

Council for Trade in Goods

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

1. The Council for Trade in Goods, at its meeting on 26 November 2003, 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. Japan and the United States submitted questions and comments in writing to China on the CTG-specific information requirements contained in Annex 1A of the Protocol. These questions and comments were circulated in documents G/C/W/471 and Corr.1 and G/C/W/473 respectively. The European Communities circulated their comments and questions after the meeting in document G/C/W/476. The information provided by China to the Council for the review was circulated in document G/C/W/474.
3. The review proceeded in two stages. First, the Council for Trade in Goods 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. The statements made at the meeting of 26 November 2003 are reflected in the minutes of the meeting in document G/C/M/71. The relevant paragraphs which reflect the discussion under agenda item III are annexed.

ANNEX

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

3.1 In accordance with paragraph 18 of the Protocol of the Accession of the People's Republic of China in document WT/L/432, the Chairman said that the CTG would report to the General Council on the Transitional Review. As last year, he suggested that the Council proceed in two stages. First, the CTG subsidiary bodies were required to transmit their reports to the Council for Trade in Goods. This they had done and, as a first step in today's review process, he wanted to give Members an opportunity to make general comments on those reports, and would then propose that the Council take note of the Reviews that had been carried out in the CTG subsidiary bodies. Then the Council would move on to its own report. Turning to the reports of the subsidiary bodies, the Chairman reminded Members that the following CTG subsidiary bodies had carried out the Review: Committee on Market Access (document G/MA/150); Committee on Agriculture (G/AG/18); Committee on Customs Valuation (G/VAL/56); Committee on Sanitary and Phytosanitary Measures (G/SPS/29); Committee on Technical Barriers to Trade (G/TBT/W/236); Committee on Import Licensing (G/LIC/11); Committee on Rules of Origin (G/RO/56); Committee on Anti-Dumping (G/ADP/12); Committee on Subsidies and Countervailing Measures (G/SCM/111); Committee on Safeguards (G/SG/66); and Committee on Trade-Related Investment Measures (G/L/648).

3.2 The representative of the United States noted that three of the questions that they had submitted for the transitional review sought clarifications about matters that were addressed before the Committee on Market Access and the Subsidies Committee.

3.3 The representative of the European Communities said that the EC attached great importance to the TRM exercise, and considered that it was of utmost importance to ensure a proper and meaningful functioning of this mechanism over the years to come. Taking into account the experience of last year and to make the 2003 exercise more meaningful, the EC had decided this year to: (i) as last year, transmit the questions well in advance of each meeting (typically six weeks); (ii) focus on a limited number of priorities; and (iii) raise only issues discussed already a number of times in the WTO committees or in bilateral meetings and therefore well-known to the Chinese side. The objective of the EC was to have in each subsidiary body under the Council for Trade in Goods a meaningful discussion and detailed replies from the Chinese side to this limited number of questions. The assessment made by the EC about this year's TRM exercise in the subsidiary bodies under the Council for Trade in Goods was mixed: while the Chinese side provided useful clarifications on several matters of concerns, the EC impression was that it did not obtain satisfactory replies from the Chinese side to a number of questions raised notably in the Import Licensing, Market Access, TBT and SPS Committees. The EC would come back to these issues in the relevant Committees and bilaterally with China in the coming months.

3.4 The Council took note of the reports and of the statements made.

3.5 The Chairman said 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/474. He also drew attention to the documents by Japan contained in G/C/W/471 and Corrigendum 1, and by the United States contained in document G/C/W/473. The European Communities also subsequently circulated its submission in document G/C/W/476.

