

# WORLD TRADE ORGANIZATION

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## Committee on Trade in Financial Services

### REPORT OF THE MEETING HELD ON 21 OCTOBER 2002

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

1. The Committee on Trade in Financial Services held a meeting on 21 October 2002. The agenda is contained in airgram WTO/AIR/1928.
- A. ACCEPTANCE OF THE FIFTH PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES EMBODYING THE RESULTS OF THE FINANCIAL SERVICES NEGOTIATIONS.
2. The Chairman recalled that seven WTO Members have not yet accepted the Fifth Protocol, namely Bolivia, Brazil, Dominican Republic, Jamaica, the Philippines, Poland, and Uruguay. However, he stated that Bolivia had recently announced its intention to accept the Protocol, and had requested the re-opening of the Protocol for that purpose. This was communicated to Members in document S/C/W/214. In addition, a draft decision for the Council's consideration was circulated in document S/C/W/215. Since only the Council for Trade in Services was authorized to re-open the Protocol, the matter would be taken up at the next regular meeting of the Council, to be held on Friday, 25 October.
3. The representative of Bolivia confirmed that according to Article 59, paragraph 12 of the Political Constitution of the State, Bolivia had enacted the Law No. 2401 of 31 July 2002, approving the Fifth Protocol to the GATS. She also confirmed that Bolivia had requested that the re-opening of the Fifth Protocol for its acceptance be included as an item on the agenda for the next meeting of the Council for Trade in Services.
4. The representative of Poland informed the Committee that the ratification procedure was in its final phase. The Council of Ministers had accepted the motion of ratification of the Fifth Protocol and, within the next few days, it would be presented to the President of the Republic of Poland for signature.
5. The representative of Uruguay said that the Fifth Protocol had been adopted by the Chamber of Representatives, and was now being considered by the Senate's Commission on International Affairs. He added that the legislative procedure had entered into its last phase.
6. The representative of the Dominican Republic said that the Fifth Protocol had been approved by the Senate of the Dominican Republic on 1 October 2002. It was expected to be considered by the Chamber of Representatives towards the end of the current month. She added that the Dominican Republic was very interested in concluding the ratification procedure as soon as possible.

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<sup>1</sup> This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

7. The representative of Canada thanked those Members for the information provided.

8. The representatives of Switzerland and the European Communities thanked those four delegations for the information provided and encouraged the other Members concerned to provide additional information on the status of their respective procedures.

9. The Chairman thanked Bolivia on behalf of all Members for its decision to finally accept the Fifth Protocol, an initiative that must be welcomed as an additional proof of Bolivia's commitment to the multilateral trading system. He also encouraged the other six Members concerned to accelerate their internal procedures for the acceptance of the Protocol.

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

B. TRANSITIONAL REVIEW UNDER SECTION 18 OF THE PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA.

11. The Chairman recalled that the Committee was mandated to conduct this review of the implementation by China of its commitments in the WTO pursuant to section 18 of the Protocol on the Accession of the People's Republic of China. He added that, on the basis of his consultations on this matter, it had been decided that the Committee would undertake that review at this meeting. This was announced by fax to all Members on 12 September 2002.

12. Since that date, written communications had been received from the following Members: the European Communities and their Member States (S/FIN/W/18); the United States (S/FIN/W/19); Canada (S/FIN/W/20); Japan (S/FIN/W/21 and Addendum 1); and Chinese Taipei (S/FIN/W/22).

13. The representative of China said that an important delegation, made up of senior officials from relevant administrative authorities, including the People's Bank of China and the China Insurance Regulatory Committee, was sent to this meeting in order to address the comments and concerns of other Members. He said he would divide this statement into two parts: i) a brief account of China's preparation for the review; and ii) responses to the comments and questions of common concern raised by some Members.

14. Regarding the preparations for the review, in light of the provisions in the accession protocol of China, the information regarding financial services had been provided to the Council for Trade in Services, according to the requirement of Annex 1.A to that protocol and the notification obligations of GATS Article III.

15. The relevant information for this Committee included the following: the laws, regulations and administrative measures directly related to the financial sectors and sub-sectors listed in China's Schedule of Specific Commitments; the government bodies in China responsible for the administration of financial services; and the market access status in the financial sector since China's accession to the WTO.

16. China had been making every possible effort to carry out its commitments with regard to financial services since its accession to the WTO. In terms of the legislation governing this sector, to fulfill its commitments, China had revised a series of regulations and administrative measures including: *Regulations on Administration of Foreign-Funded Financial Institutions*, *Implementation Rules of the Regulations on Administration of Foreign-Funded Financial Institutions*, *Measures for Administration of Representative Offices of Foreign-Capital Financial Institutions in China*; etc. A number of new regulations had also been formulated including: *Regulations on Administration of Foreign-Funded Insurance Companies*, *Rules for Establishing Foreign-Invested Securities*

*Companies, and Rules for Establishing Foreign-Invested Fund Management Companies*. The People's Bank of China also issued *Proclamation on the Related Issues of Foreign-Funded Financial Institutions' Market Access* at the time when China acceded to the WTO. The government of China had managed to compromise on a dilemma during the process of legislative streamlining. On the one hand, China was under the obligation to promulgate these regulations and administrative measures at the earliest possible stage so as to consolidate the legal basis for foreign services providers to take advantage of legitimate market access opportunities promised by China's protocol of accession. On the other hand, to observe the principle of transparency, every possible means had been utilised to provide WTO Members, enterprises and individuals with the opportunity to comment. Thus far, the only area without governing regulations was the auto financing by non-banking institutions, as the result of the historical absence of institutions specialized in auto financing, and the lack of mature administrative mechanism and experience. Starting basically from scratch, the regulatory system for this particular area needed more time to take shape. Currently, the draft of the relevant regulation had been published to solicit public comments.

