriminatorily. No other Member but China was required to go through this transitional review once a year in each subsidiary body. The question here was that certain Members alleged that China ignored their questions, or China did not provide responses. He recalled that China had ignored none of their questions. China had given all the responses. Of course, some of the responses were not positive. However, a negative response was not satisfactory. The point here was that some Members

kept asking the same question, not because these questions fell within the mandate of those subsidiary bodies or within the mandate of the TRM, but because, they were unsatisfied with the answers they received. This was the essence of the issue. So long as China could not satisfy their request to address their concerns, they kept raising the questions in all of the subsidiary body Reviews, regardless of whether these questions fell into the mandate of those bodies. He also considered some delegations arrogant to refuse to recognise that China had provided responses and answers. The questions were raised again as if China had never provided responses. He did not wish to go into substantive details about these issues because his delegation had repeated itself during the Reviews. For instance, one Member claimed that China was a centrally planned economy and was not a fully free market economy. The statement by Cuba indicated that there were Members who claimed that they were free market economies and still maintained a large number of export restrictions and government intervention in the form of anti-dumping restrictions, trade remedy measures and legislations, and export restrictions. His delegation was puzzled and did not really know how to satisfy those Members.

4.26 The representative of the United States acknowledged that China was the only WTO member who had to undergo a transitional review mechanism and, in this sense, one could call that discriminatory. At the same time, China was the only Member of which he knew which had been allowed to accede to the WTO without having its trade regime in order. China had to issue, revise, repeal thousands of laws, regulations and other trade measures and, while it began shortly before accession, this process was not completed until well after accession. In addition, China was given many transition periods in its Accession Protocol, meaning that it was allowed to comply over time with various WTO disciplines. Because there was discrimination in China's favour when China accede, this "discriminatory procedure" was put in place. He also wished to continue to dispute China's claim that all of his delegation's questions had been answered many times before. For example, questions 7 and 8 from his delegation's submission concerned export duties that were announced on 27 October 2006. Those were not questions that had been posed year after year. They were asked but no response about the trade policy objectives was received. Another example was question 9 from his delegation's submission which asked three specific questions regarding the VAT rebates on steel.

4.27 The Chairman thanked all Members for their statements and the delegation of China for the answers that it had provided. Regarding the form of the report of the Review that was carried out, he proposed that the Council proceed in the same manner as last year. This would mean that a brief factual report would be prepared with references to the documents submitted and the portion of the minutes of this meeting which related to the Transitional Review attached. The CTG report, as well as the reports of the subsidiary bodies, would then be transmitted to the General Council.

4.28 The representative of China said that he did not think there was a need to attach the relevant paragraphs of the minutes; a reference to the relevant paragraphs of the minutes was sufficient.

4.29 The representative of the United States said that his delegation wanted to follow the past practice of this Council and attach the relevant paragraphs of the minutes to the report.

4.30 The representative of China said that he would have to consult his capital on this issue. China was requesting the consolidation or streamlining of the form of the TRM report. Members could easily find the relevant portions of the minutes where the TRM was discussed. Therefore, instead of attaching these paragraphs to the report, a reference to the paragraphs in the minutes was sufficient.

4.31 Conclusion of this agenda item was suspended for a short time pending further consultations.

4.32 In resuming consideration of this agenda item, the Chairman informed Members that he had held consultations with China. He proposed that the Council take note of all the statements made and that taking into account the past practice of this Council as well as the views expressed at this

meeting, he would prepare a factual report which, together with the subsidiary body reports, would be presented to the General Council. This would conclude the Transitional Review Mechanism.

4.33 The Council so agreed.