3.6 The representative of China addressed the Council on the implementation of China's commitments with regard to trade in goods within the framework of paragraph 18 of China's Protocol

of Accession and also responded to Members' questions and concerns. Prior to the meeting, as required by Annex 1A to the Protocol of China's Accession, China had submitted information regarding the repeal or modification of laws and regulations by the principle of non-discrimination, policies affecting trade in goods and policy of government procurement, etc. A delegation composed of senior officials from relevant governmental authorities including the Ministry of Commerce, the State Development and Reform Commission had been formed to attend this review. Responding to questions raised by Members, the representative said the following:

1. On Transparency

3.7 In line with China's reform and opening up process, and to implement the commitments upon its accession, China was now, according to its arrangement of legislative plan, revising relevant laws and regulations mentioned by some Members in their questions. Amendments to these laws and regulations would be open for public comment pursuant to provisions of the *Legislation Law* and *Regulations on the Drafting Procedure of Administrative Regulation*. In addition, China would also notify those laws and regulations to the WTO. Above all, China would fully fulfil its commitments on transparency made upon its accession to WTO.

2. On Export Restrictions

3.8 Fluorspar was a kind of non-regenerative resource under the protection of the Chinese Government. The mining of fluorspar had a significantly negative impact on the environment. China had been attaching great importance to the exploitation, processing and consumption of exhaustible resources. From the 1970s, China had begun to impose export quotas on fluorspar while restricting the domestic mining and production of fluorspar. Pursuant to China's *Foreign Trade Law*, the *Regulations on the Administration of Import and Export of Goods* and China's commitments upon accession, China still imposed export quota administration on fluorspar. Due to the depleting of fluorspar resources and its shrinking production, the domestic consumption and export of fluorspar had, in turn, gradually decreased. China's export quota administrative measure on fluorspar was consistent with the "general exceptions" provided in Article XX of GATT 1994 – "*nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: including those relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption*;" Furthermore, according to the WTO rules, the general abolition of quantitative restrictions set forth by the Article XI did not preclude the various exemptions as contained in Articles XII to XXI of GATT 1994. During recent years, domestic and foreign prices of fluorspar had risen to various degrees. This rise in price was determined by the rules of market rather than the export quotas by the Chinese Government.

3. On Value-Added Tax Policies

3.9 China currently applied 17 per cent VAT on both domestic and imported goods, which was fair and non-discriminatory in terms of the value of goods. The current VAT rebate policy was consistent with the national treatment rule under Article III of GATT 1994. In China, customs imposed duties and VAT for the importation of copper scraps, copper ore concentrates and raw copper by copper-smelting enterprises reaching a certain production scale. After paying the duty and tax, a company could apply for the drawback of 30 per cent VAT on presentation of duty-paid proofs. The refunded tax should be applied to the technological innovations of the enterprise. VAT rebate policy on copper materials applied to all enterprises reaching certain production scale, and was not conditioned on ownership of the enterprise or local content. Copper-smelting enterprises had to pay VAT while importing copper materials. The amount of VAT should be the total sum of dutiable value and tariff multiplied by VAT rate for copper materials. According to relevant policy and provisions, the government would refund 30 per cent of the paid VAT to the enterprise. This policy

only applied to imported copper scraps, copper ore concentrates and raw copper and did not apply to other products. China did not implement any similar policy on other products or adopt any other preferential policies on copper-processing enterprises.

4. *On Border Trade:*

3.10 The WTO did not provide for the specific definition, forms and territorial scope of border trade, and only set forth a fundamental provision that "the provisions of this Agreement shall not be construed to prevent advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic". Therefore, special preferential treatments for border trade were allowed by the WTO, and advantages and conveniences accorded by a contracting party to adjacent countries were not inconsistent with the basic principle of the WTO, i.e. MFN. China had committed in its accession protocol to apply WTO Agreements and the protocol across the whole customs territory including border trade areas, and would develop and implement laws, regulations and other measures in relation to trade in goods in a uniform, impartial and rational manner. Border trade policies had been uniformly implemented and enforced in the provinces and regions in border areas of China as an important part of China's foreign trade policies. According to Bulletin No. 27 and No. 39 issued by the State General Customs Administration on 1 May 2003 and 11 June 2003 respectively, China had removed boric acid and 19 other products from the list of products subject to border trade import duties policy.