17. The achievement made by China in promoting market access in financial services was concrete and evident in all sub-sectors.

18. In the banking sector, the business of foreign funded banks in China had been further expanded since China's WTO accession. The number of foreign-funded banks with the right to conduct RMB business had increased from 31 at the end of the year 2001 to 45 as of August 2002, with total assets in RMB of about 44.6 billion. Foreign funded banks' profit from RMB business reached 184 million in the period from January to July, 2002, with a net growth of 13.58% in July. Profits on the foreign exchange business hit US\$ 119 million in the same period, with a monthly net growth of 21.43% in July 2002.

19. The insurance business had also witnessed an increase in the number of foreign funded insurance companies since China's WTO accession. Three companies, namely, Swiss Reinsurance, Munich Reinsurance, and Cigna Corp. had been granted the approval for the establishment of Sino-foreign joint-venture or branch. AIA Suzhou and Beijing branches, Everbright Sun-life Life Insurance had completed their preparatory work and had started operations during this period.

20. In the securities sector, Guo An Fund Management Corp., the first Sino-foreign joint-venture fund management company, was approved on 16 October 2002, marking a major step forward by China to fulfill its market opening commitments in this important and sensitive sector.

21. He then turned to the second part of his statement, and provided responses to the areas of concern identified in the questions submitted by some Members.

## **1. Insurance Business**

**a) Regarding the transparency of governing regulations**, he said that as a WTO member, China was committed to abide by the WTO rules. China would observe the notification procedures and take account of various opinions and comments in the process of formulating laws and regulations.

Since China's entry into the WTO, the approval of foreign insurance companies had been conducted in compliance with China's commitments. It was true that some articles in the "*Regulations for the Administration of Foreign-Funded Insurance Companies*" contained wording such as "pursuant to relevant regulations". By "relevant regulations", China meant the regulations already adopted by China, and commitments made by China on insurance, which had all been made public and easily accessible for foreign insurance companies.

Concerning licensing procedures, China had been making great efforts to improve the existing insurance regulations and administrative measures. As part of those efforts, the “*Regulations on the Administration of Foreign-Funded Insurance Companies*” had been promulgated and implemented with a view to defining and clarifying the procedures of approving foreign insurance companies. In practice, the so-called “multi-tiered application” only appeared when the application material was considered incomplete or failing to meet the requirements laid out in the “*Regulations on the Administration of Foreign-Funded Insurance Companies*”. The requirement for the applicants to redress deficiencies by submitting more documents showed that China was serious in aligning insurance regulations with the WTO rules and its commitments.

**b) *With regard to the issue of internal branching***, according to the “*Administrative Measures on Insurance Company*”, foreign insurers were permitted to establish branches or sub-branches. Since China’s entry into the WTO, China Insurance Regulatory Committee (CIRC) had strictly observed the “national treatment” principle with regard to requirements for internal branching. In compliance with China’s commitments, upon accession, foreign non-life insurers could establish a branch or joint venture with an equity level up to 51 percent; and within two years after accession, foreign non-life insurers would be allowed to establish wholly-owned subsidiaries. According to this commitment, a foreign insurance branch company set up in China, in compliance with concerned laws, could establish branches or sub-branches in its operation area after being transformed into a wholly-owned subsidiary.

**c) *Regarding the Issue of Capital Requirements***, these were made before China’s entry into the WTO in full consideration of the specific situation of China’s insurance industry. Before the establishment of the requirements, CIRC extensively solicited comments and opinions from experts at home and abroad. These requirements for foreign-invested insurance companies concerning capital and licensing applied to domestic insurers as well, something clearly defined in the “*Administrative Measures on Insurance Company*”.

**d) *Regarding the Issue of International Cooperation and Communication***, after China’s entry into the WTO, China committed itself to increasing exchanges and cooperation with other WTO Members and foreign economic and financial institutions in a bid to improve its insurance regulatory system and legal framework. CIRC would also like to intensify contacts with foreign insurers on related issues.

## **2. Banking Services**

**a) *Regarding the minimum registered capital requirement or operational capital requirement for foreign-invested banks***, he said that the national treatment principle was observed for the minimum capital requirement for both foreign and domestic financial institutions.

Secondly, foreign financial institutions could choose at their own discretion different types of establishment in China, which had different operational capital requirements. So far, all foreign banks had increased their operational capital to the level required for their business scope. Among them, 59 had been allowed to conduct a full spectrum of foreign exchange business, and 45 to conduct RMB business. The requirement on operational capital could meet the demand of foreign financial institutions in the 5-year transitional period.

Thirdly, many other WTO Members had also minimum operational capital requirement on branches of foreign banks, although the amount varied from Member to Member. The current operational capital requirement in China had to accommodate the current Chinese financial development level, including the banking industry and its supervisory capacity. Foreign bank branches in China already enjoyed a much broader business scope, including products and clients, than what could be allowed in many other Members.

Furthermore, the trend of governing a branch as a quasi-legal entity was catching on recently in the world. China believed that it was difficult for the regulatory authority of the host country to monitor and control the global operation risks of parent banks, even though they were committed to undertaking the liability of their branches. Therefore, for the purpose of protecting the interests of domestic depositors and the safety and soundness of the financial system, China had to treat branches of foreign banks as legal entities so as to separate risks of branches from those of their parent banks.

**b) *Regarding the Issue of Auto Financing***, China understood that foreign banks were hoping for an early promulgation of auto financing regulations. The Chinese government would do so as soon as possible. However, some explanations were necessary in that regard.

