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Council for Trade in Services

REPORT OF THE MEETING HELD ON 5 OCTOBER 2012

Note by the Secretariat[1]

1. On 5 October 2012, the Council for Trade in Services held a meeting under the Chairmanship of Ambassador Reiter (Sweden). The agenda was contained in document WTO/AIR/4005.

2. Under Other Business, the Chairman indicated that he would make a brief report on the informal meeting of the Council held on 27 September.

3. The representative of Australia said that her delegation wished to add two items of Other Business. The first concerned discussions amongst a group of Members on new pathways to services trade reform, and the second the entry into force of the certified EC-25 schedule.

4. Also concerning Other Business, the representative of South Africa indicated that his delegation wished to raise an item on cost-saving measures and the scheduling of meetings.

5. The agenda was adopted, as modified.

A. NOTIFICATIONS PURSUANT TO ARTICLES III:3, III:5 AND V:7 OF THE GATS

6. Starting with the notifications made pursuant to GATS Article III:3 (transparency), the Chairman drew the Council's attention to the communications received from Hong Kong, China (in document S/C/N/645), Nepal (S/C/N/647-650) and Norway (S/C/N/651-652).

7. The representative of Norway recalled that, at the 8th Ministerial Conference, Ministers had underlined "the importance of the work of regular WTO bodies including their role in the oversight of implementing existing Agreements; dispute avoidance; transparency through monitoring and reporting and as a forum for the consideration of trade-related issues raised by Members." Ministers had then called for strengthening and improving the functioning of the regular WTO bodies.

8. Norway supported the call to strengthen the functioning of the Council for Trade in Services, and wished to start by improving on its own record concerning GATS notification requirements, which had been somewhat neglected during times of intensified negotiations. Being more active with regard to relevant existing GATS provisions would contribute to fulfilling all the objectives mentioned by Ministers at MC8, such as increasing transparency and creating a forum for the consideration of trade-related issues.

9. Norway was presenting two notifications under Article III.3. One concerned regulations in the financial sector, an area of interest to Members in light of the recent financial crisis and discussions in its wake on the need for regulation. The other related to the recent revision of the

[1] 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.

Immigration Act, which implied a more open regime for temporary movement of natural persons supplying services in Norway.

10. In deciding whether a change in a regulation potentially had a significant effect on trade in services, her delegation had tried to find a balance. When in doubt, it had chosen to notify, but had also looked at those areas that it considered would be of interest to Members. In the case of the revision of the Immigration Act, her delegation believed that it significantly affected trade in services covered by Norway's specific commitments, providing improved market access in mode 4. With regard to the new or revised regulations in the financial sector, the case was less clear-cut. However, regulatory changes in the wake of the financial crisis had been and continued to be an area of interest to Members.

11. Furthermore, her delegation had tried to strike a balance between the level of detail that may be of interest and a workload that made it possible to notify regulatory changes on a regular basis. It had, therefore, only included a short introduction of the objective and content of the changes, and provided a link for further reading, but would be happy to reply to further questions by Members. Her delegation would continue to strive to notify regulatory changes, and expected to submit further notifications in the relatively near future.

12. The Council took note of the notifications and the statement made.

13. The Chairman then turned to the notification made by Norway pursuant to Article III:5, contained in document S/C/N/653.

14. In the same spirit that had led her delegation to intensify efforts to fulfil its own notification obligations, the representative of Norway indicated that, in order to strengthen and improve the functioning of the Council for Trade in Services, Norway had made a daring attempt at using a provision in the GATS, Article III.5, which had not been very actively used in the past. In subcommittees under the Council for Trade in Goods, similar provisions had been used actively to clarify specific trade concerns before they developed into difficult trade issues. Norway believed that the use of the Article III:5 could also be beneficial to Members' work under the GATS, and would welcome other Members' views on how to understand the intention of, and capitalise on, this provision.

15. Norway had identified a specific trade concern that could benefit from being clarified in the Council under Article III:5, namely the recently introduced Foreign Dominance Regulation ("the Regulation") in Thailand. The Regulation had been issued by the Thai National Broadcasting and Telecommunications Commission (NBTC) and had entered into force on 24 July 2012, following its publication in the Royal Gazette on 23 July 2012.

16. As Norway understood it, the Regulation sought to prohibit the holding of shares, voting rights and other actions that could permit a foreigner to exercise control over the business of a licensed telecommunications service supplier in Thailand. These restrictions went beyond the Foreign Business Act of Thailand, in which a foreign juridical entity was defined in terms of equity ownership, in a manner similar to Thailand's commitments under the GATS.

17. Norway had followed Thailand's telecommunications authorities' efforts to liberalize the telecom sector over many years. It appeared that the new regulation could be a setback to granting equal opportunity and fair competition for foreign companies investing in Thailand. The Regulation had created uncertainty regarding the stability of the framework for foreign investments in the Thai service market. Telecommunication businesses were capital-intensive and relied on innovation. Foreign capital and technology were not only necessary for the telecommunications industry, but also beneficial for customers and society as a whole. Norway was also concerned that the current

Regulation could set a negative precedent beyond the telecommunications sector, and therefore sought further explanation from Thailand about how the Regulation would ensure the necessary transparency, clarity and predictability in the regulatory system in order to stimulate the transfer of capital, technology and know-how.

18. The Regulation contained a provision pointing to Thailand's international obligations. It was, however, not clear whether the intention was to assess the conformity with Thailand's international obligations on a case-by-case basis. Norway was concerned that this could entail a non-transparent regime and procedures that could ultimately cause discrimination. The representative encouraged Thailand to explain the objective of the Regulation and give Members a better understanding of how it was considered to be in conformity with Thailand's GATS obligations, in particular in relation to its scheduled commitments concerning market access and national treatment, and domestic regulation.

19. The Chairman asked the delegation of Norway if it could circulate its statement in writing.

20. The representatives of the United States, the European Union and Japan echoed Norway's intervention and the concerns it had raised.

21. The representative of Thailand said that her delegation was aware of concerns with regard to the Regulation and was preparing a formal explanation to clarify the issue. At that preliminary stage, she wished to inform the Council that the "Notification of National Broadcasting and Telecommunications Commission Re: Stipulation of Prohibitions of Actions in the Nature of Foreign Dominance" of 2011 clearly stipulated that: “the Notification shall apply […] as long as [it] is not contrary to the terms of convention that Thailand is a member of, or is obligated according to the commitment.” This should placate any concern: the international convention would prevail over the domestic rules and regulations and the Notification was compliant with the GATS.

22. By way of a more technical explanation, the new Notification attempted to clarify issues surrounding the former Notification. Although the former Notification intended to prevent foreign dominance, it defined the term “controlling power” instead of "foreign dominance". The new Notification, therefore, removed the definition of “controlling power” and added instead the definition of “foreign dominance”, for the sake of clarity, so that operators could understand the criteria to determine actions of foreign dominance.

23. According to the new Notification, “foreign dominance” was the power by foreigners to control or to influence, either directly or indirectly, decisions on policy, management, operations, appointment of directors, or appointment of high-level executives, which could affect the management or the operation of telecommunications business of the applicant for the license or the licensee through holding voting shares of at least one-half of all the voting rights, having controlling power over the majority vote of the shareholders meeting, or appointing or removing one-half of all directors or more. Firstly, a determination could occur in three situations, namely: first, holding voting shares of at least one-half of all the voting rights; second, having controlling power over the majority vote of the shareholders meeting; or, third, appointing or removing one-half of all directors or more. This meant that, before the NBTC could consider whether or not an action, manner, or fact prescribed in the schedule annexed to the Notification fell under the scope of “prohibition” under the Notification, the NBTC first had to consider whether it resulted from the foreigner having conducted an act of foreign dominance under the definition of “foreign dominance.” This could be examined on the basis of the minutes of the shareholders' meeting.