5. *Government Procurement:*

3.11 Since became a Member, China had been actively laying the ground work for the full implementation of the commitments relating to government procurement contained in its accession protocol, and these efforts had yielded remarkable results in many ways. China's first *Government Procurement Law* was published in 2001 and was followed by the enactment of a series of supplementary rules. The implementing regulation to the Law was also being drafted. Since the *Government Procurement Law* took force, purchase activity falling under the provisions of the State Council had to follow government procurement procedures, which had to be made transparent. According to the existing regulations of Ministry of Finance, procurement from foreign suppliers had to go under international public tendering. Information relating to the bidding and winner had to be made public via the media designated by the Ministry of Finance. Up till now, no complaints from foreign suppliers had been filed to the Ministry.

3.12 In addition, opinions had been solicited extensively concerning the *Administrative Measures on Tendering and Bidding for Goods and Services under Government Procurement*, which was due to be promulgated in December 2003. *Administrative Measures on Information Publication of Government Procurement* and *Measures on Complaints by the Suppliers* would be promulgated together with the *Administrative Measures on Tendering and Bidding for Goods and Services under Government Procurement*. *Administrative Measures on Software Procurement by the Government*, *Administrative Measures on Expert Recruitment for Government Procurement* and *Examination Measures on Institutions of Government Collective Procurement* were to be promulgated at the end of 2003. Comments on these measures had also been solicited. The Ministry of Finance had made the accession to the GPA one of its research subjects in 2003. The establishment and composition of the panel of experts would be further decided based upon the results from the preliminary study, while the timetable for the launch of negotiations would be set in the same manner.

6. *On Customs Valuation:*

3.13 With regard to the questions posed by Members concerning customs valuation, China had provided responses in the context of TRM held by the Committee of Customs Valuation on 6 October 2003. If Members had further questions to China's responses during TRM, they could raise

these questions under the appropriate agenda item in the meeting of the Committee with the mandate, to which China would provide answers according to due procedures.

7. *On trading rights:*

3.14 According to China's commitments upon accession, China would progressively liberalize the availability and scope of the right to trade so that within three years after accession all domestic enterprises and foreign enterprises and individuals, including sole proprietorships of other WTO Members, would have the right to export and import all goods (with the exception of products listed in Annex 2A of the Protocol reserved for importation and exportation by state trading enterprises) throughout the custom territory of China. She stressed the point that the trading rights in this context only referred to the right of importation and exportation, not including the right of distribution in China. The liberalization of distribution rights would be executed in accordance with the Schedule of Specific Commitments on Services and governing regulations in China.

3.15 Given the above-mentioned commitments and relevant laws and regulations governing foreign-invested enterprises, the enterprises in China with foreign investment had the right to import equipment, technology, raw material and other goods for self-use, and export their products. While for the importation and domestic distribution of the goods other than the above listed, the enterprises should apply for the expansion of its business scope of distribution in accordance with China's timetable regarding distribution in the Schedule of Specific Commitments on Services and other relevant regulations in China. Furthermore, the Chinese Government also allowed foreign-invested enterprises to engage in import and export, domestic purchase and distribution in China through the establishment of specific trading company, holding company, logistics company, distribution enterprises, procurement centre, etc. At present, the *Foreign Trade Law of China* was being revised. The current draft of the *Foreign Trade Law* did not contain the requirements on minimum registered capital, import or export performance and history experience.

Implementation of WTO obligations by other Members:

3.16 With reference to the Article 18 of the Accession Protocol, "China can also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in this protocol, which have a relevant mandate." Under Paragraph 241 of the Report of the Working Party on the Accession of China which specifies the commitments undertaken by the textile clothing import restraining Members of the WTO, the United States was obliged to increase the growth rates of quotas in force on the date of China's accession to the WTO by the respective growth factors provided for in the Agreement on Textiles and Clothing (ATC), including the 25 per cent growth factor applicable to Stage 2 of the ATC implementation. However, the United States had failed to fully implement its obligations by not applying the full 25 per cent growth factor to China. Since the issue remained unresolved after several rounds of bilateral consultations between China and the United States, China requested the Textile Monitoring Body to review this matter. The TMB recommended, after thorough and careful review conducted in January 2003, that the United States apply the 25 per cent growth factor in full to China and make the necessary adjustments to its methodology accordingly (see G/T/TMB/R/95). So far the United States had not yet made such adjustments in compliance with TMB's recommendation. Such a failure on the US side had adversely affected the market access available to China and upset the balance of rights and obligations between China and the United States under the ATC. The textile and clothing sector continued to play a significant role in China's economic and social development in terms of both job creation and poverty alleviation. China hoped that the United States would immediately take actions to remedy the above-mentioned problem and fully implement its commitments under the WTO.