Firstly, since the concept of auto financing business came late to China, there was no entity specialized in this business and no governing regulation. A unified set of rules covering licensing procedures, business scope, etc., was needed for the non-banking financial institutions that were only engaged in extending loans for car purchase. The PBOC needed time to take a complete and thorough study when drafting such rules, drawing on experiences from other Members and taking into account China's specific situation.

Secondly, drafting the proposed rules had to take account of the corresponding amendment of some related administrative rules and keep consistency. So far, both commercial banks and financial companies affiliated to car companies could deal with auto financing. The operation of these entities shall be uniformly administered by the proposed rules.

Thirdly, the principle of transparency was given priority in the drafting process. Consultations had been held between the concerned administrative agencies and interested parties, including the embassies of some Members in China, and some corporations like General Motor, Ford, Volkswagen and Toyota. They provided many valuable comments and suggestions. On this basis, the PBOC made further amendments and posted *Rules on the Administration of Auto Financing Institutions* on the web-site of PBOC for further public comments with a 31 October 2002 deadline.

**c) *Regarding the 40% limit on inter-bank borrowing in RMB within 4 months (from the drafted Rules on Inter-Bank Borrowing in RMB)***, the Rules were still in the drafting process and under consultation with all parties concerned.

This requirement was in conformity with WTO national treatment principle. Pursuant to the accession commitments by the Chinese government, from December 2003, foreign banks would be allowed to conduct RMB business with Chinese enterprises and the current over-dependence of foreign banks on inter-bank borrowings would be gradually improved. The forthcoming Rules would not pose any significant impact on the development of foreign banks. In addition, the specific situation of foreign banks would be fully taken into account during the drafting process, such as a longer grace period to cushion the pressure on foreign banks.

**d) *Regarding Branching Restrictions and Approval Procedures***, he said that this was a prudential requirement based on the following considerations. Firstly, establishing an operational entity was very important to any bank and entailed many major arrangements, like the appointment of appropriate senior staff, the laying out of internal control systems as well as the development of a business plan, etc. If the interval between setting up branches was too short to manage all these arrangements, the applicant would face unhealthy pressure on the soundness of operations and risk management.

Secondly, following the approval, the foreign bank should then focus on the establishment of the branch, implementing the business plan proposed in its application as soon as possible. So it was not in line with the prudential principle to apply for another branch when the establishment of the just-

approved branch was still underway. Thirdly, there were other options for foreign banks to expand their operation network, such as sub-branching in one city and offering e-banking facilities. After a branch of foreign bank had applied for a sub-branch in one city, it could apply for another sub-branch as long as the last application was either approved or rejected according to the *Rules on Sub-Branch Establishment in One City by Commercial Banks*.

**e) *Concerning the qualification of the lead partner in a new Sino-foreign fund management joint venture company***, on June 1st, 2002, the China Security Regulatory Committee (CSRC) promulgated Rules on the Establishment of Fund Management Company with Foreign Shareholding, which was enacted on July 1, 2002. This document was one of the major regulations regarding the establishment of a Sino-foreign fund management joint venture company in China, which did not prohibit qualified overseas financial institutions (including overseas fund management companies) as the lead partner of Sino-foreign fund management joint venture companies. For prudential considerations, currently, an overseas financial institution, in order to be the lead partner of a fund management joint venture company, must have qualification and experience in asset management.

**f) *Concerning the comment period for the CSRC's rules and regulations***, prior to the promulgation of Rules on the Establishment of Securities Company with Foreign Shareholding and Rule on the Establishment of Fund Management Company with Foreign Shareholding, the CSRC published both draft Rules on the CSRC's official web-site ([www.csrc.gov.cn](http://www.csrc.gov.cn)) for public comments in December 2001. After the collection of public opinions, the CSRC went further to consult extensively with foreign-invested institutions or their local branches and representative offices through a number of discussions/seminars.

**g) *Concerning the approval process for establishing a Sino-foreign fund management joint venture company***, Articles 11-17 of the Rules on the Establishment of the Fund Management Company with Foreign Shareholding specified the approval process for establishing a Sino-foreign fund management joint venture company. In accordance with the WTO national treatment principle, the same approval process was applied to both domestic fund management companies and Sino-foreign fund joint venture companies; that is, all fund management companies in China, whether domestic-funded or foreign-funded, were subject to the same approval procedures and rules.

**h) *With respect to the Issue of MFN Regarding The Licensing of A Share Trading, Business***, the license of A share trading business for existing joint venture securities companies was approved by the CSRC before China's accession to the WTO. Legally speaking, China was not bound to the WTO obligations, including the MFN principle, until China became a formal Member of the WTO. Thus, the MFN principle did not apply to the cases before China's accession.

He added that China had been fulfilling its WTO accession commitments in a positive and serious spirit. The efforts that had been made, as well as the difficulties that had been overcome, should be recognized by all Members. From what China had learnt, foreign-funded financial institutions had been satisfied with the increased market access opportunities, the improved transparency policy and the better operation environment since China's WTO accession. They maintained strong confidence in the continuous and steady growth of the Chinese economy, and looked forward optimistically to further expanding their businesses in China. He expressed the hope that the information provided to the Council for Trade in Services prior to the meeting and the explanation just given would help Members understand China's efforts and achievements to implement its commitments on financial services.

Finally, for transparency purposes and in order to have a better understanding of the responses, the representative of China agreed to have its statement circulated after the meeting.

