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G/C/M/139

16 June 2021

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Council for Trade in Goods

MINUTES OF THE MEETING OF THE COUNCIL FOR TRADE IN GOODS 31 MARCH AND 1 APRIL 2021

CHAIRPERSON: HE MR MIKAEL ANZÉN (SWEDEN)

The meeting of the Council for Trade in Goods (CTG, or the Council) was convened by Airgram WTO/AIR/CTG/18 and WTO/AIR/CTG/18/Rev.1; the proposed agenda for the meeting was circulated in document G/C/W/793. The meeting proceeded on the basis of the following agenda:

The Chairperson recalled that, given the virtual format of the meeting and the long agenda, it would be desirable for Members to keep their interventions brief and to the point; to facilitate delegates' time-keeping, he proposed that an on-screen timer be used. In any case, delegations were invited to send their full written statements to the Secretariat, either during the meeting itself or during the subsequent five working days, for their incorporation into the meeting's minutes.

The delegate of Paraguay requested that an on-screen timer not be used to keep track of delegates' interventions.

The Chairperson informed delegations that, under agenda item "Other Business", he would raise the matter of the date of the Council's next meeting and make an announcement regarding Secretariat changes in relation to this Council.

The agenda was so agreed.

1 NOTIFICATION OF REGIONAL TRADE AGREEMENTS

1.1. The Chairperson recalled that, under the working procedures agreed by the Committee on Regional Trade Agreements (CRTA) and following the adoption by the General Council of the Transparency Mechanism[1], the CTG was to be kept informed of Members' notifications of new regional trade agreements (RTAs). He informed the CTG that 42 RTAs had been notified to the CRTA, among them 32 trade agreements concluded by the United Kingdom and its partners, as followed:

(i) United Kingdom – Ghana, Goods (WT/REG449/N/1);

(ii) ASEAN – Hong Kong, China, Goods and Services (WT/REG448/N/1-S/C/N/1043);

[1] Documents WT/REG/16, WT/L/671, and G/C/M/88.

(iii) European Union – United Kingdom, Goods and Services (WT/REG447/N/1-S/C/N/1041);

(iv) Indonesia – Australia, Goods and Services (WT/REG446/N/1-S/C/N/1040):

(v) European Union – ESA – Accession of Comoros, Goods (WT/REG445/N/1);

(vi) Ukraine – Israel, Goods (WT/REG444/N/1);

(vii) United Kingdom – SACU and Mozambique, Goods (WT/REG443/N/1);

(viii) China – Mauritius, Goods and Services (WT/REG442/N/1-S/C/N/1037);

(ix) Trade Agreements notified by the United Kingdom[2]:

- UK – Colombia, Goods and Services (WT/REG410/N/1);
- UK – Kosovo, Goods (WT/REG411/N/1);
- UK – Lebanon, Goods (WT/REG412/N/1);
- UK – Pacific States, Goods (WT/REG413/N/1);
- UK – Pacific States (Samoa), Goods (WT/REG414/N/1);
- UK – Pacific States (Solomon Islands), Goods (WT/REG415/N/1);
- UK – Palestine, Goods (WT/REG416/N/1);
- UK – Kenya, Goods (WT/REG417/N/1);
- UK – Cameroon, Goods (WT/REG418/N/1);
- UK – Canada, Goods (WT/REG419/N/1);
- UK – CARIFORUM, Goods and Services (WT/REG420/N/1);
- UK – Côte d'Ivoire, Goods (WT/REG421/N/1);
- UK – Central America, Goods and Services (WT/REG422/N/1);
- UK – Chile, Goods and Services (WT/REG423/N/1);
- UK – Faroe Islands (Denmark), Goods (WT/REG424/N/1);
- UK – Ecuador and Peru, Goods and Services (WT/REG425/N/1);
- UK – Egypt, Goods (WT/REG426/N/1);
- UK – ESA, Goods (WT/REG427/N/1);
- UK – Israel, Goods (WT/REG428/N/1);
- UK – Morocco, Goods (WT/REG429/N/1);
- UK – Norway and Iceland, Goods (WT/REG430/N/1);
- UK – Republic of Korea, Goods and Services (WT/REG431/N/1);
- UK – Singapore, Goods and Services (WT/REG432/N/1);
- UK – Tunisia, Goods (WT/REG433/N/1);
- UK – Turkey, Goods (WT/REG434/N/1);
- UK – Ukraine, Goods and Services (WT/REG435/N/1);
- UK – Viet Nam, Goods and Services (WT/REG436/N/1);
- UK – Switzerland and Liechtenstein, Goods (WT/REG437/N/1);
- UK – North Macedonia, Goods and Services (WT/REG438/N/1);
- UK – Republic of Moldova, Goods and Services (WT/REG439/N/1);
- UK – Georgia, Goods and Services (WT/REG440/N/1);
- UK – Japan, Goods and Services (WT/REG441/N/1);

(x) Communication by the European Union and the United Kingdom (WT/REG/GEN/N/10) – Notification of inactive agreements; and

(xi) EU Treaty (WT/REG39/N/1-S/C/N/6/Add.1) – Notification of changes.

1.2. The Council took note of the information provided.

[2] Reference to Kosovo shall be understood to be in the context of the United Nations Security Council Resolution 1244 (1999).

2 STATUS OF NOTIFICATIONS UNDER THE PROVISIONS OF THE AGREEMENTS IN ANNEX 1A OF THE WTO AGREEMENT (G/L/223/REV.28)

2.1. The Chairperson drew Members' attention to document G/L/223/Rev.28, containing the status of notifications under the provisions of the Agreements in Annex 1A of the WTO Agreement.

2.2. The Council took note of the report.

3 APPOINTMENT OF OFFICERS TO THE SUBSIDIARY BODIES OF THE COUNCIL FOR TRADE IN GOODS

3.1. The Chairperson reminded delegations that the Guidelines for Appointment of Officers to the WTO (WT/L/510) adopted by the General Council on 11 December 2002, provided that the Chairperson of the CTG would conduct consultations on the appointment of the Chairpersons of the subsidiary bodies of this Council, including consultations with the Group Coordinators in line with the practical steps to be taken to improve the process of appointment of officers contained in JOB/GC/22, dated 27 July 2012.

3.2. In this vein, and as he had announced at the March meeting of the General Council, and as he had also reiterated in his communication to WTO Members of 4 March 2021, in his capacity as Chairperson of the CTG, he had begun his consultations by meeting on four separate occasions with the Group Coordinators of the four Regional Groups, namely Asia and the Pacific, Latin America and the Caribbean, Africa, and the Developed Countries, on 8, 11, 24, and 26 March 2021. Specifically, during the first two meetings, he had indicated that, once he had received all of the lists from the different Groups, and in order to ensure full transparency and equal opportunities to the entire Membership, he would contact those delegations that did not belong to any of the Regional Groups.

3.3. During the first meeting, the Group of Developed Countries had submitted the names of their candidates. He had received the final lists of candidates from the other three Regional Groups on Thursday, 18 March, and he had immediately conveyed the lists to the other Group Coordinators, requesting them, in turn, to convey them to their constituencies. Based on the lists of candidates that he had received from Group Coordinators within the established deadline, he had prepared a slate of names, which had then been circulated to the Group Coordinators on 24 March 2021.

3.4. In his preparations, he had not only taken into consideration where more than one candidate had been proposed to chair the same committee, but had also respected, to the greatest extent possible, the principles of impartiality, objectivity, and, in particular, rotation and balanced regional representation. This had not been an easy task due to overlapping interests, and the many candidates that had been presented by two Regional Groups, while the other two Groups had presented, within the agreed deadline, only one or two candidates respectively. Even so, he thanked the Regional Group Coordinators for their engagement in the process and for all their efforts to reach a consensus on the list.

3.5. Nevertheless, he regretted to inform Members that, even though he had prepared a slate of names based on the candidates submitted to him by the Group Coordinators, and even though this slate had represented to the extent possible a balanced regional representation, and had respected the principle of rotation, he was not yet in a position to submit a slate of names to the Council for its approval.

3.6. Therefore, in his capacity as outgoing Chairperson, responsible for this process, he would continue further consultations with a view to seeing the approval of the list that he had circulated. He recalled that this was a routine housekeeping exercise, so he invited Members to do their utmost to reach consensus on a slate of names as soon as possible, and particularly as the absence of officers to chair the CTG's subsidiary bodies would block the work of those bodies. Therefore, he proposed to suspend this item on the agenda and to request the Council's new Chairperson, upon completion of the exercise, to reconvene the CTG meeting in order to deal specifically with this one agenda item.

3.7. The Council so agreed.

4 WITHDRAWAL OF THE UNITED KINGDOM FROM THE EUROPEAN UNION: PROCEDURES UNDER ARTICLE XXVIII:3 OF THE GATT 1994 – COMMUNICATION FROM THE EUROPEAN UNION (G/L/1385)

4.1. The Chairperson informed Members that, in a communication dated 18 March 2021, the delegation of the European Union had submitted document G/L/1385 relating to the ongoing negotiations under Article XXVIII of the GATT 1994 on the apportionment of the European Union's tariff rate quota concessions following the withdrawal of the United Kingdom from the European Union. In this document, the European Union had indicated that it would not assert that Members that had submitted a claim pursuant to Article XXIV:6 of GATT 1994 were precluded from withdrawing substantially equivalent concessions under Article XXVIII:3 of GATT 1994 because such withdrawal had occurred later than six months after the European Union's withdrawal of concessions, provided that the claiming WTO Member withdrew concessions no later than 12 months after the European Union's modification of concessions.

4.2. The delegate of the European Union indicated the following:

4.3. The European Union recalled that, on 22 December 2020, the EU submitted a document (G/SECRET/Add.3) in connection to the ongoing negotiations under Article XXVIII of GATT 1994 on the apportionment of the European Union's tariff rate quota concessions following the withdrawal of the United Kingdom from the European Union. That communication highlighted, *inter alia*, that the European Union strives for the rapid and successful conclusion of these ongoing negotiations and consultations.

4.4. The EU is pleased to report that good progress has been achieved so far, with agreements formally signed with two partners and negotiations finalized and undergoing domestic validation procedures with a further six partners. In addition, there are several negotiating and consultation partners with whom there are very good prospects of closing negotiations or consultations successfully and advancing towards the initialling of draft agreements. Thus, in line with established practice in the framework of Article XXVIII negotiations (also under Article XXIV:6), the EU believes it is desirable to extend the timelines of Article XXVIII:3 of GATT 1994 by six months. That is, until 1 January 2022, without prejudice to the question of whether there are any rights to withdraw concessions pursuant to Article XXVIII:3(a) and (b).

4.5. On this basis, the EU and other Members currently engaged in these Article XXVIII procedures can continue to concentrate on bringing these negotiations and consultations to a successful conclusion in the coming months. The EU remains fully committed to successfully conducting these negotiations and consultations within this extended deadline. Therefore, the EU requests that the CTG takes note of this communication and that it agrees on the extension of the deadline as indicated in the above-mentioned communication (G/L/1385), until 1 January 2022.

4.6. The Council took note of the statement made and agreed to extend the deadline to withdraw substantially equivalent concessions under GATT Article XXVIII by six months, until 1 January 2022, as set out in document G/L/1385.

5 UNITED KINGDOM'S WITHDRAWAL FROM THE EUROPEAN UNION: PROCEDURES UNDER ARTICLE XXVIII:3 OF GATT 1994 – COMMUNICATION FROM THE UNITED KINGDOM (G/L/1386)

5.1. The Chairperson informed Members that, in a communication dated 18 March 2021, the United Kingdom had submitted document G/L/1386 relating to the ongoing negotiations under Article XXVIII of the GATT 1994 on the establishment of the United Kingdom's Schedule of concessions and commitments on goods following its withdrawal from the European Union. In this document, the United Kingdom had indicated that it would not assert that Members that had submitted a claim pursuant to Article XXIV:6 of GATT 1994 were precluded from withdrawing substantially equivalent concessions under Article XXVIII:3 of GATT 1994 because such withdrawal had occurred later than six months after the United Kingdom's withdrawal of concessions, provided that the claiming WTO Member withdrew concessions no later than 12 months after the United Kingdom's modification of concessions.

5.2. The delegate of the United Kingdom indicated the following:

5.3. The United Kingdom refers Members to the statement contained in document G/L/1386, which was circulated by the Secretariat prior to this meeting. As Members are aware, the UK has been in ongoing negotiations and consultations with trading partners with respect to its obligations concerning tariff rate quotas within our Schedule of concessions and commitments on goods in a process under Article XXVIII of the GATT. This is on account of the UK's withdrawal from the European Union. The United Kingdom's priority remains to engage in good faith with Members in discussions relating to tariff rate quotas (TRQs), and to reassure Members that we are committed to maintaining the existing balance of rights and obligations within our Schedule.

5.4. Negotiations with Members in this process under Article XXVIII have been progressing well and the UK would like to thank the relevant Members for their continued and constructive engagement in resolving specific concerns. Whilst the UK is optimistic that it will be able to make swift progress in reaching agreement with remaining Members, the UK believes that an extension of the timelines under Article XXVIII:3 of the GATT, by six months, until 1 January 2022, is the most appropriate course of action towards concluding these discussions and the process under Article XXVIII of the GATT.

5.5. An extension will allow the UK to provide trading partners with more certainty on their outstanding concerns, and to ensure sufficient time to complete obligatory internal processes. The UK thanks Members for their participation in this process so far and will further update Members following the conclusion of Article XXVIII negotiations, in line with past WTO practice.

5.6. The Council took note of the statement made and agreed to extend the deadline to withdraw substantially equivalent concessions under GATT Article XXVIII by six months, until 1 January 2022, as set out in document G/L/1386.

6 ACCESSION OF THE REPUBLIC OF ARMENIA AND THE KYRGYZ REPUBLIC TO THE EURASIAN ECONOMIC UNION: PROCEDURES UNDER ARTICLE XXVIII:3 OF GATT 1994 – REQUEST FROM THE EUROPEAN UNION

6.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union.

6.2. The delegate of the European Union indicated the following:

6.3. In April 2019, the European Union welcomed the progress achieved in our negotiations on tariffs for non-agricultural products, where an agreement of principle has been reached. When it comes to agriculture, however, that is not yet the case. Talks continued in 2020, but understandably, progress has been impacted by the COVID-19 pandemic. Nevertheless, these negotiations remain important for the EU. The EU hopes that we will be able to engage with both countries to pursue talks with a view to concluding negotiations as soon as possible.

6.4. The delegate of Armenia indicated the following:

6.5. Armenia wishes to inform Members that it is continuing its consultations and communications with interested delegations on this issue. However, for understandable reasons, with less intensity than was initially anticipated. Armenia has made positive developments and real progress on the non-agricultural market access (NAMA) package and is very close to the finalization of negotiations on NAMA substance. At the same time, Armenia has intensified its efforts and concentrated more resources to come up with the formulation of a mutually acceptable position for a compensation package on agriculture. However, considering the number of interested Members that are involved in the process, as well as the technical and logistical obstacles created mainly by the COVID-19 pandemic, Armenia will require additional time to conclude these negotiations. Armenia has taken note of the statement made by the representative of the European Union and will forward it to Capital. Armenia will continue its communication with all interested WTO Members in a pragmatic and constructive way and confirms its readiness to organize the next round of negotiations in anticipation of finally completing them.

6.6. The delegate of Switzerland indicated the following:

6.7. Switzerland wishes to note that bilateral discussions on this matter with the Kyrgyz Republic have not been advancing in a satisfactory manner over the last few years. Switzerland invites the Kyrgyz delegation to re-engage in the bilateral process in order to make progress.

6.8. The delegate of the Russian Federation indicated the following:

6.9. The Russian Federation recognizes its crucial role in the successful conclusion of these negotiations and will continue to support the negotiation process.

6.10. The delegate of the Kyrgyz Republic indicated the following:

6.11. The Kyrgyz Republic wishes to express its gratitude to the delegation of the European Union for its comprehensive cooperation on the matter of the negotiation process under GATT Article XXIV. The Kyrgyz Republic also thanks Switzerland and the Russian Federation for their comments.

6.12. Back in 2019, after substantive discussions with its Eurasian Economic Union (EAEU) partners, the Kyrgyz Republic had formally submitted a set of NAMA and agricultural tariff lines by way of a compensation proposal, based on which the Kyrgyz Republic stands ready to further liberalize its tariff lines, including on TRQs for agriculture. As a result of NAMA goods negotiations, the Kyrgyz Republic has heard positive feedback from the EU side, which gives it reason to hope that they have reached mutually agreeable outcomes in NAMA goods, and that the NAMA negotiations now near their completion.

6.13. As for agriculture, the Kyrgyz Republic wishes to state that the consultations at technical level are under way with colleagues from the European Union on agricultural products, along with the holding of internal consultations at the EAEU-level. Upon the EU's request, the necessary statistical and technical information was sent to the EU in October 2020, and the Kyrgyz Republic, as well as its EAEU partners, are expecting to receive feedback from EU at this consultation track in order to swiftly move forward, because the Kyrgyz Republic is also interested in completing the negotiation process in the very near future.

6.14. The Kyrgyz Republic assures the EU, Switzerland, and other interested Members, that it is making all possible efforts to intensify the consultation process with its EAEU partners. However, the negotiation process also involves a number of players among its EAEU partners. The Kyrgyz Republic also reiterates that it is currently waiting for the necessary feedback from the EU side as concerns its technical calculations. Finally, the Kyrgyz Republic reiterates that the ongoing work has been seriously affected by the unforeseen circumstances presented by the COVID-19 pandemic.

6.15. The Council took note of the statements made.

7 UPDATE ON PROCEDURES TO ENHANCE TRANSPARENCY AND STRENGTHEN NOTIFICATION REQUIREMENTS UNDER WTO AGREEMENTS – ARGENTINA, AUSTRALIA, CANADA, COSTA RICA, THE EUROPEAN UNION, ISRAEL, JAPAN, NEW ZEALAND, THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU, THE UNITED KINGDOM, AND THE UNITED STATES

7.1. The Chairperson recalled that this item had been included in the agenda at the request of Argentina, Australia, Canada, Costa Rica, the European Union, Israel, Japan, New Zealand, Chinese Taipei, the United Kingdom, and the United States.

7.2. The delegate of the United States indicated the following:

7.3. On behalf of the co-sponsors, the United States appreciates the opportunity to return to the joint notification proposal, "Procedures to Enhance Transparency and Strengthen Notification Requirements Under WTO Agreements", document JOB/CTG/14/Rev.4. For this meeting, the co-sponsors wish to inform Members that they remain committed to advancing this proposal in 2021. The central focus of the proposal is about transparency, which is essential for the continued functioning and relevance of the WTO as an institution. Improvement of notification practices must be a necessary element of WTO reform efforts. As the pandemic made clear, transparency with regard to Members' trade measures is critically important.

7.4. Members were able to act in spite of challenging circumstances. A recent count showed that WTO Members had submitted more than 300 notifications related to COVID-19. These notifications enabled other Members to make policy decisions based on accurate and timely information. Similarly, Members must continue to improve baseline WTO transparency practices as we work to build back better. Earlier in the meeting, Members considered document G/L/223/Rev.28, "Updating of the Listing of Notification Obligations and the Compliance Therewith as Set Out in Annex III of the Report of the Working Group on Notification Obligations and Procedures". While the update indicates there have been some improvements in notification reporting by some Members, efforts to date to encourage timely reporting have yielded limited and insufficient results. This underscores the importance of the recommended reforms set forth in this proposal.

7.5. Since the last CTG meeting, the co-sponsors have been meeting and considering ways to evolve the proposal, taking into account the feedback received from Members. The purpose of this intervention is to remind Members about the notification proposal and to advise that co-sponsors will be reaching out in the coming weeks to seek Members' input on what improvements can be made to address outstanding concerns and garner their support. The co-sponsors welcome understanding concerning what the core impediments are that prevent Members from meeting their notification requirements. What is necessary to ensure the timely submission of notifications? How can the notification proposal better balance benefits and obligations?

7.6. The co-sponsors continue to welcome all comments and are ready to listen to how we may address outstanding concerns. More importantly, the co-sponsors would welcome Members' support as they continue to find ways to reinforce the fundamental principle of transparency that is at the core of the WTO and is critical to helping restore the negotiating function of the WTO.

7.7. The delegate of the European Union indicated the following:

7.8. The European Union appreciates the opportunity to relaunch discussions on this proposal. As the US has highlighted, the proposal aims at improving a basic tenet of WTO work: transparency. Looking at the Secretariat's annual listing of compliance with notification obligations (document G/L/223/Rev.28, under agenda item 4), we can certainly learn from Members' experience. Some Members have made efforts to catch up on their notification performance. It would be interesting to hear from them about what has made this possible. By contrast, there are still many blanks in areas such as import licensing, state trading enterprises, and quantitative restrictions.

7.9. Some of these blanks are very likely due to genuine capacity constraints. The co-sponsors would like to understand how these constraints can be better addressed, or why available assistance has not been used. In case of blanks where capacity constraints are not the reason behind the delay or lack of notification, we would like to understand what impedes Members from notifying and explore possible avenues to address the issue.

7.10. The proposal has undergone a series of revisions since it was tabled initially. The co-sponsors are not at the end of the journey yet, but would like to get there soon. The co-sponsors look forward to stepping up engagement with Members to address outstanding concerns.

7.11. The delegate of Japan indicated the following:

7.12. Japan thanks the United States for delivering the statement on behalf of the co-sponsors and thanks the EU for its intervention. Japan would like to echo the points made by the United States and stress that it is fundamental for the functioning of the WTO, as a Member-driven organization, to receive notifications from Members in the proper way. As a co-sponsor of the proposal, Japan believes that a reformed WTO will only be achieved by strengthened and enhanced transparency. The proposal includes procedures to improve the operation and effectiveness of notification requirements, through future work done by the Working Group on Notification Obligations and Procedures. Furthermore, the proposal recognizes a need for technical assistance to improve notification compliance. Japan hopes to see a consensus on this proposal as the first step in the WTO reform efforts, and to achieve mutually satisfactory improvements in transparency and notification requirements, through the future activities of the Working Group.

7.13. The delegate of Australia indicated the following:

7.14. Australia is committed to working collectively towards more effective transparency as a key part of WTO reform. Increasing transparency and meeting notification obligations would enhance confidence in the WTO and its rules. Australia acknowledges the particular difficulties faced by developing countries, particularly least developed countries, and the importance of working to assist these Members. Australia looks forward to working towards raising compliance rates for notifications, including by lifting unreasonable impediments, in order to make transparency a practical reality. Australia also looks forward to working with other co-sponsors on outreach and further refinement of this notification proposal.

7.15. The delegate of Costa Rica indicated the following:

7.16. Costa Rica wishes to reaffirm the importance of transparency in the process of reforming and strengthening the WTO. Improving transparency and notification obligations would enhance confidence in the work of this Organization. In this regard, Costa Rica looks forward to continuing to work together with the other co-sponsors to improve and refine the proposal.

7.17. The delegate of the United Kingdom indicated the following:

7.18. As a strong supporter of the rules-based Multilateral Trading System, the United Kingdom reiterates its commitment to this proposal to improve compliance around transparency and notifications. The United Kingdom is conscious of the certainty and predictability which transparency can bring to the trading system. This proposal continues to represent a logical and practical step forward in advancing improvement in these areas, as well as part of the wider WTO reform debate. The United Kingdom continues to welcome feedback from Members, particularly from developing Members, on how to enhance aspects of the current proposal and attend to their present concerns.

7.19. The UK would like to take this opportunity to re-emphasize that both technical assistance and capacity-building are integral to the proposal. The UK is committed to ensuring that this proposal does not disadvantage LDCs who face capacity constraints when trying to meet their notification requirements. The UK looks forward to strengthening support for this proposal and hopes that its inclusion on the agenda has allowed Members to re-focus on it.

7.20. The delegate of New Zealand indicated the following:

7.21. New Zealand continues to support efforts to enhance transparency and notification obligations under all WTO Committees. These are fundamental to the functioning of the WTO system, and allow Members to understand each other's implementation of commitments made under the respective WTO Agreements. This proposal seeks to identify areas where further guidance and assistance may be required to assist Members with meeting their existing notification requirements. In this regard, New Zealand continues to support and co-sponsor the proposal and ongoing efforts to enhance transparency and notifications, including in the context of MC12 outcomes.

7.22. The delegate of Ukraine indicated the following:

7.23. Ukraine supports the essential role of transparency in the implementation of the WTO Agreements and considers notifications to be an important and indispensable tool to facilitate the implementation of fundamental obligations under the WTO. Ukraine also sees transparency and notification as a tool that builds or is able to rebuild trust between WTO Members. Ukraine would like to thank all of the co-sponsors of the document for their valuable contributions in updating the previously submitted proposal. Ukraine remains a supporter of WTO activities aimed at ensuring transparency in Members' trade policies and supports WTO Members' efforts to improve compliance with the transparency requirements set forth in specific agreements. Ukraine expresses its readiness to further discuss the initiative, which will meet the challenges and needs of developing countries with regard to the timely submission of comprehensive notifications.

7.24. The delegate of Israel indicated the following:

7.25. Israel thanks the co-sponsors of this proposal for their continued interest in enhancing transparency and strengthening the notification requirements across all WTO Agreements. Transparency is of critical importance to the overall functioning of the system. Although this proposal did not address *ad hoc* notifications of temporary measures imposed under the COVID-19 pandemic,

the general goal remains the same: increased transparency. Israel echoes other Members in emphasizing the need to make policy decisions based on accurate and timely information and believes that this proposal accurately addresses this overarching objective. Israel stands ready to continue its close collaboration with the co-sponsors and any interested delegation interested in learning more about the proposal and those interested in joining as co-sponsors.

7.26. The delegate of the Republic of Korea indicated the following:

7.27. Korea recognizes the co-sponsors' efforts in developing this item and providing updates to WTO Members. Korea would like to reiterate the importance of notifications in the Multilateral Trading System as the first step to securing transparency. Korea is ready to engage in further discussions to this end. Furthermore, Korea hopes that this item will gather greater support by addressing relevant concerns in an adequate manner.

7.28. The delegate of India indicated the following:

7.29. India thanks the proponents of document JOB/CTG/14/Rev.4. India strongly believes in transparency, as it is one of the main pillars of the rules-based Multilateral Trading System and provides Members with information and clarity on the laws and regulations, facts and figures, and measures taken by other Members impacting international trade. India had earlier expressed its concerns on certain specific issues in the proposal and the decision being sought by the proponents. Most of those concerns still remain. In a nutshell, India finds it difficult to agree to any proposal that provides for administrative actions and penalties in case of default in submitting notifications, rather than making an effort to understand the capacity constraints and other legitimate difficulties faced by a large number of developing country Members in meeting their notification obligations under the WTO Agreements. In India's view, what is required is not to assume wilful default, but to encourage those Members that are able to update their notifications despite difficulties faced, and to assist those Members that have not been able to do so because of various reasons, including capacity constraints. Therefore, India reiterates that, instead of administrative actions and penalties, appropriate support to notify would encourage Members in improving their internal capacity to fulfil their notification obligations.

7.30. The delegate of Paraguay indicated the following:

7.31. Paraguay would like to thank the proponents for the statements that they delivered today. However, Paraguay notes that they have not provided any updates, despite the title of the agenda item. Paraguay continues to note with concern that, despite its repeated calls to review the differentiated treatment of agricultural notifications in this proposal, this treatment persists. Paraguay agrees with the need to improve transparency but is convinced that this differentiated treatment has precisely the opposite effect. Agricultural notifications, specifically DS:1 notifications, have a significant impact on trade and should not be considered less important for the purpose of enhancing transparency in this Organization. The timely submission of these notifications is much more important than other notifications of which the delayed submission would result in penalties from the first year of delay, but in which the notified disbursements represent zero cost for Members. However, the disbursements for agricultural notifications represent around USD 525 billion. Members must put an end to the double standards for agricultural trade in this Organization, rather than continuing to promote further unequal treatment of agriculture. Paraguay maintains its systemic concern in this regard, as it seems that bad practices are bad in all areas of this Organization except agriculture. Paraguay finds no valid justification for this differentiated treatment and cannot help but wonder whether the prevailing reluctance to provide equal treatment could be related to the agriculture notification practices of some of the proponents who are several years behind with the submission of their notifications.

7.32. The delegate of Uruguay indicated the following:

7.33. Uruguay thanks the co-sponsors for the update on this proposal, whose latest version, document JOB/CTG/14/Rev.4, which included the United Kingdom, was submitted on 24 November 2020. In the absence of any substantive modifications with respect to previous versions, Uruguay would like to refer to its detailed statements on this matter delivered at previous

meetings.[3] Without prejudice to the other issues that Uruguay has raised in these statements, which remain valid, Uruguay requests the co-sponsors to provide a clear answer to the following question. What specific contribution to the objective of enhancing transparency in the WTO is the proposal to implement the administrative measures in paragraph 12 supposed to make, specifically in the case of non-compliance regarding DS:1 notifications of domestic support in agriculture, two years later than would apply to the remainder of the notifications covered by the document? Uruguay hopes to continue constructive exchanges on this issue with the proponents and the rest of the Membership in order to achieve concrete and balanced results aimed at improving transparency in the WTO, ensuring compliance by all Members with their respective notification requirements.

7.34. The delegate of Chile indicated the following:

7.35. Chile wishes to echo previous speakers in emphasizing that this is a very important issue, particularly with regard to the future of the WTO. Transparency is of paramount importance and Chile hopes that it can be improved across the board. With a view to moving forward, Chile wishes to ask the co-sponsors if they are in a position to change the punitive framework on which it is based in some way, as well as the differences in the treatment of notifications in agriculture and other categories of notifications, as was just highlighted in the comments from Paraguay and Uruguay. If we want to be efficient, Chile believes that it is necessary to have a dialogue in an environment that promotes solutions.

7.36. The delegate of the United States indicated the following:

7.37. The United States thanks all delegations that spoke today. The co-sponsors were interested in raising this issue again and providing an update indicating that they would be initiating consultations. The United States considers it heartening to hear that there is an interest in advancing transparency as a goal that we all share. Regarding the specific questions from Uruguay and Chile, the United States will work with co-sponsors to agree an answer on behalf of all co-sponsors together. Nevertheless, the co-sponsors have obviously raised this issue with a time-frame and goal in mind of working towards a successful conclusion of this proposal. Therefore, the co-sponsors will be reaching out and will respond collectively to address the questions that were raised specifically about the disparity in agriculture notifications.

7.38. The Council took note of the statements made.

8 MEASURES TO ALLOW GRADUATED LDCS, WITH GNP BELOW USD 1,000, BENEFITS PURSUANT TO ANNEX VII(B) OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES – REQUEST FROM CHAD ON BEHALF OF THE LDC GROUP (WT/GC/W/742-G/C/W/752)

8.1. The Chairperson recalled that this item had been included in the agenda at the request of Chad, on behalf of the LDC Group.

8.2. The delegate of Bangladesh, on behalf of the LDC Group, indicated the following:

8.3. The submission in document WT/GC/W/742-G/C/W/752 aims to correct a technical omission regarding the use of export subsidies under the WTO Agreement on Subsidies and Countervailing Measures (ASCM). It is widely accepted that export subsidy is a policy tool that can potentially help Members in transition. The submission has already received wide support, and the LDC Group is grateful to all Members. The LDC Group also thanks those delegations that earlier raised some concerns and later provided opportunities to engage bilaterally. During previous CTG meetings, Bangladesh cited the historic example of Honduras, which was accidentally excluded from the original list of 20 developing country Members in the Annex VII(b) in 1995, although its Gross National Income (GNI) per capita was below USD 1,000. The General Council judiciously allowed the inclusion of Honduras in the year 2000 by correcting the omission. It means that technical correction is possible.

8.4. Time and again, the LDC Group has said that, in the early 1990s, when the ASCM was negotiated, probably no one could visualize that, in future, the LDCs, namely those countries listed

[3] Document G/C/M/137, paragraphs 7.35 to 7.40.

in Annex VII(a), would be graduated from the LDC category, and that some of them might still remain with GNI per capita below USD 1,000. This gap is nothing but a technical omission which can be corrected without adding any new flexibility in the original agreement. An omission cannot be interpreted as a deliberate intent by the Members to prevent graduating LDCs from benefiting from Article 27.2(a) flexibilities. Members also know that paragraph 10.4 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/17) further confirms that, if a Member has been excluded from the Annex VII(b) list, it shall be re-included in it when its GNI per capita falls back below USD 1,000. This is evidence of the flexibility that Ministers decided to extend to the eligible Members. Now, if a least developed country, after graduation, still falls back below this threshold of USD 1,000 in constant 1990 US dollar terms, why should it not be considered eligible to use the flexibility? The LDC Group asked this question previously, but has never received any answer from our friends, who are not yet convinced to approve this proposal.

8.5. The LDCs have provided reasons justifying why this correction is necessary. The LDC Group has always been open to engaging constructively with Members. Some Members asked questions on this issue, and the LDC Group has answered. The LDC Group has also answered all the queries raised during the last CTG meeting, in November 2020. Very recently, the LDC Group had an opportunity to sit with the EU delegation to answer their questions. Since April 2018, after the introduction of this document in the CTG, the LDC Group has never received any counter-arguments against the explanations. The LDC Group reaffirms that the specific need for this proposal is very clear, namely, to correct a technical omission and nothing else. And there is no need to change any rule. If the technical omission is corrected, the LDCs, after graduation, can equally well benefit from the ASCM, like the Annex VII(b) countries, as long as their per capita GNI does not reach the threshold of USD 1,000 in constant 1990 US dollar terms for three consecutive years. In conclusion, the LDC Group requests the Council to accept the current submission. The delegation of Bangladesh, along with the LDC Group, stands ready to engage constructively with Members.

8.6. The delegate of Nepal indicated the following:

8.7. Nepal wishes to associate itself with the statement delivered by Bangladesh on behalf of the LDC Group. In addition, Nepal notes that the criteria set for graduation eligibility cover human development, economic development, and economic risk factors. However, the provision allows countries to be eligible for graduation even by meeting only two of these criteria, making it possible for a country to graduate without it meeting the per capita income threshold. In this situation, the graduating Members may have a low level of GNP per capita, and they may meet the eligibility of Annex VII(b) of the ASCM. However, such a graduating Member may not benefit from the flexibility of export incentives as per the provision laid down in the Agreement just because of their graduation. This is a completely unfair situation arising from a lacuna in WTO law that requires adjustment. Members should therefore view this request positively.

8.8. Nepal believes that LDC graduation is an issue not only for LDC Members; it is also a global issue. Therefore, enabling and encouraging LDC graduation by extending the maximum possible support to LDCs before and after graduation, and in a just manner, has become an urgent task to enable Members to meet the global target of LDC graduation in a timely manner. Furthermore, LDCs are heavily devastated by the COVID-19 pandemic. The health and economic systems of LDCs have not been able to respond adequately to the challenges posed by the pandemic. Additionally, LDCs have been suffering from huge gaps in many areas, especially in infrastructure, and including ICT infrastructure, institutional and human capacity, resources, and technology.

8.9. Nepal also notes that it is disappointing that LDCs account for only an approximately 0.96% share in global merchandise exports, and a 0.71% share in global commercial service exports, especially when one considers that LDCs represent approximately 13% of the global population. The COVID-19 pandemic has further exacerbated the challenges for LDCs in their socio-economic transformation, and LDC exports are severely affected. In this context, graduated LDCs, or LDCs that are in the process of graduation, and which still meet the criteria of allowing export incentives as per the provision and spirit of the Agreement, should be permitted to enjoy the same level of facilitation as others.

8.10. The provision of the Agreement seems focused on the level of economic development, particularly in GNP per capita, and therefore, this provision needs to be applied in a fair manner by extending support to Members, even after their graduation, if they are eligible as per the provision and spirit of the Agreement.

8.11. The delegate of India indicated the following:

8.12. India's delegation thanks the delegation of Chad for inclusion of this agenda item, as well as Bangladesh and Nepal for their comprehensive interventions. India has already supported this proposal in earlier meetings of the CTG and its position remains the same.