24. According to the schedule annexed to the Notification, there were eight scenarios of actions, manners, or facts which were examples of criteria to be used in considering foreign dominance actions. Taking those into account, the Regulation on foreign dominance had clear criteria and procedures. Additionally, the consideration of foreign dominance did not depend on uncontrollable

discretion, because the new Notification already provided for certainty, reference tables, and the standardization of the enforcement of the Notification on every operator.

25. The representative wished to reassure Members that Thailand had complied with its international commitments and adhered to the transparency, predictability and non-discriminatory principle of the GATS and the WTO. However, she also wished to stress that, from a non-lawyer's perspective, no law was perfect in nature and that room for discretion could result from different legal interpretations. If, in future, Thailand found the implementation of the Regulation to be cumbersome, detailed guidelines for implementation could be developed in the normal course of the legal process.

26. Her delegation would appreciate if Norway and other concerned Members could submit in writing the specific questions and details of their concerns, such as how the Regulation affected the operation of the GATS and which were the specific parts concerned. Thailand stood ready to respond to specific concerns both bilaterally and formally in writing in due course.

27. The Council took note of the notification and the statements made.

28. Turning to the notifications made pursuant to Article V:7 (Economic Integration), the Chairman recalled that, at the June meeting of the Council, the delegation of India had asked some questions regarding the Free Trade Agreement between the Republic of Korea and the United States, notified in document S/C/N/621, and the United States–Colombia Trade Promotion Agreement, notified in document S/C/N/643. It had been decided that the issue would remain on the Council's agenda. India's questions were subsequently circulated in writing, in JOB/SERV/107, dated 6 July 2012.

29. In response to India's questions, the representative of the United States indicated that the term "service suppliers" encompassed both services and services suppliers because any measure that affected a service necessarily also had to affect a service supplier. Both of those US Free Trade Agreements (FTAs) had made this explicit in the definition of "service supplier of a Party", by clarifying that "[f]or purposes of [the NT and MFN articles], 'service suppliers' has the same meaning as 'services and service suppliers'" as used in the GATS.

30. With regard to the definition of cross-border supply, he explained that the FTA definition of consumption abroad was more precise, as it described who was supplying the service (a person of a Party). Also, the term "person of a Party" conveyed more accurately that both suppliers and consumers could be either nationals or enterprises. The word "national" (as opposed to "natural person") more precisely described to whom the benefits of the agreement accrued in a bilateral context. In both FTAs, each Party had subsequently defined who was a national in accordance with its domestic law. Furthermore, one of the distinguishing features of those two FTAs was that, while the GATS covered all four modes of supply, the services chapter in the KORUS FTA and the US-Colombia TPA did not include services supplied via mode 3. Mode 3 was covered by the investment chapter.

31. As concerned the question about the liberalization of mode 4 trade, he clarified that both KORUS and the US-Colombia TPA included within their respective scopes (Article 12.1.1.d and Article 11.1.1.d, respectively) measures affecting the presence in a Party's territory of a service supplier of the other Party. A service supplier was subsequently defined in KORUS and the US-Colombia TPA as a person of a Party, with the latter being defined as a national or an enterprise of a Party. The agreements, therefore, applied to measures affecting services supplied by a national of one Party in the territory of the other Party (i.e., mode 4).

32. With regard to India's second question, the representative of the Republic of Korea added that the KORUS FTA contained an opportunity for the Parties to consult on immigration measures,

including admission or conditions of admissions for temporary entry, within two years of the date of entry into force of the Agreement, and at two-year intervals afterward, unless the Parties otherwise agreed, as stated in KORUS FTA Article 12.1, footnote 3.

33. The representative of India thanked the United States and the Republic of Korea for their responses and asked that these be circulated in writing for further examination and possible follow-up questions. He then made a number of preliminary observations. First, his delegation was aware that the FTAs concerned contained footnotes to the MFN and national treatment clauses including both services and service suppliers in the definition of 'service supplier'. However, India was not clear why a footnote had been required, why a GATS-style definition could not be followed and what the implications were. He additionally noted that the national treatment and MFN clauses differed from the GATS, as they contained a notion of 'like circumstances'.

34. Second, the definition of cross-border supply appeared to cover modes 1, 2 and 4. He noted that, compared to the GATS definitions, particularly in case of mode 4, the wording 'through presence of' had been omitted, and wondered about the implications of this difference. He was grateful for the explanation on the liberalization of mode 4 in the FTAs and might revert to it.

35. Third, unlike the GATS, the FTAs in question followed a negative-list approach to scheduling. This raised a number of issues that India wished to understand better. For example, would it be right to assume that if no non-conforming measures were specified, all sectors and modes of service supply would be committed?

36. The representative also indicated that, under the list of non-confirming measures in Annex II of the US-Colombia FTA, a measure had been listed pertaining to all sectors, whereby under market access, for cross-border services, the United States had reserved the right "to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the General Agreement on Trade in Services". Similar language could also be found in the US-Korea FTA. He wondered about the implications of such a general clause: did it mean that the market openings in the FTAs were circumscribed by the services commitments taken in the WTO?

37. Concerns of this nature had arisen because of the unfamiliar structure of FTAs in question. India had therefore taken the opportunity of their notification to enhance its own understanding and might revert with additional questions.

38. Thanking the US delegation for its replies, the representative of Switzerland indicated that the complexity of the issues under discussion naturally generated additional questions. If he had taken good note of the US intervention, in the FTAs in question, market access, national treatment and MFN concerned only the service supplier, instead of covering, as was the case in the GATS, both the service supplier and the service; this made no difference as, in the end, measures that affected the supply of a service also affected the service supplier. This seemed to imply a two-stage process and raised a question about how it worked in practice. In the application of the national treatment and MFN provisions, what was the standard of comparison? Was it necessary to determine whether different treatment of a service implied a different or equal effect of the service supplier, in terms of national treatment or MFN? Was there an obligation to show that the service supplier was differentially affected by a measure applied to a service? How could such impact be assessed? Who had to make the assessment, the complainant or the defendant? Was this assessment done on a case-by-case basis or with a general sectoral approach?

39. The representative of the United States said that he would need to better understand the nuances of the questions raised by Switzerland before providing a reply. As per India's questions, he would also revert, but he could confirm that, if there were no non-conforming measures, the assumption was that all sectors and all modes were bound by the relevant obligations. He explained

that, in negative-list agreements, the initial assumption was that all sectors and modes were covered. With regard to the question on the non-conforming measure taken by the United States that provided a link to its GATS commitments, he indicated that non-conforming measures could be used both to carve things out and to carve them in the agreement. A reservation could also be a way of making a positive commitment and, indeed, the reservation that India was referring to had the effect of incorporating US GATS commitments, by reference, with regard to market access obligations. Non-conforming measures of other Members in FTAs were a combination of reservations for particular measures that existed and embedded commitments on future liberalization. In this sense, non-conforming measures provided a creative venue and reflected perhaps the most active part of the negotiations in a negative-list FTA context. His delegation was ready to follow up with more detailed responses and would welcome additional questions.

40. The representative of Colombia was grateful for the questions raised by India and Switzerland and asked that these be circulated in writing.

41. The representative of India said that his delegation would wait for receipt of answers in writing before formally raising follow-up questions.

42. The Council took note of the statements made.

43. Turning to the notifications newly received pursuant to Article V:7, the Chairman drew delegations' attention to the communications from: Ukraine, Iceland, Liechtenstein, Norway and Switzerland (S/C/N/644); El Salvador, Guatemala, Honduras and Colombia (S/C/N/646); China and Hong Kong, China (S/C/N/264/Add.6); and China and Macao, China (S/C/N/265/Add.6).

44. The Chairman proposed that the Council take note of the notifications made and refer the agreements notified to the Committee on Regional Trade Agreements for consideration.