22. The representative of the European Communities said that the responses given by China at the meeting contained interesting elements. However, they were incomplete. He made some preliminary comments, since he had not been able to analyse and review the answers provided by China. Regarding the issue of internal branching in insurance, he took note of the reply from China that national treatment was respected. However, he highlighted that it was not only a question of national treatment, but also of market access in the sense of GATS Article XVI. The existence of different performance tests and timeframes for the establishment of different branches had an impact on market access, and not only on national treatment. He invited the representative of China to provide further explanations on that issue. Regarding the minimum capital requirements for branches in the banking sector, he noted the argument provided by China. However, he was also interested in having a further analysis by China with regard to national treatment. According to China, national treatment was respected. However, he wanted to know, in China's view, to what extent the minimum capital requirements was in conformity with this principle.

23. Thirdly, regarding the "unexpected difficulties" mentioned in the communication from the European Communities (S/FIN/W/18), he got the impression that this issue – a fiscal matter – had not been addressed by China. He invited China to consider this issue further, particularly the question of national treatment with regard to fiscal requirements for banks.

24. Fourthly, regarding the opening of branches in the banking sector, he noted that according to China, that was a prudential measure. However, he failed to understand why in addition to these very high minimum capital requirements, specific timeframes were set for the expansion of the foreign banks' networks. These timeframes were evidently a restriction to the expansion of foreign banks in the Chinese market.

25. Finally, regarding securities, the MFN principle and the trading of A shares by foreign companies, he noted China's argument that the licence in question delivered before China acceded to the WTO. He noted, however, that there had been a change in the status of China, and that a license had been granted to a joint venture since China acceded to the WTO. He reserved the right to come back to the question at a later stage.

26. The representative of the United States appreciated the hard work that China had put into the implementation of its financial services commitments and the positive and serious spirit with which China had undertaken that implementation effort. Unfortunately, other Members were not always provided access to the information needed to gauge the implementation progress. In that vein, the United States was disappointed that China did not provide written responses to the questions that had been submitted by the United States and other Members in advance of this meeting. This kind of information was quite relevant to China's implementation and therefore as this review was an essential element of China's accession package, he requested China to provide written responses to the questions submitted. Although in the remarks of China there were some responses to some of the questions that had been posed and submitted by the United States and other Members, providing these answers in the context of this meeting did not provide the opportunity for a meaningful review that was intended by the transitional review mechanism. There was not enough time to analyse some of the new information that was coming up. That said, he responded preliminary to some of the replies provided by China.

27. With respect to insurance, the United States did hold bilateral meetings in China, with Chinese officials, in late September, and it was agreed to convene a follow up meeting to explore alternatives to the high and redundant capitalisation requirements for insurers, which were a source of concern in light of national treatment and market-access commitments. He remained concerned about the two other regulatory issues that were addressed and expressed an interest in the Chinese delegation's views. First of all, China had committed to prevent licensing procedures and conditions from acting as barriers to market access. China also committed to ensure that such procedures and

conditions would not be more trade restrictive than necessary, that applicants would not need to be invited to apply for a license, and that the application process would be transparent with opportunities to cure deficiencies and reapply if necessary. In its reply, China said that the new regulations effective 1 February 2002, did not contain a multi-tier process. However, articles 8 to 12 of the new regulations did continue to maintain a multi-tier application process that did invite uncertainty and delay. In practice, there still appeared to be a need for an invitation to apply from the CIRC. He invited China to offer its plans for remedying this situation.

28. With respect to branching, China had committed to allow non life firms to establish as a branch and allow internal branching in accordance with a lifting of branch geographic restrictions. China had also agreed it would not apply the qualifications for foreign insurers applying for a license to the foreign insurers already established in China who were merely seeking authorization to establish branches or sub-branches. Nevertheless, the CIRC had taken the position that non-life firms already established in China wishing to open branches could not do so unless they first established a subsidiary. He asked whether China could confirm that it would adhere to its commitments and permit internal branching by foreign non-life firms consistent with affairs out of China's geographic restriction.

29. Finally, he addressed the issue of motor vehicle financing. The United States saw the second draft of the regulation circulated by the People's Bank of China, and did appreciate some of the modifications that the PBLC had made in the latest draft. The United States intended to provide further comments on that draft to the People's Bank of China. However, the United States continued to be concerned by a number of aspects of the proposed regulation, including the level of capitalization required and the qualifications required from a company wishing to establish an auto loan institution. He noted China's statement about the need for more time to study this market and for the People's Bank of China to establish market access in this sector. However, he reminded Members that China had committed to provide market access in this sector upon accession; in other words, since 11 December 2001. So, he was interested to hear from China when indeed the regulations would be final, so that non-bank financial institutions could begin to provide motor vehicle financing in China.

30. The representative of Pakistan thanked the Chinese delegation for its detailed and comprehensive replies. Pakistan was of the view that despite the very onerous and indeed unprecedented obligation placed upon China, the Chinese delegation responded very adequately to all the questions put to them in pursuance to the TRM. Pakistan was very satisfied with their responses. He also expressed Pakistan's deep appreciation for all the measures taken by China to implement its WTO commitments in a very meaningful manner.

31. The representative of Chinese Taipei said that credit should be given to the Chinese delegation for its obvious efforts in preparing the responses to the questions and comments tabled by his delegation and several others. As one of the major trading partners and investors in China, Chinese Taipei felt much obliged to address a number of legitimate concerns in areas where China might have lapsed in its implementation. Chinese Taipei strongly believed that a smooth implementation of China's accession Protocol was in the best interest of all Members concerned, including China itself. Chinese Taipei looked forward to a successful transitional review mechanism.

32. He then made some specific comments. Chinese Taipei was of the opinion that the Chinese delegation had made conscientious efforts in preparing all the documents.