8.13. The delegate of Turkey indicated the following:

8.14. Turkey thanks Chad for bringing this proposal to the agenda of this meeting. Turkey's support for this proposal continues as stated in previous CTG meetings. Turkey believes that this carve-out, which is currently available to developing countries with GNP per capita below USD 1,000, should also be extended to LDCs that meet the same condition so that Members can continue to assist them in overcoming their remaining developmental challenges.

8.15. The delegate of Brazil indicated the following:

8.16. Brazil reiterates its support for the LDC proposal to amend Annex VII of the ASCM, to allow graduated LDCs whose GDP per capita remains below USD 1,000 to continue to benefit from the rules of Article 27.2(a). Brazil has already supported this proposal, both within the scope of the Committee on Subsidies and Countervailing Measures and in the CTG itself.

8.17. The delegate of Nigeria indicated the following:

8.18. Nigeria wishes to register its support for the proposal as presented by the delegation of Bangladesh.

8.19. The delegate of the United States indicated the following:

8.20. The United States thanks Bangladesh for its comments today and at previous CTG meetings. The United States would like to provide more detailed reaction and to raise a question about data.

8.21. First, it is important to understand that the proposal would not correct a "technical omission", as has been suggested. It is important to recognize that Members chose somewhat different criteria for Annex VII(a) and Annex VII(b). The UN criteria for graduation from LDC status is not fixed. The criteria changes over time. The per capita income criteria, for example, has increased in current value over the years – similar to the manner in which the current value of USD 1,000 measured in constant 1990 dollars has increased. In addition, the UN graduation process contains many flexibilities. A Member that recently graduated from LDC status had first met the criteria 26 years before graduating and was recommended by UN members for "immediate graduation" 23 years prior to graduating. In addition, the United States does not see the relevance of the case of Honduras. The record shows that instance was a mistake by Members, not a deliberated choice. Second, Members need to acknowledge that the proposal would clearly provide a new special and differential (S&D) benefit to LDCs who graduate from LDC status with a GNI per capita below USD 1,000 in 1990 dollars. This S&D benefit does not exist today. Third, Members have been told several times that their request that LDCs provide subsidy notifications is not relevant to our consideration of this proposal. The United States wishes to explain why this stance will not help this proposal to advance. A fundamental aspect of this proposal is trust – trust that Members asking to receive a certain benefit would be transparent in how they take advantage of that benefit. Bangladesh has cited capacity constraints and challenges as the reason why some LDCs have never submitted a subsidy notification for over twenty-five years at this point. Are these LDCs working with the WTO Secretariat to overcome these challenges and provide their notifications?

8.22. In reviewing the proposal, the United States has noted that per capita income data, in constant 1990 dollars, does not exist for certain LDC Members. What do the proponents suggest be done about this? In addition, the United States notes that the proposal provides for re-inclusion if a Member graduates and then later falls below the USD 1,000 per capita constant 1990 threshold. This aspect is not a part of the current provision governing graduation from Annex VII(b). What is the rationale for including this aspect in the current proposal?

8.23. The delegate of the European Union indicated the following:

8.24. The EU is mindful of the challenges that graduating LDCs face. The EU supports constructive initiatives to better integrate LDCs into the Multilateral Trading System and encourages discussing this proposal – as any S&D treatment proposal – on the basis of analysis that shows where specific problems lie. In previous discussions in this Council, the EU had the opportunity to set out its comments and requests for further information. These are still valid and aim to inform the consideration of the proposal. The EU would like to thank Bangladesh for the recent bilateral discussions on this proposal. The EU remains ready to continue engaging in informal consultations with the LDC Group on this matter.

8.25. The delegate of Vanuatu indicated the following:

8.26. Vanuatu is one of the countries that is in the process of graduation, in the transition period, so Vanuatu is very mindful of the issues that have been raised by Bangladesh. Vanuatu wishes to express its support for the proposal that is before the Council.

8.27. The delegate of Bangladesh, on behalf of the LDC Group, indicated the following:

8.28. The LDC Group thanks the delegations that have spoken today to support the submission. The LDC Group is also grateful to those Members that actively participated through their thought-provoking questions. The LDC Group has observed that a few delegations are just repeating the same questions, despite the fact that the LDC Group has already responded to those questions. On the contrary, there is a reluctance from their side to give responses to our queries and to offer any observations on the rationale and arguments provided by us to address the technical omission in this Annex. The LDC Group is ready to welcome any such responses and observations in order to have a constructive discussion on this long-pending issue.

8.29. Today, the US delegation has raised some interesting points, including by stating that the issue is not about a technical correction. The LDC Group has already provided explanations in support of the textual proposal. The LDC Group also mentioned the example of Honduras and explained the issue of threshold level of inclusion into the Annex VII(b) list. The LDC Group would certainly look forward to hearing the detailed views of the US delegation for its not considering the issue as a technical omission.

8.30. Indeed, the LDC Group fully agrees with the US delegation that the LDC graduation criteria under the UN system are different from the eligibility criteria for inclusion in the ASCM Annex VII(b) list. In the UN, the LDC graduation criteria are based on GNI per capita, economic vulnerability, and the human assets index. To reach eligibility for graduation, a country must reach threshold levels for graduation in two consecutive triennial reviews for at least two of the three criteria, or its GNI per capita must exceed at least twice the threshold level. In short, the UN has its own process to recommend an eligible LDC out of the LDC category.

8.31. On the other hand, Article 27.2 of the ASCM clearly sets the basis of the eligibility criterion for inclusion into the Annex VII(b) list and GNI per capita below USD 1,000 is the only threshold, and except this, there are no other criteria. This should be the focus of our discussion here. Can the US delegation deny this?

8.32. The US has also brought a concern that per capita data for many LDCs do not exist. In this context, it is to be clarified that the United Nations Department of Economic and Social Affairs (UNDESA) regularly estimates the GNI per capita for all developing countries, including LDCs.[4] The World Bank also regularly updates GNI per capita data for all LDCs[5], which is used by the WTO Secretariat. Since the only qualification to belong to the Annex VII(a) list is whether they are LDCs or not, the GNI per capita for LDCs were not required in this context. When an LDC is graduated from the LDC category, the WTO Secretariat can easily access the World Bank data from graduating LDCs in order to estimate the GNI per capita in constant 1990 US dollars, as per the current practice.

8.33. The US has also asked a pertinent question: why is the technical support from the Secretariat not effectively improving the capacity constraints of LDCs in terms of providing their notifications? The LDC Group welcomes such a question. And why the existing technical assistance programmes

[4] https://www.un.org/development/desa/dpad/least-developed-country-category/ldc-data-retrieval.html
[5] https://data.worldbank.org/indicator/NY.GDP.PCAP.KD?locations=XL

on notification enhancement cannot meet our expectations must be investigated. But this is not the case only for the ASCM, the constraints and challenges are regular phenomena for LDCs. It is perhaps true also for many other developing countries. Therefore, the issue of the inability of LDCs to submit notifications should not be placed as a pre-condition blocking our discussion that aims to address a technical oversight.

8.34. The LDC Group thanks the EU for their demand for additional information. The Group would certainly invite the EU to detail their proposal on additional information in relation to the current proposal and the text of Annex VII of the ASCM. The LDCs consider that Annex VII provides a policy space for the LDCs and the countries with a GNI per capita below USD 1,000. The volume of export subsidy is not a criterion here. In this context, the LDC Group asks the EU the following questions: When the ASCM was negotiated, and the Annex VII list was created, was it considered which country had provided what quantity of export subsidy to determine the inclusion criteria into Annex VII? In this context, does the EU delegation provide its rationale behind the inclusion of Article 27.1 in the ASCM, which maintains that "Members recognize that subsidies may play an important role in economic development programmes of developing country Members"?

8.35. The LDC Group will be happy to engage further with the delegations of the US and the EU. In conclusion, the LDC Group thanks the Chairperson for facilitating the discussion and requests that, until the issue is resolved, the Council please keep this item on the agenda of the Council's next meetings. The LDC Group also requests the Chairperson to facilitate informal group consultations on this issue. The LDCs stand ready to engage constructively in this regard.

8.36. The delegate of the United States indicated the following:

8.37. The United States wishes to reiterate that the rules and procedures require that agenda items be added in writing. In order to avoid confusion at the General Council and elsewhere, the US reiterates that the normal procedure is not to create standing items, but rather that proponents may request an item, in writing, before the next meeting.

8.38. The delegate of Chad indicated the following:

8.39. Chad supports the statement made by Bangladesh, the focal point for the LDC Group. The LDC Group's proposal on graduation simply seeks to correct a technical issue with regard to the SCM Agreement, in order to make sure that LDCs that have graduated from that status can benefit from the same condition as countries which are not listed as LDCs in Annex VII in terms of the flexibilities which appear in Article 27.2 of the SCM Agreement. This is a question of equality, equity, and inclusivity, and Chad thinks that Members are ready to lend an attentive ear to this LDC concern and to correct an item that until now has been neglected.

8.40. The Council took note of the statements made.

9 EUROPEAN UNION – COVID-19 VACCINE EXPORT TRANSPARENCY AND AUTHORIZATION MEASURE – REQUEST FROM AUSTRALIA

9.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia.

9.2. The delegate of Australia indicated the following:

9.3. Australia is disappointed and concerned by the European Union's decision to extend the scope and duration of its transparency and authorization mechanism for exports of COVID-19 vaccines. Australia acknowledges the concerning epidemiological situation in the EU and offers its sincere condolences for the ongoing loss of life. Australia also recognizes the important role the EU has played in the global response to COVID-19 as a significant exporter of vaccines. At the same time, Australia has called on the EU to ensure this measure is no more trade restrictive than necessary to achieve the objective of vaccine export transparency, and that it is consistent with existing WTO obligations. Australia is disappointed that, instead of exercising restraint, the EU has recently expanded the grounds on which exports may be refused. Australia is particularly concerned that the measure could now be used to prevent exports based on the epidemiological situation, vaccination rate, and availability of vaccines in the country of destination – even when the EU's own contracts

have been fulfilled. Australia views the scheme and its expansion as an inappropriate method of dealing with commercial contractual disputes. Australia also believes that it is inconsistent with the EU's WTO obligations.

9.4. The EU is a global leader in the fight against COVID-19 and its decisions are closely watched. As such, the continued imposition of this measure sends a disturbing signal. Widespread adoption of export restrictions on vaccines would have disastrous consequences for our collective efforts to combat the virus. Australia's long-standing position is that COVID-19 vaccines should not be subject to restrictive trade measures, and that there is a global and moral responsibility on all countries to share COVID-19 vaccines far and wide. Vaccines produced in the EU are an important component of many Members' vaccine rollouts. This includes the vaccine rollout in Australia, and Australia's ability to support the rollout to developing countries and least developed countries in our region. Australia has already gifted doses of our domestic COVID-19 vaccine stocks to support the vaccination of front-line health workers in Papua New Guinea. It is essential that the EU's measure not restrict exports of Australia's contracted vaccine supplies and our ability to support developing countries and least developed countries most in need of vaccines.

9.5. Australia urges the EU to remove this measure as soon as possible. More broadly, Australia is troubled by recent reports that other large vaccine manufacturers have ceased exports of COVID-19 vaccines, including exports for use by COVAX. Australia encourages all Members to exercise restraint in the imposition of measures, whether formal or informal, that affect the export of vaccines and other essential medical goods. These measures have significant adverse flow-on effects for global supply chains and production.

9.6. The delegate of Switzerland indicated the following:

9.7. Switzerland takes note of the EU export authorization mechanism that was introduced in January 2021, which in the previous week has been made more restrictive. Switzerland regrets this decision, particularly because of the highly integrated production chains across national borders for the manufacture of vaccine active ingredients and preparations, which makes a smooth flow of supply chains essential, especially during the fight against this pandemic. Switzerland underlines the importance of open and barrier-free supply chains for these essential products, as well as the need for cooperation and solidarity in addressing this global challenge. Being itself a contributor in the production of vaccines, Switzerland aims for a frictionless production chain and will continue its efforts in this regard.

9.8. Switzerland also notes that other countries have either taken restrictive export measures on inputs needed for the manufacturing of COVID-19 vaccines, or on COVID-19 vaccines themselves, with a view to prioritizing progress in the vaccination of their own populations. All these restrictive measures have a chilling effect on the global supply value chain and run the risk of triggering a domino effect, which is in no one's interest. As this pandemic affects every country in the world, cooperation and solidarity are needed more now than ever. Switzerland calls upon all WTO Members to remove their trade-restrictive measures as soon as possible, to ramp up their production capacities, and to contribute to the sharing of vaccines, because it is only by working together, in a collective effort, that Members will we be able to put an end to this pandemic.

9.9. The delegate of the United Kingdom indicated the following:

9.10. The United Kingdom shares the concerns of other Members regarding the trade-restrictive nature of the European Union's Implementing Regulation, and the UK regrets the EU's decision to extend this measure beyond its original expiry date of 31 March 2021. The UK notes the recent changes to the EU's regulation and asks that the EU reviews this measure to ensure that it does not constitute an unnecessary barrier to coordinated global COVID-19 efforts, and that it is duly adherent to WTO obligations, including the non-discriminatory application of export restrictions. The UK has also been raising these points bilaterally with the EU. Trade restrictive measures on medical goods, including vaccines – such as these – are damaging and costly, and must be avoided. Not only do they impede immediate global efforts to resolve the COVID-19 crisis, but they are also counterproductive to efforts to achieve equitable access to COVID-19 vaccines. They also risk damaging the Multilateral Trading System in the long term.

9.11. The pandemic has highlighted just how dependant we all are on complex global supply chains. Vaccine production is often reliant on key inputs from various countries, and each batch must be tested – sometimes abroad – before it can be deployed anywhere else in the world. Such complexity and interdependence mean that it is in all Members' interests to support these supply chains by avoiding restrictions. This has particular resonance at a time when an international collaborative effort has never been more necessary.

9.12. The delivery and creation of the vaccine has been a multinational effort. These are international projects which require international cooperation because this virus knows no borders. The United Kingdom would like to conclude by recognizing the shared challenges of the pandemic and by noting that it looks forward to continuing to support the global recovery from COVID-19, working closely with partners to do so.

9.13. The delegate of Colombia indicated the following:

9.14. Colombia is concerned that the regulatory measures and restrictions on the export of vaccines and other medical technologies related to COVID-19, far from improving, are worsening. Since the call that was made by Colombia, Costa Rica, Ecuador, Panama, and Paraguay, at the last General Council, to avoid or limit export restrictions, Members have gone rather in the opposite direction. Now, Members are learning of new measures, identifying new Members that are restricting exports, seeing extensions of previous measures, and witnessing export processes that are becoming more demanding in several places. Like many countries, Colombia continues to call for the strengthening of global trade and global value chains as the correct response to the global health crisis. The basic principles of free trade that have been so strongly defended in this Organization must continue to guide us. The export restrictions on inputs and vaccines, and the ensuing retaliation by injured countries, may lead to unpredictable risks. The growing vaccine nationalism is creating incentives for the forced localization of domestic production, thus affecting the synergies arising from international trade and the advantages that each country can offer. This vaccine nationalism is inefficient and does not help to achieve the global goals of fighting the pandemic. However, it is, above all, contrary to what the WTO has always pursued.

9.15. The contractual legal grounds provided by the Members that have adopted these measures, contrary to the rules of the WTO, are not sound arguments either. We all have contracts and we all face challenges in implementing them, and potential non-compliance. The prevalence of some contracts over others is not a valid argument, but rather another example of vaccine nationalism. Such vaccine nationalism weakens neighbouring countries and trading partners, yet this is an advantage from an electoral point of view. It is, therefore, not a good solution, either in economic, legal, or public health terms, or from an ethical perspective. However, international disciplines are designed precisely to ensure that such electoral and political arguments, in the short term, do not prevail over the benefits of free trade.

9.16. As Colombia has been saying since the beginning of the pandemic, the global health crisis requires a coordinated and multi-level solution. Colombia has participated constructively in all the different forums permitted by the WTO to improve trade in protective equipment, medical devices, medicines, and vaccines. For example, Colombia is participating actively in the discussions on the waiver in the TRIPS Council. Together with four Latin American partners, it spearheaded the statement on export restrictions. For several months, under the leadership of Hong Kong, China, Colombia has been promoting open and transparent discussions, in the CTG and the Committee on Market Access (CMA), on the measures taken by Members in response to the COVID-19 pandemic. Colombia endorsed the communication to enhance the Organization's role in the global effort toward the production and distribution of COVID-19 vaccines and other medical products, led by Canada, in support of the ideas shared by the Director-General. Colombia also supported the Trade and Health Initiative of the Ottawa Group.

9.17. From Colombia's perspective, this is a series of complementary and consistent measures that seek to influence the different points in the vaccine development, production, and distribution chain. And Colombia is participating in all of these initiatives because Colombia is concerned, because Colombia is affected, and because vaccination and treatment must be globalized much faster than at the current pace. And time is against us all. Colombia believes that these are crucial and complementary discussions that cover the different aspects of the issue. Colombia urges all Members to continue working together to avoid vaccine nationalism and begin cooperating.

9.18. The delegate of Paraguay indicated the following:

9.19. Paraguay reiterates its concern, as reflected in document WT/GC/W/818, regarding the mechanism implemented by the European Union for prior export licensing for COVID-19 vaccines, notified in document G/MA/QR/N/EU/5/Add.1. The extension and deepening of export restrictions imposed by some Members increases our concerns about equitable access to vaccines. However, the current issue goes beyond the specific measures adopted by the European Union. As mentioned in Paraguay's statement at yesterday's informal meeting of the General Council, the extreme inequality in vaccine access is undermining the global fight against the pandemic. In the three months since vaccination procedures were initiated internationally, only ten Members have managed to administer three quarters of all the vaccines available. COVAX has received only 6% of all vaccines administered globally.

9.20. The Members that have committed to multilateralism through mechanisms such as COVAX have been adversely affected with regard to the distribution of and timely access to COVID-19 vaccines. In the specific case of Paraguay, it should be noted that Paraguay purchased four million doses but has received only 36,000 doses. The COVAX mechanism claims that this is due to lack of supply and logistical problems, which have resulted in a delay in distribution. While Paraguay does acknowledge the generosity of some Members in contributing financially to the COVAX initiative, such funding is of little use if COVAX cannot access or distribute the vaccines. If no quick solution to this inequality is found, several Members will find themselves having to reassess their position on the adoption of the waiver requested under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

9.21. The pandemic is a global issue and Paraguay considers that access to vaccines is a universal public health good for preventing, containing, and halting the spread of the virus. The circumstances call for a response that allows for joint and united action to be carried out to avoid segmenting or restricting access to vaccines for a certain group of countries or requesting additional requirements that impede the timely distribution of vaccines. The fight against the pandemic is global and requires global and inclusive solutions. Therefore, no one will be safe until all are safe. The WTO cannot be indifferent to this global priority and must promote multilateralism to seek concrete solutions and thereby ensure social justice in vaccine access and provide peace of mind to each and every one of our citizens. Paraguay reiterates its call for all Members to refrain from imposing such measures that undermine global health. Measures must include an equity component, take into account the real health situation, and promote international cooperation and solidarity.

9.22. The delegate of Turkey indicated the following:

9.23. As mentioned by other Members, this measure was discussed at the General Council's most recent meeting, where Members voiced their concerns over the possible negative repercussions that it could have on global trade and health. As also stated at that meeting, Turkey is concerned about the possible domino effects that this measure could have in terms of what many call "vaccine nationalism". Turkey also wants to underline certain vague aspects of the measure, which could lead to arbitrariness in its implementation, and again asks the EU to act in line with the principles put forward in the Trade and Health Initiative that they pioneer and not to extend this measure to ensure global solidarity. However, Turkey regrets to learn that not only was this measure extended, but also that several new criteria were added to it, which could lead to the rejection of more applications for authorization. Given these recent developments, Turkey wishes to once again call upon the EU to act in line with its commitments to "fair and equitable access to critical supplies", and to exercise restraint in imposing export restrictions on essential medical goods and vaccines.

9.24. The delegate of Mexico indicated the following:

9.25. Mexico considers that controlling the pandemic is the most important challenge faced by each Member. The coronavirus has wreaked havoc around the world, with the regrettable loss of thousands of lives, and difficult economic conditions to be overcome in the short, medium, and long term. Our region has been particularly affected. To date, Mexico has confirmed thus far a total of 2,224,767 cases of COVID-19, and a total of 201,429 deaths from the virus. Although Mexico has had access to vaccines, uncertainty remains about the speed at which these will reach Mexico so they can be administered extensively to the population. In light of the above, Mexico wishes to express its systemic concern regarding the European Union's decision to extend the scope and

duration of its transparency and authorization mechanism for exports of COVID-19 vaccines, as well as measures with a similar objective that other Members are considering or have already implemented. Like previous delegations, Mexico urges the EU to ensure that this measure is not more trade restrictive than necessary to fulfil the objective of transparency in the export of vaccines, and that it is consistent with its WTO obligations.

9.26. Mexico supports the call for all WTO Members to exercise restraint in the imposition of both formal and informal measures that affect the export of vaccines and other essential medical products. If Members are to overcome this crisis, it is vital that we all support the smooth functioning of global supply chains and production, and avoid measures that could have negative and restrictive effects on trade flows.

9.27. The delegate of the Republic of Korea indicated the following:

9.28. Korea shares the concerns raised by Australia and other Members that any trade-restrictive measure may disrupt the global distribution of COVID-19 vaccines. As a co-sponsor of the Trade and Health Initiative, Korea would like to highlight why it is important to support it. The initiative includes actions that are intended to facilitate trade in those essential medical goods that are necessary for responding to the current COVID-19 pandemic. Concerning the "export restrictions", Members are to review and promptly eliminate unnecessary existing restrictions on exports of essential medical goods. Members should bear in mind that the actions laid out in the initiative will help ensure equitable distribution of scarce essential medical goods and vaccines. In this regard, Korea would like to urge all WTO Members, as well as the EU, to participate in the Trade and Health Initiative and to carry out actions pursuant to that initiative.

9.29. The delegate of Panama indicated the following:

9.30. Panama recognizes that the impact of the COVID-19 pandemic has led Members to take dramatic measures to contain its spread. The suspension of trade activities has affected the economies and development of all countries, revealing vulnerabilities and unexpected challenges. The European Union, like many WTO Members, has expressed its commitment to international solidarity to fight the COVID-19 pandemic. It has, on several occasions, supported the principle that any measure considered necessary to address the pandemic must be transparent, proportionate, temporary, clearly related to addressing the pandemic, and consistent with WTO obligations. This is why Panama is surprised and concerned by the various reports in the last few weeks, which point to a systematic practice of "vaccine nationalism" that the European Union had been conducting, contrary to the principles of cooperation and multilateralism upon which the WTO was founded.

9.31. Panama is particularly concerned about the implementation of measures that restrict exports of vaccines and their ingredients, which are necessary for the global concerted efforts against COVID-19. Panama calls on Members to refrain from implementing this type of policy. COVID-19 does not recognize levels of development or borders. The problem is global, and Members will continue to suffer globally because of it. Panama believes that the efforts of the Director-General, Dr Ngozi Okonjo-Iweala, to identify places with manufacturing capacity, especially in developing countries, are necessary to expand vaccine production and reduce the access gap. However, her efforts will only be successful if Members all work together to avoid interruptions in supply chains. Otherwise, we risk seeing an even slower economic and social recovery for all. The solution to the pandemic lies in ensuring that the means to control COVID-19 are distributed equally across the world.

9.32. The delegate of Ecuador indicated the following:

9.33. Ecuador thanks Australia for placing this item on the agenda. During the General Council meeting on 1 March, together with Colombia, Costa Rica, Panama, and Paraguay, Ecuador called for the avoidance of administrative restrictions on the export of vaccines against COVID-19. Ecuador is in favour of consolidating universal access to vaccines and, by this means, removing any obstacles that limit it. Ecuador is sure that this approach, aligned with the rules governing international trade, is the most reasonable and humanitarian in the midst of the pandemic. It is the same spirit that has prompted Ecuador also to endorse communication WT/GC/230/Rev.1, to enhance the role of the WTO in the global effort to produce and distribute vaccines and other medical products. While

addressing different aspects of the production and distribution chain for vaccines and other technologies, these are two important and complementary topics with a single interest.

9.34. For global challenges, the world needs global solutions. What could be more global than a pandemic whose effects have cut short millions of human lives and affected the economies of nations worldwide? Ecuador considers that only the cooperation of all countries can help us to find a solution that will benefit us all: the control of the pandemic at the global level. All States and all international organizations must play their part in promoting and protecting global vaccine distribution. Ecuador has not lost sight of the fact that the EU's measures for the authorization of vaccine exports correspond to very specific motivations. As stated previously, Ecuador recognizes the EU's contributions to COVAX and GAVI, as well as the exclusion of export restrictions as concerns a significant number of developing countries. However, the impact that such actions may have gives grounds for special concern, particularly because it may set an unfavourable precedent.

9.35. At this point, Ecuador is dismayed to note the uneven distribution of vaccines globally. The concentration of the provision of vaccines in a few States and the delay in their arrival to the vast majority of countries is a challenge for the whole international community. The prospect of some countries being unable to complete their vaccination programmes before 2023 is bad news for everyone. As long as the pandemic is not under control throughout the world, nobody will be safe. In the first place, there are humanitarian considerations; but there are scientific considerations, too, since areas where the virus is not under control are areas from where new and resistant strains of the virus are most likely to emerge. Therefore, Ecuador encourages a spirit of transparency, cooperation, and international solidarity to be promoted from the WTO, not only on the part of Members, but also among pharmaceutical companies and vaccine distributors. This would lead to an access to vaccines that is universal and guaranteed by collective action, and so that there is not the slightest possibility of a sustained global immunization process being blocked, especially if some experts predict that control of the pandemic will require efforts for years to come.

9.36. The delegate of Saint Lucia indicated the following:

9.37. Saint Lucia delivers this statement on behalf of the WTO Members that are part of the Organisation of Eastern Caribbean States (OECS). The OECS considers the matter of access to vaccines a moral issue, and fully endorses any and all efforts geared towards ensuring that all countries have equitable access to COVID-19 vaccines in a timely manner. As Small Island Developing States (SIDS), the COVID-19 pandemic has stretched our public health and fiscal capacities to their very limits. The OECS is very concerned about growing vaccine nationalism and export restrictions on vaccines. While we understand that certain supply chain and manufacturing issues are diminishing access to vaccines, these problems are certainly compounded by vaccine nationalism and export restrictions. The impact of this on SIDS like ours is particularly severe.

9.38. Prospects for a safe and sustainable economic recovery in the short to medium term appear quite dim, given that the supply gap and the inequitable access to vaccines continue to plague us. It is in this context that the OECS urges all WTO Members to exercise due restraint with respect to the trade restrictions being imposed on vaccines. The OECS is also very concerned that many of the restrictions currently in place lack transparency. Members should recall that transparency is one of the fundamental and enduring principles of the WTO.

9.39. At a more systemic level, none of the rulemaking or reforms that this Membership is targeting will yield value unless we address the pandemic. Therefore, the OECS welcomes the initiative announced by the Director-General to bring manufacturers and Members together for a purposeful exchange with a view to unlocking vaccine production and supply. Members must also seek to gain a better understanding of how WTO rules can be used to remove frictions in the supply of vaccines. Finally, the OECS stands ready to work with all WTO Members to ensure that all countries, especially the most vulnerable, have equitable access to vaccines. The world is watching us, and we must avert a moral failure.

9.40. The delegate of India indicated the following:

9.41. India believes that export restriction is a legitimate policy tool. If used in the right manner, it could lead to equitable delivery of scarce commodities and prevent countries with deep pockets from cornering such supplies. India has demonstrated this during last year's first wave of the

COVID pandemic, where India used this tool for ensuring equitable distribution of critical medicines, diagnostic kits, ventilators, and personal protective equipment, to more than 150 countries, based on mutually assessed needs. And this year, India has provided more than 60 million vaccine dosages to more than 80 countries, ensuring their equitable distribution. However, some Members have chosen to do the opposite, and have used export restrictions as a tool to prevent cross-border shipment of vaccines from their territory. Therefore, export restrictions will continue to play their role as a policy tool, although it depends on how a Member chooses to use them.

9.42. The delegate of Pakistan indicated the following:

9.43. Pakistan is a staunch supporter of equitable, easy, affordable, and swift access to COVID-19 vaccines for the entire global population. Pakistan understands that no one is safe until everyone is safe. Pakistan's Prime Minister, in his letter to the UN Health Assembly last year, has openly called for making the COVID-19 vaccine a global public good. In this regard, any steps that restrict vaccine availability are unwelcome in our collective fight against the pandemic. Members well understand that vaccine supply shortages are indeed a reality and can lead countries to take certain steps in the interest of only their own populations. This issue is evidenced and the reason that the current approach to vaccine sharing and equitable supply across the globe is not working. We clearly need a new approach. It is for this reason that Pakistan, along with almost 60 other WTO Members, has been calling for the open availability of technology, and the technical know-how of vaccine manufacturing, to allow for large-scale production of vaccines in all relevant countries. While manufacturing capacity in developing countries remains idle, the shortages in vaccine production in developed countries is leading to a global shortage, thereby giving rise to phenomena such as vaccine hoarding and nationalism. The only way to avoid this eventuality is to support the proposal on a temporary waiver from certain TRIPS obligations. Pakistan will continue to follow developments on this issue and will remain committed to finding ways to allow vaccine availability to all across the globe in an equitable, affordable, and swift manner.

9.44. The delegate of Canada indicated the following:

9.45. Rather than commenting on the specifics of this situation, Canada would like to take a step back and to make some general observations on the situation *vis-à-vis* export restrictions. The rules governing the use of export restrictions were drafted in an era when free resort to such policies would have most certainly slowed, if not set back, domestic and international efforts to recover from the destructive effects of World War II. As such, GATT negotiators agreed that such restrictions must be prohibited, hence the resulting Article XI:1 provision. However, in deference to national sovereignty, the negotiators included a series of carve-outs from the scope of the prohibition, one of which allows the imposition of a temporary measure on exports by a Member "to prevent or relieve critical shortages of foodstuffs or other products essential" to that Member – Article XI:2(a) of the GATT.

9.46. In the context of world trade in the late 1940s, such a self-determining exception might have made sense. It is unlikely, however, that those same negotiators could have imagined the level of integration of today's international trade, nor the rapid advancement of technologies and communications to facilitate that trade, nor forecast the formation of the supply chains that support production in the current global economy. Moreover, even if restricting exports may make sense in the context of a local crisis, such an action may not be appropriate or helpful in the context of a global effort to address a global crisis. This discussion, and this situation, reminds me again of the words of a Canadian astronaut, Chris Hadfield, whose messages to Planet Earth from the International Space Station inspired many, when he said "There is no problem so bad that you can't make it worse." In a time of real or anticipated crisis, undisciplined resort to export restrictions can have ripple effects that negatively affect all of us. Therefore, we need to be careful and considered in how we use this legitimate tool in our trade policy toolbox. Just as we have improved the rules around the use of Article XI restrictions in the past, Canada believes that we should take stock of the lessons learned throughout this pandemic. We should consider how WTO Members can improve our use of this provision in a way that mitigates the potential cascading negative effects that export restrictions can cause to our citizens and to our collective efforts to address future crises. As a start, Canada highlights the export restriction principles outlined in the Ottawa Group's Trade and Health Initiative. These important principles are a starting point for Canada, and we look forward to engaging with all Members on them in the lead-up to MC12.

9.47. The delegate of New Zealand indicated the following:

9.48. The COVID-19 pandemic imposes risks to public health and human security on a scale unprecedented in living memory. This means that no country is safe until the pandemic is brought under control globally. We therefore have a responsibility as a global community to ensure that COVID-19 vaccines, therapeutics, and diagnostics reach all populations in a timely manner, and particularly the vulnerable, and to ensure the smooth functioning of global supply chains for COVID-19 medical supplies. Export restrictions on these products will only introduce inefficiencies to supply chains and slow global pandemic recovery. It is paramount that the global trade in essential goods, particularly vaccines, be conducted in a manner that provides long-term consistent and predictable trading conditions for all WTO Members. In that context, New Zealand affirms its view that any trade measures applied by WTO Members in respect of the export of vaccines should be trade facilitative and implemented strictly in accordance with WTO obligations.

9.49. A small group of WTO Members produces the bulk of the world's supply of COVID-19 vaccines and relevant inputs. These Members have a particular responsibility to actively facilitate the flow of COVID-19 vaccines and vaccine-related goods in line with international trade obligations. The EU is one of these Members and has been a leader in the WTO in pushing the trade and public health initiative, which New Zealand supports. The EU has played a very important role in producing vaccines for supply internationally, even while experiencing the devastating impacts of the pandemic at home. However, New Zealand is deeply troubled by the implications of restrictions on COVID-19 vaccines for global supply chains and equitable access. We need to maximize efficiency at all points of the supply chain. To this end, New Zealand encourages governments to work together with pharmaceutical companies to optimize supply chains to ensure the uninterrupted availability of vaccines to all and to make full use of existing global manufacturing capacity. New Zealand is grateful for the leadership that the World Health Organization (WHO) has shown in establishing the COVAX Facility, which has been instrumental to date in increasing supply and equitably distributing COVID-19 vaccines. New Zealand hopes that through this initiative, and with the continued support of the global community, we will together bring the pandemic to an end.

9.50. The delegate of Vanuatu indicated the following:

9.51. Vanuatu supports the concerns and views that were expressed by Australia. The measures by the EU are risking global value chains and this must not be allowed to become the norm for future pandemic responses. As a graduating LDC and a Small Island State, Vanuatu is very concerned about this type of action. What does this action by the EU signal for countries like ours? Vanuatu cannot condone this vaccine nationalization that we are seeing today. The unequal and inequitable access by Australia, other Developing Countries, LDCs, and SIDS must not continue. Not only does Vanuatu regret the reality of the imposition of the new EU measures, it also calls upon and urges the EU to review its own position and accept its global responsibilities.

9.52. The delegate of Egypt indicated the following:

9.53. Egypt shares the concerns raised by Australia and many Members today, and believes that these concerns underline the challenges we are all facing to achieve equitable access to COVID-19 vaccines. For this reason, Egypt urges all Members to reach consensus on the waiver proposal in the TRIPS Council in order to help in the ramping up of production and supply of COVID-19 vaccines. It is clear that time is not on our side, so Egypt would like to encourage all those Members that have not yet supported the waiver proposal to reconsider their position in order to put an end to this unprecedented global crisis.

9.54. The delegate of Japan indicated the following:

9.55. Japan would like to echo other Members' views and reiterate its position that any export restrictions, if they are taken, should be implemented in a manner that is targeted, transparent, proportionate, temporary, and consistent with WTO obligations. The Ottawa Group has proposed in the draft General Council Declaration, document JOB/GC/251, to take stock of the effectiveness of the actions, including on export restrictions, with a view to adopting possible commitments regarding trade in essential medical goods at MC12. As a member of the Ottawa Group, Japan would like to realize this initiative with support from the wider Membership.

9.56. The delegate of the European Union indicated the following:

9.57. The European Union thanks Australia and other WTO Members for expressing their views on the EU's transparency and authorization mechanism for exports of COVID-19 vaccines. As Members are undoubtedly aware, the third wave of the pandemic is currently unfolding with force in many EU member States, with all its dire consequences for our citizens and the economy. Three months after the first vaccine was authorized in the EU by the European Medicines Agency, we are all struggling to deliver the long-awaited vaccines to our citizens. There are simply not enough vaccines on the market yet, and not all producers are meeting the agreed delivery schedules. As a result, not enough EU residents could be vaccinated to date, including in the most vulnerable parts of the population. Lives were lost that could have been saved through faster vaccination. As explained at the General Council on 2 March 2021, the EU introduced a mechanism to ensure the transparent distribution of vaccines and to avoid a situation where the much-awaited vaccine goes to the highest bidder, or where distribution is left to the arbitrary decision of vaccine producers. As persistent delays in vaccine deliveries continue, the EU needed to extend the measure until the end of June and is hopeful that by that time the bottlenecks in the production and distribution of vaccines will have been reduced.