45. It was so agreed.

B. RE-OPENING OF THE FIFTH PROTOCOL FOR ACCEPTANCE BY JAMAICA

46. The Chairman drew delegations' attention to document S/C/W/346, containing a communication from Jamaica requesting that the Council re-open the Fifth Protocol to allow Jamaica's Government to deposit the instrument of acceptance that would give legal effect to Jamaica's commitments annexed to the Protocol. As usual in such cases, a draft decision, contained in document S/C/W/347, had been prepared by the Secretariat for adoption by the Council, according to the standard format followed.

47. The representative of Jamaica said that his delegation had requested the re-opening of the Fifth Protocol to the GATS on financial services, in order to complete the ratification procedures and accede to this important agreement.

48. Jamaica had presented its first set of commitments in the Fifth Protocol in 1997 and had submitted a final set in 1998, which it had not ratified at the time. One of the main factors preventing Jamaica's ratification had been the debilitating impact of a domestic financial sector crisis, which had unfolded since the mid-1990s. It was then felt that it would not be prudent to complete the ratification exercise until necessary measures had been implemented by the Government in order to stabilize the financial sector.

49. Jamaica had since achieved significant progress in improving the regulatory regime for deposit-taking institutions, as well as in dealing with the supervision of non-deposit-taking institutions, such as insurance companies, private pension funds and security dealers. In addition,

Jamaica had enhanced its domestic adjudication and enforcement mechanism, and had since created a new regulatory entity, called the Financial Services Commission, whose responsibility it was to supervise the insurance, securities and pensions industries, and which had replaced the former Superintendent of Insurance. Furthermore, Jamaica's implementation of Capital Adequacy Regulations served to codify the regulatory approach on specific areas of banking practice. Finally, regulations had been issued, or were being finalized, under the Bank of Jamaica Act that would form the legal basis on which the Bank of Jamaica would conduct supervision of remittance companies and credit unions, respectively.

50. Therefore, having completed these reforms, particularly the implementation of measures to ensure that the problems which had emerged in the mid-1990s did not recur, the Government of Jamaica now felt that it was in a position to ratify the Protocol.

51. With the ratification of the Fifth Protocol, there were a number of practical implications for the provision of financial services in Jamaica. First, with respect to all subsectors relating to insurance and insurance-related services, there would no longer be any restrictions on commercial establishment, with the sole caveat that the regulatory authority needed to be satisfied that adequate funds would be deposited in Jamaica in order to cover the domestic liabilities of companies wishing to establish a commercial presence in the country. Furthermore, Jamaica had removed restrictions on modes 1 and 2 for non-life insurance services and reinsurance and retrocession services, and had also removed all limitations on national treatment under modes 1 to 3 for these two subsectors. National treatment limitations under modes 1 to 3 for services auxiliary to insurance had also been removed. Under the second broad category of 'Banking and other financial services', Jamaica had removed all market access and national treatment limitations for modes 1 to 3 in subsector CPC 8131, relating to the 'Provision and transfer of financial information' and 'Financial data processing and related software by providers of other financial services'. Limitations on market access and national treatment under mode 3 for all other subsectors had also been removed.

52. Jamaica, therefore, requested the Council for Trade in Services to re-open the Fifth Protocol on Financial Services for ratification by Jamaica, and further requested the Council to grant it a period of 60 days for the deposit of its instrument of ratification.

53. The representative of Trinidad and Tobago, speaking on behalf of CARICOM member States, congratulated Jamaica for its acceptance of the Fifth Protocol. The step demonstrated Jamaica's commitment to the multilateral trading system. CARICOM was of the view that a competitive and robust financial services sector was an essential component in the successful pursuit of economic growth and development. This was best achieved when financial services liberalization was tailored to the particular economic and social situation of the country in question, as opposed to a one-size-fits-all approach. She therefore commended Jamaica on its deliberate approach to financial services liberalization, and wished Jamaica well on its path to economic development, as defined by its own national interests and circumstances.

54. The representative of Canada also welcomed Jamaica's request and congratulated the country on its acceptance of the Fifth Protocol to the GATS on financial services. This represented an important step forward for Jamaica in taking broad transparent commitments in financial services. Canada also wished to encourage the last remaining Member, Brazil, to complete its domestic procedures to accept the Fifth Protocol at the earliest possible occasion.

55. The Chairman, adding his congratulations to Jamaica, suggested that the Council take note of the statements made and agree to re-open the Fifth Protocol for acceptance until 4 December 2012.

56. It was so agreed.

C. DEDICATED DISCUSSION ON INTERNATIONAL MOBILE ROAMING

57. The Chairman recalled that, in June, a representative of the International Telecommunication Union (ITU) had provided the Council with a brief oral update on proposals related to international mobile roaming (IMR) submitted for consideration and possible adoption at the ITU. A representative of the ITU was again present at that meeting and wished to share with the Council the latest developments with regard to "Draft Recommendation ITU-T D.98: Charging in International Mobile Roaming Service". A copy of the draft Recommendation had been circulated to the Council in JOB/SERV/93, dated 17 February 2012. The Chairman proposed that the representative be offered the floor.

58. The Council agreed.

59. A representative of the International Telecommunication Union reported that the Draft Recommendation had been formally approved, exactly in the form that had been distributed to WTO Members. No changes had been made at the approval, so the Recommendation was now in force and could be accessed by WTO Members (who were all also members of the ITU) in its pre-published version on the ITU website. Within two or three months, the final version would become available and be accessible to the public.

60. He also wished to provide a brief update on developments regarding mobile roaming at the World Conference on International Telecommunications. It seemed that there was general agreement in principle to add a provision to the Treaty to the effect that there should be increased or improved transparency on the cost of mobile roaming for end-users. No exact text had been agreed, but there seemed to be broad support for that principle. As he had mentioned in June, there were also proposals under discussion regarding the cost of mobile roaming, debating whether anything should be said on the issue and, if so, what. The positions of Member States on that issue differed and it remained to be seen what would happen at the Conference.

61. All delegations who spoke thanked the ITU representative for the information provided.

62. The representative of New Zealand recalled that, in June 2011, her delegation had shared some information on the joint market investigation into the trans-Tasman roaming charges being conducted by New Zealand's Ministry of Economic Development (now the Ministry of Business Innovation and Employment (MBIE)) and Australia's Department of Broadband Communications in the Digital Economy (DBCDE). She provided Members with a brief progress update on that investigation. New Zealand's Minister Joyce and Australia's Senator Conroy had announced that they were launching the full market investigation in April 2011. The purpose of the investigation was to determine whether the market for international mobile roaming was competitive between New Zealand and Australia and, if not, what, if any, form of intervention should be considered. New Zealand's MBIE and the DBCDE had prepared a draft report, which had been released for public consultation on 23 August 2012. The draft report had concluded that recent price drops had been stimulated by the regulatory threat of the joint investigation underway, and that, as a result, absent coordinated intervention by the two governments, upon conclusion of the investigation prices would again stagnate. The draft report had, therefore, put forward a number of options for coordinated intervention. Submissions on the draft report had been received and were now being considered. The MBIE and the DBCDE hoped to complete a final report before the end of the year.

63. The representative of Australia said that Australia would be participating in the upcoming ITU World Conference in International Telecommunications and in discussions on the proposed changes to the International Telecommunication Regulations (ITRs). She was pleased to learn that there were proposals relating to IMR in the ITRs, and reiterated Australia's position that the ITRs should continue to be high level principles, without prescriptive legal obligations on Member States.

64. The representative of India thanked New Zealand for its update and hoped that whatever measures were taken would be consistent with the MFN and transparency obligations of the GATS.

65. The Chairman said that the Council would take note of the statements made and revert to this item at its next meeting.