33. Regarding the issue of auto financing by non-banking institutions, he reminded that it was raised by the submissions made by the United States and Japan, dated 1 October. Incidentally, he found with pleasant surprise that a draft rule had been published by the People's Bank of China one week later for comments. Of course, that commitment was made to be available upon the accession



of China, earlier this year. But, the reasons presented by the Chinese delegate previously were quite understandable because it required a very comprehensive inter-agency hearing and consultation. From his perspective, the timely publication of this piece of legislation for comments was a development worthy of attention.

34. Chinese Taipei had tabled a wide range of issues covering securities, banking and insurance. Most of Chinese Taipei's concerns overlapped with those tabled by four other Members. These concerns lay in the unusually high capital requirements for foreign institutions, the lack of transparency in Chinese regulations and the lengthy and uncertain licensing procedures. Having said that he turned to an issue that was not answered by the Chinese delegation. It was his understanding that in order for a foreign financial institution to be able to operate in China, a so-called memorandum of understanding for mutual cooperation in the regulation of the business was required. He asked the Chinese delegation whether the rationale for that could be provided. Having said that, he noted that Chinese Taipei was a major trading partner of China, and a major foreign direct investor in China. It had invested more than a hundred billion dollars in China. Therefore there was a legitimate need for financing for Chinese Taipei investors in China. He reported that four banks from Chinese Taipei had been given the status of representative office, and were waiting to be upgraded. But in order to upgrade their operation, they were requested to sign a memorandum of Understanding with the Chinese authorities, namely the People's Bank of China. He wished that some kind of flexibility could be created for this kind of document to be signed.

35. The representative of Cuba thanked China for the full and comprehensive presentation, and for the information given concerning the tremendous efforts undertaken in order to meet the high commitments undertaken in the financial sector. The information provided showed that foreign participation in this market was a sign of confidence, and that was an underlying factor to be kept in mind constantly in this discussion. She added that China was carrying out tremendous efforts in ensuring that its commitments were met, and paid tribute to that endeavour on its part.

36. The representative of Canada expressed appreciation for China's efforts in moving forward with meeting its commitments in the financial services sector. He emphasized that Canada's concerns regarding China's regime focused more on the specific details rather than the overall direction of Chinese policies. Turning to a matter of procedure, he noted that in its statement, the Chinese delegation referred to information provided in advance to the Secretariat and asked for further details in order to have access to it. He also asked whether a list of the Chinese delegation could be made available.

37. He then raised some specific concerns in the area of insurance, banking, fund management and transparency in general. In the case of insurance and banking, Canada was concerned about the very high levels of capital requirements, and their application on a branch-by-branch basis. Canada was also concerned by the cap on RMB borrowing, and noted the Chinese statement that this was a draft regulation. He hoped to have further discussion on this issue. Regarding fund management, he asked why Chinese mutual fund companies were not permitted to be the lead partner. With respect to transparency, it was his understanding that the multi-tier, multi-stage approval process was in fact still being applied, said that was a very complex process. The issue of public comment was also very important. Canada's sense was that, when those regulations came out in December 2001, the period for comment was very limited.

38. The Chairman then offered the floor to the Secretariat to clarify the issue of the information provided by China.

39. The representative of the Secretariat stated that the submission from China was received on Friday. It was being processed at that time. It was submitted by China for circulation to the Council for Trade in Services only, and it would be issued as S/C/W/218.

40. The representative of Japan expressed appreciation for the Chinese effort to increase market access and transparency in the area of financial services. He raised four main issues of concern.

41. Firstly, some of the questions raised by Japan had not been answered by China's statement. He asked China how it intended to answer each of the questions posed by WTO Members, in what manner and what timing. He requested the Chinese delegation to circulate its responses to all Members for transparency purposes.

42. Secondly on the geographical restrictions in the insurance sector, he asked the Chinese delegation to provide an answer to the question posed in Japan's communication S/FIN/W/21 dated 1 October.

43. Thirdly, regarding the issue of licensing procedures in the banking sector, it appeared from China's statement, that since it would take some time for foreign banks to establish a commercial presence, therefore they would be prohibited from applying for another license during a certain period of time. Since China said that it had studied the banking regulations of other countries, he asked China whether it would identify the sources consulted. He then referred to the specific question posed in the addendum to document S/FIN/W/21, dated 14 October. Japan had raised the issue of the licensing procedures which prevented foreign financial institutions from applying for a license to the same city if they had been denied the application for one year. And the reasoning provided by China seemed to be that since foreign financial institutions were busy in preparing the establishment of a new commercial presence, it was not appropriate for them to apply for another license. That reasoning did not seem to apply to foreign financial institutions having been denied a license to operate in one city, which could in fact apply another time to establish commercial presence in the same city. He asked the Chinese view on this.

44. And fourthly, regarding the issue of the proposed regulation of inter-bank fund raising, he associated himself with the statement made by Canada in thanking the Chinese authorities for providing interested private sector participants with an opportunity for comment.

45. The representative of Switzerland thanked China for the information provided. Switzerland acknowledged that the Chinese authorities were facing important tasks in ensuring the commitments made during the accession process. The Swiss authorities attached great importance to the conformity of domestic regulations with international commitments. The Chinese authorities had already adapted and adopted several laws and regulations, and a certain number of initiatives were underway. Switzerland encouraged China to continue with this work. Taking into account the numerous recent developments, Switzerland wished to clarify the current regulatory situation, and associated itself with the previous interventions of other Members.