9.58. Yet Members must not lose sight of the fact that the EU continues to be the largest exporter of COVID-19 vaccines globally. Since the scheme entered into force, EU member States have approved 493 requests for export authorizations and rejected only one. As announced by President Ursula von der Leyen last week, the total number of exported doses amounts to 77 million. To repeat and be precise: all export requests have so far been authorized except for one. Amid continuing and unevenly distributed shortfalls in production globally, the EU is the only major OECD producer that continues to significantly export vaccines. On 25 March 2021, the scheme was revised to include two additional criteria that member States should consider when granting an export authorization in order to preserve the security of supply chains. This means that (i) the EU will carefully assess whether the destination country restricts exports of its own vaccine production or their raw materials, either by law or other means; and (ii) whether conditions prevailing in the destination country, in particular the epidemiological situation, its vaccination rate, and the vaccine stocks justify a request for exports. The European Union would like to underline that this is not an export ban. Rather, it is about making sure that Europe gets its fair share of vaccines. European citizens do not understand why vaccines manufactured in the EU are going to other countries, but close to nothing is coming our way, including from other countries having significant production of COVID vaccines.

9.59. Vulnerable, low, and middle-income countries will continue to be exempt from the scope of the mechanism, as are any exports to the COVAX facility. The EU calls upon all vaccine producers to exercise similar solidarity and to avoid restrictions on inputs necessary for vaccine production. The EU underlines that, not only does it request transparency, it is also committed to ensuring it. The EU has promptly and diligently reported all versions of the mechanism to the WTO's monitoring of trade measures related to COVID-19 and notified them in conformity with the relevant requirements, such as the CTG Decision on notification procedures for quantitative restrictions. The EU is more than willing to explain its approach in detail, and it would normally expect the same from other Members that restrict their exports but have so far not notified anything. The EU is working towards the overall common objective of ensuring broad and equitable access to COVID treatments and vaccines. As stated at the General Council's meeting in March, the underlying problem is insufficient global production, which cannot meet the unprecedented demand. Members must all make every effort to help manufacturers find reliable partners globally with whom they could share their know-how and technology.

9.60. The European Union has started to explore avenues for scaling up local domestic manufacturing. The EU is also accelerating its programmes to support the development of pharmaceutical production capacity in Africa, where it is particularly scarce. The European Union strongly supports Director-General Ngozi Okonjo-Iweala in her efforts to improve global cooperation in this matter.

9.61. The Council took note of the statements made.

10 INDIA – MANDATORY CERTIFICATION FOR STEEL PRODUCTS – REQUEST FROM JAPAN

10.1. The Chairperson recalled that this item had been included in the agenda at the request of Japan.

10.2. The delegate of Japan indicated the following:

10.3. Regarding the application of certification for steel products, Japan has repeatedly been requesting that India ensure proper implementation through discussions in the TBT Committee. However, it is still taking a long time to get approval for a conformity assessment, and it has become normal that no response is provided to Japanese steel companies even after a year has passed, especially for new projects. Due to the COVID-19 pandemic, the Government of India has not been able to proceed with the on-site inspection that is required as part of the approval process for certification. Japan has therefore requested the Ministry of Steel and the Bureau of Indian Standards (BIS) to implement appropriate alternative measures and postpone the enforcement of new standards. If nothing is done, this measure may lead to substantial import restrictions. For this reason, Japan would like to request India to implement appropriate alternative measures and to postpone the introduction of new compulsory standards.

10.4. In addition, Japan expresses its concern over the Government of India's request that Japanese companies switch to local procurement from Indian companies not related to the process of applying for certifications. Japan is also concerned by the Government of India's request that Japanese companies submit future plans for domestic production in India. These requirements were not included in the original procedure. When Japan also expressed its concerns at the TBT Committee's meeting in February, India only explained the reason for the introduction of its current trade restrictive measures, but did not explain the details of how it expects to find a way forward to resolve the issues surrounding those measures. Finally, Japan would like to request that India implement alternative measures in an appropriate manner or extend the period of enforcement of these mandatory standards, which should be no more trade restrictive than necessary to achieve India's legitimate objectives.

10.5. The delegate of India indicated the following:

10.6. Steel imports in India are governed by the Steel Import Monitoring System (SIMS), instituted by the Ministry of Commerce and Industry (DGFT Notification No. 17, dated 5 September 2019), to provide statistical data on steel imports entering India prior to their arrival. The SIMS requires importers to submit advance information in an online system. On submission of online data/information, the system generates an automatic and unique registration number. No manual documents are to be submitted to any public authority for this purpose. Importers can apply for online registration not earlier than the 60th day and not later than the 15th day before the expected date of arrival of an import consignment. The automatic registration number thus granted shall remain valid for a period of 75 days. A registration fee of INR 1 per thousand, subject to a minimum of INR 500/- and a maximum of INR 1 Lakh on the aggregate c.i.f. value of imports, is required to be paid electronically in the online system for each registration number. Importers must enter the registration number and the registration expiry date in the Bill of Entry to enable customs clearance of the consignment. SIMS is effective from 1 November 2019, that is, any Bill of Entry received on or after 1 November 2019 for listed items is governed by SIMS. Since every importer that applies for this document receives it, this system can be classified as an automatic registration system, where the objective is to collect statistics.

10.7. The Council took note of the statements made.

11 INDIA – IMPORT RESTRICTION ON AIR CONDITIONERS – REQUEST FROM JAPAN

11.1. The Chairperson recalled that this item had been included in the agenda at the request of Japan.

11.2. The delegate of Japan indicated the following:

11.3. As already mentioned in the latest TRIMs Committee meeting, Japan considers that India's import ban on air conditioners including refrigerants, introduced on 15 October 2020, is a measure that unreasonably imposes a restructuring of corporate supply chains. Japan is strongly concerned that this measure is likely to be an import ban that is inconsistent with Article XI:1 of the GATT 1994. In this regard, India responded at its Trade Policy Review (TPR) that the measure was consistent with India's obligations under the Montreal Protocol and was consistent with regulations on hydrochlorofluorocarbons (HCFCs), which are ozone-depleting substances. However, this import ban

is unnecessary and irrational in that it covers a wide range of air conditioners that use refrigerants, which are not subject to India's reduction and elimination obligation under the Montreal Protocol and the regulation of the ozone-depleting substance, freon gas, under Indian domestic law. Japan calls upon India to proceed with the early withdrawal of this measure. If India considers the measure to be justified, Japan would like India to explain its reasons more specifically.

11.4. The delegate of India indicated the following:

11.5. The measure in question was necessary for the application of standards and regulations for marketing of the item. Besides reducing risks to human, animal and plant life and health, it is consistent with India's commitment to the Montreal Protocol. Further, as per the Ozone-Depleting Substances (Regulation and Control) Amendment Rules 2014, the import of air conditioners containing Group VI substances (HCFCs) is prohibited since 1 July 2015.

11.6. The Council took note of the statements made.

12 MEXICO – CONFORMITY ASSESSMENT PROCEDURE FOR CHEESE UNDER MEXICAN OFFICIAL STANDARD NOM-223-SCFI/SAGARPA-2018 – REQUEST FROM THE UNITED STATES

12.1. The Chairperson recalled that this item had been included in the agenda at the request of the United States.

12.2. The delegate of the United States indicated the following:

12.3. The United States raises its concerns over Mexico's NOM-223 – Cheese conformity assessment procedures, a measure that may very soon be finalized. The US concern is three-fold. First and foremost, NOM-223 contains a conformity assessment scheme that includes the following: (i) third-party testing of cheese with an annual production facility inspection, traceability, and post-market surveillance performed by a third-party certification body; or (ii) batch-by-batch testing at the border to determine the quality of cheese products with the objective of providing better information to consumers. Such a scheme may be overly trade restrictive. Providing information to consumers about cheese quality is a low-risk undertaking, and the United States and industry are concerned that Mexico's scheme may not be proportional to those risks, and that Mexico does not appear to have fully considered available alternatives to meet consumer needs. The United States requests Mexico to halt the finalization of the regulation and to consider the alternatives previously proposed by government and industry stakeholders, including the use of standards of identity, labelling, or suppliers' declarations of conformity, to demonstrate the completion of third-party test procedures. Second, cheese made from animal fat will have to undergo these burdensome testing and certification requirements, while cheese produced from vegetable fat will not. Please explain the reasoning for the difference in treatment of these products. The third US concern relates to whether Mexico has taken comments from WTO Members and stakeholders into account. Stakeholders had provided input into a draft in the working group, which concluded in September 2020, and the final draft is significantly different from the draft agreed to by that working group. The US asks Mexico to suspend the draft and reconsider the less trade restrictive alternatives presented by industry and other WTO stakeholders.

12.4. The delegate of Mexico indicated the following:

12.5. The delegation of Mexico welcomes the comments shared by the delegation of the United States on the conformity assessment procedure applicable to Mexican Official Standard 223 on cheese, which, as Mexico has mentioned on previous occasions, seeks to address issues that have been identified in the verification processes carried out at points of sale to the final consumer in the Mexican market with regard to consumer information. In order to prevent deceptive practices, and on the basis of cases of non-compliance detected in products of both domestic and foreign manufacture, it is of utmost importance to demonstrate the compliance of any product bearing the name "cheese" with the applicable technical regulation. The Mexican authorities are currently analysing this procedure in a comprehensive manner, so that the requirements envisaged, including compliance with international commitments, ensure that products bearing the name "cheese" marketed in national territory comply fully with the applicable technical regulation, and that Mexican consumers are not offered any misleading products. Given the above, the delegation of Mexico

reiterates its willingness to clarify any doubts that Members may have on this procedure and undertakes to report on any progress made through the TBT Committee and the relevant contact points.

12.6. The Council took note of the statements made.

13 EUROPEAN UNION – SWEDEN'S DISCRIMINATORY MARKET ACCESS PROHIBITION ON 5G EQUIPMENT – REQUEST FROM CHINA

13.1. The Chairperson recalled that this item had been included in the agenda at the request of China.

13.2. The delegate of China indicated the following:

13.3. China would like to raise its concerns over Sweden's measure prohibiting China's companies from participating in Sweden's 5G construction. On 20 October 2020, the Swedish Post and Telecom Authority (PTS) set the licence conditions regarding the process of its 5G frequency auction, which clearly stipulate that new installations and new implementation of central functions for radio use in frequency bands must not be carried out with products from the suppliers Huawei and ZTE. In addition, the products of Huawei and ZTE in the existing infrastructure must be removed by 2025. China also takes note that the decision made by PTS has already been implemented, in January 2021, despite the relevant legal cases still ongoing in Sweden. China is deeply concerned about this measure, which China thinks is groundless, discriminatory, and inconsistent with WTO rules.

13.4. China noted that the decision of the PTS is based on the assessments made by the Swedish Armed Forces and the Swedish Security Service. However, PTS has neither disclosed the content of the assessment and relevant evidence, nor consulted or informed Huawei, ZTE, and other stakeholders before taking the decision. China is of the view that this non-transparent decision violates both WTO rules and the domestic laws and regulations of Sweden. In fact, Huawei and ZTE have been operating in Sweden for more than 20 years, and no security concerns regarding their products have ever been raised before. It is also worth noting that Ericsson's CEO has criticized Sweden's decision to ban Huawei and ZTE. He said that, "[F]or Ericsson and Sweden, we are built on free trade, [and] it is important that we have open markets and free competition".

13.5. In contrast to Sweden's discriminatory treatment towards Huawei and ZTE, China's market has always been open to Sweden's telecommunications companies, such as Ericsson. Recently, the company's CEO also said that, "[I]n China we have a larger share of 5G than we had of 4G, so that is also driving our growth". China requests Sweden to stop its erroneous practice immediately, and instead to provide a fair, transparent, and non-discriminatory environment for Chinese companies operating in Sweden.

13.6. The delegate of the European Union indicated the following:

13.7. This item is on the agenda of a WTO body for the first time. The EU would like to thank China for the bilateral discussions that have taken place in Geneva prior to this meeting. The EU notes that the matter raised by China in relation to the recent Swedish 5G spectrum auction is currently subject to legal proceedings in Sweden. In light of these ongoing proceedings, the EU will not enter into details on this issue in the Council today.

13.8. The Council took note of the statements made.

14 EUROPEAN UNION – QUALITY SCHEMES FOR AGRICULTURAL PRODUCTS AND FOODSTUFFS – THE REGISTRATION OF CERTAIN TERMS OF CHEESE AS GEOGRAPHICAL INDICATIONS – REQUEST FROM URUGUAY

14.1. The Chairperson recalled that this item had been included in the agenda at the request of Uruguay.

14.2. The delegate of Uruguay indicated the following:

14.3. Uruguay regrets to include this item again in the agenda and wishes to refer to previous statements[6], reaffirming its concern over the decision of the European Union to register the term "Danbo" as a protected geographical indication despite the objections to this decision raised by many Members. From a systemic point of view, it is a source of concern that recognized international regulations and standards are disregarded, as is the potential impact on the value of standardization and harmonization efforts within the framework of Codex. Also, from the point of view of trade, Uruguay is concerned about the creation of restrictions and uncertainty, as well as the potential frustration of legitimate expectations of producers operating under internationally agreed standards. Uruguay would like to recall the questions it raised at previous meetings of this Council regarding the practical implementation of EU legislation on quality schemes for agricultural products and foodstuffs, to which Uruguay has not yet received a response. Lastly, Uruguay would like to urge the EU to respect the provisions and international standards of the Codex Alimentarius, and to reconsider its regulatory approach in order to avoid the creation and proliferation of unnecessary restrictions on international trade in cheese.

14.4. The delegate of New Zealand indicated the following:

14.5. New Zealand is raising this item in the Goods Council because it sees a conflict in the positions that the EU has taken in standard-setting bodies and the actions that they have taken *ex post facto* to restrict the labelling within the EU of products produced using those standards by producers outside of Denmark. This does not relate solely to grounds for granting or denying IP protection, but relates also to the importance of legal consistency, upholding internationally agreed standards, and not frustrating the legitimate expectations of businesses operating within those standards. New Zealand remains concerned that the European Commission has chosen to register the terms "Danbo" and "Havarti", despite having previously agreed to a Codex standard in which the European Commission and Denmark both acknowledged that "the country of origin statement preserves its generic nature". Such actions will negatively affect producers outside Denmark who have invested with the legitimate expectations that they could use the standard. The EU's approach to registering cheese names for which there are existing Codex standards shows disregard for the integrity of the standards-setting system that promotes reliability and consistency in international trade rules, which New Zealand would expect the EU to support.

14.6. The delegate of Argentina indicated the following:

14.7. Argentina would like to register its support on this trade concern and thanks Uruguay for having kept it on the Council's agenda. Argentina also wishes to reiterate that the Codex standard for Danbo cheese is the international standard of reference regarding the identity and quality of this product in relation to the TBT Agreement. Being the international standard of reference regarding the identity and quality of "Danbo" cheese, no country that bases its technical regulations on the said standard should encounter trade restrictions due to a misappropriation of this term. Argentina believes that this misappropriation of the internationally regulated name of a product has analogies to the panel report that concluded against the EU, in *EC – Sardines*. Even when the elements are different, both cases have an international reference standard of identity and quality of the Codex Alimentarius that establish the generic name of the product. As it mentioned at the Council's previous meeting, Argentina does not understand the point of dedicating efforts to multilaterally agree on a Codex standard on "Danbo" cheese if the use of this term will then be the exclusive privilege of Danish producers. In essence, registering the term "Danbo" as a geographical indication constitutes an undue restriction on the international trade in such cheese. In any case, as Argentina has stated on previous occasions, Argentina's concerns are not purely commercial but also encompass systemic aspects, in particular the impact on international harmonization efforts.

14.8. The delegate of the European Union indicated the following:

14.9. The EU has had the opportunity to explain its approach on many occasions, which remain relevant.[7] The EU has consistently said that the fact that a GI name is subject to a specific Codex Alimentarius standard, or that it is listed in Annex B to the Stresa Convention, does not imply that the name should be considered as a common or generic term. Generic status in the EU can only be assessed with regard to the perception of the consumers in the EU territory. In the EU, the relevant public is comprised mainly of the reasonably well-informed members of the public and/or customers

[6] See, for example, document G/C/M/138, paragraphs 23.2-23.5.
[7] See, for example, document G/C/M/138, paragraphs 23.15-23.17.

who may purchase the product or a like product. Regulation (EU) No. 1151/2012 on quality schemes for agricultural products and foodstuffs, as well as subsequent delegated and implementing acts, were notified to the WTO under the TBT Agreement as they contain provisions relevant to the TBT Agreement (for example, provisions relating to technical standards, definitions, and labelling issues). Nevertheless, even if intellectual property rights (in particular, elements relating to the substantive protection of geographical indications) are part of the notified measures, these are not relevant for TBT purposes.

14.10. The Council took note of the statements made.

15 CHINA – MEASURES RESTRICTING THE IMPORT OF SCRAP MATERIALS – REQUEST FROM THE UNITED STATES (G/C/W/790)

15.1. The Chairperson recalled that this item had been included in the agenda at the request of the United States.

15.2. The delegate of the United States indicated the following:

15.3. It is unfortunate that the United States must again reiterate its concerns, as expressed previously in this and many other WTO bodies, regarding the negative trade and environmental impacts resulting from China's import ban, and accompanying measures, on certain recovered materials. The United States has circulated a set of written questions and requests that China provide written responses. As the United States has noted previously, in April 2020, China approved a revised Law on Prevention and Control of Environmental Pollution by Solid Wastes. As the United States has indicated before in the CTG and in other bodies, these policy measures seem to contradict China's own pro-circular economy narrative that it is promoting in the WTO and internationally. China is the world's largest processor of scrap materials, and these measures hinder China's aspirations to transition to a more resource-efficient, global, circular economy by directly affecting global recycling networks.

15.4. The United States is very concerned with the overly broad scope of "solid waste", as it appears in the revised Law, which has resulted in an import ban on certain plastic and paper scrap, which are recyclable materials. The United States understands that certain recyclable scrap materials such as bundled newspaper have been banned, whereas other more processed "recycled raw materials", such as copper, aluminium, and brass, are allowed as long as those materials meet strict purity standards. The United States would like to reiterate its request that China explain the scientific bases that it has used to determine which categories of scrap materials it will allow to be imported. These abrupt restrictions and bans have left recyclers without viable alternative processing capacity, and the global shortfall in processing capacity has also caused the decline, and in some cases, collapse, in prices for some recyclable materials.

15.5. Further, the United States is concerned that these policies are detrimental to our shared environment and have resulted in an increased volume of scrap materials going into landfills, or other less desirable waste channels, and becoming marine litter. The United States reiterates its request that China immediately revise the relevant measures in a manner consistent with existing international standards for trade in scrap materials, which provide a global framework for transparent and environmentally sound trade in recyclable commodities.

15.6. The delegate of New Zealand indicated the following:

15.7. New Zealand acknowledges and supports the right of all WTO Members to regulate to achieve legitimate domestic health and environmental objectives. New Zealand applauds China's stated proactive policy objectives in relation to sustainable development and encourages valid actions to limit harmful environmental impacts from contaminated waste inside its borders. New Zealand in no way seeks to question China's right to regulate to protect its environment. However, New Zealand remains concerned that vanadium slag is included in China's catalogue of banned imports under this measure. New Zealand reiterates its view that vanadium slag is a purposefully produced co-product with a purposeful end-use in the production of specific forms of steel. It is not a waste product and so should not fall under measures for solid waste. New Zealand understands that China itself is the largest global producer of vanadium slag, and that its production has reportedly increased over 30% since 2018.

15.8. New Zealand would appreciate clarification on how China has ensured that the rules that apply to foreign products are no less favourable than those accorded to domestic products. New Zealand would also be interested to hear a further explanation from China on how it has ensured that the import ban on vanadium slag is not more trade restrictive than necessary to achieve China's environmental and health protection objectives. New Zealand thanks China for its recent engagement on this issue, including bilaterally and at the TBT Committee, and looks forward to further constructive engagement on this topic to better understand China's approach to distinguishing between waste and non-waste materials.

15.9. The delegate of Canada indicated the following:

15.10. Canada continues to share the concerns of the United States and would like to reiterate its comments on China's restrictions with respect to solid waste from past CTG meetings.[8] Canada does not wish to dispute China's goal of limiting harmful environmental impacts resulting from contaminated waste material. However, Canada notes that high-quality scrap products are a valuable raw material for Chinese customers involved in various manufacturing sectors and a key component of a strong circular economy that ultimately helps to reduce waste.

15.11. The delegate of China indicated the following:

15.12. China is still working on the questions that were submitted by the United States. China would like to provide its preliminary responses at this meeting. Since 1 January 2021, China has implemented its import prohibition on solid waste according to China's law on the prevention and control of environmental pollution by solid waste and relevant regulations, with the aim of effectively protecting people's health, ensuring ecosystem safety, and enhancing the treatment of domestic solid waste. As there is no internationally agreed definition and standard on what constitutes solid waste, the definition and the coverage China uses in the law and regulations on solid waste is based on the Basel Convention. China's relevant laws and regulations also stipulate that, if the solid waste, after being properly treated, is not hazardous to people's health and the environment, and complies with the national mandatory quality standards of the relevant products, it will not be considered as solid waste, and can be managed and traded as normal goods. The relevant rules equally apply to domestic and international trade. China has published the national quality standards for recycling materials for brass, copper, cast aluminium alloys, and iron and steel materials, and is working on the relevant standards for recycling paper pulp. WTO Members may export the recycling materials to China in the normal way after ensuring that the solid waste is not hazardous and that it meets China's quality standards for the relevant products.

15.13. China would like to reiterate that the relevant measures taken by China are fully in line with its circular economy policy. The measures not only support environmental protection in developing the circular economy, they also promote the utilization of domestic and international recycling materials. China urges the major solid waste exporting Members to reduce the solid waste at the source and to shoulder their international responsibilities to handle and dispose of their own solid waste rather than exporting millions of tonnes of solid wastes to other Members, in particular developing Members, which already lack capacity to meet environmental challenges.

15.14. The Council took note of the statements made.

16 EUROPEAN UNION – IMPLEMENTATION OF NON-TARIFF BARRIERS ON AGRICULTURAL PRODUCTS – REQUEST FROM AUSTRALIA, BRAZIL, CANADA, COLOMBIA, COSTA RICA, CÔTE D'IVOIRE, ECUADOR, GUATEMALA, HONDURAS, JAMAICA, PANAMA, PARAGUAY, PERU, THE UNITED STATES, AND URUGUAY (G/C/W/767/REV.1)

16.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia, Brazil, Canada, Colombia, Costa Rica, Côte d'Ivoire, Ecuador, Guatemala, Honduras, Jamaica, Panama, Paraguay, Peru, the United States, and Uruguay.

16.2. The delegate of Australia indicated the following:

[8] See, for example, document G/C/M/138, paragraphs 12.6-12.7.

16.3. Australia, as a co-sponsor of this paper, again highlights its ongoing concerns in relation to the EU's non-tariff barriers on agricultural products, including agricultural chemical regulations and policy, and the potential negative effect on farmers and trade. Australia has also previously raised its concerns about the EU's risk assessment and import tolerance setting policies in this Council, as well as in the TBT and SPS Committees. Australia welcomes the unofficial room document, document RD/CTG/12, which highlights the range of SPS and TBT specific trade concerns raised against the EU. Australia raised or supported a number of these specific trade concerns, including at the most recent SPS and TBT Committee meetings. This shows the strong level of interest in the EU measures and the concerns of a broad cross-section of Members. While Australia recognizes the right of WTO Members to regulate agricultural and other chemicals in a manner that protects animal, plant and human health, and the environment, Members are also bound by their WTO obligations, in particular in relation to undertaking science-based risk assessments and ensuring that measures are not more trade-restrictive than necessary.

16.4. Australia questions the EU's approach to the approval and renewal of plant protection product authorizations and import tolerance limits that relies primarily on hazard-based assessment. In doing so, it is unclear how the EU hazard-based assessment is consistent with internationally agreed risk assessment standards for import tolerances. Australia continues to seek clarification on how the EU determines hazards to consumers of treated produce and would welcome discussion on the risk assessments that underpin EU decisions on import tolerances. Australia also seeks greater clarity from the EU on how hazards of a substance are differentiated in terms of the substance's use in a production system compared with presence in consumed produce. Australia is looking for the EU to substantially engage on these long-running issues with Australia and other Members.

16.5. The delegate of Peru indicated the following:

16.6. The delegation of Peru thanks Paraguay and the other delegations that requested this item to be placed on the Council's agenda. Peru shares the concerns raised in document G/C/W/767/Rev.1 relating to the policies implemented by the European Union over the past few years, which deviate from the provisions of the SPS Agreement, especially Article 5 thereof. This is because some of the EU measures are not based on a risk analysis but instead reflect a hazard-based approach, which in practice translates into more restrictive measures than necessary. Peru wishes to emphasize that it has submitted its trade concerns on these issues within the framework of the SPS Committee, without obtaining a satisfactory response from the EU to date. In this regard, Peru would like to emphasize the need to work together, so that the concerns are addressed in a specific way and take account of the needs that countries may have. Lastly, Peru reiterates the importance of complying with the provisions of the SPS Agreement, especially those relating to risk assessment, in order to avoid further barriers to trade.

16.7. The delegate of Colombia indicated the following:

16.8. For more than three years, Colombia, like other Members, has been raising this trade concern in many WTO Committees and forums. It has also done so in various spaces for bilateral dialogue. Colombia would have preferred not to have to repeat its earlier statements but, unfortunately, the concern is not only persisting but also aggravating. Colombia fully shares the European Union's environmental objectives. However, there are increasing drawbacks and barriers in the EU's set of policies and practices which have made it difficult, and which will make it increasingly difficult, for agricultural products to enter into the common market. Colombia has raised, on previous occasions, several points of concern, to which new concerns have now been added. Colombia will now provide a summary and brief explanation of these concerns and respond to the arguments heard earlier.

16.9. First, the health measures that are of concern are not based on a "risk assessment" that takes into account both the harm caused by, and the result of exposure to, the active substance. It has been said on previous occasions that the establishment of a maximum residue level (MRL) in the European Union does involve a risk analysis. The main problem, however, is that the risk analysis is absent at a much earlier stage, from the beginning of the process, when the renewal of the marketing authorization for a substance is requested. It is at this point that things diverge, as this is precisely where the European Union appears not to carry out a risk analysis of the substance. From this point onwards, the other steps are merely natural consequences of the first decision taken.

16.10. Second, the SPS Agreement requires Members to base their specific MRLs on those agreed under the Codex, and to carry out individual risk assessments only exceptionally. The figures submitted by the European Union itself show that its MRLs deviate 30% from those of Codex Standards. This is exacerbated by the fact that the 30% includes many of the plant protection products that are used particularly for tropical agricultural products.

16.11. Third, these measures involve discriminatory practices on several levels. For example, the same substance when applied to products produced in the EU, such as oranges, is given different treatment from when it is applied to products produced in the tropics, such as bananas, and the arguments that are provided are anything but convincing. Furthermore, emergency mechanisms to combat pests for which there are no available alternatives are considered only for EU member countries, and there is no parallel mechanism for other Members. The consequence of this differential treatment is that European citizens can consume those substances that the EU considers to be dangerous, as a precaution, only when they are used on EU soil (for oranges and beets), but not when the substances come from abroad.

16.12. Fourth, these problems are linked to a subsidy issue. The European Union has a Just Transition Mechanism (JTM) to offset the costs of the proposed transition. According to the EU's figures, the JTM will provide specific support to the amount of at least EUR 100 billion to mitigate the socio-economic impact of the transition. Moreover, the Union has calculated the cost for each farmer, per hectare, of the transformation required to implement only some of these measures, and, based on that amount, has calculated the necessary subsidies. Countries like Colombia simply do not have the financial capacity to provide this type of support. The EU's enormous capacity to subsidize its producers, coupled with the above-mentioned non-tariff restrictions, skews the playing field, to the detriment of Colombia's farmers.

16.13. Fifth, Colombia is also faced with an issue of good regulatory practices. Colombia regrets the EU's lack of transparency during the internal process for the renewal of substances, during which spaces for intervention by stakeholders are non-existent or are simply considered as a formality to be completed. The measures are notified to the WTO when they are already fully defined, following an internal process carried out in the EU with no consultation with any interested external stakeholder. The natural consequence of this is that the resulting measures are neither proportionate nor transparent.

16.14. Sixth, the relationship between policy objectives and measures is far from direct or simple: environmental objectives are not a direct cause of the elimination of pesticides, as the European policy suggests. In fact, the disappearance of pesticides could easily lead to a need for larger areas of cultivation. The data for the EU indicate that reductions in the use of phytosanitary substances lead to a decrease in production and harvests of 7% to 12% for European farmers. This probable reduction in harvests is likely to encourage land conversion in Europe and other latitudes, and therefore it cannot be ruled out that the overall effect of the entire policy may erase the alleged environmental gains that justify it.

16.15. Seventh, Colombia is concerned about the growing wall that it is facing. Although these concerns are serious, legitimate, and shared by countries on all continents, the response has only been "this is the way forward, end of story". Despite the goodwill of some EU officials in Geneva and Brussels, the political wall is insurmountable: "this is the way forward, end of story". Evidence of this, as demonstrated by the room document submitted, is the ever-increasing and already disproportionate space that these specific trade concerns are taking up on the agendas of the technical committees, and the inability to resolve them and remove them from the agendas of those committees. Unfortunately, the European Union does not seem to have any legitimate interest in addressing these concerns. There is a very powerful electoral benefit that outweighs and negates any discussion of the health, environmental, and trade benefits of these measures.

16.16. In conclusion, Colombia believes that the European Union's set of policies and practices carries the risk of nullifying and undermining the legitimate rights of WTO Members that have signed the Agreement on Agriculture and the SPS Agreement. Members should be more concerned about the current good level of trade. For these reasons, Colombia will continue to call for a dialogue that allows Colombia to raise its concerns candidly and constructively and explore alternative solutions. Colombia believes that a constructive, serious, and ongoing dialogue, in conjunction with mutually agreed technical assistance, will allow us to reach mutually beneficial solutions, within the general spirit of partnership that characterizes Colombia's relationship with the EU. The most important thing

now, beyond specific requests, is to break through the wall and find a willingness to really sit down and address these concerns.

16.17. The delegate of Uruguay indicated the following:

16.18. The non-tariff policies and measures of the European Union affecting trade in agricultural products have created a large and growing number of specific trade concerns on the part of various Members in the SPS and TBT Committees, which occupy a large part of the agenda of those bodies, as reflected in room document RD/CTG/12. In this regard, Uruguay wishes to reiterate its trade and systemic concerns, particularly regarding the use by the EU of a hazard-based approach rather than complete risk assessments, in its regulatory decisions linked to SPS matters. Uruguay would like to make it clear that any determination in this area, particularly when it deviates from internationally accepted standards and harmonization efforts in multilateral forums such as Codex Alimentarius, must be based on a complete scientific assessment of the risks using validated methodologies, in line with the provisions of the relevant agreements, and on conclusive scientific evidence. This is essential to maintain the effective balance that must exist between the right of Members to pursue their legitimate objectives and the need to avoid creating unnecessary obstacles to trade. Special responsibility lies with the largest importers of agricultural products to consider the effects that their approaches and regulatory determinations, particularly when they are not based on sufficient scientific evidence, may have on developing and least developed countries, whose economies rely to a large extent on the production and trade of agricultural and agro-industrial products, through which they make an invaluable contribution to global food security. In light of the above, Uruguay urges the EU to reconsider its regulatory approach with a view to avoiding the unjustified proliferation of barriers to international trade in agricultural products and the severe socio-economic consequences that it may have for other Members, in particular developing and least developed countries, for which the European market is of key importance.

16.19. The delegate of Paraguay indicated the following:

16.20. Paraguay regrets having to return to this item, but unfortunately, in the absence of satisfactory replies from the European Union, Paraguay has no choice. Since 2020, Paraguay has been submitting questions to the European Union on the policies proposed or implemented by the EU or its member States, which affect or have the potential to affect trade in agricultural goods. During this period, 72 questions were submitted to the EU in the context of the SPS Committee, the Committee on Agriculture, and the EU's TPR, which were directly or indirectly related to the creation of non-tariff barriers in trade in agricultural goods by the EU. Furthermore, questions have been posed orally to the EU in the Committees on Market Access, Technical Barriers to Trade, and Trade and Environment. This is no small task for a small developing country with resource constraints, such as Paraguay. Despite Paraguay's efforts, several of the answers provided by the EU are incomplete or do not address the issue in a concrete manner, which is unusual for a delegation that is known for promoting transparency in the WTO. These include a request for a single list indicating all substances that are, or that have been, subject to assessment, and their current status, which the EU has failed to provide, thus forcing Paraguay to compile the list itself. This list was recently circulated in document RD/SPS/131/Rev.1, the information contained in which Paraguay expects at least to be confirmed by EU colleagues. Paraguay has yet to receive a reply to the latest questions submitted in writing to the EU before the closing of the SPS Committee's agenda. In addition to the questions raised in Geneva, Paraguay would like to point out that its Mission in Brussels also formally submitted questions in writing to the European Commission's Directorate-General for Health and Food Safety (DG SANTE) on 21 January 2021, to which it has still not received replies.

16.21. The proliferation of non-tariff barriers to trade in agricultural products in the EU is illustrated in document RD/CTG/12, which is co-sponsored by Paraguay, together with other Members. Paraguay notes that more than 20% of the trade concerns of the TBT and SPS Committees are about EU policies. In addition, Paraguay would like to point out that, according to document G/SPS/GEN/804/Rev.1, which was prepared by the Secretariat, the EU is the Member with the highest number of trade concerns raised against it in the SPS Committee in the history of this Organization. The concerns raised generally remain on the agenda for years with no possible resolution, due to the lack of political will or flexibility to resolve them. In particular, the inflexibility shown by our European colleagues with regard to alternatives that take into account the climate and geographical conditions and the level of development of their trading partners, or the fact that there are sometimes no alternatives on the market, the continued refusals to provide longer transition periods, and the uncertainty surrounding the lengthy and costly import tolerance process in the

review of MRLs for plant protection products, has grown in prominence over the past few years in both Committees. This inflexibility is not applied to European producers, who are routinely granted emergency authorizations to continue using unauthorized products in the EU, in the absence of alternatives on the market, despite the fact that the EU's argument, when denying the requests of its trading partners, even regarding simpler issues such as higher transitional periods, is that greater flexibility would jeopardize the health of its consumers.

16.22. It is highly concerning that the European Commissioner for Agriculture publicly stated in 2020 that he does not believe that the importation of goods produced with plant protection products not permitted in the EU should be allowed, which would appear to indicate that the EU does not intend to grant import tolerances. These statements are linked to preserving the competitiveness of European products and were delivered in this context. This protection of competitiveness is explicitly stated as one of the objectives of the Farm-to-Fork strategy. Both producers and European representatives indicate that such protection would be necessary to level the playing field and balance competition, but what they seem to overlook is the fact that agriculture is extremely unbalanced because of the high levels of subsidies maintained by some Members, including the European Union, with total subsidies of over EUR 351 billion per year, according to the amounts approved for the latest common agricultural policy (CAP). Not only is there a notification backlog of several years for these subsidies, but their notification format and classification are also the subject of constant questions and comments in the Committee on Agriculture. Moreover, the EU's clear intention to export its standards to third countries, as expressed in the Farm-to-Fork and Biodiversity Strategies published in May 2020, is also concerning, as these standards are to be applied extraterritorially, diverge from international standards, and have no conclusive scientific basis. Paraguay has heard pledges of specific cooperation and training for developing countries to help them adapt and comply with European standards, but to date, all the cooperation programmes published by the EU or mentioned in its seminars target some specific regions, but none appear to be applicable to Latin American countries.