D. WORK PROGRAMME ON ELECTRONIC COMMERCE

66. The Chairman recalled that, up to that point, discussions in the Council under the E-Commerce Work Programme had focused on three communications: from the European Union and the United States, on trade principles for ICT services; from the United States, on cloud computing and mobile applications; and from Switzerland on the e-commerce activities of small and medium sized enterprises.

67. Two new documents had been submitted for that meeting: a communication from the European Union (document S/C/W/348) focusing on a particular ICT principle, namely authorizations and licenses; and a communication from Australia (document S/C/W/349) suggesting three additional ICT principles for consideration.

68. The representative of the European Union said that, in July 2011, his delegation and that of the United States had presented to the Council a set of trade-related principles designed to contribute to the development of electronic commerce. In that context, they had invited other Members to share their own experiences regarding the topics identified in their communication. With a view to stimulating the debate at that meeting, the European Union wished to share its own experience with regard to principle number 8 relating to "Authorizations and Licenses". The issue was of critical importance because a well-thought authorization scheme could contribute to unleashing the full potential of electronic commerce.

69. Electronic commerce in the EU was mainly regulated by two sets of rules: the directives relating to 'electronic communications services', and the directives relating to 'information society services'. Those directives contained overarching principles, which guided authorization procedures and criteria in the 27 EU Member States for the provision of electronic commerce.

70. Starting with 'electronic communications services', these were all services which consisted in the conveyance of signals on electronic communication networks. They broadly corresponded to the basic and value-added telecommunication services in the sense of the W/120 classification. As a basic principle, the freedom to provide electronic communication services was enshrined in EU legislation. Beyond that, a two-tier system had been put into place, combining "general authorisation" and "individual rights of use". By default, all electronic communication services were being authorized through a "general authorization" which was equivalent to a simple notification. Services suppliers might only be obliged to submit a notification, and were not required to wait for an explicit decision before they could start providing services. It was only for a very limited set of issues, namely the use of spectrum and numbers, that services suppliers were required to acquire an "individual right of use", i.e. an individual licence. Whatever the option chosen by the regulator, all procedures needed to be open, objective, non-discriminatory, transparent and proportionate. These authorization schemes applied both to the cross-border provision of services and to the provision of services through commercial presence.

71. In EU law, 'information society services' covered most of the services provided online. Looking at cross-border supply first, European legislation enshrined again the freedom to provide information society services from one EU Member State to another. This meant that, in principle, none of the Member States could restrict the freedom to provide information society services cross-border throughout the European Union; in most cases this freedom had been extended to third country

services suppliers. As concerned mode 3, the EU directive ensured that the provision of e-commerce through establishment was not subject to prior authorization. There was, therefore, no specific authorization or licensing process that could *a priori* prevent the provision of such services once the services supplier, whether EU-owned or foreign-owned, was established in one of the Member States. The absence of prior authorization did not exempt information services suppliers from complying with a series of legal requirements, for instance pertaining to consumer protection.

72. In conclusion, under the EU approach for e-commerce services suppliers were either exempt from any authorization procedures or subject to a very light notification procedure. This system had been successfully put into place for many years without compromising on broader policy objectives such as consumer protection or the legitimate need to regulate. The European Union would welcome questions from Members on its regulatory framework and would invite other Members to also share their own experience with regard to licenses and authorization for e-commerce services.

73. The representative of Australia said that the bilateral principles circulated by the European Union and the United States in July 2011 were a useful starting point for multilateral discussion on work that could be done on ICT services. As a contribution to the discussion, Australia had circulated a communication, in document S/C/W/349, suggesting the need for three additional principles, namely online consumer protection, online personal data protection and unsolicited commercial electronic messages. In Australia's view, a discussion of any principles in the ICT field would be incomplete without these additional principles. They were vital to enhancing consumer and business confidence in electronic commerce. A lack of confidence had been a key factor inhibiting greater growth and development of electronic commerce in Australia and elsewhere.

74. Online consumer protection was vital to ensuring consumer confidence in electronic commerce. Regardless of whether Members enacted specific legislation for consumer protection in e-commerce *per se*, Australia believed that governments should endeavour to offer an equal level of protection to all consumers, in both the online and offline environments. Australia's own domestic legislation in the area took a technology-neutral approach, which provided consumers with the same protections online and offline. Also, Australian legislation did not discriminate between Australian and foreign consumers so that its regulators could take action for any consumer who, regardless of nationality or place of residence, had suffered a loss through trade within Australia, or between Australia and another jurisdiction.

75. With regard to online personal data protection, this was essential to ensuring consumer confidence in electronic commerce and providing basic privacy protections for citizens, including against identity theft and unlawful disclosure of personal details. Cooperation among Members was important to ensuring the protection of personal data that flowed across borders and to encourage the development of electronic commerce globally.

76. Finally with respect to spam, measures to regulate unsolicited commercial electronic messages were useful in the trade context because such unsolicited messaging could damage consumer confidence and obstruct legitimate business activities.

77. The representative stressed that the sorts of principles she had outlined were required to bring the appropriate balance to any discussion of how work could be done in the WTO, or any multilateral forum, to take into account the increasing trade in services through new technologies.

78. Starting with the Australian submission, the representative of Switzerland said that his delegation very much welcomed and shared the principles set out therein. Switzerland also considered consumer protection as an important objective, which went beyond the simple well-being and confidence of consumers. It was an objective which arose from public order considerations, for instance when it came to the protection of minors, and in this sense it was particularly important.

With regard to data protection, this was a key element which also had commercial implications. Studies showed that lack of cooperation with regard to data protection was one of the major factors that hindered development of e-commerce at the international level, by generating insecurity for consumers who, within their own national legal frameworks, were used to very high levels of protection. Consumers were often left to their own devices when data or identity theft had taken place abroad, which could happen with e-commerce transactions. Therefore, strengthening cooperation in this area was important and could give impetus to international e-commerce. Finally as concerned spam, this was an area where many States were starting to legislate. He wondered if the wording in the Australian submission that "Members should seek to promote measures to regulate" was not already obsolete. Many Members for which e-commerce represented an important part of the market had already taken measures in this regard.

79. Turning to the EU submission, he said that EU practice could possibly be an example in the area and be used as a basis for looking at tools to enhance e-commerce, particularly for small and medium sized enterprises (SMEs). Simplified procedures, which did not detract from national policy objectives, were an effective way of strengthening the beneficial effects of policies that were already non-discriminatory, liberal, and which granted market access. This by itself was not sufficient, however. Procedures, particularly for licenses, must not dampen entrepreneurship or imply excessive costs that would affect competitiveness *vis-à-vis* companies that used different technologies. Moreover, as discussed in paragraph 3 of the EU submission, Switzerland also pursued a number of public policy objectives, such as the protection of consumers and ensuring liability, and strove to attain them through the most appropriate procedures. It was not a question of compromising the objective, but rather, to be as effective and efficient as possible in pursuit of a given objective.

80. Addressing the communication from Australia, the representative of the United States sought clarification whether Australia supported the ten principles in the US-EU ICT Trade Principles document. He said that the three principles identified by Australia made some sense as additions to the existing principles, but not on their own. They needed to correspond to an underlying set of trade rights, whereas in isolation, they were simply an elaboration of domestic regulation, with no obvious link to trade. It would thus be helpful to consider them as additional principles to the ICT ones put forward by the United States and European Union as opposed to simply stand-alone elements.

81. With regard to the communication from the European Union, the representative said that he appreciated the sharing of information on how the European Union complied with the ICT trade principle concerning "Authorizations and Licenses". That particular principle committed governments to two major objectives. First, to simplify, as much as possible, the authorization of competitive telecommunications services. By definition, this concerned new and emerging entrants to markets with an established incumbent (often the former government-owned monopoly provider). Second, governments committed not to arbitrarily limit the number of service providers unless there was a legitimate reason to do so, such as with the allocation of spectrum, which was considered to be a limited resource. This principle was particularly important for SMEs, which often lacked the administrative capacity to follow and comply with a broad set of authorization rules and long and complex procedures. Therefore, it was important to strike an appropriate balance, as a well thought-out authorization scheme could contribute to unleashing the full potential of electronic commerce.