46. The representative of China said that, according to his understanding of section 18 of accession protocol, China had no legal obligation to provide answers in writing. China believed that a commitment to provide answers in written form went beyond paragraph 18 and would impose an excessive burden on China. He understood that some members might have additional follow-up questions, but the transitional review mechanism was only one opportunity. There were also other opportunities. Members could collect information from China's enquiry point, which was established immediately after accession to the WTO. Or, discussions could be held bilaterally. Any Member having any follow-up question might approach his delegation. China would be pleased to discuss with Members.

47. The transitional review mechanism was an 8 to 10 year programme, and nobody could expect China to fulfill all the commitments overnight, in one year time. That was unrealistic. China had done its utmost and would continue to do its best to fulfill its obligations. China was very serious about its commitments and obligations to the WTO but needed time to fulfill all of them.

48. Regarding the questions raised by Chinese Taipei, China made the following clarification. The normal trade relations in light of WTO principles and rules between China and the separate customs territory Chinese Taipei had not yet been established. Such a situation was caused by unilateral restrictions erected by Chinese Taipei. China's policies towards Chinese Taipei were open and non-discriminatory. Therefore, it was meaningless for Chinese Taipei to ask any specific question to China while it refused to fulfill its basic obligations under the WTO to allow the normal flow of goods, services and people across the strait. It was China's hope that all these fundamental issues would be first dealt with through bilateral channels.

49. He took note of the additional questions raised by Members. Many of those concerns had already been answered in the introductory statement. He focused instead on some specific questions raised.

50. Firstly, regarding the tax issue raised by the European Communities, he said that, having checked with the relevant authorities, he was not aware of such a regulation and did not know that such measures applied differently between domestic and foreign financial institutions.

51. On the questions regarding the registered capital and the geographical limitations in the insurance sector, he said that some foreign insurance companies still misunderstood the Chinese capitalization requirements and operation ratios. According to the Insurance Companies Administrative Measures, insurance companies doing business on a national level should have at least RMB 500 million in paid-up capital. Those doing business in specific regions should have at least RMB 200 million in paid-up capital. A branch of a foreign insurance company was required to have an operational capital of RMB 200 million, and could establish up to two sub-branches in its operational region without requirements for additional capital. If those companies wished to establish more sub-branches in addition to those two, an additional RMB 50 million was required for each additional sub-branch until the capital reached RMB 500 million, and automatically became national companies.

52. Regarding the question on high-level senior management personnel for foreign insurance companies, he said that the fact that China allowed foreign senior management personnel to hold posts in China did not mean that there was no requirement for the qualification of their posts.

53. Regarding the insurance regulatory system in China, he said that the Chinese government regulated life insurance and non-life insurance markets separately. And this was for the sake of prudential administration.

54. On the question of whether China was going to further liberalise its restriction on life insurance, he said that China's commitments on life and non-life insurance were different. Actually, the question of whether China was going to further liberalise its life insurance should be discussed in the next round of market access negotiations.

55. Regarding the opening of the cities allowing foreign insurance companies to enter into China, it was true that some foreign insurers already had insurance operations in some cities like Beijing, Suzhou, and Tianjin. These cities had already opened their markets to some foreign insurance companies. But attention should be drawn to the fact that all of them got an approval before China's accession. China would, in accordance with its commitments, gradually open more cities to foreign insurers.

56. He then turned to the questions on banking services.

57. Regarding the 70 per cent limit on foreign exchange deposit versus total foreign exchange assets, he said that prior to the accession to the WTO the ratio was 40 per cent. Following the

accession, the ratio increased to 70 per cent, and would be further relaxed during the five year transitional period.

58. Regarding transparency in licensing of foreign branches, he said the China had transparent and detailed provisions, contained in Articles 7 and 10 of the regulation. In addition, Articles 7 and 14 contained the implementation details.

59. With respect to transparency in application procedures, upon reviewing the application materials, the People's Bank of China would inform the applicant whether the materials were complete or not. If not, the People's Bank of China would ask the applicant to supplement these materials. And if complete, the People's Bank of China would issue the notice of application materials' completeness.

60. Regarding the intervals between applications, according to China's understanding of its accession commitment in paragraph 308 of the report of the Working Party on the accession of China, the term "at its discretion" did not necessarily mean the absence of an interval for applications. For all cases, the problems leading to the rejection could not usually be resolved within a short period of time. Therefore, China's requirement in the detailed implementation rule was consistent with its prudential purpose.

61. He then addressed the questions on securities services, particularly the issue concerning the requirement for a domestic fund management company as the lead partner in a new sino-foreign fund joint-venture company. Article 7 of the Rule on the Settlement of the Fund management company with foreign shareholding specified that domestic share holders of a sino-foreign joint-venture company shall meet the requirements for shareholders of fund management companies stipulated by the CSRC. Meanwhile, China issued a set of interim measures on the administration of securities investment funds, which was one of the major regulations regarding the establishment of fund management companies in China. Article 24, paragraph 1, of the measures stipulated that for establishing a fund management company in China, the lead partner shall be a securities company or a trust and investment company funded in accordance with laws and regulations. Therefore, under China's existing legal framework, a Chinese fund management company was not permitted to be the lead partner in either a new sino-foreign fund joint venture company or another domestic fund management company in order to avoid any illegal interest to transfer between the old Chinese fund management company and the newly set up companies.

62. Finally, regarding the issue raised by some Members about an obligation of written response to the questions, he said that China would spare no efforts in answering as many questions from other Members as possible in the process of this review. For transparency purposes China had provided the necessary information in advance to the Council for Trade in Services and his previous statement already included various concrete responses to the major questions. Additional responses had just been given to some of the follow-up questions.