16.23. Before concluding, Paraguay wishes to indicate that the US Department of Agriculture recently published a report on the consequences of the implementation of these strategies within the EU, and if implemented by other Members, as indicated in the design of the strategies. The report concludes that such implementation will lead to increased food insecurity in the world as production will decline and food prices will rise, with the erosion of the competitiveness of agricultural producers, and a decrease in the GDP of developing countries. The EU has contested these assertions, but has so far failed to provide its own impact assessment, which Paraguay also requested, without receiving any response. Paraguay reiterates its call to European colleagues for a comprehensive and constructive dialogue, among all interested parties, to seek a joint solution together, to find alternatives with which compliance is feasible and which will still allow the European Union to pursue legitimate protection objectives in a manner that is not more trade restrictive than necessary, and that takes into account the fact there are different methods of pursuing such objectives, rather than a single universally applicable formula for all Members.

16.24. The delegate of Brazil indicated the following:

16.25. The Brazilian co-sponsorship of this agenda item stems from the understanding that the EU's position in relation to the definition of MRLs puts at risk the balance established in the SPS Agreement between the principle of protection of life and human and animal health and the guarantee that the market access conditions negotiated multilaterally are not undermined by unjustified non-tariff measures. This balance rests on the scientific principle, enshrined in the SPS Agreement and materialized through risk analysis, which must guide the adoption of SPS measures. When prohibitions based on the hazard approach and/or recourse to Article 5.7 of the SPS Agreement become the norm, despite technical advice from renowned institutions, the balance tilts towards protectionism. This condition of imbalance cannot last.

16.26. The document that Brazil co-sponsors shows that this issue is not merely technical or legal. European policy implies concrete risks to the maintenance of safe and efficient production systems in various regions of the globe. It prevents access to pest control instruments that threaten the viability of food production, and discourages scientific research, which would allow access to new chemical and biological technologies to combat these pests. Currently, it is fashionable to draw attention to the risk that climate change may lead to the introduction of new pests, especially in areas of temperate agriculture. Without underestimating this risk, it is imperative to remember that tropical countries such as Brazil have always faced these SPS risks and the success or failure of

agricultural activity depends on access to these technologies. In the case of Brazil, the sustainability of several crops is at risk, such as soybeans, citrus fruits, coffee, wheat, bananas, and papayas, which are a source of income and nutrients for a very important portion of the Brazilian and world population.

16.27. The introduction of these technologies has also led to more sustainable agricultural production, as it has made it possible to use new practices, such as the no-till system, in several countries. It is undisputable that production has become more sustainable, since no-tillage prevents soil erosion, reduces water loss through evaporation, increases the level of organic matter in the soil, reduces the use of fossil fuels with machinery and equipment, and provides a better balance of microbiological properties in soils. It is an essential mechanism for the increase in production from increased productivity, and not from the expansion of the planted area, or deforestation. It is worrying that, 25 years after its adoption, the interpretation given to the SPS Agreement differs from the purposes that guided the negotiations during the Uruguay Round. It is also worrying that Members have to bring debates of this nature to the CTG in a context in which Brazil has been following with concern legislation projects that try to create new non-tariff trade barriers under the guise of environmental protection measures.

16.28. The delegate of Ecuador indicated the following:

16.29. Ecuador continues to support raising this trade concern because the European Union has not taken into account the specific production features of the different regions of the world. The EU proposes banning the use of critical tools for pest control, without considering that agricultural production conditions vary across regions and what works in Europe may not be appropriate in other climates and regions. In addition, the implementation of the proposed measures includes inadequate transition periods. Furthermore, the EU's suggestion to seek alternative tools is difficult to implement because of limited access to information on replacement substances and on the implementation of alternative treatments. Plant protection is essential to ensuring the absence of pests in many regions, which in turn increases food quality. Taking unilateral measures that restrict such protection without conclusive scientific evidence and at short notice amounts in practice to creating non-tariff barriers to trade in agricultural products. As indicated in the trade concern, such measures can seriously obstruct the entry of many products into the markets of trading partners.

16.30. Room document RD/CTG/12 further describes this concern. Over the past five years, 36 trade concerns have been raised in the SPS Committee and 27 in the TBT Committee, all related to the adoption of such measures by the EU. This is not an isolated subject. The ongoing presence of these concerns on the agendas of the meetings of this Council and its subsidiary bodies reflects the lack of a real commitment to finding a viable solution for all concerned. Meanwhile, the pandemic continues to affect the economies of the world and presents ever growing challenges for small-scale agricultural producers. Members should make an effort to put themselves in their position and imagine how this kind of measure seriously affects their livelihoods and those of the people who depend on them. Based on the foregoing, Ecuador refers to its previous statements on the subject[9] and once again urges the EU: (i) not to adopt restrictive measures without conclusive scientific evidence, without an actual increase in the level of health protection, and without taking into account the economic and social impact on its trading partners in the short, medium, and long term; (ii) to observe the globally recognized international standards on human, plant and animal health protection; (iii) to comply with the requirements established in the WTO SPS Agreement to take a risk assessment approach to any measure, to minimize the adverse effects of its trade-related measures, and to prevent such measures from becoming unjustified barriers to trade; (iv) to consider suspending the ongoing implementation of measures to reduce MRLs and maintain the levels recommended by the Codex Alimentarius; (v) to grant the necessary adjustment period – of at least 36 months – in cases where the reduction of MRLs is shown to be essential; and (vi) to provide additional information on alternatives to the contested substances.

16.31. The delegate of India indicated the following:

16.32. India also thanks the proponents of this agenda item. India echoes the concerns raised by other Members relating to the implementation of non-tariff barriers on agricultural products by the European Union. These measures effectively prohibit the use of a number of substances that are required for safe and sustainable agricultural production, and which have been assessed and

[9] See, for example, document G/C/M/138, paragraphs 18.14-18.16.

authorized for use by many WTO Members. In this context, India would like to reiterate its trade as well as systemic concerns. This hazard-based measure by the EU is significantly impacting the trade from developing countries, including India. It also lacks transparency, hindering predictability for exporters. India would urge the EU to avoid such unnecessary barriers to trade and to find a mutually acceptable solution to this issue, through dialogue with Members, as early as possible.

16.33. The delegate of Jamaica indicated the following:

16.34. Jamaica joins other co-sponsors in expressing its concerns over an approach in which certain non-tariff measures are adopted. While Jamaica believes that WTO Members are within their rights to adopt measures to protect the environment, as well as their population's health, safety, and welfare, those rights should be balanced by Members' responsibilities in relation to WTO rules and the Multilateral Trading System. Jamaica is of the view that measures adopted should be in accordance with WTO rules and practices, should be proportionate to the objectives sought, should stand up to independent scientific scrutiny, should accommodate the capacity constraints of developing countries and their vulnerable exporters, and, importantly, should not be a disguised restriction on trade. For Jamaica, the issue at hand is a systemic one. Jamaica already faces capacity constraints in its bid to take advantage of the opportunities to be derived from the export of agricultural products. These measures are yet another layer of restrictions faced by Jamaica's producers who export the relevant products to the EU market. Small and vulnerable economies, such as that of Jamaica, with less resourced treasuries, do not have the resources to offset exporters' losses induced by these measures. Furthermore, Jamaica's farmers are disadvantaged by the lack of an adequate transition period for implementation. The measures have negative implications for the development of Jamaica's agricultural sector, rural development objectives, and job creation and foreign exchange-earning targets. Jamaica urges Members adopting certain measures to bear in mind their implications and the unbearable compliance burden they present for small, resource-poor farmers and small businesses, who are already at a competitive disadvantage in global markets.

16.35. The delegate of Costa Rica indicated the following:

16.36. As a co-sponsor of this agenda item and joint communication G/C/W/767, and the revision thereof, G/C/W/767/Rev.1, previously submitted in this Council, Costa Rica wishes to reaffirm the importance of this topic. As Costa Rica has highlighted on previous occasions, this concern is shared by a large number of Members of this Organization, mostly developing and least developed countries. Costa Rica's technical concerns are well known, having been put forward in the SPS Committee, in the TBT Committee, and, since June last year, in this Council. Costa Rica continues to have multiple concerns regarding the scientific soundness of the EU's MRL assessments and what, in Costa Rica's view, is a hazard-based approach, rather than one based on risk. The reduction of MRLs without sufficient scientific evidence restricts access to critical substances for agricultural production, particularly in countries with a tropical climate, such as Costa Rica. Moreover, it generates additional costs and increases the risk of pests emerging and having an impact on production and export capacity. While Costa Rica agrees with the EU's goal of supporting the global transition to more sustainable world agri-food systems, Costa Rica is of the view that the fulfilment of this goal must be based on building solutions designed and implemented through dialogue mechanisms and multilateral cooperation frameworks. Costa Rica urges the EU once again to listen to the legitimate concerns of dozens of WTO Members and establish a mechanism for dialogue and evaluation of its policies on MRLs that takes into consideration and effectively addresses Members' systemic and trade-related concerns. Costa Rica is sure that, through increased and better-quality multilateral dialogue, Members can find solutions together that will enable them to progress towards mutually beneficial trade.

16.37. The delegate of Argentina indicated the following:

16.38. Argentina would like to thank those Members that again raised this concern regarding the proliferation of non-tariff barriers to trade in agricultural products by the European Union. Argentina is particularly concerned that the EU applies measures that effectively prohibit the use of a number of substances that are required for safe and sustainable agricultural production, a use that has been tested and authorized by many WTO Members. As other Members have already highlighted, this claim has been repeatedly expressed in the SPS and TBT Committees, emphasizing the disproportionate impact of these measures in the trade in agricultural products. Argentina fully supports and reiterates the arguments, concerns, and requests made to the European Union in document G/C/W/767/Rev.1, and those that several Members have expressed today, and urges the

EU to take them into account. Argentina asks the EU to provide additional information on the process and timelines for establishing import tolerances for active substances whose authorization is not renewed by the EU, as well as on the applicable transition periods for MRLs. In addition, Argentina requests that the EU establish a transparent, predictable, and commercially viable import tolerance process for plant protection products whose authorization has not been renewed, including a risk assessment taking into account the risk assessment techniques developed by the competent international organizations.

16.39. The delegate of the United States indicated the following:

16.40. The United States continues to be concerned about the European Union's implementation of non-tariff barriers on agricultural products. Increasingly the EU is developing rigid polices with extraterritorial implications that force third countries to adopt European production practices or to abandon trade. The EU continues to lower many MRLs to trade-restrictive levels without clear scientific justification or measurable benefit to human health. The EU's hazard-based approach to pesticide regulation may lead to trade barriers that threaten the security of global food systems. The United States recalls its concerns on these matters as set out in documents G/SPS/GEN/1858, G/SPS/GEN/1802, G/SPS/GEN/1750, and G/SPS/GEN/1749, as presented to the SPS Committee. Further, the EU enforces new reduced MRLs at the point of production for domestic goods, but at the point of importation for imported goods. This causes trade inefficiencies and disruptions for products destined for the EU market depending on when a new reduced MRL is enforced and results in both an inconsistent application of the SPS measure and an unfair advantage for EU producers, especially for products with long shelf lives.

16.41. The United States is also increasingly concerned with the politicization of EU pesticides polices, particularly as evidenced in the EU's Farm-to-Fork Strategy, Biodiversity Strategy, and the Pesticide Regulatory Fitness and Performance Programme (REFIT). Further, it appears as though the EU is following a similar approach through its new veterinary drug legislation that could prohibit producers from using for growth promotion antimicrobials that are not considered medically important. The United States recalls its concerns, as raised in document G/SPS/GEN/1811, that these prescriptive restrictions will apply to foreign producers shipping animals and animal products to the EU. The EU has also not clarified how risk assessment will be used to inform its import polices. The United States urges the EU to consider the needs of agricultural producers and both recognize and respect the level of protection provided by national regulatory systems as the EU works to implement its own system. The international community should be working together to support science-based measures that promote a safe and sustainable food supply. The United States calls on the EU to join with its trading partners in identifying such mutually beneficial solutions.

16.42. The delegate of Canada indicated the following:

16.43. As noted in previous interventions on this subject, most recently at the June and November 2020 Council meetings, Canada emphasizes the need for transparency and predictability in international trade. In accordance with the WTO Agreements, Canada continues to recognize Members' rights to adopt measures to achieve legitimate objectives and to apply the food safety measures deemed necessary to protect human health. However, such measures must be implemented in a transparent manner that does not unjustifiably restrict international trade. This Communication highlights Members' shared need for greater transparency and predictability around the EU's approach to approving and renewing plant protection product authorizations, as well as Members' shared concerns about the impact this approach is having on trade in food. Canada acknowledges the EU's recent efforts to clarify the process for establishing import tolerances. In particular, Canada thanks the EU for hosting seminars with third countries and stakeholders in January. Canada appreciated the information shared and the opportunity to participate and ask questions.

16.44. Canada shares the EU's ambitions relating to health, safety, and environmental protection with a view to making the agriculture sector more sustainable and adaptable. That said, for this to work in practice, such frameworks must be predictable and based on thorough scientific analysis and risk assessments that reflect the specific realities at the national and regional levels. Canada is pleased that the EU intends to conduct risk assessments for all import tolerance requests and that such requests will be impartially reviewed in accordance with internationally-accepted risk assessment principles and EU legislation. While Canada recognizes that the EU has a process for import tolerances, Canada also requests that the EU consider maintaining MRLs for substances that

do not pose unacceptable dietary risks. Along with minimizing disruptions to trade, this would eliminate the need for import tolerance requests for some substances. Canada also urges the EU to take into account the timelines necessary for practical decision-making by farmers and producers, as well as the time and effort required to bring products to market, particularly in the global trade context.

16.45. Canada understands that environmental considerations with a global reach will be included as a factor in future assessment of import tolerances. Canada would note that including environmental considerations as part of the import tolerance assessment does not align with relevant international guidance. Consequently, Canada looks forward to receiving further information from the EU as to the scientific justification for including environmental considerations in the import tolerance assessment process for pesticides, as they are established for the protection of human health from food safety risk. In closing, Canada hopes that reiterating its concerns here in the CTG serves as a clear indication of the importance that Canada, and many WTO Members, attribute to seeking enhanced transparency and predictability for trade.

16.46. The delegate of Côte d'Ivoire indicated the following:

16.47. The delegation of Côte d'Ivoire supports document G/C/W/767/Rev.1 because the European Union's SPS measures are disproportionately affecting its producers and exporters of fruits and vegetables. This is why the Exporters' Association of Côte d'Ivoire, as well as those of other countries in the region, has been trying to get in touch with the authorities in Brussels for a dialogue, as yet unsuccessfully. Côte d'Ivoire has also written a letter directly to the WTO in order to try to find a solution to the problems faced by producers given the European Union's policies in determining MRLs in relation to certain pesticides. This is why Côte d'Ivoire encourages the EU to review its hazard-based approach for the authorization of these types of products. Côte d'Ivoire sincerely encourages the EU to adopt a risk-based approach in accordance with international practices. Côte d'Ivoire is very concerned by this issue because it is a largely agricultural country, the economic policy of which is based on agri-food production. Since the EU is its major trade partner, Côte d'Ivoire believes that the EU should be in a position to help developing countries such as Côte d'Ivoire in this area. Setting these barriers prevents our countries from getting access to the EU's markets.

16.48. The delegate of Panama indicated the following:

16.49. Given the time constraints, Panama just wishes to express its support for the concerns raised by the co-sponsors under this agenda item. Panama considers that these concerns have been made very clear in this and other forums.

16.50. The delegate of Chile indicated the following:

16.51. Chile congratulates the Colombian and Paraguayan delegates for explaining well the problem at issue, as well as the long list of other Members that have taken the floor. Although this is not the first time that the issue is being raised in the CTG, clearly it is an important one and discussing these trade concerns is the essence of multilateralism. The issue is not about impeding the EU to meet its objectives, but it is for the EU to respect the rules of the game in doing so. Chile urges the EU to pay attention to all the comments and concerns that have been raised. Chile supports the concerns expressed by a number of delegations regarding the measures taken by the EU and requests further information on the scientific risk analysis on the basis of which these measures were adopted.

16.52. The delegate of the European Union indicated the following:

16.53. The European Union takes note of the concerns expressed. The European Union provided a detailed reply to these concerns at the CTG meeting in November 2020.[10] The European Union has also provided detailed explanations to all specific trade concerns raised against the European Union and listed in unofficial room document RD/CTG/12. Without repeating its statement from November 2020 in full, the European Union would like to highlight that that statement remains unchanged and valid in its entirety. The European Union is the biggest importer of agri-food products in the world. The European Union has developed a highly trusted, transparent, and predictable system based on the high level of consumer health protection, to which some other countries defer

[10] Document G/C/M/138, paragraphs 18.54-18.18.60.

in the absence of their national MRLs. The European Union has an open market. Its high level of consumer protection has never been an impediment to the import of agricultural commodities, including from the Members raising this concern, whose large exports of agricultural products to the European Union during these five years have remained stable. The European Union provides technical assistance to developing countries and LDCs, directly or through other international organizations, such as the Food and Agriculture Organization (FAO), to support a smooth transition towards new products or production systems. The European Union again emphasizes its commitment to continuing an open dialogue on its policies and measures. The European Union stands ready to further engage and explain our policies to our trading partners. The EU believes that Members have a shared interest in tackling the issue of toxic active substances and protecting their citizens' health with appropriate measures.

16.54. The Council took note of the statements made.

17 INDIA – RESTRICTIONS ON IMPORTS OF CERTAIN PULSES – REQUEST FROM AUSTRALIA, CANADA, THE EUROPEAN UNION, THE RUSSIAN FEDERATION, UKRAINE, AND THE UNITED STATES (G/C/W/791)

17.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia, Canada, the European Union, the Russian Federation, Ukraine, and the United States.

17.2. The delegate of the United States indicated the following:

17.3. The United States has repeatedly stated its concerns with India's use of domestic support policies, multiple increases in tariff rates, and the application of quantitative import restrictions for pulses including pigeon peas, mung beans, black gram lentils, and peas. The United States' concerns remain unchanged. On 17 March 2021, in concert with the delegations of Australia, Canada, the European Union, the Russian Federation, and Ukraine, the United States circulated questions for India (G/C/W/791) regarding these measures, which are due to expire today, 31 March 2021. The United States requests India to confirm that these allegedly "temporary" measures will not be renewed for a fourth consecutive year, and to respond in writing to the questions circulated on 17 March 2021.

17.4. The delegate of Australia indicated the following:

17.5. Australia's concerns with India's restrictive measures on pulses imports are well known to all Members, particularly India's quantitative restrictions (QRs). Australia was extremely disappointed with India's decision to renew the QRs for mung beans (Moong), pigeon peas (Tur), and black gram (Urad), for the 2021-2022 marketing year. The renewal of the QRs means that India will have in place these WTO-inconsistent measures over five marketing years, noting the QRs were first introduced in August 2017. Australia would request India to clarify the status of peas, which were also the subject of a QR in 2020-2021. These QRs are clearly no longer temporary and must be removed. Despite Australia's regular requests, India has failed to provide a sufficient explanation of the WTO-basis for the QRs. Australia, along with Canada, the EU, the Russian Federation, Ukraine, and the United States, submitted formal questions to India prior to this Council's current meeting. The recent Indian Government announcement has effectively answered one of these questions, but this announcement has only increased the importance of the other questions asked. It is imperative that India provide detailed answers to explain the market and other conditions behind the decision and how they are WTO-consistent. While the WTO Agreements contain exceptions, the onus is on the Member implementing the measure to explain how such exceptions may apply.

17.6. Pulses are not a "small" commodity for India, neither by tonnage, nor value produced and consumed, nor with respect to trade. Therefore, India's measures matter in the global pulses market. India's current suite of measures on pulses, including significant levels of market price support, high tariffs, and QRs, continue to negatively impact upon the stability and predictability of the global pulses market and are demonstrably ineffective. In addition to the formal questions that Australia co-sponsored for this Council meeting, Australia has previously posed a series of questions to India in this Council, in June and November 2020, and in late 2019, including providing them to India in writing. Australia has still not received a response. Australia will avoid repeating its questions, but notes that it was requesting India provide a detailed explanation of how India's QRs satisfied the requirements of Article XI:2(c)(ii) and Article XX(a) and (b) of the GATT, which Australia does not

believe are appropriate or legally available in respect of India's import restrictions on pulses. Australia requests India to remove the measures immediately.

17.7. The delegate of the Russian Federation indicated the following:

17.8. The Russian Federation recalls its long-standing concern over India's pulses import policy and urges India to stop applying restrictive measures on imports of yellow peas inconsistent with its WTO commitments. During the period from 2018 to 2021, India has been progressively restricting the access of pulses to its market through measures which India has been calling "temporary" for the past three consecutive years. The negative result of India's policy of import restrictions became obvious in 2020, as exports of yellow peas from Russia into India declined by a factor of 145 in that year compared to the values exported in 2017. The most dramatic decrease in export volumes was demonstrated after the introduction of India's import ban on yellow peas in early 2020. At the same time, India fell short of providing sound reasoning to justify its introduction of measures that hinder the import of pulses into India to such extent. Import quotas, import bans, minimum import price requirements, and ports of entry restrictions, have led to a situation where import volumes of yellow peas have plunged down almost to zero.

17.9. These restrictive measures contravene Articles VII and XI of the GATT 1994, and Article 4.2 of the Agreement on Agriculture. India claims that the measures are justified under Article XX(a) and (b) of the GATT. However, India failed to provide the causal link between the protection of public morals, and human, plant or animal life or health, and its import restrictions and prohibition on yellow peas. As the current financial year has almost come to an end, the Russian Federation would like to clarify whether India is going to introduce an import quota on pulses and an import prohibition on yellow peas in the upcoming 2021-2022 financial year and beyond. The Russian Federation urges India to remove its unjustified import restrictions on yellow peas and to bring its policy into compliance with its WTO obligations.

17.10. The delegate of Canada indicated the following:

17.11. As the largest supplier of pulses to India, Canada has been the WTO Member most negatively affected by India's measures to limit the import of pulses. Pulses are an important source of protein for many Indian consumers and Canada is a high quality and reliable supplier. Canada is disappointed that India continues to use QRs on the import of dried peas and other pulses. For dried peas, Canada will be marking the third consecutive year of QRs this April. Other QRs on other types of pulses have been in place for more than three years. It is difficult for Canada to see how India can still be claiming these measures to be temporary. Market access for yellow dried peas in India continues to be unfairly affected by India's import measures. For yellow peas, the combination of a prohibitive minimum import price, import quota at zero, and restrictions on the port of entry, constitute a perfect storm of measures that is blocking all access in India. As expressed in previous committees, these measures violate both Article XI:1 of the GATT and Article 4 of the Agreement on Agriculture and cannot be defended on the basis of Article XI:2(c) or Article XX. Canada would also like to reiterate its request for India to clarify how these stated objectives are advanced through India's QRs on dried peas and other pulses and why less trade-distorting approaches have not been considered. To conclude, Canada reiterates its call for India to immediately and expeditiously review its trade restrictive measures put in place on pulses, and to implement alternative, WTO-consistent policy options that promote a predictable and transparent import regime for pulses.

17.12. The delegate of Ukraine indicated the following:

17.13. Ukraine stands for predictable market conditions. Therefore, Ukraine would like to reiterate its concerns over India's pulses policy. India has continued to impose QRs on imports, along with other trade-distorting policies, in relation to various pulses, for more than three years. During this period, India did not provide substantial explanations as to the nature and duration of such restrictive measures despite the systemic concerns expressed by Members at almost all meetings of the Committee on Agriculture, the CMA, and the CTG. As such, India's QRs are not temporary and non-transparent and appear to violate the requirements of Article XI of the GATT 1994 and Articles 4 and 12 of the Agreement on Agriculture. India's policy has a destructive effect on the international pulse crop markets and cannot guarantee predictable trade opportunities for exporters. For example, Ukraine's exports of pulses to India have been negatively affected and decreased dramatically – by

almost a hundred times (from 157.4 thousand to 1.9 thousand tonnes). Ukraine hopes that India will comply with its WTO commitments and eliminate the above-referenced export restrictions.

17.14. The delegate of Argentina indicated the following:

17.15. Argentina would like to register its support for the concern raised by several Members, regarding the measure ordered by India that restricts the importation of certain pulses for more than three years. As other Members have said today, despite the concerns that have been expressed on this issue in different bodies, India has not provided explanations regarding the justification and duration of this measure, so Argentina does not know if it is or is not a temporary measure as established by the WTO.

17.16. The delegate of the European Union indicated the following:

17.17. The European Union has been raising concerns on this issue for a long time in various WTO bodies; the EU once again echoes the concerns raised here today. The EU is one of the co-sponsors of the questions circulated to India earlier this month in document G/C/W/791. The EU would welcome clarifications from India on these various questions at today's meeting, and also in writing. The EU would welcome clarity as to whether the import ban will be prolonged after today's date, 31 March 2021. For over three years, India has been telling Members that the measure was temporary, but after three years this was clearly not the case. The EU urges India to rapidly eliminate this trade-distorting measure. The EU would also welcome clarifications as to how this Indian policy complies with WTO rules.

17.18. The delegate of India indicated the following:

17.19. India would like to thank the delegations of Australia, Canada, the European Union, the Russian Federation, Ukraine, and the United States for their continued interest in this matter. India notes that most of the issues raised today have also been raised in the earlier meetings of this Council, including at its last meeting, as well as in Committees, such as this week's Committee on Agriculture. In this context, India would like to reiterate that the objective of this measure is to cater to the food and livelihood security of small and marginal farmers. India submits that a mere increase in tariffs on pulses has not been sufficient to handle the prevailing domestic demand and supply situation of pulses in India. The Government of India has been regularly reviewing this measure based on the market situation of pulses, owing to which the quota of pulses has been increased from time to time. A few Members have sought to know relevant specific WTO provisions under which India has imposed these measures. On this, India has replied earlier that the QRs on pulses are necessary for the enforcement of governmental measures to remove any surplus of pulses, as permitted under Article XI:2(c)(ii) of the GATT 1994, and the protection of public morals and human, animal, or plant life or health in India, as recognized under Article XX(a) and (b) of the GATT 1994. India believes that the General Exceptions under Article XX allow a Member to impose measures necessary to protect its small and marginal farmers' food and livelihood security.

17.20. The Council took note of the statements made.

18 EUROPEAN UNION – PROPOSED MODIFICATION OF TRQ COMMITMENTS: SYSTEMIC CONCERNS – REQUEST FROM AUSTRALIA, BRAZIL, CHINA, NEW ZEALAND, AND URUGUAY

18.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia, Brazil, China, New Zealand, and Uruguay.

18.2. The delegate of Australia indicated the following:

18.3. Australia has consistently raised concerns with the EU and UK's approach to splitting the previous EU-28 tariff rate quotas (TRQs) as a result of Brexit since it was first proposed in 2017. It is clear the proposed modifications to TRQs will diminish the commercial value of Australia's existing market access, by not only removing flexibility in where a product is sent year-to-year, but by also rendering some TRQ allocations too small to be commercially viable. That said, Australia appreciates the constructive and pragmatic engagement from the EU in late 2020, which resulted in Australia reaching agreement with the EU on revised TRQ splits before the end of the transition period. Australia is now seeking to ensure that implementation of the agreed arrangements occurs in a

timely manner. This will provide certainty to Australian exporters with the new post-Brexit trading environment. Australia would appreciate if the EU could provide an update to the Council on the overall timing of the implementation of the agreements resulting from the GATT Article XXVIII negotiations, as well as when the EU will table an amended EU-27 Goods Schedule reflecting the revised TRQs and the reduced Final Bound Total Aggregate Measurement of Support (FBTAMS) entitlement.

18.4. The delegate of Brazil indicated the following:

18.5. Brazil's statement will cover both items 18 and 19. Brazil would like to refer to its statements presented in November 2020[11], and state that, in addition to the elements that Brazil has been raising, Brazil would like to highlight that the end of the transition period and the agreement between the European Union and the United Kingdom have not substantially changed Brazil's concerns over the consequences of Brexit on WTO Members. Brazil would like to reiterate that the methodology of "apportionment", unilaterally proposed by the United Kingdom and the European Union, makes the general level of concessions on reciprocal access to markets agreed during the Uruguay Round less advantageous for other WTO Members. For this reason, Brazil understands that compensatory adjustments are essential and expects constructive engagement from both Members. With regard to systemic issues, there are still doubts about how the UK and the European Union will ensure that the most-favoured-nation clause be respected. Brazil has been following the uncertainties on the management of trade across the Irish border and successive relaxations of the border control of the bilateral trade, which are not justified in the light of the current relationship between the UK and the EU.

18.6. As expressed on other occasions, apprehension persists about the way in which the UK and the EU are dealing with the FBTAMS of the EU-28. On the one hand, the United Kingdom claims a formally non-existent right to establish its Aggregate Measure of Support (AMS) itself, using exchange rate conversion that overestimates that value; on the other hand, the EU has not yet communicated to the WTO the equivalent reduction of its FBTAMS, which seems to indicate a selective application of the apportionment method. The reasons why Brazil – and other delegations – considers that its conditions of access to the EU and UK markets will worsen, as raised in previous meetings, remain; this is in view of the remaining uncertainties and the lack of a recognition that a successful conclusion of the negotiations under Article XXVIII will require flexibility from the EU and the UK regarding their negotiating position.

18.7. The delegate of Uruguay indicated the following:

18.8. Uruguay wishes to reiterate its position and concerns expressed previously here and in other forums on the specific issue of modifications of concessions in the form of European Union TRQs under Article XXVIII of the GATT 1994. Uruguay's delegation reaffirms its willingness to work constructively with the EU to find appropriate solutions in this context and recalls the importance for the Multilateral Trading System of this matter being resolved within the framework of substantive bilateral negotiations between the parties concerned, in accordance with WTO rules. Secondly, Uruguay takes note of the completion of the negotiations on the EU-UK Trade and Cooperation Agreement and its provisional application, which provides greater clarity regarding the form that the trade relationship between the two partners will take, including with respect to the reciprocal use of WTO-bound *erga omnes* TRQs. While the commitment not to make reciprocal use of such tariff quotas included in the above Agreement, and the clarifications provided in the relevant MA:1 notifications of the EU and the UK this year, are all positive, Uruguay would like to see this commitment reflected in the Schedules of concessions of both Members in the WTO for greater legal certainty.

18.9. Lastly, Uruguay wishes to raise the issue linked to domestic support. In this regard, the EU and the UK indicated in their joint letter of 11 October 2017 that the committed AMS levels for the EU-28 would be shared on the basis of an objective methodology. In its communication G/SECRET/42/Add.3 of 22 December 2020, the EU stated that it would revert to Members in due course on this topic, in accordance with the appropriate procedures to this end. Uruguay would like to know when and how the EU intends to adjust downwards its Final Bound AMS entitlements in its Schedule of concessions, in line with the announcements made.

[11] Document G/C/M/138, paragraphs 18.30-18.33.

18.10. The delegate of New Zealand indicated the following:

18.11. New Zealand has been consistent in raising its concerns about this issue for the past three years. Though New Zealand does not accept the EU's rationale for, or approach to, the modifications it has sought to make to its WTO tariff rate quota commitments, New Zealand does appreciate the fact that the EU has engaged actively with concerned WTO Members, including New Zealand, to find practical solutions to address these concerns. New Zealand is pleased that progress is being made in this regard and is committed to continue working with the EU to arrive at practical solutions that can work for all concerned. New Zealand is pleased to see that "Article GOODS 18: Use of Existing WTO Tariff Rate Quotas" of the EU-UK Trade and Cooperation Agreement makes clear that each Party is precluded from using the other's WTO MFN TRQs. It will be important to see this reflected in the respective Member's WTO Goods Schedules in due course. New Zealand would appreciate an indication from the EU (and the UK) as to when they plan to submit the necessary notification of modification to this effect.

18.12. The delegate of China indicated the following:

18.13. China's statement will address both agenda items 18 and 19. China's consistent concerns on the issues remain unchanged. China is of the view that the EU and UK's approach to simply split the EU existing TRQs will diminish the commercial value of China's existing market access and does not reflect the reality of their bilateral trade. Meanwhile, China takes note that the EU and UK already proceeded with their draft Schedules from January 2021 according to Article XXVIII:3(a) of the GATT 1994. This causes immediate negative commercial impact to China's exporters. In this situation, China urges the EU and UK to redouble their efforts to speed up the negotiations and to reach agreements soon with the Members concerned.

18.14. The delegate of Switzerland indicated the following:

18.15. Switzerland will likewise address agenda items 18 and 19 together. Switzerland welcomes the progress in the negotiations that the EU and UK have made with other Members. Switzerland is of the view that legal uncertainties regarding the reallocation of TRQ quantities to the EU-27 and UK must be avoided and that, in this respect, the Article XXVIII negotiations with other Members also need to be concluded as soon as possible. In particular, Switzerland is asking for legal certainty that existing tariff quotas are not filled by bilateral trade between the EU and UK.

18.16. The delegate of Mexico indicated the following:

18.17. Mexico would also like to make reference to both agenda items 18 and 19. Mexico would echo the concerns expressed by the preceding delegations in taking the floor and would stress Mexico's systemic concern, which Mexico has also raised on previous occasions[12], over the methodology put forward by the parties regarding the relationship between the EU and the UK and how this is presented in their Schedules, as well as the issue of domestic support.

18.18. The delegate of Canada indicated the following:

18.19. Negotiations with the EU on its modification of its TRQ commitments as the result of Brexit are still ongoing. Canada looks forward to continuing a positive discussion with the EU.

18.20. The delegate of Paraguay indicated the following:

18.21. In the interests of time, Paraguay will address both agenda items 18 and 19 together. While Paraguay welcomes the fact that the EU and the UK have reached an agreement and that they have mutually excluded each other from *erga omnes* quotas according to their MA:1 notifications, Paraguay agrees with other colleagues that this should be reflected in their Schedules of concessions. Paraguay also reiterates its concerns as expressed on previous occasions.[13]

18.22. The delegate of India indicated the following:

[12] Document G/C/M/138, paragraphs 21.29-21.31.
[13] Document G/C/M/138, paragraphs 21.37-21.38.

18.23. This is India's response to both agenda items 18 and 19. India had already expressed its concerns, both in writing and during formal consultations with the EU under Article XXVII. India has also made it clear to the EU how the present methodology and threshold years taken into account for the apportionment of TRQs adversely affects Members' rights. India expects that the EU will provide reasonable opportunities to all WTO Members, including India itself, to exercise their rights under the WTO Agreements and take into account the concerns raised. India looks forward to further fruitful negotiations with the EU.

18.24. The delegate of the European Union indicated the following:

18.25. With reference to the European Union's statement under agenda item 4, also related to these negotiations, the EU is pleased to report good progress achieved so far with agreements formally signed with two partners and negotiations fully finalized and going through domestic validation procedures with a further six partners. The EU welcomes the increased engagement of many WTO Members and remains fully committed to continuing these negotiations and consultations and to bringing them to a successful close in the coming months.

18.26. The Council took note of the statements made.

19 UNITED KINGDOM – DRAFT GOODS SCHEDULE AND PROPOSED UK TRQ COMMITMENTS: SYSTEMIC CONCERNS – REQUEST FROM AUSTRALIA, BRAZIL, CHINA, NEW ZEALAND, THE RUSSIAN FEDERATION, AND URUGUAY

19.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia, Brazil, China, New Zealand, the Russian Federation, and Uruguay.

19.2. The delegate of Australia indicated the following:

19.3. Australia has consistently raised concerns with the EU and UK's approach to splitting the previous EU-28 TRQs as a result of Brexit since it was first proposed in 2017. It is clear the proposed modifications to TRQs will diminish the commercial value of Australia's existing market access, by not only removing flexibility in where a product is sent year-to-year, but by also rendering some TRQ allocations too small to be commercially viable. That said, Australia appreciates the constructive and pragmatic engagement from the UK on these issues before the end of the transition period in late 2020. Australia has reached an in-principle agreement with the UK on its revised TRQ splits and is working with the UK to finalize the overall agreement. Australia is seeking to ensure implementation of the agreed arrangements in a timely manner. This will provide certainty to Australian exporters in the new post-Brexit trading environment.