82. The United States had taken several steps to simplify the authorization of many services. No licensing requirements existed for the US "information services" category, which included most VoIP services and such Internet-enabled services from Google, Facebook, Netflix, Skype, Amazon, etc. The Federal Communications Commission (FCC) did not restrict the number of entrants into any market for telecommunications or Internet services. While it did license the use of spectrum, the FCC had flexible secondary market rules for the lease and sale of spectrum to facilitate its use, and had also established several unlicensed spectrum bands which anyone could utilize, subject to technical standards and rules.

83. While his delegation had no new submission on cloud computing and mobile applications, the United States viewed their expansion as an important trade issue. A recent World Bank report, entitled "Maximizing Mobile", demonstrated how important mobile services and mobile applications were for economic development and growth. The report found that mobile applications not only empowered individuals, but also had important cascade effects stimulating growth, entrepreneurship and productivity throughout the whole economy.

84. As part of the call by Ministers at MC8 to reinvigorate the Work Programme on Electronic Commerce, he suggested that a possible workshop, based on a written proposal, be held sometime in 2013, after the workshop being proposed in the Committee on Trade and Development. The workshop could develop some of the ideas discussed in the Council, from the Swiss SME proposal, to the EU-US ICT principles and Australia's proposal on additional principles, as well as the US submission on cloud computing and mobile applications. It would not supersede the CTD workshop, but rather focus on services aspects, such as the ones addressed in the Council or any others Members might suggest. He encouraged the Chairman to consult further on this idea.

85. The Chairman suggested that the United States could to share further information about its domestic system with other Members.

86. Regarding Australia's suggestion of three additional ICT principles, the representative of Chinese Taipei said that online consumer protection and data protection had always been e-commerce issues discussed by civil society. Personal data protection was the most sensitive area. But these issues needed government, enterprises and individuals to work hand-in-hand, to secure a safer electronic transaction environment and to raise public confidence in e-commerce.

87. In Chinese Taipei's case, the "Personal Information Protection Act", passed in 2010, had come fully into force on 1 October 2012. The new law applied to all entities, including e-commerce related industries. In this sense, her delegation welcomed Australia's proposal, and looked forward to some further sharing of experience among Members on the protection of the personal data of e-commerce users.

88. As for unsolicited commercial electronic messages, her delegation agreed that regulatory action and international cooperation were of equal importance in tackling the issue. Chinese Taipei had completed draft legislation, which was currently being reviewed by the legislative department. The draft law was aimed at protecting the recipients of electronic messages and clarifying the rights and obligations of ISPs. Preventing spam was a cross-border issue which needed inter-governmental cooperation and information-sharing on policy approaches, strategies and statistics. Chinese Taipei already had cooperative relationships to prevent cross-border spam with the competent authorities of Canada, Australia and Brazil. Chinese Taipei would welcome having more information and further experience-sharing with other Members.

89. The representative of Hong Kong, China said that his delegation had read with interest the communication on the European Union's authorization and licensing regimes. One purpose of this submission was to urge Members to share their own experiences. Insofar as the telecommunication regime in Hong Kong, China was concerned, there was no general authorization similar to what he had understood existed in the EU. Hong Kong, China was still operating very much on the basis of individual authorizations. However, the concept of class licenses existed, which implied the possibility that composite services be handled in one go by the Communication Authority. As regards the use of radio frequencies and numbers for telecommunications, the situation was very similar to that of the European Union. Radio frequencies for public mobile services were assigned through open auctions and in a transparent manner. As for information society services, there was no such legal concept in Hong Kong, China. Therefore, no authorization or licensing measures existed for the

provision of services by electronic means in general. However, different services would be subject to the respective regulations, which were always non-discriminatory and transparent.

90. Turning to the Australian paper, the representative said that it was a very useful addition to the discussion on ICT principles. He considered the three topics highlighted by Australia as additions to the other ICT principles that the Council had discussed. Hong Kong, China attached great importance to all three issues, and had local legislation to regulate these respective areas. He hoped to be able to share the details of Hong Kong, China's legislative framework in subsequent meetings. He welcomed the opportunity to continue to discuss such principles and share Members' regulatory experiences in the Council.

91. In a broader context, Hong Kong, China supported continuation of the Council's work on e-commerce and welcomed any proposals to advance it further. In this sense, his delegation was very interested in the suggestions raised by some Members, including the one by the United States regarding preparatory work for a workshop in 2013.

92. The representative of China indicated that China had no specific regulations on electronic communication services and information society services as identified in the EU submission. However, with the largest population in the world, China was always willing to learn from experiences and measures adopted by other Members to promote the e-commerce industry. While his delegation concurred that a free and liberalized market environment was crucial for the development of e-commerce, effective supervision and regulation were also indispensable for the orderly development of the industry. Licensing, as one of governments' primary regulating approaches, therefore played an important role in realizing the above-mentioned objectives.

93. The Chinese Government had fully recognized the irreplaceable role that e-commerce played in boosting the economy, promoting scientific and technological advances, and accelerating the digitalization of social services. China highly valued and actively facilitated the development and applications of Internet technology. China's general principle on authorization and licensing mechanisms was to simplify procedures as much as possible, which meant that there was generally no authorization for cases where markets functioned effectively, or where industry associations and intermediary agencies self-regulated properly. Administrative permits only applied to situations where special credits, conditions or qualifications were needed.

94. His delegation had welcomed the Australian proposal. The three suggested principles were all closely related to the development of e-commerce, and worthy of further discussion in view of their practical significance. China encouraged and supported the development of online business and related services, and was committed to establishing a fair and orderly market environment under effective regulation. China attached great importance to the protection of online consumer and personal data. The Interim Management Measures of Online Transactions and Related Services, which regulated online transactions, had been introduced in 2010. To ensure consumer protection, all online service providers had to supply their real identity to the supervisory agencies, were required to notify consumers of the name, type, quality, quantity, price and other related information about the product in advance, take protective measures to ensure the reliability and safety of the transactions, and fulfil the commitment to provide the specific product or service.

95. As for the protection of personal information, online service providers were legally required to collect consumer information, keep it secure, use it reasonably within a given time-limit, and guarantee its final and proper elimination. Moreover, information irrelevant to the provision of goods and services could not be collected, and any illicit use, disclosure, rent or sale of such information was prohibited. Operators who provided online transaction platform services were required to take all necessary measures to protect information related to dealers' business secrets and consumers' personal data. All disclosure, transfer, rent or sale of the parties' name, transaction record, dealers' business

secrets or consumers' personal data to third parties was prohibited unless specifically approved by the parties concerned.

96. China would like to learn more about other Members' experiences with promoting and regulating the e-commerce industry.

97. Starting with the EU submission, the representative of New Zealand said that her delegation welcomed the opportunity of addressing in further depth one of the principles outlined in the EU-US earlier submission on ICT principles. Overall, her delegation was in concordance with the entirety of paragraph 3 of the EU paper, both as concerned the importance of authorization procedures as a regulatory tool, and also with regard to the observation that such procedures might lead to a burdensome process that could hinder the development of a sector and create barriers to market access, especially for SMEs. She concurred that it was important to identify an appropriate balance.

98. New Zealand had a very relaxed and open regime, with no 'general' or 'individual' authorizations required, except in the case of scarce resources like spectrum. On spectrum, New Zealand operated an arrangement consistent with that described in paragraph 8 of the EU paper, whereby individual rights of use were granted through open, objective, transparent, non-discriminatory and proportionate procedures. Spectrum auctions were held, and successful bidders were required to sign a license outlining a list of conditions. Other than for the allocation of spectrum, there were circumstances in which an operator could choose to register for authorization if it wished to gain certain rights (such as the right to install equipment on the road reserve), but there was no obligation to do so. New Zealand's regime had helped attract investors who might otherwise have considered the country, with its limited population base, too small to invest in.