3.17 The representative of the United States thanked the Chinese delegation for their responses. The first question dealt with trading rights, the right to import and export goods in China. This was a

key area in the China accession negotiations, along with the commitments on distribution services. For foreign invested enterprises, China committed to a phased-in liberalisation of trading rights. By 11 December 2002, joint ventures with minority foreign ownership should have had full trading rights without conditions. By 11 December 2003, joint ventures with foreign majority ownership should have had those same rights. The Working Party report in paragraph 83 required China to eliminate export performance requirements, trade balancing requirements and prior experience requirements. In that same paragraph the only minimum registered capital requirements allowed were those for Chinese enterprises, that is wholly Chinese-invested enterprises. In the measures that China had issued to date, dealing with trading rights for foreign invested enterprises, it had imposed stringent requirements and conditions on eligibility. There were minimum registered capital requirements, import level and export level requirements, and there were prior experience requirements. These measures had acted to greatly restrict the number of foreign enterprises or foreign invested enterprises that were eligible to gain trading rights. He was interested in China's response to or explanation as to how it justified those measures in light of paragraph 83 of the Working Party report.

3.18 This phased-in liberalisation essentially concludes on 11 December 2004, when full trading rights are to be available to all enterprises in China and all foreign enterprises and individuals. He understood from the Chinese delegation's response that China is now working on amendments to the foreign trade law that would effect that commitment due 11 December 2004. He welcomed the delegate's statement that those amendments would not contain any of these conditions on minimum registered capital, import and export levels, or prior experience. The United States, however, sought for China to reconsider its position and to immediately make changes to those existing measures so that the joint ventures with minority or majority foreign ownership would have the trading rights to which they should be entitled at this point.

3.19 The next area that the US had addressed in its questions was value-added tax policies. It asked one question specifically dealing with the value-added tax policy on integrated circuits. In the past, before the Market Access Committee, China had sought to justify its discriminatory value-added tax policy in this area by citing GATT Article III, paragraph 8(b). In its question the US cited two examples of a GATT and WTO panel report that made clear that discriminatory VAT policies ran afoul of Article III, that was whether they were effected through a simple reduction of the VAT that had to be paid or, as China did, where it was effected through a rebate of the VAT that had already been paid. In either event those types of policies were considered discriminatory under Article 3 and he was interested in China's views on those reports. With regard to the questions on the VAT policies on copper scrap, the United States was just seeking clarifications as to how these policies worked: first, he was trying to understand if the entity that paid the VAT in the first place was always the entity that received the VAT rebate subsequently; the second clarification was whether or not the rebate was only available upon exportation.

3.20 The next area dealt with the export restrictions on fluorspar. The Chinese delegate had addressed the question on export quotas on fluorspar and China's explanation was that while export quotas were generally prohibited, Article XX allowed an exception in this case, because China maintained comparable restrictions on domestic consumption. Although the Chinese delegate did not cite the specific measures that China used to effect the domestic restrictions, in the past China had referred to compensatory taxes and other charges. However these charges applied equally to domestic sales and to exports, so those would not seem to qualify for the required comparable restrictions on domestic consumption. As Japan had pointed out in its questions on this issue, what had been seen was domestic consumption increasing in recent years while exports had been decreasing. The second issue the US had raised under export restrictions on fluorspar, which he did not hear the Chinese delegate address, dealt with export licence fees. Article VIII of the GATT only allowed fees that were limited to the costs of services rendered. He believed the Chinese delegate had said that the price of fluorspar, both domestically and on export, was determined by market forces. However, the export licence fees that China maintains on fluorspar were assessed on a per unit basis and it more than

doubled the cost of fluorspar. He was interested in what justification the Chinese delegation could cite for maintaining those export licensing fees in the light of GATT Article VIII.