19.4. Beyond the TRQ splits, Australia continues to be concerned that the issues it has raised over the UK's initial rectification remain unaddressed. Australia considers that the UK's draft Goods Schedule, circulated on 24 July 2018, contains substantive changes to the UK's current WTO concessions, including the UK's FBTAMS entitlement, and Special Safeguard (SSG) entitlements. Australia does not believe the UK should have automatic rights to an AMS entitlement without some scrutiny from the Membership and potential changes. Australia is concerned with the UK's inclusion of an AMS entitlement of GBP 4.95 billion, and it is worth noting that the EU has still not formally proposed any corresponding reductions to its AMS entitlement.

19.5. The UK needs to find a multilateral solution to this issue and demonstrate to other Members that its expected future domestic support programmes will not unduly distort global agricultural trade. Australia calls on the UK to reassure Members that the UK is a strong advocate for domestic support reform, to help show that it will be part of the solution, even if it has such a large initial AMS entitlement. Finally, Australia also does not think that the UK should be able to simply "copy and paste" SSG rights from the EU's WTO Goods Schedule, which have a distinct history and basis from the Uruguay Round and could result in the perverse outcome of providing the UK with SSG rights for products that the UK does not produce. Australia stands ready to have constructive discussions with the UK to help resolve these matters and move towards certification of the UK's Goods Schedule.

19.6. The delegate of Uruguay indicated the following:

19.7. Uruguay wishes to reiterate its position on the following points: (i) the claim of the United Kingdom to have a bound total AMS warrants analysis and discussion on the part of the Members; (ii) it would not seem appropriate for the UK to attempt to replicate the rights to invoke the Special Safeguard, under Article 5 of the Agreement on Agriculture, for all products and under the same criteria and conditions as set out in the Schedule of the European Union; and (iii) the proposal to introduce one currency conversion in the draft Schedule of concessions based on the average daily exchange rate in the 2015-2019 period also raises concerns, given its ability to generate bound tariffs and particularly high levels of AMS entitlements, higher than those that would result from considering other representative periods (in particular, 1986-1988), and from its factual linkage with the ongoing Article XXVIII process. Uruguay hopes that the open procedure under Article XXVIII of the GATT on TRQs will be settled through substantive bilateral negotiations between the Members concerned and the UK, enabling the latter to have an independent Schedule of concessions formally established in the WTO, while at the same time safeguarding the rights of the other Members concerned. In this regard, Uruguay looks forward to continuing its discussions with the UK with a view to ensuring market access commitments that are adapted to the reality of bilateral trade and the specific interests of the parties involved, and which do not detract from current access opportunities, fully complying with the relevant multilateral rules.

19.8. The delegate of the Russian Federation indicated the following:

19.9. The Russian Federation would like to reiterate its concern in respect of the UK's approach to establishing its Schedule of concessions. In spite of its bilateral consultations with the UK, the Russian Federation is still worried about the methodology of apportionment of Aggregate Measure of Support and the proposed currency conversion. The Russian Federation notes that Article XXVIII of the GATT, as well as the Agreement on Agriculture, do not provide the possibility to amend Members' AMS commitments. As for the currency conversions, the Russian Federation is troubled by their potential impact on the general level of concessions, which may result in substantive changes to the UK's current WTO concessions. The Russian Federation also continues to have a significant concern regarding the UK's approach to the TRQ renegotiations. The Russian Federation stresses the impossibility of concluding negotiations without an agreement on compensation to be provided by the UK. The Russian Federation urges the UK to provide its compensatory proposal. The Russian Federation looks forward to further consultations with the UK to resolve these issues.

19.10. The delegate of New Zealand indicated the following:

19.11. As noted under the previous item, New Zealand has been consistent in raising its concerns about this issue for the past three years. Just because the item has become a regular feature on the Goods Council agenda over this period, though, it should not be misconstrued as suggesting that this a routine matter. Far from it, the nature and scale of the changes the UK has proposed to its bound commitments makes this a major matter of concern. These proposed changes include doing away completely with access to the UK market (that is, zero quotas) for 55 of the 142 existing WTO quotas, and offering such small volumes for a number of other quotas as to render them not commercially meaningful. Unfortunately, despite the ongoing efforts that concerned WTO Members, like New Zealand, have made to seek practical solutions, there has been little discernible progress in discussions with the UK aimed at resolving this serious issue. Rather, New Zealand is now experiencing direct, negative, commercial impacts, with exporters being denied access to even the reduced quotas the UK has unilaterally implemented from January this year. New Zealand food exporters are now being denied the ability to utilize valid UK quota access for exports into Northern Ireland, due to complications arising from the implementation of the UK-EU Northern Ireland Protocol. Other WTO Members may be experiencing similar difficulties. This is a clear and present example of the kind of disadvantages that the UK's actions to modify its WTO quota commitments in this way have caused for other WTO Members.

19.12. As has been indicated previously, New Zealand also continues to have concerns about several other aspects of the UK's draft WTO goods Schedule. These include the UK's very substantial claim to trade distorting AMS entitlement; a similarly substantial claim (on 685 products) to use of the Special Safeguard; and the proposed application of "minimum entry price" and "Meursing Table" market management systems not reflected in the UK's global tariff regime. New Zealand, for its part, remains committed to pursuing its engagement with the UK in order to arrive at practical solutions to address its concerns. Given the time that has now elapsed since the UK left the EU, New Zealand urges the UK to redouble its efforts to this end – and to do so urgently, given the damaging commercial effects that New Zealand's exporters are already experiencing.

19.13. The delegate of Canada indicated the following:

19.14. Negotiations with the UK on its draft WTO Goods Schedule and proposed TRQ commitments are still ongoing. Canada looks forward to continuing a positive discussion with the UK.

19.15. The delegate of the United Kingdom indicated the following:

19.16. Firstly, the United Kingdom would like to thank Members for their statements under this item. Across all of the issues relating to the United Kingdom's withdrawal from the European Union at the WTO, the United Kingdom has endeavoured to ensure that Members are not left worse off by the UK's departure from the European Union. The United Kingdom remains strongly committed to continuing to work closely with WTO Members in discussions on its Schedule, including through the process under Article XXVIII on TRQs. Furthermore, the United Kingdom would like to refer Members to document WT/GC/226, which was circulated to the General Council at the beginning of this year. In that communication, the United Kingdom confirmed that, from 1 January 2021, the UK fully respects the concessions and commitments laid out in its Goods Schedule.

19.17. As mentioned in agenda item 5 of this meeting, whilst negotiations in the process under Article XXVIII have been positive and productive, discussions are still progressing with some Members. The United Kingdom's position on the extended time-frame for these discussions was set out in more detail under that agenda item. The United Kingdom believes that this extension will allow it to continue constructive engagement with Members towards resolution of any outstanding concerns. On Special Safeguards, the United Kingdom would note to Members that the UK's Schedule replicates the concessions and commitments applicable to the UK as expressed in the EU-28 Schedule. On the statements relating to Northern Ireland made by New Zealand, the United Kingdom has made numerous efforts to support traders following the end of the transition period with respect to moving goods into Northern Ireland. The UK Trader Scheme was established to enable authorized businesses to undertake that the goods they are bringing into Northern Ireland are "not at risk" of onward movement to the EU and therefore not liable to EU tariffs. The United Kingdom has been clear that it wants to address the specific TRQ issue raised today by working constructively with traders and international partners, including particularly with the European Union, as part of ongoing dialogues on the implementation of the UK-EU Withdrawal Agreement. The UK will continue to engage bilaterally with WTO Members on this.

19.18. Regarding the United Kingdom's AMS entitlement, the United Kingdom set out its intention to divide the pre-existing EU-28 level of commitment on domestic support between the UK and EU in October 2017, using an objective methodology based on previous cases at the WTO, and the UK has continued dialogue with Members on this issue ever since. This is not a new AMS entitlement and the United Kingdom's view has not changed on this issue. On the question of currency, the United Kingdom redenominated all currency components in the Schedule, including both tariffs and AMS, with a single, consistent exchange rate into pound sterling using a methodologically sound formula built on previous examples at the WTO, as explained in document G/MA/TAR/RS/570/Add.1. The United Kingdom is continuing its dialogue with Members to address their relevant questions and concerns.

19.19. The Council took note of the statements made.

20 EUROPEAN UNION – CARBON BORDER ADJUSTMENT MECHANISM (THE EUROPEAN GREEN DEAL OF DECEMBER 2019) – REQUEST FROM ARMENIA, CHINA, KAZAKHSTAN, KYRGYZ REPUBLIC, QATAR, THE RUSSIAN FEDERATION, AND THE KINGDOM OF SAUDI ARABIA

20.1. The Chairperson recalled that this item had been included in the agenda at the request of Armenia, China, Kazakhstan, Kyrgyz Republic, Qatar, the Russian Federation, and the Kingdom of Saudi Arabia.

20.2. The delegate of the Russian Federation indicated the following:

20.3. The Russian Federation reiterates the statements made during previous meetings of the CMA and the CTG on the plans of the European Union to introduce the Carbon Border Adjustment Mechanism in accordance with the European Union's Green Deal Strategy, published in

December 2019. First, Russia appreciates the intentions of the European Union to protect the environment. However, it does not seem fully evident why the focus on climate change efforts is placed on a unilateral trade-measures mechanism rather than the mechanisms stipulated in specific climate agreements, including the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, the Intergovernmental Panel on Climate Change (IPCC), and others. Currently, the implementation mechanism of Article 6 of the Paris Agreement, aimed at cooperation among the parties to this Agreement, has been under development and will be established within the framework of the UN Climate Change Conference of the Parties (COP26) this year. The Russian Federation believes that the instruments provided in the specific climate fora have not yet been exhausted. The Russian Federation is convinced that the introduction of trade-related climate measures is premature and unjustifiable.

20.4. Second, one of the purposes of the Carbon Border Adjustment Mechanism (CBAM), as announced by the EU, is the reduction of so-called "carbon leakage". The Russian Federation questions "carbon leakage" as an environmental goal, as well as the WTO-consistent reasons to set the restrictions implied under the CBAM. The protection of the European industry from the risk of delocalization of capacities to other territories with policies different to the EU climate and environmental policies obviously relates to economic reasons and cannot be justified under the WTO Agreement. Third, the EU proposal on the CBAM does not take into account the fundamental principles reflected, for example, in Article 2.2 of the Paris Agreement, which states that the "Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances". However, the concept of the CBAM and, by the way, many other measures under the EU Green Deal, imply prioritization of the EU approaches as the only credible way to protect the environment.

20.5. As a final note, the Russian Federation would like to stress its belief that all WTO Members are united by the objective of creating a more climate-friendly world. Any Member should be free to choose its own methods on the path towards the achievement of global climate objectives, as long as those methods represent a proportionate contribution and do not nullify or impair any of the benefits accruing to other WTO Members. Hence, the Russian Federation would like to urge Members to stick to the ultimate goal of the WTO, namely, ensuring sustainable global development by means of trade. This is why all Members should avoid imposing unnecessary restrictions on international trade, as no true development can be achieved if trade is being undermined by "green protectionism".

20.6. The delegate of Qatar indicated the following:

20.7. Qatar would like to thank the Russian Federation for making this statement on behalf of the co-sponsors. Qatar has taken note of the European Union's Green Deal climate ambition to become the first climate-neutral continent by 2050. Qatar takes note that the European Union has made a presentation on this initiative during the last meeting of the Committee on Trade and Environment (CTE). Qatar compliments the European Union for its political courage in setting these objectives. Like the EU, Qatar has also signed and ratified the Paris Agreement and is equally ambitious in its climate change objectives. However, concerning the EU Green Deal, Qatar would like to express some trade-related concerns over the introduction of a CBAM to address the so-called "carbon leakage". Qatar would like to seek further clarification from the European Union on how its CBAM will be compatible with fundamental WTO principles, including most-favoured-nation and national treatment. Qatar is of the view that treating like products differently based on the carbon content of the production process would go against decades of well-considered jurisprudence. Qatar takes this opportunity to thank the EU and looks forward to continuing this discussion in a fruitful and cooperative manner.

20.8. The delegate of China indicated the following:

20.9. China notes that the EU is considering a carbon border adjustment mechanism. The discussions on the EU's CBAM in various events and relevant reports indicate that the introduction of the CBAM is likely to serve multiple purposes, such as tackling climate change, protecting the EU's industries from competition, and increasing the EU's financial budget. China is of the view that the UNFCCC is the most important international treaty tackling global climate change. The UNFCCC has confirmed "common but differentiated responsibilities" as one of its core principles to carry out international cooperation on climate change. This principle should be fully respected. China cannot go along with any measure, either in the form of carbon border adjustment or carbon tax, if they

are discriminatory and inconsistent with WTO rules. The issue of the environment should not be used as a disguise to implement trade protectionist measures. China encourages the EU to enhance transparency and the dialogue with Members and relevant stakeholders in the process of drafting the CBAM, and to ensure its WTO-compatibility. China will closely follow this issue.

20.10. The delegate of Argentina indicated the following:

20.11. Argentina thanks the Members that included this agenda item, which generates a growing concern among the Membership, with serious doubts about the consistency of a mechanism of this nature with the WTO rules and, in particular, with the provisions of the GATT 1994. The fight against climate change is a commitment of all Members and the actions they undertake, as well as the instruments they use, must be respectful of international commitments, and must not restrict international trade more than necessary to achieve legitimate objectives, nor constitute a disguised restriction to international trade. In this context, Argentina views with concern the intention of the EU to impose the same level of ambition at a global level, without taking into account the principle of "common but differentiated responsibilities". Argentina wishes to draw the attention of the EU to the importance of avoiding unilateral actions without due legal support. Argentina will follow the evolution of this initiative and hopes to receive detailed information on the design that will be adopted, the system to calculate the carbon footprint, as well as the scope that the mechanism will have, all in due time, to be able to have a productive exchange. Argentina also raised the issue in the CMA and looks forward to its notification to the WTO.

20.12. The delegate of the Philippines indicated the following:

20.13. The Philippines supports the holistic efforts by the EU in the area of sustainable trade and development. The Philippines makes the following intervention to contribute to and enrich the EU's assessment processes in relation to the proposal on CBAM in the context of the Green Deal.

20.14. First, the Philippines would like to seek clarification from the EU as to whether the CBAM will take into account the limitations in the capacity of some trading partners, like the Philippines, which can affect compliance in respect of, for example, measuring and assessing carbon footprint per commodity. The Philippines is in the process of building its own institutional capacity, consistent with the Enhanced Transparency Framework (ETF) of the Paris Agreement. However, much will depend on the methodology or approach that the EU will eventually decide in implementing the CBAM. This emphasizes the importance of trade-related technical support and assistance to enable compliance by developing country Members and their domestic industries. Second, the Philippines would like to ask the EU if, and how, the CBAM could affect the EU's Generalized Scheme of Preferences Plus (GSP+) and the tariff rates on the products benefiting from the EU GSP+. Third, the Philippines would like to ask the EU if it has considered the possibility of double counting with respect to the accounting of carbon leakage from emissions associated with imported goods. The Philippines notes that the CBAM could potentially conflict with Article 4 of the Paris Agreement, which states that "when recognizing and implementing mitigation actions with respect to anthropogenic emissions and removals, Parties should take into account, as appropriate, existing methods and guidance under the Convention, in light of the provisions of Paragraph 13 of the Article", which in turn refers to ensuring the "avoidance of double counting". There is the likelihood that said emissions are already accounted for and reported by the exporting country as part of its domestic emissions reduction measures. Fourth, the Philippines is concerned that the implementation of the CBAM could have a significant impact on its main exports to the EU, which are electronic products, machinery and transport equipment, and other manufactured goods. These are likely to be covered by the CBAM based on the EU Parliament's proposal. Fifth, the target implementation date of the CBAM (that is, by 2023) may be ill-timed since the Philippines anticipates that, by that time, the majority of the world's economies, especially developing economies, will still be recovering from the impact of the COVID-19 pandemic. The CBAM may only amplify negative socio-economic impacts resulting from disruptions to international trade, especially in terms of unemployment and poverty. This will only exacerbate the post-COVID-19 challenges faced by many countries.

20.15. The delegate of Pakistan indicated the following:

20.16. Pakistan thanks the Russian Federation, China, and other Members for their statements on this issue. This is an issue of extreme importance for Pakistan, as the EU is a large export market for Pakistan. The issue is currently being studied in greater detail in Capital. The issue is also being

discussed with the EU at Capital-level. Pakistan is concerned about the various technicalities and operations of this programme and its wider impact on trade flows and the potential negative implications for Pakistan's exports to the EU. Pakistan is also concerned that it will affect, in a very short time, its industry and employment structures without immediate adjustment mechanisms in place. Pakistan will continue to follow developments in this issue.

20.17. The delegate of the Kingdom of Saudi Arabia indicated the following:

20.18. Saudi Arabia thanks the proponents for including this agenda item. From the perspective of the Kingdom of Saudi Arabia, while the EU stated that the proposed mechanism will be in conformity with WTO rules and other international obligations, the EU is yet to provide explanations on how it aims to achieve this. While the EU's stated intention is to address the risk of investment leakage from the EU to other countries, in fact its main objective is to maintain the competitiveness of EU industries. Saudi Arabia's very preliminary review indicates that the proposed mechanism raises very serious concerns due to its potential long-term negative implications on global trade, which will distort the full value chain of trade, including goods, services, and jobs. Saudi Arabia urges the EU to further engage in consultations with Members in order to ensure the full compliance of the CBAM with WTO rules and Agreements, and to ensure that the proposed mechanism would not create unnecessary barriers to trade, or be applied in a manner that constitutes protection to EU domestic industries. Finally, Saudi Arabia looks forward to receiving further details and reflections from the EU on this proposed mechanism, and the Kingdom stands ready to engage with the EU and interested Members on this issue.

20.19. The delegate of Turkey indicated the following:

20.20. Turkey continues to follow closely the developments around the European Green Deal, which includes the goal of enshrining the objective of climate neutrality and increasing the EU's climate ambition to reduce greenhouse gas emissions. Turkey believes that combating climate change at international community level plays a vital role and that all members of the international community should take the necessary steps to combat climate change. This should be done, however, taking into account the historical responsibilities for greenhouse gases and common but differentiated responsibilities, as indicated in the scope of the UNFCCC. Turkey would also like to note that the international climate change regime acknowledges that mitigation measures can affect the social and economic development of countries. In fact, the UNFCCC affirms that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding any adverse impact or response measures. Turkey, as a developing country, believes that international trade is one of the major driving forces for sustainable development and economic diversification efforts. Therefore, any restrictive measure on trade can affect the development goals of developing countries. In this sense, Turkey believes that, while designing its CBAM, the EU must take into account the possible negative effects of mitigation measures and the fact that not all members of the international community can have the same level of ambition because of their different levels of capacity and industrialization. Turkey also believes that the EU Commission must give all interested parties sufficient time to make the necessary adjustments once it declares details of its methodology on how the carbon contents of imported goods will be measured, calculated, and verified by the EU. Turkey thinks that all countries will need time and detailed information in order to analyse and adjust to the EU's proposal. Turkey also believes that the EU's future carbon border adjustment must be fully aligned with GATT rules and principles, and that it must not be applied in an arbitrary manner or constitute unjustifiable discrimination or a disguised restriction on international trade.

20.21. The delegate of Paraguay indicated the following:

20.22. Paraguay thanks the proponent delegations for placing this item on the agenda. Paraguay has been closely monitoring the development of this mechanism in Brussels and notes the recent publication, on 10 March, of a resolution by the European Parliament on the CBAM and its compatibility with the rules of this Organization. Paraguay is pleased to note that the initiative recognizes the need to be consistent with WTO rules, and that it cannot create new protectionist barriers or be applied in a discriminatory manner. However, the resolution raises some questions regarding, first, special and differential treatment, which, in accordance with paragraph 7 of the resolution, would appear to apply only to LDCs and small island states, and not to all developing countries. Paraguay notes in this regard that landlocked developing countries are also in a special category of developing countries and should receive the same treatment as small island states.

20.23. Second, regarding coverage, the resolution calls for all products and commodities under the EU emissions trading system (ETS) to be subject to this mechanism. In this regard, Paraguay notes that the EU had indicated that agricultural products would not be affected. However, products such as powdered milk, casein, lactose, frozen potatoes and peas, dehydrated potatoes, tomato purée and concentrate, yeast, manufactured malt, sugar, fats and oils, are part of the ETS, on the list for 2020. Paraguay requests the EU to confirm whether the CBAM will include agricultural products.

20.24. Third, regarding calculation of the carbon footprint, the country of origin of the imports is expected to be able to present its own data and demonstrate that the carbon footprint of the products is lower than that indicated by the EU. In this regard, Paraguay would highly appreciate an update on how the procedure would work, and Paraguay asks for it not to create a disproportionate burden on exporters. Paraguay also reiterates its request for information on whether the EU plans to introduce positive incentives, such as a tariff reduction for products with a lower footprint than European products. Paraguay notes that if the objective is to incentivize carbon reductions, Members that are already contributing in a positive manner, in line with the principle of common but differentiated responsibilities of the Paris Agreement, should be rewarded.

20.25. Fourth, regarding "export discounts", paragraph 29 of the communication refers to this alternative as an option for consideration. In principle, this seems to be the same as export subsidies for European producers, which would provide them with an additional competitive advantage. Paraguay requests the EU to provide an explanation of how this alternative would work and how it is consistent with WTO rules.

20.26. Paraguay would also like to note once again that, while Paraguay shares the EU's objectives of environmental protection and reduction of greenhouse gases, and an ambitious emissions reduction agenda, the implementation of such an agenda should take into account the specific conditions of the different Members and their levels of development, and respect the principle of shared but differentiated capabilities. To this end, such issues must be taken into account in the design of the tools, as imposing the same rules and standards on those that have much smaller carbon footprints, despite having different production systems, would not level the playing field and would create even greater inequalities and negatively affect developing countries. Lastly, Paraguay urges the EU to publish its impact assessment for its trading partners once completed.

20.27. The delegate of the Republic of Korea indicated the following:

20.28. Korea appreciates the EU's leading role in the global efforts to tackle ongoing climate change. In this context, the EU is considering introducing a CBAM to address the issue of possible carbon leakage in the process of reinforcing environmental policies that aim to achieve carbon neutrality by 2050. However, individual countries should be considerate in introducing proactive measures for environmental protection, such as the CBAM. They must ensure that such actions comply with WTO rules and will not impede the free flow of trade by creating additional barriers. Korea also suggests having sufficient discussions among the WTO Members to ensure transparency and predictability in the process of introducing the CBAM, from the submission of the bill by the European Commission in June to the deliberation by the European Parliament and the Council of Europe. Korea looks forward to having active multilateral discussions on the CBAM at the CTE.

20.29. The delegate of Kazakhstan indicated the following:

20.30. Kazakhstan is closely monitoring the development of the proposed EU CBAM. Kazakhstan urges the EU to fully consider the compatibility of the CBAM with WTO rules and regulations so that any such measure does not create obstacles to trade. Kazakhstan looks forward to learning more about this initiative, including its current state of development, the specific form of the measure, and its coverage at the sectoral and product level.

20.31. The delegate of the Kyrgyz Republic indicated the following:

20.32. The issue of the CBAM of the European Union has been raised more than once in the different bodies of the WTO. A number of Members expressed their views and positions on this issue during the meetings of the WTO bodies at the end of 2020. The Kyrgyz Republic commends the efforts of WTO Members towards establishing and achieving the aim of a sustainable ecological environment. The issues relating to ecology and the environment are important for all Members of the WTO. At

the same time, the Kyrgyz Republic believes that all actions taken, and all measures introduced, with a view to achieving the above-mentioned objectives should not impact negatively upon the interests of other Members and should be implemented and maintained in full compliance with WTO rules and norms.

20.33. The delegate of Chinese Taipei indicated the following:

20.34. Chinese Taipei thanks the proponents for placing this item on the agenda and wishes to register its interest in this subject. The EU is to be commended on its ambitious proposals and international leadership towards the goal of climate neutrality by 2050. The various measures proposed to ensure a just and inclusive economic transition under the European Green Deal programme are also greatly appreciated. However, it appears that the CBAM is part of a broader EU industrial strategy that could, in the future, include all imports of products and commodities listed under the EU's current ETS and hence have wide implications on international trade. Chinese Taipei notes that the EU is currently undertaking an impact assessment relating to those sectors with a high risk of carbon leakage. Chinese Taipei welcomes any update on this matter.

20.35. Chinese Taipei is especially interested in learning more about the possible implications of the mechanism for those trading partners outside the EU. Here, Chinese Taipei would urge the EU to engage further with international stakeholders and WTO Members in a more transparent and comprehensive manner, taking into account the relevant WTO rules and the undesirable trade barriers arising from the mechanism. Furthermore, the issue of environmental sustainability is already a much more important factor in the crafting of Members' trade policies as of today. At the multilateral level, the collective effort of all Members is required to shape a common policy objective, which involves a fully coordinated trade approach overall, as well as the harmonization of all regulatory requirements. Chinese Taipei would therefore strongly encourage the EU, and other Members intending to carry out carbon border measures, to come forward and initiate discussions at meetings of all the relevant WTO committees. In addition, the newly established Trade and Environmental Sustainability Structured Discussions (TESSD) is another forum available now for a meaningful engagement and experience-sharing on this highly critical subject.

20.36. The delegate of Egypt indicated the following:

20.37. Egypt would like to refer to its statement from the CTG meeting in November 2020[14], and thanks the EU for its presentation made in the CTE meeting the day before. Egypt would like to reiterate the need to ensure the full compliance of the proposed CBAM with WTO rules and principles, and to ensure that the proposed mechanism would not create unnecessary barriers to international trade.

20.38. The delegate of the United States indicated the following:

20.39. The United States has been following with interest the EU progress to develop a carbon border adjustment mechanism, particularly given our bilateral trading relationship. The United States is committed to appropriately utilizing trade channels as another tool for tackling the potentially catastrophic impact of climate change, including through market and regulatory approaches to address greenhouse gas emissions and to achieve net-zero global emissions by 2050 or before. Regarding the EU's carbon border adjustment under current development, the United States looks forward to additional, detailed information and engagement as the EU has promised it will do, at their earliest possible convenience, so that it may better understand how the CBAM is being developed and how it would be implemented. The United States further encourages the EU to fully consider the compatibility of any such measure it develops with applicable WTO rules to ensure that there is an open system of trade and that any such measure will not constitute a barrier to trade. It will be important to ensure that Members' respective approaches to climate change mitigation are complementary, achieve the desired climate and environmental benefit, and minimize interruptions to our transatlantic trade relationship.

20.40. The delegate of Uruguay indicated the following:

[14] Document G/C/M/138, paragraphs 16.35-16.36.

20.41. Uruguay would like to thank the proponents for placing this item on the agenda. Uruguay recognizes the policy objectives identified by the EU and reaffirms its strong commitment to climate matters. Uruguay would like to reiterate its interest in following up on the process of adoption of a CBAM by the European Commission, within the "European Green Deal". Uruguay looks forward to continuing to receive updated and detailed information on the initiative, including its current state of development and the time-frame for the measure's adoption, how the measure will be designed, and its coverage at the sector and product level. Lastly, Uruguay wishes to highlight the importance of ensuring the measure's compatibility with the commitments made by the EU in the WTO.

20.42. The delegate of Canada indicated the following:

20.43. Canada and the European Union have a long-standing history of fruitful cooperation on the environment and climate change. Like the EU, Canada is committed to ambitious action and global leadership on climate change. Canada is following the EU's work on a new Carbon Border Adjustment Mechanism with great interest. Canada anticipates that the design of a CBAM will account for the carbon pricing policies and climate measures of partner countries. Canada also anticipates that the EU will ensure that any mechanism it puts in place will respect its trade obligations. Canada would welcome continued opportunities for meaningful engagement with EU officials throughout the CBAM development process.

20.44. The delegate of India indicated the following:

20.45. India would also like to thank the delegations of Armenia, China, Kazakhstan, the Kyrgyz Republic, and the Russian Federation, for raising this important issue in this Council. India also thanks the mission of Canada and the WTO for organizing the Carbon Border Adjustment Workshop. India believes that a thorough legal examination will be required of any such mechanism to ascertain its conformity with the relevant WTO rules. India would reiterate that any such mechanism must take into consideration the principle of common but differentiated responsibilities and respective capabilities of different countries, in the light of different national circumstances, fiscal, and development levels. India believes that there may be possible WTO non-compliance issues relating to any such mechanism that will require further deliberation once the details of the EU CBAM are made available by the EU.

20.46. The delegate of the Kingdom of Bahrain indicated the following:

20.47. The Kingdom of Bahrain shares similar concerns to those raised by the Kingdom of Saudi Arabia and other delegations regarding the European Union's Carbon Border Adjustment Mechanism and looks forward to further clarification from the European Union on its application.

20.48. The delegate of Brazil indicated the following:

20.49. Brazil would like to thank the sponsors for raising this issue. Brazil reiterates that it is carefully monitoring the proposal for the establishment of a CBAM. The proposal mentions some possible alternatives for its implementation, noting that the calculation of the carbon content could be based on different methods, and that there are several methodologies to quantify the carbon footprint of products. There is thus a high degree of uncertainty and the exact contours of the European Union's CBAM are still unclear. Brazil expects that, once specific elements of the CBAM have been defined, an opportunity for more direct dialogue between the competent authorities will be provided, in order to ensure that the measure is not discriminatory in character and that it is fully compatible with WTO rules. It should be remembered that, since 2013, the EU Commission has introduced specific regulations to deal with the risks of carbon leakage under its ETS, and industrial facilities considered by the bloc as threatened with the transfer of operations to other countries ("leakage") receive privileged treatment to maintain their competitiveness, production, and jobs in Europe. In May 2019, the Commission published a new list for ETS, effective until 2030, which includes, among other sectors, mining, paper and cellulose production, sugar production, and textiles and leather manufactures, among others. In the absence of clarity about the methodology to be used, there are risks related to the establishment of carbon quantification based on industry performance benchmarks from the European bloc, which may constitute undue privileges, disregarding the reality of production from other countries. Finally, as highlighted by other delegations, Brazil must also stress that the principle of common but differentiated responsibilities, enshrined in the UNFCCC since it was agreed in Rio in 1992, cannot be ignored.

20.50. The delegate of Mexico indicated the following:

20.51. Mexico thanks Russia and the other proponents and Members who have taken the floor on this issue. Mexico would like to record its interest in this issue. Colleagues in Capital are currently analysing the development and implications of these measures and their implications regarding future policies relating to the European Green Deal. Mexico thanks the European Union for information updates on this point.

20.52. The delegate of Armenia indicated the following:

20.53. Armenia would also like to share the concerns expressed by the Russian Federation and others regarding the EU CBAM initiative. This is an important and sensitive issue for many Members and Armenia will be carefully monitoring further developments.

20.54. The delegate of Australia indicated the following:

20.55. Australia is strongly committed to addressing climate change and believes that international trade can contribute to this objective. In particular, Australia believes that policies that facilitate increased trade in environmental goods and services, and related investment, can make a strong contribution in support of international climate policy. Australia welcomes the consultative approach that the EU has taken so far in respect to its CBAM. Australia encourages the EU to share to the maximum extent possible, in the WTO and other relevant international bodies, details of its policy deliberations and the likely form a CBAM might take, consistent with the central WTO principle of transparency. Australia also notes the EU's commitment to ensuring the consistency of its eventual measure with its WTO obligations. Further details addressing the issue of WTO consistency would be helpful for the many Members – including Australia – that have questions and concerns about border carbon adjustment policies, including their possible protectionist impacts.

20.56. The delegate of the European Union indicated the following:

20.57. The EU appreciates the continued interest of Members in this important issue. The EU is determined to ensure that its declared greenhouse gas reduction targets, required to keep the temperature goals of the Paris Agreement within reach, are implemented in practice. This is why the EU is fully translating the necessary steps into legislation. But the climate challenge is inherently global. This is why the European Union wants – and needs – its international partners to share a comparable level of ambition. As long as climate action is not equally taken at a global level, there is a risk of "carbon leakage": put simply, companies transferring production to places where decarbonization requirements are less strict and, as a result, increasing their emissions there, thus leading to a global increase in emissions. This would end up undermining global climate action efforts.

20.58. In the European Green Deal, the European Commission announced that, should differences in levels of climate action and ambition worldwide persist as the EU upgrades its own commitments, it would need to propose a CBAM, for selected sectors, to tackle the risk of carbon leakage. The decarbonization objectives of EU action would be sharply curtailed if EU businesses in certain emission-intensive sectors were to transfer production to other countries with less stringent emissions constraints. This could lead to an increase in total emissions globally, thus undermining the effectiveness of the EU's emissions mitigation policies. However, the CBAM would take into account efforts by the EU's international partners to adopt policies and measures to reduce greenhouse gas emissions from industrial production, including through carbon pricing mechanisms. Importers will be treated in an even-handed manner and will not be subject to an adjustment that is higher than that applied domestically.

20.59. The EU wishes to work with its partners to promote effective methods of decarbonization, from technological innovation to market-based approaches, and much in between. The EU is committed to stepping up its bilateral engagement in this regard. The European Union is also committed to working with EU trading partners to make sure that adjustment measures work in an open and fair manner – and are in full compliance with WTO rules. In doing so, the EU shall take into account all relevant provisions, such as existing carbon pricing mechanisms applied to the proven actual carbon emissions of given products.

20.60. The Council took note of the statements made.

21 KINGDOM OF SAUDI ARABIA, KINGDOM OF BAHRAIN, THE UNITED ARAB EMIRATES, THE STATE OF KUWAIT, OMAN, AND QATAR – SELECTIVE TAX ON CERTAIN IMPORTED PRODUCTS – REQUEST FROM THE EUROPEAN UNION, JAPAN, SWITZERLAND, AND THE UNITED STATES (G/C/W/792)

21.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union, Japan, Switzerland, and the United States.

21.2. The delegate of the United States indicated the following:

21.3. The United States, the EU, Japan, and Switzerland, circulated questions on 17 March regarding the GCC Selective Tax on Certain Imported Products. The United States looks forward to written responses to these questions from each of the member State governments of the Cooperation Council for the Arab States of the Gulf (GCC) regarding their implementation of the selective tax on carbonated soft drinks, malt beverages, energy drinks, sports drinks and other sweetened beverages. As noted in the questions, the co-sponsors have raised concerns with GCC member States regarding the transparency and application of this tax since it was introduced in 2016, including in this Council and in other WTO and bilateral fora.

21.4. These concerns relate to the need for GCC member State governments to: (i) switch from an *ad valorem* tax on energy drinks and carbonated beverages to a graduated tax based on sugar content in beverages in line with international best practice models; (ii) ensure that tax will be applied to all beverages in which the total sugar content – from either naturally occurring and/or added sugars – exceeds a minimum threshold, including fruit juices and milk-based products; (iii) exempt from the selective tax those beverages with no added sugar and low caloric beverages; (iv) harmonize and apply the same tax rate to all beverages subject to the tax for energy drinks and other beverages currently covered that have similar amounts of sugar; and (v) ensure consultation with private industry, trading partner governments, and other interested parties regarding the selective tax. Given the study currently being conducted by GCC member State governments on alternative excise tax implementation models and possible revisions of the current excise tax model, timely engagement on these concerns with interested trading partner governments and private industry stakeholders is critical.