63. The representative of Chinese Taipei said that he could not agree more with China that China would implement this WTO obligation in a non-discriminatory manner. Therefore, it was only appropriate for Chinese Taipei to address some of its legitimate concerns. Chinese Taipei had some reservations about China's reference that some of those issues were bilateral in nature.

64. The representative of India thanked the Chinese delegation for the efforts undertaken in preparation of the transitional review mechanism. The statement made by China and the subsequent clarification gave comprehensive information on the regulatory initiatives and changes made by the Chinese authorities to fulfill its commitments in financial services. He also welcomed the observation made by the Chinese delegation that it would address some of the follow-up questions in the bilateral context. He finally considered that replies so far had been satisfactory.

65. The representative of the United States said that his country appreciated the opportunity to discuss issues of concern bilaterally, but reminded China that this was a multilateral review of its implementation and not simply a bilateral process of exchange. In the United States view, unless all questions were answered in writing and in an appropriate form, the review had not been completed. While bilateral exchange was important, a multilateral review required a more thorough process than the one engaged in this meeting.

66. The Chairman asked the Chinese delegation whether, as requested by Canada, the list of delegates could be provided, along with the statement.

67. The representative of the European Communities also expressed appreciation for China's efforts to respond to questions by other Members. However, he added that this was a multilateral review and there were still some questions which remained unanswered and further clarification was needed on all points raised by Members.

68. The representative of China agreed that for transparency purposes, the list of Chinese delegates be circulated among Members. He also agreed to further discussion at the bilateral level, but China's position was that bilateral discussions had nothing to do with the transitional review mechanism.

69. The representative of Pakistan said that China's offer of bilateral discussions would definitely supplement the multilateral process. He also welcomed China's offer to circulate the statements made and the answers to the questions.

70. By way of conclusion, the Chairman invited the Committee to take note of all the statements made. Secondly, he requested the Secretariat to prepare a report, to be presented to the Council for Trade in Services on Friday 25 October. It would be a factual report, stating basically the following:

- that, pursuant to section 18 of the Protocol on the Accession of the People's Republic of China, the Committee conducted a review of the implementation by China of the WTO Agreement and of related provisions of the said Protocol, in the meeting held on 21 October 2002;
- that written communications had been received from five WTO Members, namely the European Communities, the United States, Canada, Japan and Chinese Taipei; and,
- that the details of the discussion could be found in the meeting report, contained in document S/FIN/M/37.

71. The Committee so decided.

#### C. TECHNICAL ISSUES

72. The Chairman recalled that, at the last meeting, Thailand indicated that many bilateral requests contained interesting technical issues, which could eventually be taken up by the Committee in due course. He regretted however that no communication had been received in that respect.

73. The representative of Thailand reiterated her delegation's understanding that Technical Issues would not only cover classification questions but also other things, such as regulatory issues. Thailand's position was that regulatory issues, such as transparency, could also be covered under Technical Issues. In Thailand's view regulatory issues in financial services deserved consideration by the Committee. Thailand might raise some regulatory issues under this item in the future.

74. The representative of Hong Kong, China echoed Thailand's call, or indeed the statement of fact, that this forum and also this agenda item on technical issues would remain open for Members to raise any technical issues arising from bilateral discussions, which might be of relevance to the financial services sector. In this regard, he agreed with the Thai delegation that transparency might be eligible to be raised by Members as a technical issue under this agenda item. He was of the view that although bilateral negotiations and discussions were still at an early stage and Members needed more time to reflect on the range of issues, Members should feel free to raise issues arising from bilaterals, so that those issues could benefit from the wisdom of this Committee and also benefit from open and multilateral discussions in this forum.

75. The Chairman thanked Thailand and Hong Kong, China for raising this pertinent issue. He confirmed the understanding of the Committee that under its broad terms of reference on technical issues, regulatory issues, including transparency-related issues, fell into the ambit of technical issues. To conclude, he reminded Members that this agenda item was broad enough to allow for the discussion of any technical issue that Members might want to raise, including those arising in the bilateral requests. Discussion of those issues could constitute a good combination of bilateral negotiations and multilateral work.

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

D. RECENT DEVELOPMENTS IN FINANCIAL SERVICES TRADE

77. The Chairman recalled that at the last meeting the Committee heard very interesting presentations by the representatives from Chinese Taipei and Mexico. Additionally, Canada circulated a room document on regulatory transparency mechanisms in that country.

78. The representative of Australia took the opportunity to briefly set out the recent experience of Australia, where there had been substantial reform in financial market regulation, to enhance the soundness, competitiveness and efficiency of the Australian financial market. These and other reforms had sent Australia into a sustained period of economic growth. He announced that Australia would submit a paper, on which his comments were drawn.

79. Australia scheduled commitments on financial services that gave a high level of openness to Australia's financial market. The WTO Trade Policy Review of Australia (WT/TPR/S/104) found that Australia had a liberal financial sector. The Australian currency traded freely in the market, foreign banks operated freely alongside Australian banks in the domestic market, and there was a growing pool of savings in the market with compulsory superannuation schemes. Privatizations and demutualization had also expanded the equities market. Australia now had the seventh largest funds management marketplace in the world, and the largest in the Asia-Pacific outside Japan.

80. Total funds under management were now in excess of US\$ 350 billion and Australia's central bank projected these numbers to increase substantially over the next two decades. As indicated in Australia's recent Trade Policy Review, these financial sector reforms followed two major reports of enquiry known as the Campbell inquiry report in 1979 and the "Wallis" inquiry report in 1997. These reforms, flowing from these reviews, had been based on promoting greater efficiency through enhanced competition, removing unnecessary regulation and maintaining confidence and stability in the financial system; while preserving the ability to be responsive to innovation and market development. In Australia, competition laws also applied nationally across the country, and following agreement in 1996, among the State and Australian commonwealth Governments, all governments applied the principle of competitive neutrality. This principle aimed at ensuring that competition between private and public business was down on the basis that it was competitively neutral, which meant that a public business gained no commercial advantage from having a government as its owner.