3.21 With regard to border trade, he appreciated the Chinese delegate's response but had not heard whether or not she had provided a list of the products that still received preferential border trade treatment. He would like at least a citation of a measure where he could clarify that matter.

3.22 Lastly, on government procurement, he noted his delegation's interest in China beginning the negotiations for GPA membership as soon as possible.

3.23 In response to China's comments regarding textiles, the US representative said that it was true that the ATC required an increase in China's quota growth rates because China had joined the WTO during the second stage of the ATC implementation period. Where he disagreed with China was on the methodology that should be used in determining that quota growth increase. The US position was that because China had joined the WTO only 21 days before the end of stage 2, the fundamental principle that a Member did not begin acquiring the benefits of the WTO Agreements until it was actually a Member of the WTO allowed the US to pro-rate the increase in the quota growth rate for that period of stage 2 of the ATC when the US was calculating what those increases should be. His delegation had explained in further detail to the TMB the reasons behind the US use of this methodology. The document that was cited by the Chinese delegation with the findings of the TMB explained in greater detail why it was that the US had adopted this methodology.

3.24 The representative of Japan referred to the document G/C/W/471 and requested that the Chinese delegation supply additional information and data for the questions addressed in the above communication from Japan, because the statement made by the Chinese delegation failed to respond to all questions. In addition, the representative of Japan noted that the Chinese delegation had mentioned that for fluorspar domestic consumption actually decreased along with exports. This contradicted his delegation's understanding of trends in domestic consumption. He believed that there must be some discrepancy between the data on which he had based his comments and those on which the Chinese delegation had based their statement. The representative of Japan stated that he would appreciate it if China could further explain or furnish more data on this question. On government procurement, he expressed our appreciation of the explanation given, and looked forward to getting more updated information whenever new developments occurred.

3.25 The representative of the European Communities concentrated on three concerns: first, the trading rights issue (right to import and export for foreign invested companies): the Chinese statement on this issue at the Import Licensing Committee did not clarify whether the shortcomings in the current Chinese legislation highlighted by the EC in both the Import Licensing and the Market Access Committees would be corrected and whether, in line with China's commitments, all majority-owned foreign joint-ventures would be able to obtain trading rights from 11 December 2003, without any condition and for all goods related to their activity. This notably supposed the abolition of the distinction currently made by the Chinese side but not foreseen under China's Protocol of accession, between so-called "trading JVs" and "manufacturing" JVs, the elimination of conditions on prior experience and capital requirement and the unclear requirement for existing JVs to request in some cases a "change of [their] scope of business".

3.26 Second, the establishment of a dual distribution network for domestically produced and imported automobiles: while the question from the EC on this issue was unfortunately left unanswered by the Chinese side at the Market Access Committee of 20 October 2003, the Chinese side officially confirmed its intention to set up separate distribution network a few days later in a bilateral meeting. The EC was told that the objective of China was to establish such system in the coming months. As was done then and on a number of occasions in the past (notably during last year TRM in this Council), the EC would like to strongly reiterate its deep concerns with regards to this

planned measure and to its WTO compatibility. The EC would be grateful if China could explain whether it intended to reconsider this measure and, if not, what was the state of play of the legislative process for its adoption and when China intended to notify it for comments. In this respect, given the potentially very disruptive impact such a measure would have on the activity of foreign automotive firms in China, the EC would like to urge China to make available the text of the planned measure as soon as possible.

3.27 Finally, as a follow-up to the question asked last year, the EC raised the question of China's accession to the Government Procurement Agreement (GPA). In the Working Party for WTO accession China had stated that it would initiate negotiations for membership in the GPA as soon as possible. Now that two years had elapsed since China's accession to the WTO, the EC would be grateful if China could indicate when it intended to start negotiation in order to join the GPA. The EC would also like to stress that, until its accession to the GPA, China should, in line with its commitments ensure that all government entities conduct their procurement in a transparent manner and that all foreign suppliers be provided with equal opportunity to participate in that procurement pursuant to the MFN principle.