21.5. The delegate of Switzerland indicated the following:

21.6. Switzerland refers to its past statements in this Council, as well as in the CMA, where it has repeatedly raised its concerns with regard to the selective tax, and notably addressed issues relating to the reform of the tax and the harmonization of the tax rate for energy drinks and other sugar-containing beverages.[15] Last November in this Council, Members were provided with the information that the study on the tax reform would be completed soon. However, if Switzerland's information is correct, this date has again been postponed, currently until the end of 2021. This delay perpetuates discrimination between beverages that contain a similar amount of sugar, but which are taxed differently on the basis of non-scientific criteria. Together with the EU, Japan, and the US, Switzerland has raised a series of questions in document G/C/W/792 regarding specific issues about the tax reform. The aim of these written questions was to have a sense about the direction of the foreseen reform of the tax, as well as when it would take place. Will it be at the beginning, the middle, or at the end of 2021? Switzerland expects to get detailed answers from the GCC member States as it is they that together take the decisions and implement the changes. By contrast, the GCC Secretariat is not able to provide the requested answers as it does not have the power to decide. Switzerland reiterates its expectation to be informed sufficiently in advance about the results and recommendations of the study, that is, before a final decision is taken at the GCC level. Switzerland encourages the GCC member States to continue to engage and work closely with Switzerland and other interested Members, as well as the private sector, in order to modify the selective tax and related measures, so that they are applied in a transparent and non-discriminatory manner while meeting the legitimate health policy objectives.

[15] See, for example, document G/C/M/138, paragraphs 33.2-33.3, and document G/MA/M/73, paragraph 25.2

21.7. The delegate of the European Union indicated the following:

21.8. The EU maintains its serious concerns, which have already been voiced in the CTG, the CMA, and in bilateral contacts with the GCC countries, in relation to the GCC "Treaty on Excise Tax" of December 2016. The EU would like to reiterate the importance of harmonizing the implementation of the Excise Tax law and the need for a close engagement with private industry stakeholders on the process for revising the tax. The EU would also like to underline the call for providing immediate relief for industry until the ongoing GCC excise taxation revision takes effect, by exempting all zero sugar beverages from the tax and harmonizing the tax rate at 50% for energy drinks and all other categories of sugar-sweetened beverages subject to the tax. The EU also looks forward to receiving the results of the study concerning the revision of the Excise Tax as soon as it is available. The EU looks forward to receiving written replies from the GCC countries to the written questions which the EU submitted earlier this month, together with Japan, the United States, and Switzerland, in document G/C/W/792. The EU is ready to continue engaging with the GCC countries on this issue in order to ensure positive adjustments to the excise taxes in all GCC countries.

21.9. The delegate of Japan indicated the following:

21.10. Japan has been expressing its concerns over this issue of the selective tax on carbonated soft drinks introduced by certain GCC member States since 2019. Especially in the United Arab Emirates, a high tax rate is imposed on some Japanese carbonated soft drinks due to their classification as energy drinks based not only on the drinks' ingredients but also on the marketing and merchandizing methods used for them. Japan does not have any intention to raise an objection to impose certain excise taxes in order to improve human health. However, if the objective of the excise tax is improvement of human health, the tax must be a specific tax in line with the quantity of ingredients, such as stimulants, that are harmful to human health. If the UAE does not take the above approach, the tax would not act as an incentive to refrain from consumption of the stimulants concerned. Japan therefore requests that the selective tax be modified based on objective reasoning in a transparent and constructive manner.

21.11. Japan noted that, at the CTG's November 2020 meeting, the Kingdom of Bahrain had stated, on behalf of the GCC members, that they were now undertaking a review. However, Japan has not yet received detailed information regarding the future plan for the review from the GCC members, even when communicating with them regarding related meetings. Information on the review has not been shared with the business sector or the countries concerned. As such, Japan would appreciate an update on the current situation of the review. Also, immediately after the review, a notification should be made on the actual implementation of the new measures in order for the business sector and countries concerned to address it in an appropriate manner. Finally, Japan requested written answers to the questions that had been put forward in document G/C/W/792.

21.12. The delegate of the Kingdom of Bahrain, on behalf of the GCC member States, indicated the following:

21.13. The European Union, Japan, Switzerland, and the United States have circulated a communication, in document G/C/W/792, dated 17 March 2021, through which they have submitted some questions on the excise tax implemented in the GCC member States pursuant to the GCC Unified Excise Tax Agreement. In reaction to this communication, the Kingdom of Bahrain would like to share with the Council the following information on behalf of the GCC member States, as Bahrain is the GCC Coordinator for the year 2021. First of all, the Kingdom of Bahrain would like to emphasize that the compliance of the GCC member States with international obligations has always been, and will continue to be, a priority. Indeed, they take into consideration all their international commitments during the process of enacting new legislation to ensure their continued compliance. Specifically, the GCC member States were cognizant of the need to maintain conformity with their WTO commitments when ratifying the GCC Unified Excise Agreement domestically, and when enacting their respective domestic excise tax legislation.

21.14. As for the questions raised in the communication circulated by the GCC's trading partners, the Kingdom of Bahrain will try to respond to them without necessarily following the order in which they were posed. With regard to the GCC timeline to inform the concerned WTO Members, the GCC will do so as soon as the GCC member States undertake the completion of all the aspects of the new excise tax model and its implementation plan. Once a decision is taken on these matters at

GCC level, there will be a formal communication to inform WTO Members of the new model and its implementation timeline. It is worth noting that the change in the current tax regime is a standing process of the "GCC Tax Working Group" to regularly review different aspects and issues with respect to taxation, including excise tax on beverages. Such regular review will take into consideration new developments, international best practices, and the optimal methods of the tax under consideration. In conducting such reviews, it is essential for the Group to make recommendations in an objective, efficient, and non-discriminatory manner. In fact, the objective is to switch to a graduated tax based on sugar content as soon as the GCC member States complete their review. The project, when completed and commonly adopted, will effectively amend the GCC Unified Excise Tax Treaty. Then it is expected that the GCC member States will announce their respective timeline for domestic implementation within a few months of the common work being completed at GCC level.

21.15. The GCC member States do not consider that their excise tax practices are, or at any point were, discriminatory, as the tax is neutral and the same and like products are not subject to different tax treatments. Furthermore, the excise tax is applied to achieve the GCC common health objectives and is implemented on all products that fall within the definitions agreed upon by the GCC member States, regardless of their origin. The GCC member States emphasize that the excise tax regime is not, and was not, discriminatory in any way. The difference in the tax rate between some drinks is based on the inherent difference between the type and content of the beverages. Thus, the appropriate tax rate is applicable to a drink depending on how it is categorized on the basis of the legal definition for each type of beverage. In this regard, the GCC member States have common definitions and are in process of the amendment of such definitions at GCC level. In fact, the GCC member States are of the opinion that the current excise tax model is a good practice as it balances both public health concerns and private sector interests. On the other hand, the tiered volumetric model may be applied in the future and would be implemented after numerous discussions with all the relevant stakeholders in the public and private sectors in order to ensure that its implementation is practical, reflecting both policy objectives and industry interests, as well as being easy to enforce.

21.16. As for the question of fruit juices and dairy products, the GCC member States have already taken steps to expand the application of the excise tax on sweetened fruit juices and dairy products. It should be noted that the expansion was approved by the GCC member States on 6 November 2018 for implementation on 1 July 2019. With regard to low calorie beverages, studies are being undertaken, as mentioned before, on the move towards a tiered volumetric excise tax model based on sugar content that would consider the option of imposing low or no tax on beverages with low calorie-added sweeteners. The outcomes of the said studies will help the GCC member States to take decisions in this regard. Until now, there is no exemption based on the calorie count of the beverages subject to the excise tax. The current beverages definition for excise tax purposes does not recognize such a category of drinks. In fact, the GCC member States are considering the inclusion of this category and making a distinction based on caloric intake in the revised excise tax scheme. Such consideration was initially based on the recommendations of the GCC Tax Working Group. The requests from the concerned WTO Members came to strengthen the thinking of the working group.

21.17. The GCC member States have looked at the practices of most countries that implement an excise tax on beverages as part of the comprehensive study conducted to transition to a tiered volumetric excise model. The Egyptian experience has been taken into consideration, along with other country models, to inspire decision-makers to reach a final decision. As far as the GCC member State governments' formal mechanisms for consultations with private industry are concerned, all GCC member States have their own public consultation process in place to obtain feedback and commentary from the private sector and any interested party on draft legislations prior to their enactment. In this regard, the GCC member States remain committed to working closely with industry stakeholders and welcome their comments and suggestions on regulatory and legislative issues that affect the industry, taking these into consideration as they develop and improve legislative frameworks. As for the mechanism for consultations with trading partner governments, the GCC member States are open to all commonly known mechanisms and use all of them at both bilateral and WTO levels.

21.18. The Kingdom of Bahrain would like to assure GCC trading partners that all comments and suggestions from the relevant stakeholders, including the private sector, as well as from officials from WTO Members, are taken into consideration. For this purpose, the GCC member States have

maintained open and transparent dialogue with private stakeholders, as well as with GCC trading partners, to ensure transparency and effectiveness.

21.19. The Council took note of the statements made.

22 EGYPT – IMPORT RESTRICTIONS FOR SUGAR – REQUEST FROM THE EUROPEAN UNION

22.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union.

22.2. The delegate of the European Union indicated the following:

22.3. Since 4 June 2020, Egypt implemented a series of three-month restrictions on imports of sugar that have been prolonged three times. The most recent prolongation took place on 4 March 2021, again for a period of three months. In the Committee on Agriculture meeting of 28 July 2020, the EU asked Egypt to explain how it sees this measure respecting the requirements of Article XI:2(c) of the GATT. To date, Egypt has not provided a reply. Moreover, in the Committee on Import Licensing's meeting of 9 October 2020, the EU asked Egypt to submit all the relevant information which could justify the import prohibitions applied to raw and white sugar. Again, to date, no information has been received. Following the most recent prolongation of the measure, the EU asked Egypt, in the Committee on Agriculture's meeting of 30 March 2021, how the import restrictions on sugar fitted with its commitments under Article XI of the GATT (General Elimination of Quantitative Restrictions). Furthermore, the EU enquired about the current market situation in Egypt, the modalities of obtaining an import approval for sugar, and recent import statistics. The EU continues to seek Egypt's replies to these questions concerning its restrictions on the import of raw and white sugar. The EU considers that these import restrictions are not in line with Egypt's WTO obligations and urges Egypt to rapidly eliminate these trade-distorting measures.

22.4. The delegate of Brazil indicated the following:

22.5. The decision of the Egyptian government to impose restrictions on sugar imports is of concern to Brazil both from an economic and commercial point of view, given the importance of sugar exports in Brazil's export basket, and from a systemic point of view, given the prohibition by Article 4 of the Agreement on Agriculture on QRs on imports of agricultural products. It is of paramount importance, and as a way of ensuring the stability of the agricultural trading system, including by strengthening its resilience and robustness, that WTO Members, as set out in the aforementioned provision of the Agreement on Agriculture, limit themselves to applying customs duties on trade in agricultural products. In this sense, Brazil asks Egypt to eliminate its import ban on sugar.

22.6. The delegate of Egypt indicated the following:

22.7. Egypt thanks the delegations of the EU and Brazil for their continued interest in this matter and wishes to clarify the following points. Currently, there is no ban on the import of sugar into the Egyptian market. The recent Ministerial Decree No. 606, issued on 3 December 2020, allows for the importation of white sugar, as is the case for imports of raw sugar, through obtaining an import approval from the Minister of Trade and Industry and the Ministry of Supply and Internal Trade, and this Ministerial Decree was renewed on 4 March 2021. Egypt reiterates that the measures it has taken in relation to sugar imports are of a temporary nature and in order to address the inventory surplus of sugar due to the impact of the current pandemic on different economic activities and on local consumption. These measures will be reviewed on a regular basis.

22.8. It is also important to point out that, in order to ensure the continuity of trade, since the issuance of the first decree in June 2020, a number of trade-facilitating measures have been taken by the Egyptian authorities, including: (i) excluding products that have been shipped or have arrived before the entry into force of the decree; (ii) excluding shipments for which credit lines were opened before the entry into force of the decree; (iii) excluding contracts concluded, legalized, and accredited, from Egyptian consulates abroad, in case of transfer of at least 10% of its value before the date of entry into force of the decree, provided that they are implemented in a time-period of no longer than a year; and (iv) excluding contracts concluded, legalized, and accredited, from Egyptian consulates abroad, in case of transfer of the total value before the date of entry into force of the decree.

22.9. The Council took note of the statements made.

23 SRI LANKA – IMPORT BAN ON VARIOUS PRODUCTS – REQUEST FROM AUSTRALIA AND THE EUROPEAN UNION

23.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia and the European Union.

23.2. The delegate of the European Union indicated the following:

23.3. The European Union continues to have serious concerns over the broad import restrictions imposed by Sri Lanka, in various forms, since April of last year. The European Union repeats its position that it has serious doubts concerning whether Sri Lanka is accomplishing its commitments under the GATT, specifically the Understanding on the Balance-of-Payments Provisions of the GATT 1994, and also the GATS. The European Union does not dispute that Members can take import restrictions in the case of a critical Balance-of-Payments (BOP) situation. However, when doing so, a WTO Member must comply with its relevant WTO obligations. Such measures must be consistent with WTO rules (GATT Article XII, GATT Article XVIII(b), and the Understanding on the Balance-of-Payments Provisions of the GATT 1994). These measures have already been in place for over 10 months, and Sri Lanka has still not complied with the following: (i) the obligation to notify the import restriction to the General Council and to enter into consultations with other WTO Members; (ii) the need for the measures to be temporary in nature – as the measures have no expiration date and apply "until further notice"; (iii) the obligation to present timetables for progressive relaxation and phasing out until final elimination of the measures; and (iv) the need to administer the import restrictions in a transparent manner.

23.4. The European Union notes that, since its initial measure of April 2020, Sri Lanka has repeatedly modified its regulations, and has gradually moved products from the banned category into the category where imports are subject to a 90 or 180-day credit facility. However, the measures still remain heavy, complex, and non-transparent. And on a select number of tariff lines, such as cars and tyres, or the import of certain textiles, a full import ban remains in place. This seems clearly targeted to protect a particular domestic industry. The European Union wishes to recall that open trade remains an essential element in supporting the recovery from the COVID-19 pandemic. It is in Members' common interest to maintain conducive trade policies and to promote trade and investment as key factors for development. Protectionist or short-term approaches risk causing structural and systemic constraints, which will have a long-lasting impact on the economy. It is worrying that, in 2020, EU exports to Sri Lanka decreased by 27% – way beyond the average decline in EU exports of 9%. The European Union, therefore, reiterates its concerns over the measures taken by the Government of Sri Lanka affecting EU exports, including the lack of notification and justification of the measures. In the absence of any justification of these measures, the EU calls for their full withdrawal.

23.5. The delegate of Australia indicated the following:

23.6. Australia appreciates the recent engagement by Sri Lanka on this issue. Australia appreciates the difficult circumstances that Sri Lanka is under as a result of the impact of COVID-19 on its economy and trade. Nevertheless, a well-functioning, transparent, predictable, and stable global trading system remains fundamental to global economic stability. Australia would like to reiterate the concerns it raised at the November 2020 CTG, and shares the concerns of the European Union with respect to these measures implemented by Sri Lanka, including import restrictions and limitations on commercial banks relating to payment arrangements for imports. These measures appear to be overly trade-restrictive, do not appear to have a clear end-date – noting that they are in place "until further notice", and have not been notified to the WTO.

23.7. Australia reiterates its request for Sri Lanka to notify the WTO of these measures as soon as possible and to provide an explanation of the WTO basis for the measures. Australia also requests Sri Lanka to update Members on when these measures will be lifted. The lack of certainty has been trade-disruptive and has impacted Australia's exporters' ability to provide staple foodstuffs to Sri Lankan consumers. Australia requests Sri Lanka to reassure Members that the measures have only been implemented to address the immediate impacts of COVID-19, and that they will not be

maintained longer than necessary. Finally, Australia requests Sri Lanka to ensure that these measures are being implemented in a manner consistent with Sri Lanka's WTO obligations.

23.8. The delegate of Argentina indicated the following:

23.9. Argentina wishes to join the EU and Australia in raising this concern as Notification No. 2184/21 of the Government of Sri Lanka affects Argentine exports of mung beans. Argentina refers to its previous Council statements in this regard.[16]

23.10. The delegate of Japan indicated the following:

23.11. Japan shares the views expressed by the EU and is likewise concerned that the measure is inconsistent with Article XI:1 of the GATT. Sri Lanka explained that the rationale behind the measure derives from the difficulties it is facing in terms of its balance of payments. However, taking into account the practical and procedural requirements provided in the Agreement on Balance of Payments (BOP), due caution must be taken when implementing import restrictive measures. Japan would like to know the reason why Sri Lanka considers its measure to be legitimate and also urges Sri Lanka to revoke the measure as soon as possible, in line with its explanation that the measure is temporary.

23.12. The delegate of Sri Lanka indicated the following:

23.13. Sri Lanka takes this opportunity to appreciate the interest shown by the delegations of the European Union, the United States, Australia, Argentina, and Japan, on Sri Lanka's trade policies in general and for directing their specific concerns on the current trade measures taken by Sri Lanka to curb the COVID-19 pandemic in the island. Sri Lanka made very detailed statements at the CTG and the CMA sessions when this matter was raised. The texts of its interventions were also shared with interested delegations and the contents of these statements are still relevant in addressing the concerns raised by the interested delegations.[17] The emphasis of these Members has been on the compliance with provisions in the GATT and the BOP. However, Sri Lanka already explained why it considers that these measures are covered by the GATS rather than the GATT and is, therefore, within its legal limits in relation to the justification of these measures.

23.14. From the statements which interested delegations made at the CMA and the CTG meetings, it is evident that the major concerns raised by these delegations evolve around Sri Lanka's transparency obligations and the duration of the temporary measures. Having considered their concerns in a pragmatic manner, Sri Lanka has already taken the initial steps towards ensuring Sri Lanka's transparency obligations. In this regard, Sri Lanka is pleased to inform Members that it has already contacted the WTO Secretariat and shared an overview of the measures currently in force for the purposes of seeking the Secretariat's guidance, further information on notification formats, and technical assistance enabling Sri Lanka to notify the existing measures to the appropriate Council/Committee in the very near future, which Sri Lanka considers to be the Council for Trade in Services, in order to fulfil its transparency obligations. With respect to the second matter, on the duration of the temporary measures, which were targeted and for a specific purpose, Sri Lanka is ready to engage constructively with the interested delegations with a view to presenting a clear picture of the measures currently in force. As the EU noted, some of the measures have already been removed. This will supplement the information that Sri Lanka had already shared with the interested delegations recently. The intention of this interaction is to apprise them of the remaining measures, as most of the measures have either been removed or eased by Sri Lanka over the past few months, as Sri Lanka believes in the gradual liberalization of its measures.

23.15. The Council took note of the statements made.

[16] Document G/C/M/138, paragraphs 34.6-34.7.
[17] Document G/C/M/138, paragraphs 34.10-34.16.

24 UNITED STATES – IMPORT RESTRICTIONS ON APPLES AND PEARS – REQUEST FROM THE EUROPEAN UNION

24.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union.

24.2. The delegate of the European Union indicated the following:

24.3. The European Union regrets that the United States has so far failed to solve this matter, despite the EU raising this issue on multiple occasions in the SPS Committee and this Council. The scientific risk assessment carried out by the United States has been finalized already years ago and demonstrated that safe imports of apples and pears can take place from the EU under a systems approach. The United States continues to block the publication of its Federal Notice, which is the last remaining step to allowing imports of apples and pears from the EU under this systems approach, and this without any scientific ground. The United States is herewith going against the SPS Agreement: it maintains an approval procedure with undue delays and without providing a scientific justification explaining these delays. The EU urges the United States to base its import policy on science, in line with its WTO commitments. In this regard, the EU urges the US to finalize the last purely administrative step to allow market access of apples and pears from the EU without any further delay. The EU looks forward to continuing to cooperate with the United States with the aim of finding a swift solution to this matter.

24.4. The delegate of the United States indicated the following:

24.5. The United States thanks the EU for its continued interest in the status of the request from eight EU member States to export apples and pears under a systems approach to the United States. The US Department of Agriculture continues to work through its administrative procedures on this request. The United States would again note that the EU is able to export apples and pears to the United States under the existing preclearance programme.

24.6. The Council took note of the statements made.

25 INDONESIA – IMPORT AND EXPORT RESTRICTING POLICIES AND PRACTICES – REQUEST FROM AUSTRALIA, THE EUROPEAN UNION, JAPAN, NEW ZEALAND, AND THE UNITED STATES

25.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia, the European Union, Japan, New Zealand, and the United States.

25.2. The delegate of the European Union indicated the following:

25.3. Under this long-standing agenda item, the European Union has repeatedly stressed that an announced shift towards more trade openness and a deeper integration of Indonesia in world trade, which the EU welcomes, cannot result solely in measures to improve the country's trade balance and an exclusive focus on promoting exports and attracting investments. To truly integrate into global value chains, a country also needs to be open to increasing its imports. Creating a trade and investment-friendly climate is necessary to achieve this result. The European Union is therefore encouraged by the recent Omnibus Law on Job Creation. The bill is designed to stimulate domestic and foreign investment by removing bureaucratic inefficiencies and excessive licensing requirements as well as opaque, overlapping, and contradictory regulations. The European Union is looking forward to seeing the trade and investment facilitation effects of these measures. The European Union is also relieved that the import ban on EU alcoholic beverages in place since April 2019 has been lifted and that trade flows have resumed. The EU trade and investment relations with Indonesia continue nevertheless to be hampered by a long list of pervasive non-tariff barriers. The EU will only elaborate on recent developments.

25.4. On the export restrictions side, the EU has initiated a dispute settlement case to address the ban on nickel exports. Imports of food and agricultural products in Indonesia continue to be hampered by the lack of transparency and undue delays in SPS import approval procedures. The EU is particularly concerned by the lack of progress on its export applications on beef, dairy, poultry, pork, and plant products, which in some instances were submitted more than seven years ago, and

on most of which Indonesia has failed to provide any feedback for many years. Moreover, Indonesia has only concluded the approval procedure and opened its market in a very few cases. The long period needed for risk assessment is also not justified from a scientific point of view. Regulation No. 77 of 2019, regarding the "Second Amendment on the Ministry of Trade Regulation No. 85/M-DAG/PER/10/2015 Regarding the Provisions on the Imports of Textiles and Textile Products" aims at preventing importation of a significant number of textiles and textile products by means of an extremely complex import licensing scheme. Since January 2020, these products can only be imported to meet the processing needs of domestic producers and small or mid-sized industries. This legislation has not been notified in accordance with WTO terms and affects EU operators in the sector very negatively. Moreover, Ministry of Trade Regulation No. 68/2020 of 28 August 2020, concerning Provisions for the Imports of Footwear, Electronics, and Two-Wheeled and Tricycle Bicycles aims at suppressing the imports of the targeted consumer goods. Finally, the implementation of Law No. 33/2014 – also known as the Halal Law – has been creating uncertainty. Government Regulation No. 31 of 2019 on the Implementation of Law No. 33 of 2014 entered into force in May 2019. Not one of these measures has been notified to the TBT Committee.

25.5. The European Union would request Indonesia to provide clarification on the specific products covered within the defined categories (Halal and Haram). The European Union further considers that Indonesia's requirement for a bilateral government-to-government Mutual Recognition Agreement as a pre-condition for the Indonesian Halal Product Assurance Agency (BPJPH) to start recognizing Halal-certifying agencies in a foreign country is complicated in practice and unnecessarily burdensome. The additional registration requirement for Halal certifications issued by foreign bodies appears to be duplicative and time-consuming. The European Union therefore reiterates its invitation to Indonesia to consider less cumbersome practical solutions to continue recognizing Halal-certifying institutions and to provide further information on the technical implementation of the cooperation between BPJPH and foreign Halal agencies. The EU also calls upon Indonesia to keep Halal certification and Halal labelling voluntary as a less trade restrictive measure, and not to impose non-Halal labelling for products or services not claimed by the producer as being Halal. The EU considers that "non-Halal" labelling is unnecessary and creates an excessive burden for operators. For additional detail, the EU refers to the EU's comments and questions raised in the TBT Committee. The EU is currently analysing the Implementing Regulation of the Omnibus Law on Halal, which Indonesia has just notified. The EU is hopeful that this will address its concerns. To sum up, the European Union looks forward to soon seeing the positive effects of the Omnibus Law. Since the CTG's previous meeting, market access for EU alcoholic beverages has been restored; nevertheless, there is a persisting and urgent need to reduce the high number of trade barriers that have been affecting EU trade flows for too long, and to refrain from issuing new ones, in line with Indonesia's commitments in the G-20.

25.6. The delegate of New Zealand indicated the following:

25.7. New Zealand echoes the concerns raised by the European Union. New Zealand believes that Indonesia's restrictions on agricultural imports undermine core WTO principles. New Zealand is particularly concerned about the inconsistent issuance of import licences. Delays in import licences last year prevented commercially meaningful access for New Zealand horticultural products to the Indonesian market for a significant proportion of New Zealand's export season. Delays in the processing of applications this year reduce the commercial certainty exporters have in this market. New Zealand looks forward to the timely issuance of commercially meaningful import licences to allow trade to flow freely for the remainder of this season. New Zealand requests an update from Indonesia on how the issues previously experienced will be addressed.

25.8. The delegate of Australia indicated the following:

25.9. Australia welcomes the opportunity to co-sponsor this agenda item. Australia shares Members' concerns regarding Indonesia's import restricting measures, in particular regarding import licensing. Australia notes that a number of Indonesia's import policies continue to unnecessarily restrict and impact imports. Australia thanks Indonesia for its engagement with Australia to date on this issue — including under the Indonesia-Australia Comprehensive Economic Partnership (IA-CEPA) — and requests that it continues to ensure that any delays are resolved and trade in the affected products can resume as soon as possible. Australia is encouraged by Indonesia's efforts to improve its import licensing regime through implementation of its Omnibus Law on Job Creation (Law No. 11 of 2020), including by simplifying permit processes for agricultural products. Australia encourages Indonesia to promptly notify WTO Members about regulations to implement the Omnibus

Law, including in relation to the operation of the Commodity Balance, which Australia understands will inform decisions about import and export permits. Australia would like to better understand how the proposed usage of the Commodity Balance will affect the issuing of import permits. Australia also requests Indonesia to explain whether there was any consideration of the adoption of automatic import licensing procedures as part of the Omnibus Law, and why this was not adopted. Australia requests that Indonesia ensures that all its measures, including the latest proposed changes resulting from the Omnibus Law, are consistent with its WTO obligations, and in particular those under the WTO Agreement on Import Licensing Procedures.

25.10. The delegate of Japan indicated the following:

25.11. As Japan has stated in the General Council, as well as in the TRIMs Committee, Japan continues to have concerns over Indonesia's local content requirement measures in various areas, as over their consistency with WTO Agreements. These include a measure for 4G LTE mobile devices and measures in the retail sector. Japan continues to raise the issue, taking into consideration the situation that Indonesia has not made any improvements, even though Indonesia explained that it was working on a comprehensive review of various local content requirement measures, and that it was proceeding with harmonizing a set of regulations. Japan would like Indonesia to implement these measures in accordance with the WTO Agreements and also to explain the process and content of the reviews in a transparent manner.

25.12. Indonesia has been introducing increasing numbers of trade restrictive measures, which appear to be inconsistent with Article XI:1 of the GATT. For example, since import licensing measures for textiles products and air conditioner products were introduced in October 2019 and August 2020, respectively, imports have dramatically decreased. Moreover, on textile products, it was truly regrettable that the safeguard measure on carpets was introduced on 17 February 2021, even though Japan called upon Indonesia to reconsider this measure during the meeting of the Safeguards Committee, as well as in the consultations on Article XIX:2 of the GATT. Japan questions Indonesia's action of imposing a high duty, amounting to 150 to 200%, without considering the negative impact of the introduction of the aforementioned import licensing measures. Japan is not convinced that this falls within the scope of "to the extent and for such time as may be necessary to prevent or remedy such injury", as stipulated in Article XIX of the GATT. Japan is concerned by Indonesia's introduction of increased trade restrictive measures that are questionable in terms of their WTO consistency. Japan has therefore prepared some written questions for Indonesia after receiving its request in the TRIMs Committee. Japan urges Indonesia to explain the background to the introduction of the measures, as well as their legitimacy in terms of WTO consistency. Japan also urges Indonesia to withdraw the measures immediately.

25.13. The delegate of the United States indicated the following:

25.14. This Council is well aware of the breadth of concerns that the United States has with Indonesia's trade and investment regime. In previous interventions in this body, the United States has reviewed in some detail the broad range of its concerns, including over import licensing requirements, standards requirements, pre-shipment inspection requirements, and export restrictions, including taxes and prohibitions, among others. These types of restrictions affect a broad range of sectors. The United States would like to focus its remarks today, however, on several emerging issues in the ICT and digital trade space in Indonesia that the United States considers deeply worrisome.

25.15. First, the United States continues to note concerns that Indonesia is applying tariffs at the border on a category of ICT products that appear to exceed its WTO bound tariff commitments. For example, Indonesia has a duty-free tariff commitment for all products that are classified under tariff subheading 8517.62. However, US and Indonesian traders report that a 10% duty is being levied for certain products in this tariff category. The United States has been raising this issue repeatedly with Indonesia over the past year, including in the Market Access and ITA Committees, as well as bilaterally. Unfortunately, Indonesia has yet to provide a substantive response to the US concerns. The United States understands that US companies have also engaged the Indonesian government directly on this issue, seeking clarification of Indonesia's application of these tariffs. Despite their efforts, they too have yet to receive a satisfactory response from Indonesia. In addition to calling into question Indonesia's bound commitments, the costs of Indonesia's policies in this space are not insignificant, practically speaking. Indonesia's tariffs not only impose an unfair financial burden on

foreign firms, but they also limit access for Indonesian consumers and firms to important high-tech products.

25.16. Second, the United States continues to have significant concerns with Indonesia's use of local content requirements, including their expanding use in the ICT sector. For example, Indonesia requires 30% local content for 4G LTE subscriber stations (cell phones, laptops, and tablets) and 40% local content for 4G LTE base stations. And for over a decade now, Indonesia has imposed local content requirements on wireless broadband equipment. Unfortunately, Indonesia now appears to be expanding these local content requirements, with the ICT Ministry issuing regulations in late 2019 that establish a legal basis for the application of local content requirements to telecommunication tools and devices. In response to Members' concerns, Indonesia agreed to undertake a "comprehensive" review of its local content policies. However, it has now been over two years since the launch of this review and Indonesia has yet to provide any updates or further information.

25.17. Third, the United States is concerned by recent reporting that Indonesia may move forward with plans to apply import duties on electronically transmitted software and digital goods. The United States first raised this issue before the Council in 2018 when Indonesia issued a regulation establishing five 8-digit tariff lines for such products. The United States is raising its concerns again today because of recent public statements by the Indonesian Finance Minister indicating that Indonesia may move forward with such duties. Such a move would contravene the customs duties Moratorium, through which Members, including Indonesia, agreed not to impose tariffs on digital content transmitted electronically. The United States is hopeful that, by raising these issues today, it can help to pave the way for greater engagement on these issues and move towards their expeditious resolution. The United States thanks the Indonesian delegation in advance for its engagement.

25.18. The delegate of Indonesia indicated the following:

25.19. Indonesia thanks Australia, the European Union, Japan, New Zealand, and the United States, for their interest in Indonesia's import and export policies. Before responding to the concerns, Indonesia is of the view that this agenda title is too general, and one where new issues may be raised by Members without prior notice being given, making it difficult for Indonesia to identify the concerns before the meeting. In general, Indonesia's export and import policies are *inter alia* aiming to provide a better business environment and climate. This is reflected through a series of continuous efforts made to deregulate and improve Indonesia's trade-related regulations and policies, of which the most recent is the Law on Job Creation, which entered into force on 2 November 2020. Under the Law, business licensing, including export, import, and investment licensing, will be further simplified to make it more streamlined and effective. Indonesia's government is now preparing the implementing regulations that it believes and expects will address the issues raised by Members under this agenda item. To conclude, Indonesia took note of Members' concerns to this date and is committed to discuss the issues further with the WTO Members concerned.

25.20. The Council took note of the statements made.

26 EGYPT – MANUFACTURER REGISTRATION SYSTEM – REQUEST FROM THE EUROPEAN UNION AND THE RUSSIAN FEDERATION

26.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union and the Russian Federation.

26.2. The delegate of the European Union indicated the following:

26.3. The European Union would like to reiterate its concerns with regard to the registration of companies exporting to Egypt under Decrees No. 991/2015, No. 43/2016, and No. 44/2019. This registration procedure constitutes a considerable obstacle to trade, imposes an unnecessary administrative burden, and blocks or substantially delays EU exports. The EU therefore continues to question Egypt's justification for this mandatory registration of EU companies. The EU notes with concern that most of the pending registration cases known to the EU have still not been successfully processed and that some sectors (like ceramic tiles) continue being disproportionately affected by the discretionary application of Decree No. 43. Moreover, the EU would like to highlight the structural problems relating to Decree No. 43/2016, like the lack of transparency in the registration process,

the lack of clear deadlines for processing requests, the lack of a clear appeals procedure, and a high level of discretion in granting registrations. Therefore, the EU considers that this measure should be either terminated or substantially improved. The EU is ready to work with Egypt in order to finalize the registrations of pending applications and to work on solutions that would prevent delays in future registrations.

26.4. The delegate of the Russian Federation indicated the following:

26.5. Russia regrets to raise this concern on the Egyptian registration procedures of foreign companies under Decree No. 43/2016 once again, and reiterates its statements made during the previous meetings of the TBT Committee and the CTG.[18] Unfortunately, the reasons for this concern still remain, and the conditions still hold. A Russian steel manufacturer has been trying to get registered since 2016, but without any progress. Over this period the company has not received any substantive feedback on its application apart from one time when it was requested by the General Organization for Export and Import Control (GOEIC) to update some submitted documents that had expired. This request was swiftly satisfied. Russia takes note that the purpose of the decree is to ensure the reliability and credibility of exporters. It is surprising that the Ministry of Trade and Industry is questioning the company's reliability and credibility in the case of traditional exporters that have been shipping their products to Egypt for decades. The company in question currently supplies Egypt with other products and does not raise questions of reliability in other sectors. Such a denial of market access to certain sectors of the Egyptian market suggests that the reasons behind those decisions are different from those stated publicly. Russia has witnessed that the list of Russian companies that are facing registration problems is widening and, therefore, requests the delegation of Egypt to provide the Russian companies with market access in accordance with the WTO rules, and to bring its measures into conformity with those rules.

26.6. The delegate of Turkey indicated the following:

26.7. Turkey will refrain from repeating the points raised previously in this Council and the TBT Committee and limit itself to stating that its concerns are still ongoing with regard to Egypt's manufacturer registration system. Rather than problems faced only by individual companies, there are structural problems in relation to this Decree and its implementation that lead to unpredictability and arbitrariness. In this sense, it is still unclear how the applications to the GOEIC are evaluated, whether the completion of the process is subject to any time-limits, and which steps should be followed to complete a registration process. In addition, companies are not informed of the status of their application on a regular basis. Predictably, they face long delays and bear additional costs in the registration process. As a result, Turkey would like to ask Egypt to review its measures, taking into consideration its obligations under the WTO Agreements, and ensuring their implementation in full transparency. Turkey believes that this hindrance will be overcome given the continued dialogue with Egypt, and Turkey stands ready to engage with Egypt on all trade-related measures.

26.8. The delegate of the Republic of Korea indicated the following:

26.9. Korea has expressed its concerns on this issue over several years and would like to reiterate its previous position. The registration procedures carried out by Egypt are causing serious delays for foreign manufacturers of specific products, which includes requiring the issuance of certificates of conformity and certifications of inspection. These measures constitute a non-tariff barrier and undermine the free trade system. Korea urges Egypt to take appropriate measures by improving its trade restrictive policies and practices.