99. As for the contribution from Australia, the three additional principles suggested were useful enhancements to those already discussed, and consistent with New Zealand's own current practice. New Zealand's general approach was to address consumer protection and data protection in a broad manner, rather than through e-commerce-specific measures, for instance through consumer guarantees and privacy legislation. However, New Zealand did have specific legislation in place on unsolicited commercial e-mail, in the form of the Unsolicited Electronic Messages Act of 2007. The representative said that she would be pleased to provide further details to any interested Members.

100. She added that the Council had gained some good momentum on its e-commerce discussions, and her delegation was supportive of further work in this area. In this sense, she could endorse the US suggestion for a services-focused workshop on e-commerce in 2013, and looked forward to further discussions on this suggestion.

101. Recalling views expressed previously by her delegation on the EU-US ICT principles, the representative of Turkey said that Turkey attached great importance to ensuring that ICT services were provided under competitive market conditions, to improve productivity and efficiency in the whole economy. Turkey had established its independent authority responsible for the regulation and supervision of the ICT sector in 2000. The Information Technologies and Communications Authority had subsequently introduced legislation, with the objective of ensuring provision of ICT services in a competitive and transparent environment, taking into consideration many of the principles put forward in the EU-US submission. Her delegation regarded the principles of "transparency" and "regulatory authorities" as particularly essential to secure competitive market conditions.

102. However, as previously indicated, Turkey considered some of the principles as potentially constraining for countries in which the ICT sector was still evolving. There were significant differences among countries in terms of the level of development of ICT networks and infrastructure, which surely had an impact on the conditions of competition in the supply of those services. The EU-US ICT principles, however, failed to take account of the diversity in the competitiveness of

different countries, as well as their willingness to develop their own domestic capacity for ICT services infrastructures and networks.

103. In order to accommodate wider interests, Turkey believed that the principles on "Authorizations and Licenses", "Local Infrastructure", "Open Networks, Network Access and Use" and "Cross-Border Information Flows" in particular should include more flexibility for policy makers, to allow for the attainment of development objectives. In addition, a reference to "public order, public health, public security, protection of consumers and other public interest objectives" would be useful to define the policy space in regulating the ICT services market.

104. Her delegation also saw value in developing additional principles on "online consumer protection", "online personal data protection" and the "treatment of unsolicited commercial electronic messages", as proposed by Australia. Those principles would help improve electronic commerce and build trust while doing business electronically.

105. By way of preliminary comments on the EU submission, her delegation appreciated that the objectives of "public order, public health, public security and protection of consumers" were stressed in paragraph 11 as justifying reasons for the denial of authorizations in the sector. Besides, Turkey understood that, within the EU internal market, provision of electronic communication and information society services, either cross-border or through establishment, was enabled subject to a limited number of exceptions and public policy concerns. In that respect, she sought a clarification on whether the legislative harmonization across the EU Member States was seen as a facilitating and necessary element to ensuring the freedom of provision of services in those areas.

106. The representative of Japan underscored the importance of the issues raised in the EU submission and of sharing information on national regulations among Members. In Japan, a person intending to run a telecommunication business had to obtain a registration from the Minister of Internal Affairs and Communications or to notify the said Minister to that effect. Additionally, it was necessary to be licensed individually in order to be allocated frequency or telephone numbers. However, there was no special permission to be obtained for the running of any other e-commerce business.

107. The representative of Canada appreciated the US suggestion for a workshop on e-commerce; her delegation would be interested in participating in the consultations to further define such an event. With regard to the EU submission, Canada was supportive of broad commitments on open cross-border trade in services, and considered transparent and timely authorization procedures for telecommunications to be an important factor in supporting effective competition in that sector. She noted that the GATS already largely supported those objectives, through Members' commitments on cross-border trade and the Reference Paper on telecommunications. The information shared by Members on their schemes was highly welcome, and she hoped to be able to contribute on Canada's own experience. She was also interested in further discussion of the principles raised in the Australian submission.

108. The representative of Norway expressed her delegation's support for the ICT principles tabled by the United States and the European Union. Norway had found the experience-sharing exercise on these issues very helpful and hoped to contribute more actively in the future. The Australian submission pointed to concerns that her delegation had also raised with regard to the ICT principles; the three suggested principles were a useful addition to the 10 EU-US principles. Norway supported starting work in preparation for an e-commerce workshop in 2013.

109. The representative of Singapore said that her delegation was encouraged to see Members building on the various e-commerce-related proposals on the table. She could support the US suggestion for a workshop on e-commerce.

110. The representative of Indonesia stressed the need to have a balanced coverage of the development of e-commerce, including the implementation of the EU-US ICT principles, as well as the additional principles proposed by Australia. The level of ICT development of a country played a significant role in the availability of the infrastructure and the capacity of the government. Indonesia was in the process of developing regulations on e-commerce to ensure the protection of e-commerce transactions. Her delegation supported the sharing of Members' experiences with regard to the protection of consumers and cross-border e-commerce, and in this regard could endorse the US proposal to organize a workshop on the issue.

111. The representative of India noted that both the Australian and the EU papers had been presented in the context of the earlier joint EU-US submission on ICT principles. India, like a number of other Members, had already expressed its reservations on the joint submission, on the grounds that it reintroduced many of the issues that had been part of the negotiating agenda in 2011 in respect of market access in CTS-SS and of domestic regulation in the WPDR. As those issues had not been resolved in intensive negotiations at that time, there was no value added in discussing them again. India continued to retain the same reservations, and was not in a position to support those ICT principles or the related submissions.

112. The representative added that he needed to consult with his capital-based authorities on the workshop proposed by the United States, and would request the US delegation to submit a written proposal with detailed terms of references for the workshop, so as to enable others to develop considered views.

113. The Chairman recalled that a question had been raised about the relationship between the three additional principles proposed by Australia and the chapeau of the EU-US ICT principles which read "these principles are also without prejudice to the policy objectives and legislation of the European Union and the United States in areas such as the protection of intellectual property, the protection of privacy and of the confidentiality of personal and commercial data, and the enhancement of cultural diversity (including through public funding and assistance)".

114. The representative of Australia acknowledged the interest expressed in the principles her delegation had circulated. In response to the US question, she indicated that her delegation had not put forward the three issues as stand-alone ITC principles, but as a very important part of any discussion on the subject. Australia thought that the bilateral EU-US principles were an interesting starting point for multilateral discussion. While it was not signing on to the bilateral arrangement between the United States and the European Union, Australia did welcome the discussion it had provoked. Australia had put forward its own three principles with a view to continuing the exchange and promoting a level of balance that it thought was missing. On the possibility of a workshop on services trade and e-commerce, her delegation would be interested in the idea proposed by the United States, building on the on-going work on development and e-commerce in other WTO bodies, and would welcome participating in further discussions.

115. Replying to the specific question raised by Turkey, the representative of the European Union confirmed that EU harmonization over the past 20 years on electronic communication services had led to liberalization of electronic commerce and communications. With regard to the Chairman's query, the initial EU-US submission had indeed raised a series of general public policy objectives which needed to be taken into account when considering the ten ICT principles. In that sense, the Australian proposal had usefully opened up the debate and put some additional topics on the table. He concurred with Australia on the need to achieve a balance between trade liberalization and consumer protection. The topics raised by Australia were very important in their own right, but were also enablers of future liberalization and development of electronic commerce. His delegation could support more dedicated in-depth discussions in the Council, such as the workshop proposed by the United States. Such an

event could be complimentary to the one that was being envisaged by the CTD and that the European Union also supported.