3.28 The representative of Canada commended China for its efforts during this second year of membership in the WTO. Canada acknowledged the sustained commitment that China had demonstrated to the ongoing process of evolution and reform of its international trade regime. Continued progress was resulting in increased trade between China and other WTO Members including Canada, as well as in economic growth within China. Canada recognised progress in areas of particular interest, notably with regard to clarification of frontier/border trade issues and towards implementation of its commitments under the Information Technology Agreement. Products on the ITA list were an important and growing part of our bilateral trade and would play a significant part in the development of China's economy.

3.29 Another noteworthy area was on some SPS issues where ongoing cooperation between Canadian and Chinese authorities was bringing satisfactory solutions that would benefit Canada's exporters of food products. While Canada acknowledged progress made to date, there continued to be areas of concern. For example, Canada shared the views expressed by some Members regarding a perceived lack of transparency in China's approach to TRQ and quota allocation for certain products, particularly agricultural commodities. Canada was a significant producer of canola and was taking advantage of the new export opportunities for this commodity. However, China's approach to regulating genetically-modified organisms (GMOs) was evolving and Canada was eager to ensure that its growing trade in canola was not negatively affected. Canada continued to monitor closely China's compliance with its WTO obligations in these, and other areas. Canada was prepared to work constructively with China to ensure that commitments China had given to all WTO Members were sustained and achieved.

3.30 The representative of China thanked the speakers for their interventions and, concerning the questions and comments made, invited her colleagues to provide further responses. Regarding trading rights, as pointed out by the China HOD in the context of China's protocol of accession, trading rights only referred to import and export, not distribution. In this regard, foreign invested enterprises with majority or minority ownership should follow the relevant provisions of the regulations with regard to foreign invested enterprises. These enterprises could import goods, services and technologies for their own use, and if those enterprises imported goods and services to be distributed within Chinese territory they needed firstly to file the application for changing their business scope and after doing that they could undertake distribution business in China. With regard to the capital requirements of trading companies set up by foreign investment, one was referring to foreign trade companies only. Regarding the question raised by the US about holding companies, their functions were much more than trading, and China imposed capital requirements on those companies. With regard to logistics companies set up by foreign investment, these companies were actually involved in distribution,

purchasing and a series of other activities. So with this expanded business scope China had to impose capital requirements for these companies. China was now revising its foreign trade law. According to the draft of the foreign trade law China would further specify the trading rights and their availability to foreign invested companies.

3.31 Regarding export restrictions which directly concerned fluorspar, in order to protect those non-generative resources China was now imposing a quota restriction system on the export of fluorspar. This was in line with the general exceptions as enshrined in Article XX of the GATT 1994. The US had raised a concern that China might have collected an export licence fee which ran at 80-150 per cent of the production cost of fluorspar. She pointed out that with regard to the export licence, only 20 RMB was collected for the cost of the licence itself. No other fees were charged. Secondly, fluorspar was a scarce resource with great market demand. Production was falling in recent years in China, where the costs of exploitation and transportation were constantly rising, which resulted in a surge of demand and shortage in supply. It was this gap between the supply and the demand which was the cause of the rise in price and was not the result of quota restrictions imposed by the Chinese Government. With regard to the question raised by Japan on the increase of domestic consumption of fluorspar, she considered that in recent years the production of fluorspar had been constantly decreasing. Exports, together with domestic consumption, had also been decreasing significantly.

3.32 With regard to border trade, he considered the border trade policy of China was in line with the MFN principle of GATT 1994. The list of preferential treatment for border trade was published by the Ministry of Finance with approval by the State Council and the executive agency was the general customs administration in China. The list was published in several batches and up until now there had been no complete and uniform document containing all products subject to preferential treatment for border trade.