26.10. The delegate of Egypt indicated the following:

26.11. Egypt thanks the delegations of the European Union and the Russian Federation for their continued interest in this issue; as well as the delegations of Turkey and the Republic of Korea for their interventions today. Since the CTG's previous meeting, last November, bilateral meetings between Capitals with some of Egypt's trading partners have taken place in order to discuss Members' concerns regarding the delay in the registration process under Ministerial Decree No. 43/2016. Egypt would like to assure its trading partners of its understanding for their concerns,

[18] Document G/C/M/138, paragraphs 15.2-15.4, and document G/TBT/M/83, paragraph 2.288.

and Egypt will continue to follow-up with its Capital in order to resolve the issue of pending registration requests.

26.12. The Council took note of the statements made.

27 CHINA – CUSTOMS DUTIES ON CERTAIN INTEGRATED CIRCUITS – REQUEST FROM THE EUROPEAN UNION AND JAPAN

27.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union and Japan.

27.2. The delegate of the European Union indicated the following:

27.3. The European Union continues to have concerns about Chinese duties on MCO semiconductors, raised on numerous occasions in the past. The EU continues to urge China to reconsider its classification of certain MCO products, where duties should not apply even if such duties are being gradually lowered as the implementation of the staged cuts progresses.

27.4. The delegate of Japan indicated the following:

27.5. Japan will carefully observe whether all of the relevant tariffs on goods are eventually eliminated by July 2021, in accordance with China's ITA concession schedule.

27.6. The delegate of Chinese Taipei indicated the following:

27.7. Chinese Taipei supports the statements made by the EU and Japan, and echoes the concerns that they have just raised. Chinese Taipei's views on this agenda item have already been expressed on numerous occasions since 2018. Chinese Taipei takes note of the fact that all of the duties on multi-component semiconductors (MCOs) will be eliminated by this July. Nevertheless, Chinese Taipei must reiterate the fundamental principle that the scope of Members' tariff concessions under their WTO commitments should not be altered during their tariff transpositions. Chinese Taipei will continue to closely monitor developments on this subject until the duties on the products concerned have been completely eliminated.

27.8. The delegate of China indicated the following:

27.9. China thanks the delegations for their continued interest in this issue. As the same question has been raised many times and China has repeated its response in various bodies, China has no intention of repeating its detailed statement again on this occasion. What China would like to do is to reiterate that its methodology is consistent with WTO rules, and that the duties on the MCO products concerned will be eliminated in July 2021.

27.10. The Council took note of the statements made.

28 CHINA – EXPORT CONTROL LAW – REQUEST FROM THE EUROPEAN UNION AND JAPAN

28.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union and Japan.

28.2. The delegation of the European Union indicated the following:

28.3. The EU is closely following the developments in China's new Export Control Law, which passed the Standing Committee of China's National People's Congress on 17 October 2020 and took effect on 1 December 2020. While recognizing that it consolidates China's non-proliferation commitments and export controls, the EU has four major concerns regarding China's Export Control Law.

28.4. First, on extra-territorial application, because the law contains a new provision with extraterritorial application determining the consequences for foreign individuals and organizations outside of China violating the law and endangering the national security and interests of China (Article 44), which is not in line with internationally agreed export control standards.

28.5. Second, on rules on deemed exports and re-exports, because the law appears to provide for controls that apply to transactions within China (referred to as deemed exports, Article 2.3). In this regard, the EU places great importance on the non-discriminatory treatment of EU companies in China (for example, of their Chinese subsidiaries). The EU is concerned that the concept of deemed exports, which goes beyond the internationally agreed export control standards, might lead to unequal treatment and have adverse effects on the activities of EU companies in China (including their research and development activities, for example). Furthermore, the law foresees controls on re-transfer or re-exports (Article 16 and Article 45), while it is unclear whether the obligation not to re-export items without the prior consent of the Chinese authorities also applies to foreign products that contain controlled items obtained from China as components. The previous draft included an explicit provision in this regard in case the controlled items exceeded a certain threshold. It would be useful if China could confirm that such obligation is not included in the current re-export provision.

28.6. Third, on the objectives and scope of controls, because the law names "national security and interests" as a prime objective, next to "non-proliferation and other international obligations". Even though the law does not any longer reference "development interests", "industrial competence", or "technological development" as control principles (as previous drafts did), the EU is nevertheless concerned that Article 1 ("national security and interests") as well as Article 3 ("national security" and coordination of "security and development") contain vague language still reflecting objectives other than China's international security obligations and commitments. The EU recalls that the objectives and scope of export controls should be in line with international obligations and multilateral commitments. The EU would therefore welcome clarification in this regard, as well as on the intended application and specification of other related provisions that could lead to legal uncertainty for economic operators, as, for example, on the application of control parameters ("national security" and "development", Article 1, Article 3, and Article 13; and "terrorist purposes", Article 12), the scope of controls ("temporary controls", Article 9) and related control lists, the understanding of exporters' obligations in this regard ("is or should be aware", Article 12), the scope of investigations by the authorities (in case of "suspected violations", Article 28), and the information restrictions (prohibited for reasons of national security, Article 32).

28.7. Fourth, on the retaliation clause, because Article 48 provides for "reciprocal measures by the Chinese Government where the abuse of export control measures by any country or region endangers its national security and interests". This provision is not in line with international export control standards. The EU will place great importance on any secondary legislation and would welcome clarifications and specifications on the application of such provisions.

28.8. The delegation of Japan indicated the following:

28.9. Japan continues to have concerns over China's Export Control Law, which entered into force last December. Japan believes that this law may constitute an overly stringent export regulation that goes beyond the scope of the international export control regime and may be inconsistent with Article XI of the GATT. As Japan has stated in past Council meetings, and taking into consideration the objective of the law to safeguard national security and interests, Japan is concerned that the scope of products subject to restrictions appears to be quite diverse, and that there may be cases that require unnecessary disclosure of technological information during classification and end-user/usage investigations. Japan is also concerned that the provisions on countermeasures for discriminatory export regulation by other countries are maintained in the law.

28.10. As for the scope of the targeted items, the draft regulations concerning rare earths, which were published in January 2021, provide that the export of rare earth products shall comply with said Export Control Law. Japan is concerned that, in complying with the law, the export controls on rare earth products will be carried out in an inappropriate manner due to Japan's aforementioned concerns. When Japan looks at the draft regulations, which provide a certain amount of control over reserves of resources, prioritizing already exploited minerals as strategic reserves in order to offset domestic demand might be regarded as *de facto* export controls, and there might be a possibility that they are inconsistent with Article XI:1 of the GATT. Japan urges China not to include rare earth products among the items to be covered in the law and to treat domestic demand and export demand equally and in a non-discriminatory manner when it buys and sells reserves on the basis of the rare earth regulation. Japan remains concerned that the "Unreliable Entities List" contains a wide range of possible measures that may be used as countermeasures, in the same way as the countermeasures stipulated in the Export Control Law. In addition, Japan is concerned by the lack

of clarity on the relationship between the entities list in the Export Control Law and this "Unreliable Entities List".

28.11. Japan is further concerned by the catalogue of technologies subject to export bans and restrictions based on the Foreign Trade Law. The list's objective and scope lack a clear definition and could be widely defined as reasons for restrictions for listed technologies and may contain measures that are inconsistent with the Agreement. The relationship between the items covered in the law and the technology list in the Export Control Law is also unclear. Japan understands that the details of the procedure for implementing the law will be provided in due course and expects that the scope of the items, as well as the technologies list and entities list under the Export Control Law, will be provided within the appropriate scope. Japan also expects that a procedure that does not require excessive disclosure of technologies will be prescribed in due course. In addition, Japan is of the view that the countermeasure provisions should be removed from the law. Finally, Japan will continue to observe the actual practice in the implementation of the law. In this connection, Japan would like to request China to provide information on the detailed regulations and the timeline for them, with sufficient leeway and in full transparency.

28.12. The delegation of China indicated the following:

28.13. China requests the European Union to provide them with its technical questions. At present, China is still drafting the supporting regulations and control lists of the "Export Control Law". China will keep in communication with the relevant Members and will provide updates in due course.

28.14. The Council took note of the statements made.

29 RUSSIAN FEDERATION – TRADE RESTRICTING PRACTICES – REQUEST FROM THE EUROPEAN UNION AND THE UNITED STATES

29.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union and the United States.

29.2. The delegate of the European Union indicated the following:

29.3. The Russian Federation continues to develop and apply a policy of import substitution and of forced localization of production that is contrary to the spirit, and often to the letter, of its WTO commitments. Moreover, this policy is being expanded in its scope and made more stringent in its requirements. A case in point is the recent proposal to increase the "recycling fee" for certain categories of vehicles. Revenue collected from this fee is presumably used to recycle end-of-life vehicles, and the measure applies to both domestic and imported goods. Russia is proposing up to a six-fold increase for certain categories of vehicles (semi-trailers), and up to 2-3 times for road construction equipment and some agricultural machinery. Has an evaluation of the recycling market in Russia concluded that the cost of recycling certain categories of vehicles requires an increase in the corresponding fee? The EU has not found evidence of the existence of such an evaluation, which the Russian Federation is invited to provide. Instead, the preamble of the draft Governmental Resolution "On amendments to the list of types and categories of wheeled vehicles (chassis) and trailers to them, in respect of which the recycling fee is paid, as well as the size of the recycling fee" reads: "It is expected that the increase of the recycling fee will not cause an increase in prices for Russian-made cars, as this increase will be offset by a proportional increase in government support for sectoral demand stimulation programmes … Additional receipts to the federal budget will allow, among other things, to continue the implementation in 2021 of programmes to stimulate demand for automotive equipment … The programmes … apply to highly localized cars of a mass, affordable price segment."

29.4. Similarly, in the course of the public consultation on the measure, the Ministry of Industry and Trade said that "the additional revenues received from adjusting the rates of recycling fees will be used to finance government support measures demand." It is thus apparent that, behind the veil of an environmental purpose, the Russian Federation's measure actually intends to raise the price of foreign products and use the increased revenue to stimulate demand for domestic products, which would not be compatible with Article III of the GATT (National Treatment). A number of business associations in Russia, including those bringing together local companies, expressed well-reasoned disagreements with the planned measure. Therefore, the European Union calls upon Russia: (i) to

suspend the planned increase in the recycling fee; (ii) to conduct a fact-based evaluation of the recycling market for vehicles so as to inform future decisions on the level of the recycling fee; and (iii) to ensure that measures supporting demand provide the same advantages to domestic and imported products.

29.5. At the previous meeting of this Council, the EU voiced its concern over the draft decree establishing quotas for foreign products in procurement by State-Owned Enterprises (SOEs) and by some unspecified private entities. This decree, No. 2013, was adopted on 3 December 2020. It lists 250 lines of customs nomenclature, on which quotas for Russian products were established. These quotas reach a prohibitive 90% level. This is a manifest practice of trade restriction and its compatibility with WTO rules is highly questionable. The EU regrets that it continues to be necessary to refer to the blockage of EU exports of cement to Russia, effective since 2016, and to the absence to this date of the remedy announced by the Russian Federation in 2019 in the form an amendment to the standard. As previously stated, the European Union considers the amendment to the Federal law "on protecting consumer rights", which mandates the pre-installation of Russian software mandatory in a number of consumer electronic devices, to be a potentially discriminatory measure, and requests its notification in accordance with the TBT Agreement.

29.6. The European Union repeats its request to notify Federal Law No. 468, "On Viticulture and Winemaking", and regrets that Russia refuses to do so. To remind this Council, the law introduced many new requirements for the placing of wine products on the Russian market, hence it has to be notified to the WTO in accordance with the TBT Agreement. Furthermore, this law uses European geographical indications as definitions for certain categories of wine, like Champagne, Cahors, or Cognac, and the implementation of this law is not clear. The European Union expects that the amendments to the law, currently in preparation, will be proposed to eliminate the EU's concerns. The EU would welcome clarifications as to when these amendments would be adopted.

29.7. Finally, the European Union reiterates its concern about the announced introduction of an export ban on timber, starting from 1 January 2022. It would seem that Russia also plans to reduce, from four to one, the number of railway border crossing points with the EU for the export of round wood. Moreover, the chosen crossing point has practically no infrastructure to handle wood trade, which would make exports of wood to the EU all but impossible. The European Union would welcome explanations from Russia about how such an export ban and related measures may be compatible with WTO rules, and urges Russia to notify any corresponding draft legislation. The EU continues to call upon Russia to ensure that its measures fully conform to WTO rules and to abandon its policy of import substitution and localization.

29.8. The delegate of the United States indicated the following:

29.9. The United States joins the EU to raise again its concerns about Russia's trade restrictive practices, most notable in its increasing reliance on localization requirements and import substitution policies. As the United States has raised before, and as the EU has noted, Russia's expanding adoption of local content requirements and import substitution policies flies directly in the face of the goals of this Organization – to open trade for the benefit of all. The United States certainly does not have time today to review all the measures that have been put in place since Russia adopted Law No. 223-FZ "On the Purchasing of Goods, Works, and Services by Certain Types of Legal Entities" in 2011, which gave the government the authority to establish priority for Russian goods, works, and services. However, a sampling of government measures reveals an economy that: (i) requires SOEs to provide a 15% price preference to Russian-made products in many sectors; (ii) requires SOEs to provide a 30% price preference to Russian-made radio-electronic products; (iii) requires SOEs to consult with the Commission on Import Substitution to purchase certain imported products for use in large investment projects; and (iv) requires SOEs to purchase a minimum quota (sometimes as high as 90%) of over 150 domestically-produced products.

29.10. And such measures continue to grow. For example, as the United States mentioned at the Council's last meeting, the US understands that the Duma is considering a draft measure requiring that companies considered to be "critical information infrastructure" purchase only Russian software. The United States has specific questions on this draft that will be provided to the Russian Federation in writing. Although the United States and other Members have raised these concerns in the past, Russia has yet to explain how these measures comport with its WTO obligations. Likewise, the United States has yet to hear any assurances from the Russian delegate that Russia will ensure that purchases made by commercial enterprises that are state-owned or state-controlled are governed

by commercial considerations, as provided for in its Working Party Report. Will the delegate from the Russian Federation provide such an assurance to this Council?

29.11. With regard to the track and trace labelling regime, Russia continues to expand the list of goods to which these labels must be applied. While the United States supports efforts to combat counterfeit goods, the US is concerned about the proportionality of this measure – whether such a costly and burdensome labelling regime is really needed for all products. The United States is also concerned about the potential for significant supply chain disruptions at the border and about unequal access to the machinery and the technological systems of the regime. The United States will continue to monitor Russia's implementation of this regime carefully. The United States has mentioned previously its concerns about the software pre-installation requirement established in Federal Law No. 425-FZ, "Law on Protection of Consumer Rights." The United States appreciates the efforts of the Ministry of Digital Development, Communications and Mass Media to work with industry in the implementation of this law. Nevertheless, the United States continues to question the consistency of what is, in fact, another localization requirement, with Russia's WTO obligation on national treatment.

29.12. The United States also joins the EU in raising concerns about the proposed dramatic increase in the recycling fee on construction and agricultural equipment and will be raising questions in the CMA. Finally, the United States echoes the EU's call for transparency with regard to Russia's wine law. The United States hopes that Russia will respect its transparency obligations and notify the Russian measures as well as the EAEU measure.

29.13. The delegate of Ukraine indicated the following:

29.14. Ukraine thanks the EU for keeping this issue on the agenda and echoes the concerns raised with regard to the Russian Federation's certification requirements for cement. Ukraine also continues to have significant concerns about the Russian Federation's certification requirements for alcohol drinks. Ukraine would like to refer to its statements made in the course of the previous TBT Committee meetings on these issues for further detail.[19]

29.15. The delegate of Australia indicated the following:

29.16. Australia understands that Russia has adopted "Federal Law No. 468 of 27.12.2019 on wine making and wine growing in the Russian Federation", which entered into force on 26 June 2020. Australia thanks the Russian government and industry for its recent engagement on this issue. However, despite Australia raising its concerns in previous CTG and TBT Committee meetings, its concerns remain. The Federal law poses several barriers to the importation of wine into Russia, which, coupled with the short timelines for the law's implementation, are of concern to the Australian wine industry. Further to the technical issues that Australia raised at the recent TBT Committee, a key concern is the mandatory declaration of vintage and variety required under the new law. This does not reflect the International Organisation of Vine and Wine (OIV) practices, of which Russia is a member. Additionally, Australia notes that several obligations within the Federal wine law are inconsistent with the Eurasian Economic Union Technical Regulation No. 047/2018, "On safety of alcohol products". Australia understands that the implementation of the technical regulation has been postponed in order to allow for harmonization work with the Russian Law to be undertaken. Australia encourages Russia to take into account concerns raised by Members during the harmonization phase, including ensuring that the technical regulation aligns with international production standards. Australia looks forward to Russia notifying the WTO accordingly, and as soon as possible.

29.17. The delegate of the Russian Federation indicated the following:

29.18. The Russian Federation takes note of the concerns raised and previously the Russian Federation commented extensively on many of the issues raised today, in this Council as well as in the TBT Committee and CMA. On this occasion, the Russian Federation would like to highlight the points that follow. Regarding SOEs procurement, the Russian Federation would like to point out that this regulation is the development of the previous acts under the Federal Laws No. 223-FZ, "On the Procurement of Goods, Works, Services by Certain Types of Legal Entities", and No. 488-FZ, "On

[19] See document G/TBT/M/82, paragraph 2.340.

the Industrial Policy of the Russian Federation", which clearly stipulate that this regulation should be applied in accordance with the international obligations of the Russian Federation. The Russian Federation would also like to note that this regulation does not cover private entities. As for cement certification, the Russian Federation states that the relevant amendments are still being discussed among the responsible authorities and the Russian delegation will inform the WTO Members when they are prepared, adopted, and publicly available.

29.19. Regarding pre-installation of software on technically complex goods, the Russian Federation refers to its previous statements regarding the conformity of this measure with Russia's WTO commitments.[20] The Russian Federation would also like to inform WTO Members that the date of entry into force of the measure was postponed based on the consultations with the interested companies, including foreign companies. Throughout the process of developing the draft Law, the comments submitted by the stakeholders were taken into due account. The current version of the Law provides for a number of flexibilities. In particular, there are several options for the pre-installation of software and the product manufacturers are free to choose those most convenient for them. If the programme is not compatible with the operation system, the Law does not require pre-installation. The software in question is already available in manufacturers' digital stores, so the Law does not require the installation of applications incompatible with the company's rules and policies.

29.20. Concerning the Wine Law, the Russian Federation notes that this Law was developed in order to improve the quality of viticulture products circulated in the Russian market, and to bring about a reduction in smuggled and counterfeit products. The Russian Federation is happy to inform WTO Members that the requirements of the Law did not have a negative impact on international trade in viticulture products, which remained stable and, in some cases, even increased, according to trade statistics data. Considering this fact, one comes to the conclusion that credible exporters and manufacturers not only retained their positions but also expanded their presence in the Russian wine market. Regarding the timber export regulation, the Russian Federation carefully studies the practice of WTO Members in this area. The Russian Federation notes that a number of WTO Members, including certain member States of the European Union, apply different restrictions relating to the export of timber for different reasons. The final design of the future measure is still under development. Taking into account the current practices in the WTO, the Russian Federation believes that it will be able to ensure the compliance of the measure with WTO rules.

29.21. In respect of the increase in recycling fee for vehicles, the Russian Federation notes that this fee is applied to both domestic and imported products, and that the size of the fee is the same for domestic and imported products. The WTO rules do not prevent the establishment of fees, at any rate, not as long as they comply with the national treatment and non-discrimination principles. As for the track and trace system, the Russian Federation reiterates its statements made during the previous meetings of the TBT Committee, the CTG, and the CMA. This measure was developed for fighting counterfeited and smuggled products on the Russian market as well as ensuring that all taxes have been paid. This measure is implemented, in respect of each category of products, in close cooperation with importers and manufacturers, with sufficient transition periods, and in full compliance with WTO rules.

29.22. The Council took note of the statements made.

30 CHINA – IMPLEMENTATION OF TRADE DISRUPTIVE AND RESTRICTIVE MEASURES – REQUEST FROM AUSTRALIA

30.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia.

30.2. The delegate of Australia indicated the following:

30.3. Australia and China have enjoyed a strong bilateral partnership and trading relationship, built over many decades, that has delivered benefits to both sides. Members will recall that Australia raised China's implementation of trade disruptive and restrictive measures at the November 2020 CTG meeting. Since that time, Australia has followed up on its concerns about these measures with

[20] Document G/C/M/138, paragraph 31.15.

China bilaterally and through the relevant WTO committees. Australia has not received from China a satisfactory response to the issues it raised. Australia remains concerned by the sudden increase of measures China has taken against Australia, particularly in the second half of 2020, and official Chinese statements linking their trade actions to unrelated issues in our bilateral relationship.

30.4. China has concluded anti-dumping and countervailing duty investigations into imports from Australia of barley and wine. Australia has concerns with the procedures, analysis, and findings of these investigations. The anti-dumping and countervailing duty (AD/CVD) investigations and duties have effectively ceased Australian exports of these commodities to China. Australia initiated WTO dispute proceedings into China's AD/CVD duties on barley. Australian exporters fully cooperate where they find themselves respondents in anti-dumping and countervailing duty investigations. Australia fully respects the right of all WTO Members to take trade remedy action within the framework of existing international trade rules that govern such action and on the expectation that those rules will be upheld. Trade remedy actions should not be used as retaliatory measures. Trade remedy actions necessarily stem from properly constituted requests from a Member's domestic industry, not directed by governments.

30.5. Australia also has serious concerns regarding China's lack of transparency, due process, and engagement across a range of measures implemented on imports of Australian goods. China's approach to many of these measures appears to be inconsistent with China's WTO obligations, and is significantly impacting the overall bilateral trade relationship. At the November 2020 CTG meeting, Australia outlined its concerns about measures China had placed on a range of Australian agricultural exports. In summary, these were as follows: (i) undue delays in obtaining Chinese government approval for export establishments (meat, dairy, and seafood), brand approvals of infant formula, and new approvals of Australian seafood species; (ii) the lack of reinstatement of three Australian establishments that voluntarily suspended exports to China following the detection of SARS-CoV-2 in on-site workers long after the COVID incidents were resolved; (iii) increased testing of Australian live rock lobster consignments; (iv) suspension of timber log imports from particular Australian states; (v) suspension of some Australian barley and wheat exporters; and (vi) increased inspection and laboratory testing of imports of Australian wine.

30.6. Since the last CTG meeting, Australia has seen no improvement to these measures and Australian agricultural exports continue to be unnecessarily impacted. Worryingly, the situation has deteriorated further, with new or additional measures being placed on more Australian agricultural commodities. These include the following: (i) the suspension of timber log imports from all Australian states; (ii) the suspension of another meat export establishment; (iii) increased testing and delays to the clearance of bulk and sparkling wine not covered by the AD/CVD duties; and (iv) a number of Chinese importers of Australian hay and lobsters being unable to secure import licences prior to the expiry of existing licences, despite the Australian Government providing well in advance the necessary information for the re-registration of the Australian exporters. Concerningly, the increased inspection and testing on barley and wine and the suspension of barley exporters, in addition to the AD/CVD investigations and duties, raises questions about whether these products are being indiscriminately targeted by China to ensure all trade in these commodities ceases from Australia.

30.7. Regardless, Australia continues to treat these issues on their technical merits. Australia has sought to address them bilaterally with the relevant Chinese authorities. Australia takes detections of non-compliant consignments seriously and initiates investigations into the cause of the non-compliance. Australia has made a number of technical submissions to China seeking to address China's concerns about non-compliance. However, Australia has been disappointed with China's lack of timely responses to Australia's efforts to reinstate trade. To progress and resolve these issues there needs to be a willingness by both sides to engage in a timely and responsive manner. At the November CTG meeting, China said that it always honours its commitments and actively fulfils its obligations under the WTO and the China-Australia Free Trade Agreement. Australia once again asks China: (i) to respond to the submission of non-compliance investigation reports; (ii) to take action on requests for new and revised listings and reinstatement of establishments; and (iii) to implement changes to inspection and testing requirements in a timely, transparent, non-discriminatory, and predictable manner.

30.8. In addition to trying to address these issues bilaterally, Australia raised its concerns with China's undue delays in China's approval procedures, disproportionate actions taken by China in response to minor or technical breaches, and lack of transparency in its approval procedures, at the SPS Committee meeting on 25-26 March 2021. Australia was not the only Member to raise concerns

with China's approval procedures, highlighting that this is not just an issue for us to resolve bilaterally and not simply a reflection on Australia's regulatory systems as China has asserted.

30.9. In November 2020, Australia received credible reports, including from Chinese industry, that Chinese authorities had informally instructed importers not to purchase Australian barley, coal, copper ores and concentrates, lobster, logs, sugar, and wine. At the time, Australia welcomed China's denials that any such instructions were in place. However, Australia has in this Council outlined the formal actions that China has taken against Australian barley, lobster, logs, and wine, which have rendered trade in these items prohibitive. For the other items, Australia notes that Chinese trade data shows zero Chinese imports of Australian coal and copper ores and concentrates since December 2020. China continues to import these items from countries other than Australia. Australia therefore urges China to immediately cease any discriminatory measures being applied formally or informally to Australian products.

30.10. Australia understands that no Australian coal has cleared Chinese customs since early November 2020. Associated delays saw the number of vessels carrying coal from Australia waiting at Chinese ports to discharge cargo peak at 79 in December 2020. The delays have impacted the welfare of crew aboard these vessels and imposed significant costs on the commercial parties involved. When asked by a journalist at a State Council Information Office press conference on 24 February 2021 what needs to be done by Australia before China will stop banning the import of Australian coal, China's Vice-Minister of Commerce and Deputy China International Trade Representative Wang Shouwen, said: "we hope that Australia can do more things that are conducive to increasing trust and cooperation". Australia does not consider that such a sentiment reflects an understanding of China's obligations under the WTO Agreement. On cotton, there have been widespread and consistent reports, including a statement from the Australian cotton industry that, on 16 October 2020, the Chinese National Development and Reform Commission (NDRC) told Chinese millers to stop or limit purchases and imports of Australian cotton. It is claimed that Chinese businesses that do not stop purchases and imports from Australia risk losing access to imports of cotton under existing or future cotton TRQs. Australia understands from its cotton exporters that this situation remains the same. Australia continues to consider that such directives, if issued formally or informally, appear to be inconsistent with China's WTO obligations.

30.11. In conclusion, China has implemented a range of trade disruptive and restrictive measures against Australian goods that have been outlined. Australia has engaged on the technical merits of each measure, but its engagement has not been reciprocated on the Chinese side. The recent developments have created uncertainty and increased risk for all exporters and created a trade-chilling effect on imports from Australia, regardless of whether the measures are formal or informal. Moreover, the cumulative impact of these measures, their sudden increase in intensity over 2020, the disproportionate impact of these measures on Australia, and China's public statements linking trade with political issues in our relationship, takes China's actions beyond the realm of the technical. They give rise to concerns about China's adherence to the letter and spirit of its international trade obligations.

30.12. China has consistently stated it is committed to open trade and the Multilateral Trading System. Australia expects all WTO Members to conduct their trading relationship with Australia in a manner consistent with their WTO obligations, and the market-oriented policies that underpin WTO membership. Allowing enterprises to make their own purchasing decisions is an important policy that should be observed by all WTO Members. Accordingly, Australia again seeks assurances from China that Australian exports are not subject now, and will not be subject in the future, to instructions to stop or limit purchases and imports of Australian goods. Similarly, Australia would like China to provide reassurance that relevant import licences will be issued, including under existing and future TRQs, and consignments will be cleared by relevant Chinese customs officials in a timely, transparent, non-discriminatory, and predictable manner, consistent with China's WTO obligations. Australia has actively sought meetings to discuss these issues and remains open and willing to progress constructively with regard to any technical issues in its trade with China bilaterally, at all levels, in Geneva, in Beijing, and in Canberra, at the earliest opportunity.

30.13. The delegate of China indicated the following:

30.14. China has already made its statement on this issue in previous CTG meetings and has no intention of repeating its statement. However, China would like to reiterate that the measures taken by China to address the problems of Australian products in the process of inspection and quarantine

are to protect the health of its people. The trade remedy measures imposed on certain Australian products by China are to counter unfair trade practices and protect the legitimate interests of the relevant Chinese domestic industries. Regarding transparency, all the measures, already published on the relevant Chinese government websites, are consistent with China's laws, regulations, and international practices, as well as the provisions of the China-Australia Free Trade Agreement.

30.15. The Council took note of the statements made.

31 EUROPEAN UNION – REGULATION (EU) 2017/2321 AND REGULATION (EU) 2018/825 – REQUEST FROM CHINA AND THE RUSSIAN FEDERATION

31.1. The Chairperson recalled that this item had been included in the agenda at the request of China and the Russian Federation.

31.2. The delegate of the Russian Federation indicated the following:

31.3. The Russian Federation has raised at previous CTG meetings, and on numerous occasions, its concerns regarding the amendments to the EU basic regulation on protection against dumped imports introduced by Regulation (EU) 2017/2321 and Regulation (EU) 2018/825. Unfortunately, the reasons for the Russian Federation's concerns remain and appear to become more pronounced. At previous CTG meetings we have heard, *inter alia*, the following from EU delegates: (i) that the anti-dumping calculation rules foreseen under the 2017/2321 amendment are "country-neutral"; (ii) that China and Russia were selected for the first two country-reports in view of their "relative importance" in the EU's trade defence activity; and (iii) that the legislative changes introduced in 2017 and 2018 are distinct, which applies also to the definition of "significant distortions" under amendment 2017/2321, as opposed to "distortions on raw materials" under amendment 2018/825.

31.4. Today the Russian Federation would welcome further clarifications from the EU on the following. First, what further steps, if any, has the EU made or planned to ensure the alleged country-neutrality of the 2017/2321 amendment? It should be noted that, at the time of the previous CTG meeting, the EU had two reports on so-called "significant distortions" published – on the Russian Federation and on China. Four months have now passed since the preceding CTG meeting. Has the EU started, or at least planned, and is ready to announce, the preparation of a similar report on any other country? Second, how does the EU assess the so-called "relative importance" of Russia and China in its trade defence activity? The impression that the Russian Federation has so far is that the countries of such "relative importance" are those to which the EU investigators can afford applying WTO-inconsistent methodologies. The Russian Federation's views on WTO-incompliance of the methodologies are well known to Members, and the Russian Federation will not repeat them. However, should the Russian Federation's impression be wrong, and there is any other reason to label Russia and China as of "relative importance", the Russian Federation would welcome such clarification from the EU. Third, what exactly is the distinction the EU sees between the definition of "significant distortions" under amendment 2017/2321 and "distortions on raw materials" under amendment 2018/825? The only distinction that the Russian Federation can see now is the rationale for the punishment of exporters. It seems that the EU would call the same thing either a "significant distortion" or "distortion on raw materials" depending on its aim – either to calculate the normal value based on out-of-country data or to deny lesser duties to the exporters. Should the EU have any other explanation, the Russian Federation is most curious to hear it.

31.5. The Russian Federation would welcome clarifications from the EU. The Russian Federation also urges the EU to abstain from WTO-inconsistent methodologies and discriminative treatment of Russian exporters in its trade defence proceedings.

31.6. The delegate of China indicated the following:

31.7. China is of the view that the EU's anti-dumping regulation and relevant practice is inconsistent with WTO anti-dumping rules. First, the EU's anti-dumping regulation creates a so-called "significant market distortion" concept and sets up six standards to assess whether the market is seriously distorted. However, WTO anti-dumping rules neither have such a concept and standards, nor authorize Members to assess the market situation of exporting Members in an anti-dumping investigation. In addition, the EU currently only issues the documents on so-called significant distortions for a very small number of countries, which raises concerns over whether its approach is

consistent with the principle of MFN treatment. Second, China cannot go along with the EU's anti-dumping practice of using the so-called working document on significant distortions of China as important evidence to carry out its anti-dumping investigations. This is not in line with WTO rules, which require Members to carry out anti-dumping investigations based on the specific evidence and facts of an individual case. Third, in the EU's anti-dumping practice, if there is so-called significant market distortion, the EU will directly use the third-party data as the normal value, without carrying out a proper assessment of whether the third-party data is distorted. This is inconsistent with WTO anti-dumping rules.

31.8. The delegate of the European Union indicated the following:

31.9. The EU notes the points raised by both China and Russia. The EU's replies are on the record of both this Council and numerous meetings of the WTO Anti-Dumping Committee. In order not to repeat the EU's position on the points raised, the EU invites the Council to refer to the EU's previous statements.[21]

31.10. The Council took note of the statements made.

32 EUROPEAN UNION – REGULATION EC NO. 1272/2008 (CLP REGULATION) – REQUEST FROM THE RUSSIAN FEDERATION

32.1. The Chairperson recalled that this item had been included in the agenda at the request of the Russian Federation.

32.2. The delegate of the Russian Federation indicated the following:

32.3. The Russian Federation is still concerned about the cobalt classification as a carcinogen category 1(b) for all routes of exposure adopted under the 14th Adaptation to Technological and Scientific Progress to the CLP regulation. First, the Russian Federation considers this classification as unjustifiable because currently there are no scientific studies allowing the classification of cobalt as a carcinogen for any route of exposure other than inhalation. Second, the classification was adopted in accordance with a precautionary principle laid down in the CLP Regulation, as well as other regulations of the EU. The Russian Federation questions the consistency of this principle with Article 2.2 of the TBT Agreement, which requires scientific information when developing technical regulations. At the same time, the Russian Federation is also convinced that classification of chemicals under the CLP should be justified, if not by laboratory testing, then at least epidemiologically. However, in spite of the Russian Federation's requests, the EU has not yet provided any data. Third, the Global Cobalt Association (Cobalt Institute) initiated a scientific study on the carcinogenicity of cobalt for oral route of exposure, about which the Russian Federation several times informed the EU, both bilaterally and during the meetings of the working bodies of the WTO. In spite of this information, the Commission adopted the cobalt classification without any laboratory and epidemiological data that would confirm cobalt hazard for any route of exposure other than inhalation.

32.4. The Russian Federation welcomes the efforts of the EU to adopt the gastric bioelution protocol at the levels of the OECD and the EU. However, this classification enters into force in October 2021 and if the methodology of bioelution is not adopted, cobalt-containing products, including compounds and alloys, will be subjected to restrictions in a form of registration and authorization under the REACH regulation, as well as further restrictions of cobalt content in product-specific and sectoral legislation of the EU. As a final note, the EU proposed the new chemical strategy in the framework of implementation of the EU Green Deal, which implies amendments to the REACH/CLP legislation and further restrictions in respect of chemicals strictly classified, such as cobalt. Thus, the Commission is considering further restrictions and the classification decisions are not limited to labelling and packaging requirements.

32.5. The delegate of the European Union indicated the following:

32.6. The clarifications provided in previous meetings are still relevant. Titanium dioxide and cobalt were included in the 14th Adaptation to Technical and Scientific Progress (ATP) amending the

[21] See, for example, document G/C/M/138, paragraphs 17.8-17.10.

CLP Regulation. Several discussions on the classification of cobalt and TiO2 and the classification of mixtures containing TiO2 took place in the expert group for REACH and CLP (CARACAL) and in the regulatory committee (the REACH Committee). After its adoption by the Commission, on 4 October 2019, the Commission Delegated Regulation was sent to the Council and the European Parliament for the two-month objection period. As no objection was raised, the Commission Delegated Regulation (EU) 2020/217 was published in the Official Journal of the EU on 18 February 2020, and the classification of cobalt as a carcinogen will become applicable as of 1 October 2021. The classification of cobalt as a carcinogen for all routes of exposure is based on the scientific opinion of the Risk Assessment Committee (RAC) of the European Chemicals Agency (ECHA), as well as on the comments received and concerns expressed by the member States and stakeholders. This opinion is in line with the CLP Regulation as well as the UN Globally Harmonized System of Classification and Labelling of Chemicals (UN-GHS). The opinion and the background document containing all the relevant scientific information on which the opinion is based are available to all WTO Members and stakeholders at the ECHA website. In its scientific assessment, the ECHA's RAC took all available data into account, including the information submitted during the public consultation period. Review of an RAC opinion is only possible if new and relevant scientific information becomes available. The EU would like to reassure WTO Members in the CTG that all comments that WTO Members submitted in the context of the EU notification, in accordance with the TBT Agreement, were shared with EU member States and duly taken into account by the Commission and member States in the decision-making process. The Commission has also sent written replies to the comments from WTO Members on the TBT notification of the measure.