116. In response to the Chairman's question, the representative of the United States referred to the many policy issues relevant for e-commerce. The EU-US principles focused on some concrete trade-related areas, and he cautioned against raising all sorts of domestic policy concerns that were still under very active consideration in many countries. While his delegation was probably taking a more practical approach, it welcomed Australia's proposal and would continue to work with Australia and other Members. His delegation had taken note of the Indian suggestion to develop clearer and more concrete ideas for the workshop through a consultative process and was ready to engage with interested Members.

117. The Chairman said that the Council had had a very useful discussion and sharing of information. He encouraged Members to circulate information on their own experiences in writing. The Council would take note of the statements made, including on how to move forward with the Work Programme, and revert to this item at its next meeting.

E. OTHER BUSINESS

118. The Chairman reported briefly on the informal meeting of the Council held on 27 September 2012, for the purposes of transparency and inclusiveness. For a more detailed summary, he had produced, under his own responsibility, an informal Note issued as JOB/SERV/117, dated 5 October 2012. The informal meeting had two purposes. First, to discuss possible further cost-saving measures in the operation and organization of the meetings of the Council and its subsidiary bodies, in line with the recommendations from the Budget Committed agreed to by the General Council in November 2011. Second, to exchange views on how to strengthen and improve the functioning of the Council, as per the call in paragraph 3 of the Elements of Political Guidance provided by Ministers in December 2011.

119. With regard to further cost-saving measures in the operation and organization of the meetings of the Council and its subsidiary bodies, he considered that the discussions had provided him with a rather solid basis to report back, on his own responsibility, to the Chair of the Budget Committee, as well as to the Director-General, on the actions taken and measures considered by the Council, including suggestions that had appeared impractical. This did not preclude the possibility of returning to one or more of those elements in the future.

120. As concerned the strengthening and improved the functioning of the Council for Trade in Services, he was encouraged by the views exchanged at the informal meeting. They confirmed the possibility of finding some common ground among Members on a few tangible and realistic steps that could help to operationalize the call by Ministers. In this light, he invited delegations to further reflect on the suggestions discussed at the meeting, review the summary and indicate to him whether there were any outstanding questions, additional suggestions or specific concerns. These could be explored in further consultations, including at a future informal meeting. As always, he was available at all times for bilateral consultations.

121. The representative of Brazil concurred with the Chairman's assessment on the cost-saving measures already achieved by WTO services bodies. In his view, there was room for further improvement and, to that end, Members should be ready to take their share of responsibility. However, this should not be to the detriment of Members whose participation relied, to a large extent, on translated material. On a related topic, Brazil was also open to adjusting the scheduling of meetings, as long as this was driven solely by the actual substance to be discussed, and in line with the call by Ministers to strengthen the functioning of the Council and its subsidiary bodies.

122. Brazil generally welcomed the Chairman's initiative to revive activities in the Council, and believed it was rather timely, as the WTO had been undergoing testing times. While he had noted the focus on transparency and trade barriers, for the sake of balance, he also called for discussions leading to an improved understanding of Members' different levels of development in the services area. Developing countries might be confronted with particular challenges to deploy the necessary legal and institutional frameworks enabling service production and export capacity. It could also be useful to explore the kinds of policies devised to mitigate existing bottlenecks. These suggestions served only to illustrate what a more balanced approach might look like. His delegation hoped to be able to revert with a more elaborate proposal.

123. The Chairman clarified that his informal summary had not been circulated for discussion, as it was not up for adoption, but just for information. He intended to allow delegations sufficient time to reflect on a process that was not going to be concluded at that meeting, but would be the object of further open-ended informal consultations.

124. As he had indicated at the start of the meeting, the representative of South Africa wished to raise his delegation's serious concerns with the manner in which the meetings of that cluster had been scheduled. Given the budgetary constraints many governments were facing, his delegation found it unjustifiable to have a two-day gap in the middle of the week. Two days in Geneva with no official WTO meetings were excessively costly for most capital-based delegates, and time should be used more efficiently. He was aware that a small number of delegations were engaged in consultations, which they were naturally free to do. However, the scheduling of meetings during a cluster should reflect the interests of all Members. If those consultations had determined the meeting schedule that week, his delegation would consider this to be highly inappropriate. The scheduling of a cluster must not advance the interests only of a few, while prejudicing the great majority of Members. The representative of India supported the statement by South Africa.

125. A representative of the Secretariat explained that the scheduling of meetings at that cluster had been dictated by a number of factors. First, the Committee on Trade in Financial Services had to have its meeting on Monday, for reasons related to internal organization and the availability of the Chairperson. Second, to reduce interpretation costs, meetings had to be scheduled as far as possible over full, rather than half, days. As the Council and its subsidiary bodies needed at least two and a half days for all of their meetings, an attempt had initially been made to schedule all the meetings at the beginning of the week. This would have led to a clash, however, with the General Council which was meeting in the middle of the week. Third, holding the meeting of the Council at the end of the week enabled delegations to address any issues that had been left open before. That was the first time that a cluster had been organized that way. In the next cluster, during the week of 3 December, meetings would be scheduled towards the end of the week.

126. The Chairman recalled that this point had also been raised at the informal meeting by a number of delegations. South Africa's concerns had been noted and would be duly taken into consideration in the planning of future meetings.

127. The representative of Australia wished to brief the Membership on the discussions taking place among a group of Members interested in exploring new pathways to services trade reform, further to the guidance provided by Ministers at MC8. Since June, the group had had some very constructive and substantive exchanges on their ambition and architecture for a services agreement, and on how their initiative could contribute to the work in the WTO. On 5 July, the group had issued a statement which set out the progress in their work, and their vision of the way forward. That morning, the press had reported on the substance of their discussions during the week, but she cautioned delegations concerning the accuracy of those reports.

128. She then briefed the Council on some of the ideas that had been discussed. Participants had identified elements of a toolkit for multilateralizing any agreement reached, namely: using the GATS as a basis for the group's work; creating an agreement which would be open to new participants; setting up a mechanism that could enable the parties to multilateralize the agreement on the basis of a critical mass, yet to be defined; as the discussions evolved, bringing them into relevant WTO Committees; and, subject to agreement of all WTO Members, incorporating the agreement as a WTO plurilateral Agreement. She restated the group's willingness to further discuss their work with any interested Member and to continue to be fully transparent.

129. All delegations who spoke thanked Australia for the update and appreciated the transparency brought about.

130. The representative of South Africa recognized that, while some Members had demonstrated willingness to explore different negotiating approaches, there remained divergences on what the appropriate nature of such possible approaches should be. At MC8, Ministers had reaffirmed their commitment to the DDA by stating that they remained committed to working actively, in a transparent and inclusive manner, towards a successful multilateral conclusion of the DDA in accordance with its mandate. Any effort to advance the services negotiations must be deployed in the context of a multilateral and inclusive framework.

131. South Africa was committed to looking at all possible approaches, provided that these were in accordance with the principles of inclusivity and formed part of the single undertaking. In addition, any new approach must advance the objectives of the DDA in a manner that benefitted all Members. Equally important, any new approaches that were explored within the legal framework of the WTO had to be based on the MFN obligation. However, South Africa recognised that Members were free to pursue preferential market access arrangements outside of the legal framework of the WTO, as provided for in GATS Article V. Members who wished to exercise their right to negotiate an Article V agreement should be aware that South Africa could not accept that a pre-determined outcome, negotiated in a forum outside of the WTO, be transposed to the Council for Trade in Services.

132. The representative once again reiterated his delegation's support for all possible new approaches, provided these took place within the context of the WTO, were in accordance with the principles of inclusivity, formed part of the single undertaking, and were in accordance with the development mandate. He further stressed the importance of the linkage between NAMA, services and agriculture.