81. From the regulatory reform in Australia, benefits had been seen in the financial sector and the economy more generally, notably among these was that it had helped Australia to sustain strong economic growth in recent periods, and to manage shocks both from external downturn in Australian partners and internally from significant corporate shocks including in the insurance industry. Australia's financial reforms were trade expanding as they increased certainty in the regulatory structure, offered more flexibility for business to adapt corporate structures suited to the needs of consumers with a full range of services and products. The reforms had also provided for competitive neutrality across the financial industry. This streamlining was making redundant some reservations to the Understanding on Commitments in Financial Services, and might provide scope for Australia to increase its level of commitments.

82. Australia, with an open financial sector and through adopting a high level of commitments under the Understanding on Financial Services, could be seen as an example of how an open soundly regulated financial sector might be key to fostering economic activity and wellbeing in a country.

83. The representative of the United States said that this agenda item was a useful vehicle to address some issues and allowed countries to relate their positive experiences from reforming their financial services sector. The United States was gratified that at the July meeting a number of Members, including Canada, Chinese Taipei and Mexico, described their recent financial reforms, emphasizing transparency in their regulatory frameworks for financial services. In the United States view, it was clear that transparency regarding consultations with the public was beneficial and helped avoid unintended consequences of regulation. The Committee would benefit from other countries relating their practices in the future. She agreed with the point made by Japan in the past that this issue was particularly relevant in the financial sector, which was highly regulated and where lack of transparency could therefore effectively mean lack of access to markets. Transparency in applying regulations, both in developing and developed countries, was also an important contributing factor to financial markets stability. Some Members had questioned whether financial services transparency issues were different from horizontal transparency issues, and whether it was appropriate to carry out financial services specific discussions. The United States did not believe the question was so relevant, since financial services were characterized by a discrete regulatory community, a highly regulated sector and a substantial history, including through participation in the IMF/World Bank programmes in developing transparency procedures. The best place to initially share ideas was the financial services specific forum, namely this Committee.

84. The representative of Hong Kong, China informed Members that, as indicated some time ago, his delegation had been working on a submission on the issue of e-finance. In that regard, he announced that Hong Kong, China would submit a paper very shortly. The purpose of the paper would be to share with Members information on the latest market trends in Hong Kong, China in respect of on-line banking and on-line trading in securities and futures. The intention was also to share approaches and issues related to the regulatory framework. With the growth of on-line banking and on-line trading in Hong Kong, China in the past few years, currently most of the banks, which represented around 80 per cent of the total customers deposit in Hong Kong, China, had already introduced internet banking services. The total market turnover of internet trading in securities and futures had risen from merely 1 per cent in April 2000 to around 11 per cent in the fourth quarter of 2001. On-line banking and on-line trading in securities and futures was a fast growing area, and one where regulators saw many challenges in undertaking their regulatory duties. In this regard, Hong Kong, China regulators put particular emphasis on the principle of technological neutrality. All suppliers of electronic banking, and of securities and futures trading, were subject to the same set of prudential and custodian requirements as those applied to conventional service suppliers. In addition, there were specificities in e-trading and e-banking that would require some specific guidelines and instruments for regulators to conduct their job properly. He hoped to be able to submit the paper before the next meeting of the Committee, and suggested that a formal presentation of the paper be made on that occasion.

85. The Chairman confirmed that a formal presentation of the paper could be arranged for the next meeting.

86. In concluding, the Chairman highlighted the importance of using this agenda item to discuss these of issues, which were of extreme relevance for the negotiations, since they gave an idea about the context in which financial services trade takes place. He encouraged other Members to come up with similar presentations.

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

E. PRESENTATION BY THE WORLD BANK OF ITS POLICY RESEARCH REPORT "FINANCE FOR GROWTH: POLICY CHOICES IN A VOLATILE WORLD"

88. The Chairman recalled that at the last meeting, under Other Business, Canada suggested that the Committee invite the World Bank to make a presentation of its 11<sup>th</sup> Policy Research Report, entitled "Finance for Growth". This presentation, which could be organized following the format of previous presentations by international standard setting organizations and the International Monetary Fund, could take place during the next cluster of services meetings, in December 2002, provided World Bank representatives were available on those dates.

89. The representative of Canada said that this would be a very useful initiative and hoped that Members would support it. He added that the summary of the World Bank publication was available on the World Bank web-site.

90. The representative of the European Communities agreed that this was an excellent idea and fully supported the Canadian initiative.

91. The Chairman said that an invitation to the World Bank would be extended on behalf of the Committee, and a seminar on this account would be organized at the time of the next meeting.

92. The Committee so decided.

F. DATE OF THE NEXT MEETING

93. The Chairman suggested that the Committee hold its next meeting during the next cluster of services meetings, in December 2002. The exact date would be announced in due course.

94. The Committee so decided.

G. OTHER BUSINESS

95. The representative of China noted that in the report of the last meeting, under item C ("Recent Developments in Financial Services Trade"), there were some words and phrases expressed by Chinese Taipei, which in China's view were not appropriate. China expressed its concern on that wording, and expressed its strong reservation. She requested that this statement be recorded in the report of this meeting.

96. The representative of Chinese Taipei said that China's reference to Mr. Tseng's statement at the last meeting as inappropriate was not acceptable. He requested this statement to be fully registered in the minutes of this meeting.

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