32.7. The EU also proposed to harmonize at OECD level the method on bioelution. This method could be useful to ensure that, if a metal contained in an alloy is not bioavailable (that is, it remains in the matrix), then the alloys (for example, stainless steel) do not need to be classified. An agreement at the OECD has been reached in May 2020 to develop and validate this method. The EU would welcome any support from third countries to actively participate in the development of the OECD test method on bioelution. A special expert sub-group has also been recently established by the Commission in order to provide advice and exchange views on technical, legal, and policy issues relating to the use of the relative *in vitro* bioaccessibility of a hazardous metal in metal compounds or alloys, for the refinement of their classification under CLP. The discussions are expected to focus on the applicability of the data generated with a validated test method. The European Union also referred to its statement delivered under this agenda item at the Council's previous meeting.[22]

32.8. The Council took note of the statements made.

33 ANGOLA – IMPORT RESTRICTING PRACTICES – REQUEST FROM THE RUSSIAN FEDERATION

33.1. The Chairperson recalled that this item had been included in the agenda at the request of the Russian Federation.

33.2. The delegate of the Russian Federation indicated the following:

33.3. The Russian Federation remains concerned about Angola's import restrictions on certain agricultural and industrial products under the Presidential Decree No. 23/19, and reiterates its statements made during the previous meetings of the CMA and the CTG.[23] The Russian Federation would like to thank Angola for the fruitful consultations that took place last year. Nevertheless, since then, the Russian Federation does not see any positive developments in respect of an elimination of Angola's QRs. The Russian Federation urges Angola to bring its measures into conformity with the WTO Agreement and to lift its import bans on agricultural products.

33.4. The delegate of the United States indicated the following:

33.5. As the United States has expressed in this Council and in the CMA, the United States remains concerned that this decree appears aimed at restricting Angola's imports. The United States appreciates Angola's engagement on this issue with the US Embassy in Luanda. However, as the US seeks to resolve its concerns, that engagement is not a substitute for addressing the issue in this Council or its subsidiary bodies. The United States continues to hear reports of confusion over how

[22] Document G/C/M/138, paragraphs 19.5-19.7.
[23] Document G/C/M/138, paragraphs 8.2-8.3, and document G/MA/M/73, paragraph 10.2.

the decree is being enforced, and of delays facing goods at the border. US agricultural exporters remain concerned over delays that perishable goods face amidst all this uncertainty. The United States urges Angola to revise this decree to address the US concerns and to ensure that its measures in respect of imports are in compliance with WTO rules.

33.6. The delegate of the European Union indicated the following:

33.7. The EU maintains its concerns over Decree No. 23/19, which seems to protect domestic industries in a manner that is not compatible with WTO rules and that could be detrimental to foreign investments in Angola. The EU's concerns have already been raised in previous WTO meetings, notably the Council on Trade in Goods, since 2019. To date, the EU has still not received substantive explanations from Angola on how it intends to bring this Decree into compliance with WTO rules. Irrespective of the issue of the Decree's compatibility with WTO rules, the EU would welcome more clarity as to the process considered by Angola regarding this decree; might Angola be considering introducing any changes, for example, and if so, in which areas. The EU remains supportive of Angola's intention to diversify its economy and to develop its domestic industry. Nonetheless, the EU urges Angola to review the relevant measures in order to ensure their compliance with WTO rules.

33.8. The delegate of Angola indicated the following:

33.9. Angola thanks the Russian Federation for raising the question. Angola would like to inform Members that, at Capital-level, Angola continues its work with the relevant authorities in order to finalize this question. In addition, as reported previously, bilateral consultations with the Russian Embassy in Luanda began last year with a meeting between our Deputy Minister for Trade and the Ambassador of the Russian Federation accredited in Angola. The discussion focused on mutual concerns and other relevant issues. Both parties agreed to seek positive solutions. The government is making every effort to reduce the time and costs for importers and exporters to make it easier for the relevant economic operators to do business in Angola. Angola reaffirms its commitment to the Multilateral Trading System and will provide its answers in due course. Angola believes that bilateral dialogue is a good solution to resolve differences. Angola also understands that these concerns are linked to Decree No. 23/19 and its efforts to diversify its economy, which will be taken into account in its answers that will be presented in due course.

33.10. The Council took note of the statements made.

34 MONGOLIA – MEASURES APPLIED WITH RESPECT TO CERTAIN AGRICULTURAL PRODUCTS – REQUEST FROM THE RUSSIAN FEDERATION

34.1. The Chairperson recalled that this item had been included in the agenda at the request of the Russian Federation.

34.2. The delegate of the Russian Federation indicated the following:

34.3. The Russian Federation reiterates its previous statements on Mongolia's measures applied with respect to the importation of certain agricultural products.[24] In March 2021, Mongolia stated that it did not open quotas for the importation of liquid milk and wheat flour for 2021, but it did not provide the respective legal acts confirming the absence of quotas. Flour and milk are still not excluded from the list of agricultural products subject to annual QRs, which means that quotas may be imposed in the future. In practice, each year the time-frames between the Decision of the Food Security Council on the establishment of quotas, and the official publication of the document, differ deeply, creating great uncertainty with regard to import conditions. In light of this, the Russian Federation urges Mongolia to clarify when it is going to provide written and official information about the absence of the quota regime for 2021 and the decision on its further cancelling, as the quota regime continues to be inconsistent with WTO rules.

34.4. The Russian Federation would also like to reiterate its concern regarding the Enrichment Law, which sets out the mandatory requirements for wheat flour to be fortified with vitamins and mineral compounds in order to be marketed. According to Russia's information, the methodology for the determination of vitamins in fortified wheat flour is still being worked out, and that the standard will

[24] Document G/C/M/138, paragraphs 28.2-28.6.

be approved by 2021. The Russian Federation expects Mongolia to explain why the fortification of the wheat flour is already mandatory, while according to Russia's information the methodology of vitamins identification has not yet been adopted. Bearing in mind that imported products are subjected to the fortification, while national flour is supplied unfortified, the measure seems to be inconsistent with Article 2.1 of the TBT Agreement. The Russian Federation expects Mongolia to provide its feedback on the concerns raised and to bring its legislation into compliance with the relevant WTO provisions. The Russian Federation also urges Mongolia to cease implementing its Law on Fortified Food Products. The Russian Federation will continue monitoring Mongolia's quota policy and food nutrition measures carefully.

34.5. The delegate of Mongolia indicated the following:

34.6. Mongolia thanks the Russian Federation for its statement and the questions raised. Mongolia would like to reiterate its statement made at the last meeting of the Committee on Agriculture, as well as the recent TBT Committee meeting in February. Mongolia continues to work on this matter internally, and measures are being taken step by step. In this regard, Mongolia would like to thank the Russian Federation for the bilateral meeting that was held in February in Moscow on this particular issue. Mongolia would like to inform Members that, following the recommendation made by the National Food Security Council at its meeting of 4 March, the import quotas are not to be imposed on wheat flour and liquid milk. Mongolia communicated the situation to its Russian colleagues accordingly and will keep them informed of any further developments.

34.7. The Council took note of the statements made.

35 KINGDOM OF SAUDI ARABIA – TRADE RESTRICTIVE POLICIES AND PRACTICES CONCERNING TURKEY - REQUEST FROM TURKEY

35.1. The Chairperson recalled that this item had been included in the agenda at the request of Turkey.

35.2. The delegate of Turkey indicated the following:

35.3. Turkey regrets to reiterate that the ongoing systematic import restrictive practices of Saudi Arabia, which became a part of its trade policies, continue in an increasing manner. As Members may recall, Turkey brought this issue to the Council's attention at its meeting last November. Trade volumes between Turkey and Saudi Arabia were exceeding USD 6 billion in 2019. However, Turkey's exports to Saudi Arabia decreased by almost 24% from 2019 to 2020, and by a disappointing 92% in the first two months of 2021 compared to the same period of the previous year. The official figures of Saudi Arabia also point to a drop of 97.7% in January 2021, which clearly reveals the recent erosion of market opportunities for Turkish products in the Saudi market. These decreases are directly linked to the mandatory commitments having to be signed by Saudi companies not to import from Turkey, as well as the ongoing boycott calls against Turkish products by the Saudi press and Chambers, which are also guided by the same systemic policies. The practices against Turkish export products at the Saudi customs provide the other reason for the decrease in exports. Consequently, Turkish companies do not have any opportunity to access the Saudi Arabian market due to Saudi Arabia's systemic and dissuasive practices, as the export statistics vividly demonstrate.

35.4. Imports from Turkey have been subject to discriminatory and arbitrary practices with unreasonably long delays at Saudi customs and unnecessarily burdensome product safety inspections. To be specific, it is stated in the *2020 Doing Business Report* that "time to import: border compliance" in Saudi Arabia takes 72 hours, which is equal to three days. However, border compliance for Turkish-origin goods at Saudi customs is completed in 100 days on average. There are even some cases when this period takes as long as 204 days. Turkey has already shared information and data with Saudi Arabia to document this frustrating situation. Turkey would like to emphasize that the import prohibitive policies of Saudi Arabia are not only harmful to bilateral trade, but also disruptive to global value chains and hence to global trade overall. In addition, these policies of Saudi Arabia would also undermine the confidence and trust of international businesspeople in the Saudi Arabian trading system since there is no longer any security and predictability in the system for traders.

35.5. In response to Turkey's complaints, Saudi Arabian representatives have expressed on many occasions that Saudi Arabia agrees with Turkey on the importance of the removal of barriers to free trade within the framework of the rights and obligations arising from being a Member of the WTO. Unfortunately, these commitments have not yet been fulfilled. As the numbers clearly show, there is, in fact, a *de facto* import ban against Turkey. Turkey is seriously concerned about these import prohibitive policies and practices of Saudi Arabia against Turkish goods, which are in clear violation, *inter alia*, of Article I of the GATT on MFN treatment, and of Article XI of the GATT on QRs. Moreover, Turkey also believes that the discrimination, orchestrated by the government against Turkish products in the Saudi Arabian market, is also in breach of Article III:4 of the GATT on the principle of National Treatment. Turkey would like to underline that it remains committed to defending its rights stemming from the WTO Agreements in all necessary platforms. In this vein, Turkey urges Saudi Arabia to abide by its WTO commitments and to bring its policies and practices concerning Turkey in line with its WTO obligations to ensure the smooth flow of bilateral trade. Turkey would like to hear an official announcement from Saudi Arabia about this topic while at the same time it stands ready to engage bilaterally with Saudi Arabia with a view to addressing all trade-related matters, and to promoting fair and balanced bilateral trade relations.

35.6. The delegate of the Kingdom of Saudi Arabia indicated the following:

35.7. The Kingdom of Saudi Arabia would like to stress that it always affirms its commitments to all trade rules stipulated in the WTO Agreements. The Kingdom of Saudi Arabia is a keen supporter of the Multilateral Trading System to achieve its objectives aiming to liberalize international trade among Members. Saudi Arabia has responded on several occasions, bilaterally and here in the WTO, to Turkey's questions and comments. Through these responses, Saudi Arabia has confirmed that there is no restriction or discrimination imposed on Turkish imports to Saudi Arabia. Saudi Arabia would like to emphasize once again that its borders and markets are open to all goods and products, including those coming from Turkey. In addition, Saudi Arabia would like to reiterate that Saudi authorities do not interfere in consumer preferences, nor encourage buyers to trade with products based on their country of origin.

35.8. The Council took note of the statements made.

36 EUROPEAN UNION – DRAFT IMPLEMENTING REGULATIONS REGARDING PROTECTED DESIGNATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS, TRADITIONAL TERMS, LABELLING AND PRESENTATION OF CERTAIN WINE SECTOR PRODUCTS – REQUEST FROM THE UNITED STATES

36.1. The Chairperson recalled that this item had been included in the agenda at the request of the United States.

36.2. The delegate of the United States indicated the following:

36.3. It is very disappointing that the United States must again raise its concerns with the EU's revisions to its draft regulation on geographical indications and traditional terms for wine; and specifically, US industry's pending applications for traditional terms. The EU's persistent failure to provide any information leaves the United States with no choice but to keep this item on the WTO TBT Committee's agenda, as well as on the agenda of the CTG. After nearly three years, the EU is still unable to provide any estimate or to tell the US about the status of these pending applications. In the interests of time, the United States requests that the minutes for this meeting reflect its intervention from the November 2019 CTG meeting.[25] This statement reads as follows:

36.4. The delegate of the United States regretted that her delegation had again to raise this issue in this Council. The United States and other WTO Members had voiced their objections to the EU's proposed protection of the term Havarti as a geographical indication (GI) during the 2014 opposition period, in this Council and in other WTO Committees; insofar as Havarti had been established as an international standard under the Codex Alimentarius, the EU had nevertheless moved forward with the process. Havarti had undergone a rigorous review to prove its use in the public domain and in international trade, which had been reconfirmed by Codex members, including the EU, in 2007, 2008, and 2010. The EU's decision to move forward raised serious questions about the views of

[25] Document G/C/M/138, paragraphs 23.6-23.8.

Denmark and the EU Commission regarding the legal relevance of Codex and the integrity of the international standards system, as well as the international trading system. The US reminded the EU that no WTO Agreement was superior to another. Therefore, the fact that the EU asserted that it was following procedures under the Trade-Related Aspects of Intellectual Property (TRIPS) Agreement did not mean it could disregard TBT commitments to uphold international standards. The EU had to comply with both WTO Agreements. The US strongly encouraged the EU to uphold its WTO TBT obligations to follow international standards and to consider a less trade restrictive approach to protecting Danish cheese producers by linking Havarti with the place of origin and protecting only the entire compound term.

36.5. The delegate of Argentina indicated the following:

36.6. Argentina has repeatedly presented as a specific trade concern, within the scope of the TBT Committee, the EU regulations on this matter, considering that their application has been discriminatory for third countries. Argentina therefore wishes to support the presentation made by the US and to express its gratitude for having kept this item on the Council's agenda. Argentina has suffered the same discriminatory treatment as the United States due to the impossibility of using the terms *Reserva* and *Gran Reserva* on wine labels, despite having met all the EU requirements 10 years ago. Argentina is therefore compelled to draw attention to this issue once again.

36.7. The delegate of New Zealand indicated the following:

36.8. New Zealand refers the European Union to its statement on this trade concern made at preceding TBT Committees, most recently in October 2020.[26] New Zealand recognizes that Members have the right to protect their consumers from deceptive practices in line with their WTO obligations. New Zealand asks that the European Union take into consideration the concerns raised by Members relating to the scope and application of the system of traditional terms, as well as transparency, process, and timelines relating to applications by third countries that wish to use traditional terms in the European Union.

36.9. The delegate of the European Union indicated the following:

36.10. The EU notes the continued interest of the United States, Argentina, and New Zealand in this issue. The EU has completed the revision of its internal legislation on traditional terms, which was discussed in previous TBT Committees (Commission Delegated Regulation (EU) 2019/33 and Commission Implementing Regulation (EU) 2019/34). The EU believes that its internal legislation offers a meaningful and transparent system of protection to traditional terms used on wine products from the EU, as well as on products from third countries. In the past, the EU has demonstrated its ability to address specific Members' concerns in this area either via its internal legislation or via bilateral agreements.

36.11. The Council took note of the statements made.

37 UNITED STATES – MEASURES REGARDING MARKET ACCESS PROHIBITION FOR ICT PRODUCTS – REQUEST FROM CHINA

37.1. The Chairperson recalled that this item had been included in the agenda at the request of China.

37.2. The delegate of China indicated the following:

37.3. China regrets to raise this issue again, as the US recently initiated investigations on certain Chinese enterprises providing information and communications technology and services (ICTS) in the US with the aim of identifying whether related transactions fall under the scope of the executive order, namely Securing the Information and Communications Technology and Services Supply Chain. China is seriously concerned over this issue and believes that the continued restrictions and interference in the ICT industry by the US will further undermine the stability of the global supply chain and cause huge losses to the related ICT companies of many Members. National Security

[26] Document G/TBT/M/82, paragraph 2.327.

should no longer serve as a defence for disguised trade protectionism. China urges the US to abide by the WTO rules and to refrain from its unilateral practice to abuse the national security exception.

37.4. The delegate of the United States indicated the following:

37.5. As the United States has stated previously, it does not believe that the WTO Council for Trade in Goods is the appropriate forum to discuss issues related to national security.

37.6. The Council took note of the statements made.

38 UNITED STATES – EXPORT CONTROL MEASURES FOR ICT PRODUCTS – REQUEST FROM CHINA

38.1. The Chairperson recalled that this item had been included in the agenda at the request of China.

38.2. The delegate of China indicated the following:

38.3. China regrets to raise this issue again, as the US has recently imposed stronger export control measures against China and labelled some of China's high-tech companies as companies that pose a threat to US national security. Taking Huawei as an example, without showing any evidence, the US has made export control rules tailored to Huawei twice and has also tried to restrict related companies from other Members from supplying goods to Huawei. China firmly opposes this practice, which disregards basic WTO rules, undermines the market principle and the principle of fair competition, and endangers the security of global supply chains. China takes note that the US has been carrying out relevant assessments of the measures and would like to urge the US to take concrete steps to stop its unjust and unfair practice and to relax its export control measures against China's companies; in this way, the US would create favourable conditions for bilateral normal trade and investment cooperation and avoid any negative effect on the global supply chain.

38.4. The delegate of the United States indicated the following:

38.5. As the United States has stated previously, it does not believe that the WTO Council for Trade in Goods is the appropriate forum to discuss issues related to national security.

38.6. The Council took note of the statements made.

39 UNITED STATES – EXECUTIVE ORDER ON SECURING THE BULK-POWER SYSTEM - REQUEST FROM CHINA

39.1. The Chairperson recalled that this item had been included in the agenda at the request of China.

39.2. The delegate of China indicated the following:

39.3. China regrets to raise this issue again, as China believes that the Executive Order issued by the US, namely Securing the United States Bulk-Power System, violates basic WTO rules by imposing market access barriers on China's equipment. China takes note that the US has temporarily suspended the order and is making an assessment of it. China sincerely hopes that the US could make an objective assessment, avoid any abuse of "national security", and abide by the WTO rules.

39.4. The delegate of the United States indicated the following:

39.5. As the United States has stated previously, the referenced Executive Order, issued on 1 May 2020, is a matter of US national security. The United States does not believe that the WTO Council for Trade in Goods is the appropriate forum to discuss issues related to national security.

39.6. The Council took note of the statements made.

40 AUSTRALIA – DISCRIMINATORY MARKET ACCESS PROHIBITION ON 5G EQUIPMENT – REQUEST FROM CHINA

40.1. The Chairperson recalled that this item had been included in the agenda at the request of China.

40.2. The delegate of China indicated the following:

40.3. This item has been on the Council's agenda since 2018. China has sent Australia written questions twice and would like to thank Australia for providing answers. However, China regrets to see that many key questions are still not yet directly answered. China thinks that this response is inconsistent with the transparency obligation in the WTO rules. More than two years have passed, and Chinese companies still cannot participate in Australia's 5G network construction. What worries China more is that Chinese companies' equipment in the existing 4G network has also been removed. These measures have had a devastating impact on those Chinese companies operating in Australia. China is of the view that the issue of telecommunication network security should be addressed based on scientific verifiable facts and data, rather than the origin of suppliers. China urges Australia to review its regulatory policies in the telecommunications sector, to provide fair market access to Chinese companies to participate in its 5G network construction, and to bring its measures in line with the WTO rules.

40.4. The delegate of Australia indicated the following:

40.5. Australia notes China's statement. Since China first raised this issue elsewhere in the WTO, in late 2018, Australia has engaged constructively and in good faith with China to explain in detail the rationale for its position, including by providing written responses to China's written questions. For the purposes of this meeting, Australia reiterates that its position on 5G networks is country-agnostic, transparent, risk-based, non-discriminatory, and fully WTO-consistent.

40.6. The Council took note of the statements made.

41 FUNCTIONING OF THE COUNCIL FOR TRADE IN GOODS AND SUBSIDIARY COMMITTEES: INFORMATION FROM THE CHAIR

41.1. The Chairperson recalled that he had convened an informal meeting on 11 February 2021 with the objective of continuing to exchange views and ideas about the "Functioning of the Council for Trade in Goods and its subsidiary bodies". He had invited delegations to provide their comments and views, *inter alia*, on the following issues: (i) a year plan/calendar of meetings of the CTG and its subsidiary bodies; (ii) the possible introduction of an eAgenda for CTG meetings; and (iii) the conduct of meetings, including advance statements for interpreters, presentation of the agenda, delivery of statements, and an introductory briefing session addressed to new delegates.

41.2. On the first topic, delegations had appreciated the year plan of meetings circulated by the CTG Secretariat, finding it helpful to better organize their annual activities and to be aware of the closing dates of agendas. They had also considered that a year plan should be structured so as to avoid overlaps of meetings in the goods area by also allowing the subsidiary bodies to meet sufficiently in advance of the Council. In light of these comments, the Chairperson confirmed that he would suggest to his successor to conduct a coordination meeting with Chairs and Secretaries of CTG subsidiary bodies. Furthermore, the year plan would be updated and circulated to all delegations at least twice a year: at the beginning of each calendar year and before the summer break. The Chairperson had also encouraged the Secretariat to continue assessing the possibility of an automated year plan of meetings.

41.3. The Chairperson considered that the eAgenda was an important IT tool which provided delegations with a mechanism for advising the rest of the Membership of issues that they wished to raise at the following CTG meeting sufficiently in advance and before the agenda closed. Such mechanism would enhance the coordination between delegations and their Capitals, and among delegations themselves, thus allowing them to better prepare their interventions and improve the quality of the debates at CTG meetings. At the same time, the Chairperson understood the Members' concerns expressed at the informal meeting that such a tool must be tailored to the particularities of each body, and their position that the eAgenda should be implemented in the subsidiary bodies

first before being considered at CTG level. However, he invited delegations to further reflect on the advantages of exploring a pilot project given the increasing number of agenda items and the fact that Director-General Ngozi Okonjo-Iweala herself had referred to the importance of eAgendas in her inaugural statement.

41.4. Turning to the conduct of meetings, delegations had considered that the provision of advance statements for interpreters was a good practice, and a practice to be encouraged, as it facilitated the interpretation and understanding of the issues being discussed. However, some Members had indicated that the advance distribution of statements to other Members should remain at the discretion of delegations. Regarding the organization and presentation of the CTG agenda, some Members had not supported the organization of trade concerns in alphabetical and chronological order. As to the interventions at CTG meetings, various delegations had reiterated their positions from the previous CTG meeting, regarding (i) on time-limits when delivering statements; and (ii) on making reference to previous statements in the absence of new developments in older trade concerns. Finally, one delegation had objected to the scheduling of a briefing introductory session addressed to new delegates on how the CTG meetings function, when the issues regarding the functioning of the CTG itself had not yet been resolved.

41.5. On the organization of a briefing session for new delegates, the Chairperson clarified that such sessions would be of a purely technical nature and aimed at providing an overview of the Council's activities and the particularities of its three annual meetings. Therefore, the session would familiarize new delegates with routine and practical issues related to the functioning of the CTG, such as the mandate of the CTG and its place within the WTO structure, the main issues considered at CTG level, the organization of CTG meetings and the structure of the agenda, key documents relating to the CTG, and the election of officers to its subsidiary bodies. Since there were a number of new delegates responsible for CTG matters, and given that at the informal meeting in 2020 there had been no opposition to organizing such an introductory session, the Chairperson invited delegations to consider this possibility in the coming months. Finally, the Chairperson encouraged delegations to keep reflecting on these issues and to continue having these discussions with his successor.

41.6. The delegate of the United States indicated the following:

41.7. Regarding the yearly plan of meetings, the United States would like to reiterate its proposal, made at the informal meeting in February 2020, in line with the Chair's suggestion, that the Council Chair meet both with the Secretariat and with the chairs of the subsidiary bodies, and that he also consult with Members when planning for the appropriate sequencing of meetings for the following year. Regarding the eAgenda, the US recognizes its utility in several WTO committees currently, but its position remains the same in terms of the implementation of the eAgenda at the CTG in the short term. The US continues to prefer that the eAgenda be taken up by individual subsidiary bodies before Members turn to considering its use at the CTG. The United States also continues to express reservations with regard to scheduling a briefing session for new delegates. The US does not wish to prevent incoming delegates' access to information which is still readily available by conversing with the Secretariat. The US simply feels that it is important to reach a conclusion on the discussion on the functioning of the Council before proceeding to brief new delegates on its functioning.

41.8. The delegate of Switzerland indicated the following:

41.9. Switzerland firmly believes that improving the work of WTO regular bodies and committees is in the interests of all Members. Members should notably take advantage of new technologies and instruments, for instance the eAgenda. Recently the CMA has started to use this instrument and there is progress there in terms of managing the meetings and allowing Members to see the issues and prepare for the meetings. Switzerland also supports the idea of a briefing session for new delegates, especially now that Members are working virtually. Switzerland thanks the Chair of the CTG for his efforts in this regard and notes that he can count on Switzerland's support.

41.10. The delegate of Canada indicated the following:

41.11. On the yearly plan of meetings, Canada strongly encourages the incoming CTG Chair to continue planning and interacting with the Chairpersons of the subsidiary bodies. There is value in gathering the Secretaries and the Chairpersons of subsidiary bodies, in order to talk about the plan

for the coming year and the planning of meetings, to take stock of the constraints when holding specific meetings, and to recognize that most of the subsidiary bodies' meetings must be held before certain times of the year so that they can feed into the Council's discussion. It is well worth working together as a group in the CTG family and to plan out meetings together, so that we can organize work and ensure that there are no overlaps as those that have occurred in previous years.

41.12. In terms of the eAgenda, Canada agrees not to implement it yet at the CTG, although there is always a rush before the closing date of the agenda to submit agenda items to the Secretariat and to confirm co-sponsorship. The pilot project is an interesting idea and can be discussed in the future, but we should be working to perfect the functioning of the eAgenda in some of the subsidiary bodies that are experimenting with it and learn lessons that can be applied to the CTG context.

41.13. Finally, in terms of the scheduling of a briefing session for new delegates, Canada does not understand why it cannot be offered to Members. It was tested one year ago in the CMA and, using that presentation as a model, this would be a reasonable and factual way to set out the purpose and role of the Council itself. Canada recognizes the ongoing discussion around the functioning of the Committees and would not want to prejudge it. However, there are some relatively standard and consistent practices at the CTG, such as why it exists, how often it meets, and standard agenda items such as, for example, the annual status of notifications or notification of Free Trade Agreements (FTAs). It would be useful for new delegates to understand these general long-standing practices at the CTG. It is also helpful to put a name to a face and identify contacts at the Secretariat. Furthermore, it is important to ensure that new delegates are registered in the e-registration system and that they tick off the committees for which they are responsible because this also allows Members to get to know the new colleagues and establish contacts for future discussions. Canada would encourage continuing the discussions on the briefing session for new delegates, keeping the briefing session factual, specific to the long-standing role of the Council, and without delving into issues related to the functioning of the Council currently under discussion.

41.14. The Chairperson recalled that he had not been able to organize additional consultations on these issues because he had been fully occupied with the consultations concerning the election of Chairpersons of the subsidiary bodies. He noted that the new Chairperson was in attendance and had heard all the comments, and he would no doubt be reaching out to Members to continue these consultations. On the information to newly arrived delegates, he believed that there would be a benefit in explaining to new delegates what was happening in the Council, and he expressed surprise that the Council could not agree on this point. Although individual delegations could always meet the Secretariat to request an explanation of an issue, he also saw benefit in sharing some of these explanations collectively.

41.15. The Council took note of the statements made.

42 WORK PROGRAMME ON ELECTRONIC COMMERCE

42.1. The Chairperson recalled that the Ministerial Decision adopted at MC11 in Buenos Aires had decided to reinvigorate the Work Programme on E-Commerce. It had also instructed the General Council to hold periodic reviews, based on the reports submitted by the relevant bodies, among them the Goods Council, in preparation for MC12, and to maintain the current practice of not imposing customs duties on electronic transmissions. MC12 had been postponed on two occasions. At its meeting in March 2021, the Chairperson of the General Council had indicated that the General Council would continue holding periodic reviews of the Work Programme in its future sessions, based on the reports submitted by the WTO bodies entrusted with the implementation of the Work Programme in preparation for MC12. Accordingly, the E-Commerce issue was again an agenda item at the Goods Council's meeting. The Chairperson invited delegations to continue to express their opinions and to make suggestions for the preparation of the periodic review to be held in the General Council in anticipation of MC12. He also informed delegations that, in order to fulfil this mandate, the Goods Council would again submit, at the General Council's meeting in July, a factual report under his own responsibility.

42.2. The delegate of Chad indicated the following:

42.3. With the appearance of the current crisis, which has led to restrictions on the movement of people and which has seen a slowdown in global activity and global demand, those countries that

have the technology are those best prepared to confront such a situation. The COVID-19 pandemic has had a significant impact on trade and exports. LDCs have been particularly affected by the pandemic, not only in terms of health but, significantly, in economic and social terms as well. For them, technology transfer and the use of technology is very important for enabling them to catch up economically. That is why the LDC Group is looking for an effective update to Article 66.2 of the TRIPS Agreement on Transfer of Technology Promotion. Developed countries are not yet providing these encouragements, so we need to look at encouraging that transfer towards LDCs to allow them to have an appropriate technological basis, which is solid and viable. In the current context, Members have seen to what extent a technology can be useful in terms of maintaining links between individuals, but also for promoting continuing activity. E-Commerce can help Members work towards the goal of coming out of the crisis and strengthening Members' economies. Therefore, Chad has a deep interest in the benefits which come along with E-Commerce for companies, for consumers, but also for the economy more generally.

42.4. The LDC Group has nevertheless identified some difficulties which appear in terms of the use of E-Commerce that need to be taken into account in the WTO's Work Programme on E-Commerce. The question that arises is how E-Commerce can help SMEs in countries that are fragile, such as the LDCs. How can it help them to increase their activity and stimulate their development and create jobs? That is the spirit in which the LDC Group is going to move forward and hopes that Members will lend an attentive ear to this topic and seek to understand the difficulties that LDCs are currently facing in terms of addressing E-Commerce. The LDC Group is ready to continue discussions with Members on this topic.

42.5. The delegate of India indicated the following:

42.6. As the digital revolution is still unfolding, India has stated on a number of occasions that it is important to first understand the complex and multi-faceted dimensions of issues related to E-Commerce. India still does not comprehend the full implications of E-Commerce on competition and market structures, issues related to transfer of technology, data storage and automation, as well as its impact on traditional jobs and gaps in policy and regulating frameworks in developing countries. Therefore, India has been a proponent of strengthening the multilateral work under the non-negotiating and exploratory 1998 Work Programme on E-Commerce.

42.7. Under this multilateral Work Programme, with the intention of understanding the implications of the Moratorium on customs duties on electronic transmissions, India, along with South Africa, has introduced three submissions, which explain their understanding of the scope and impact of the Moratorium. In December 2019, India joined the consensus for a six-month extension of the Moratorium, with an understanding that the Work Programme on Electronic Commerce will be reinvigorated with the specific objective of achieving clarity on issues related to the scope of the Moratorium, the definition of electronic transmissions, identification of products which are covered under the Moratorium, as well as its impact. In this context, India would again draw the attention of the Membership to paragraph 3.1 of the Work Programme, which requires this Council to examine and report on aspects of electronic commerce relevant to the provisions of GATT 1994, the trade agreements covered under Annex 1A of the WTO Agreement, and the approved Work Programme. The said paragraph also provides an inclusive list of issues to be deliberated upon here in this Council. In this regard, India is working on a submission with like-minded Members and would urge the Membership to sincerely deliberate and report on these mandated issues, instead of prematurely jumping to rule-making on such issues.

42.8. The delegate of Pakistan indicated the following:

42.9. The importance of this agenda item in the work of the Council cannot be overemphasized. Pakistan considers that this is the most appropriate forum to discuss the various development aspects and implications of E-Commerce. It can help developing countries to better understand and explore avenues for economic growth through digital capabilities, in their peculiar socio-economic context. The prevalent digital divide, which goes beyond the issues of infrastructure and connectivity, has been further exacerbated by the incidence of the COVID-19 pandemic. But the pandemic has also highlighted the growing need for E-Commerce and the increasing dependence on digitalization. However, there is a need to enhance capacity in developing countries in order to benefit from the opportunities provided by E-Commerce and to bridge the digital divide. Furthermore, as trade through E-Commerce continues to increase, it is also necessary to analyse the financial and policy implications of the Moratorium for developing countries.

42.10. It is important to understand and address these issues and any attempt at rule-making, without first addressing them, particularly in a non-consensual environment, might widen the existing digital divide and create further imbalances. This could have detrimental effects on the prospects of developing countries addressing existing and new challenges. Therefore, Pakistan encourages Members to engage on these issues in the correct, mandated forum of the Work Programme, which was reinvigorated again through consensus when extending the Moratorium temporarily. Pakistan looks forward to collective and constructive engagement on issues clearly outlined for this Council under the Work Programme on E-Commerce.

42.11. The delegate of Ukraine indicated the following:

42.12. Ukraine reiterates its position on the issue of the Moratorium already voiced at the meeting of the General Council in March 2021. Ukraine remains a strong supporter of the Moratorium on customs duties on electronic transmissions, since it encourages the engagement of business, especially MSMEs, in cross-border E-Commerce, and has already contributed significantly to its global growth. Ukraine has already committed not to impose customs duties on electronic transmissions under a number of active Free Trade Agreements. For this reason, Ukraine supported the extension of the Moratorium until MC12 and reiterates its readiness to continue the work on this issue with interested Members under the Work Programme on Electronic Commerce. However, taking into account the general nature of electronic transmissions and the fact that all WTO Members have already applied the practice of not imposing customs duties on electronic transmissions over two decades, Ukraine hopes that at MC12 Members will decide to make the Moratorium permanent.

42.13. The Chairperson recalled the Buenos Aires mandate and proposed that the incoming Chairperson submit, under his own responsibility, a purely factual report to be considered at the July meeting of the General Council, which would be based on the discussions held in the CTG in 2021.

42.14. The Council took note of the statements made and agreed to the Chairperson's proposal.

43 OTHER BUSINESS

43.1 Date of Next Meeting

43.1. The Chairperson noted that the next meeting of the Council was scheduled to take place on 8 and 9 July 2021. These dates would be confirmed in due course.

43.2 Secretariat Staff Changes in Connection with the Council for Trade in Goods

43.2. The Chairperson informed Members that Mr Alejandro Gamboa-Alder would shortly retire from the WTO Secretariat, and that Mr Roy Santana would replace him as Secretary to the Council. The delegations of Colombia, Panama, Paraguay, Ecuador, Mexico, Chad (on behalf of the LDC Group), Uruguay, Canada, the European Union, the Russian Federation, and the United States intervened to congratulate Mr Gamboa-Alder and to thank him for his service to the CTG.

44 ELECTION OF CHAIRPERSON OF THE COUNCIL FOR TRADE IN GOODS

44.1. The Chairperson recalled that the Chair of the General Council had carried out consultations on a slate of names for Chairpersons to the different WTO standing bodies in accordance with the established Guidelines for the Appointment of Officers. These proposed nominations had been approved by the General Council at its last meeting. In line with the nominations, he proposed that the CTG elect Ambassador Lundeg Purevsuren of Mongolia as Chairperson of the Council by acclamation.

44.2. The Council so agreed.

44.3. The meeting was closed.