133. The representative of Costa Rica indicated that his delegation was also part of the plurilateral initiative and expressed satisfaction with the group's discussions. Since the objective was to strengthen the multilateral trading system, the group would be interested in bringing any results to the WTO. For a developing country like Cost Rica, it was important to achieve results in the services negotiations, given the importance of services for its economy. He indicated that, in 2011, services accounted for around 68% of Costa Rica's GDP and 66% of employment. Services exports had tripled in value over the previous 12 years and grown, on average, by 1.5% per year. Services exports accounted for 32% of all exports in 2011, with exports of IT and business services having increased 12 times over the previous 12 years, overtaking tourism as the main service export in 2011 and, for the first time, being equivalent to agricultural exports. For every dollar of services imported, Costa Rica exported 3.2 dollars to the rest of the world. Services had also played a crucial role for the country's integration in global value chains. Those results were largely due to the liberalization Costa Rica had achieved in bilateral and regional trade agreements, as well as through autonomous measures. The next step was thus to bring those achievements to the multilateral trading system, and the new plurilateral initiative contributed to that objective. He concluded by inviting other Members to participate.

134. The representative of China said that his delegation would welcome continued sharing of information on the part of the Members involved in the plurilateral initiative. In particular, he would welcome receiving more details on nature of the initiative, its relation to the DDA, how it would serve as a "stepping stone" for multilateral negotiations, and how the group envisaged multilateralizing the outcome of the process. He reiterated that his delegation welcomed all efforts aimed at moving the DDA negotiations forward, provided that relevant initiatives respected the consensus reached by Ministers at MC8, i.e., that they proceeded in a transparent and inclusive manner, in accordance with the development mandate, and contributed towards a successful multilateral conclusion of the DDA. He hoped that the discussions in the plurilateral initiative would advance the multilateral negotiations, and not replace or undermine them.

135. The representative of Egypt echoed the statements by South Africa and China, and recalled that at MC8 Ministers had called for a successful multilateral conclusion of DDA. Members needed to more fully explore different negotiating approaches within that multilateral context.

136. The representative of Switzerland noted that China and Egypt had recalled important WTO principles that the members of the plurilateral initiative were also well aware of. With regard to the comments made on inclusivity and on GATS Article V, he considered that the approach currently being developed in the plurilateral initiative could not be compared with existing services trade agreements. The group was willing to multilateralize the results of its work once a critical mass had been reached, and it was not closed, but in fact had been broadened and was promoting an even broader membership.

137. The representative of Brazil encouraged the group to continue providing details on their initiative. He recalled Brazil's previously stated position on the issue and echoed the statements made by South Africa and China.

138. The representative of the Plurinational State of Bolivia reiterated his delegation's opposition to plurilateral initiatives, which would weaken the multilateral trading system. He shared the concerns expressed by South Africa, China, Brazil and others. Seeking more details on the group's activities, he enquired, in addition to China's questions, what was meant by "critical mass".

139. The representative of Cuba supported the statements by South Africa, China, Egypt, Brazil and the Plurinational State of Bolivia. He had noted that a different delegation had briefed the Membership, and in that regard recalled Albert Einstein's saying to the effect that, if one wished to achieve a different result, one should not continue repeating the same action.

140. He recalled the recent report by the TNC Chairman about the critical situation of the DDA, the multilateral trading system, and the credibility of the WTO. He did not wish to discuss all what had happened during the previous 10 years, but rather what could occur if liberalizing measures and plurilateral approaches, which were in the interest of only some Members were placidly accepted. It was not correct to try to take the Council down a path of plurilateralism, towards condoning agreements amongst only a few Members. His delegation continued to oppose the unfruitful attempts of Members that promoted a plurilateral approach to services, to the detriment of the multilateral character of the negotiations, and thereby damaging the credibility of the WTO. He commended those that, wisely, had withdrawn from the plurilateral process, and hoped that they would be joined by others. Finally, he hoped that the meetings the group had held on Tuesday and Wednesday that week had not been one of the factors that had influenced the schedule of that services cluster.

141. The representative of the European Union said that the group's exploratory discussions had achieved progress in a constructive and almost enthusiastic atmosphere. The European Union attached critical importance to ensuring that any possible agreement be built in a way that allowed for its multilateralization. Australia had delivered a good description of the different options under

discussion in the group, and, in his view, it had answered some of the questions raised by China. As for the question of Bolivia, it was too early to describe the threshold for a "critical mass", but transparency on this issue would emerge as the discussions progressed. In the spirit of multilateralization, he encouraged any other interested Member to join the process, which was open, either at that stage of preliminary discussions, during the negotiations, or once the process had been concluded.

142. Though the representative of India appreciated the group's attempts at transparency, he was not sure that these had been effective. Along with other delegations, India had raised a number of questions and concerns, primarily about how the proposed initiative would contribute to the goal of concluding the DDA in an inclusive manner as per the guidance by Ministers. As pointed out by China, those concerns and questions had remained unaddressed.

143. Having a small group of Members working in isolation, developing a set of principles and asking others to adopt them was against the fundamental principles of multilateralism and inclusiveness, which were the cornerstone of the WTO. Multilateralism and inclusiveness meant working with all Members which, in the context of the DDA, implied working in the CTS-SS. It did not mean that some Members could work in small groups and present their solution for others to adopt. That was neither multilateralism nor inclusiveness. He shared the views expressed by South Africa in that regard. Ministers had specifically said, in their Elements of Political Guidance, that Members needed to explore different negotiating approaches while respecting the principles of transparency and inclusiveness. Unfortunately, the attempt by the group was not in accordance with that political guidance and would detract from the goal of a successful multilateral conclusion of the DDA in accordance with its mandate.

144. The representative of South Africa referring to the invitation by Switzerland and the European Union to join the initiative, recalled that his country's Minister had made it clear that South Africa remained committed to the WTO and would attempt to find a solution within the multilateral framework. If all Members adhered to the outcome of MC8, and in particular to the call to explore new approaches in the context of the multilateral setting, South Africa could not see scope for the proposed initiative.

145. The representative of New Zealand reaffirmed the openness of the group and the constructiveness of the discussions, and welcomed the progress made. The group did not have answers to all the questions raised at that stage, as discussions were still on-going. The group was giving concerted and collective thought to the issues raised by Members in the Council, notably by beginning to identify specific and concrete steps to link their work to that of the Council.

146. The representative of Jamaica said that he had been struck by the comments on the plurilateral services negotiations and the objective to create an incubator agreement for multilateralization. He asked the group to consider whether a negotiation aimed at creating a commonly acceptable package could proceed successfully, bearing in mind the need, in such a process, to contemplate and anticipate the objectives and concerns of others who were not engaged in the negotiations. This question assumed that it was the group's intention to make the package immediately acceptable to all, rather than trying to impose it.

147. The representative of Argentina echoed the statements by South Africa, China and others. She reiterated her delegation's aversion to plurilateral approaches, and stressed that it was necessary to strengthen the multilateral system in a transparent and inclusive manner, and conclude of the DDA in accordance with its mandate.

148. The representative of Chile reiterated the open and transparent character of the initiative and repeated the invitation to other developing countries to join the group. Chile was a developing, small

and remote economy. There were similar countries amongst the Membership who would be welcome in the group.

149. The representative of India invited the group to negotiate in the CTS in an open and inclusive manner.

150. Turning to the last item of Other Business, the representative of Australia sought an update from the European Union regarding its progress on the entry into force of the certified EC-25 schedule. The representative of India echoed the statement.

151. The representative of the European Union recalled that, as indicated in June, 18 EU Member States had ratified the consolidated schedule. The European Union continued engaging with affected Members in informal meetings to keep them up to date on the on-going ratification process.

152. The Chairman said that the Council would take note of the statements made.

153. The meeting was adjourned.