3.33 With regard to the automobile distribution network in China, a new automobile development policy was in the process of being drafted. During the drafting process China had extensively solicited the opinions from various parties, including US and EU manufacturers. The final solution of this problem would have to wait until the final text of this new policy was ready and published. With regard to the questions raised by some Members on the VAT regime, he began with an explanation of the VAT rebate system in China for integrated circuits. The VAT tax, as reflected in the prices of integrated circuits, was the same for all products and was not treated differently with regard to the ownership of these manufactures. With regard to the cases raised by the US on the panel rulings on some related cases, he said the following: with regard to the wine tax cases raised by the US, the tax policy actually covered a two-layer tax regime for wine distribution. According to the law the lower rate applied to wines produced below a certain production scale, and imports of wines were subject to a higher rate in general. The Canadian Government claimed that this violated the national treatment rule. Because these measures were different from state to state in the US, this was also challenged by the Canadian Government. The US was held to lose in this case. He thought there are essential differences between the US tax policy on wines and China's VAT rebate policy on integrated circuits. If lower tax rates applied to domestic products they would benefit from a relatively low price, and a higher tax rate on imported goods would pose a kind of discrimination. This type of difference in tax rates for domestic and imported goods was inconsistent with the national treatment principle. A policy concerning this case was not comparable to the VAT rebate policy on integrated circuits in China.

3.34 With regard to the question concerning the Indonesian automobile case, the interpretation of the WTO DSB on the subsidies paid to the producers was that if the subsidies were derived from indirect taxes, first of all they should be imposed on a non-discriminatory basis, and at the same time the subsidies must be paid to producers directly, which was stated in Article III.8(b) of the GATT. This should not be a financial benefit indirectly accruable to producers, such as those paid to

consumers of the products manufactured by domestic producers. Therefore his delegation was of the view that the current VAT drawback system for integrated circuits was in full conformity with the above interpretations and with Article III.8(b) of GATT 1994.

3.35 With regard to the VAT regime on copper scrap, he stressed the point that after payment of duties, enterprises could apply for a drawback of VAT on presentation of duty paid proofs. This policy only applied to exporters of finished products and semi-finished products. This tax rebate system was equally applied to all enterprises reaching a certain production level regardless of the ownership of the enterprise.

3.36 The representative of Japan said that concerning fluorspar his delegation requested China at a later stage to submit to Japan the sources of the data for the domestic consumption of fluorspar so that the statistics upon which the Chinese information was based could be verified.

3.37 The representative of the United States said on the fluorspar issue, the US would be interested in understanding more about the import licence fees. US companies were paying fees that doubled the cost of fluorspar, but the Chinese delegation had said that the fee was only 20 RMB. He did not understand this discrepancy at this point. These fees had been in place for several years so he would appreciate a clarification at some point on that issue. With regard to trading rights, he was not addressing specifically logistics companies and holding companies which carried out a range of duties. China's commitments were to allow foreign invested enterprises to have full trading rights without conditions, without capital requirements, without import and export level requirements, and without prior experience requirements. On the VAT issue with regard to integrated circuits he disagreed on what the WTO precedent was. With regard to border trade, he understood that the list of products had been issued in several batches and at some point he would be interested in finding out what those various measures were.

3.38 The representative of China thought that the responses contained in her statement and information exchanged in the discussion should be sufficient to address the major concerns of Members. Also, multilateral and bilateral channels which were supplementary to each other could be utilised to accommodate the concerns of Members. The implementation of China's commitments made in the WTO accession was an integral part of China's opening up and economic reform policy. China had been faithfully fulfilling its commitments towards other WTO Members on a friendly and mutually beneficial basis. China as a developing country was facing enormous difficulties in implementing its commitments. It was therefore her sincere hope that WTO Members would adopt a long-term approach and a pragmatic attitude towards China's implementation process.

3.39 The Chairman thanked the delegation of China for the answers that it had provided and also those delegations that had raised questions and made comments. Regarding the form of the CTG report, he suggested that the Council proceed in the manner it did last year. This would mean that a brief factual report would be prepared with references to the relevant documents and attached to it the portion of the minutes of this meeting which related to the Transitional Review. The CTG report, together with the reports of the subsidiary bodies, would then be transmitted to the General Council.

3.40 It was so agreed.
