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Council for Trade in Goods

MINUTES OF THE MEETING OF THE COUNCIL FOR TRADE IN GOODS 30 JUNE 2017

CHAIRPERSON: HE MR KYONGLIM CHOI

The meeting of the Council for Trade in Goods (CTG, or the Council) was convened by Airgram WTO/AIR/CTG/8; the proposed agenda for the meeting was circulated in document G/C/W/739. The meeting proceeded on the basis of the following agenda:

At the start of the meeting the Chairperson announced that he would refer to the date of the next CTG meeting under the agenda item "Other Business".

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 adoption by the General Council of the Transparency Mechanism, the CTG was to be kept informed of Members' notifications of new regional trade agreements.[1] He informed the CTG that the following trade agreements had been notified to the CRTA:

1.1 Accession of Ecuador to the Trade Agreement Between the European Union and Colombia and Peru (WT/REG380/N/1)

1.2 Economic Partnership Agreement Between the European Union and the SADC EPA States (WT/REG381/N/1)

1.3 Economic Partnership Agreement Between the European Union and Ghana (WT/REG382/N/1)

1.4 Free Trade Agreement Between the Republic of Moldova, Azerbaijan, Georgia and Ukraine (GUAM)(WT/REG383/N/1)

1.5 Accession of Panama to the Central American Common Market (CACM) (WT/REG384/N/1)

1.6 Free Trade Agreement Between the Eurasian Economic Union (EAEU) and Viet Nam (WT/REG385/N/1)

[1] See documents WT/REG16, WT/L/671, and G/C/M/88.

1.2. The delegate of the United States of America thanked the parties to the previous agreements for their notifications, and took the opportunity to again encourage those Members that had not yet notified Free Trade Agreements (FTAs) to which they were signatories to do so as quickly as possible so that Members could all benefit from the transparency mandated under the WTO Transparency Mechanism for Regional Trade Agreements.

1.3. The Chairperson proposed that the Council take note of the statement made and of the information provided.

1.4. The Council so agreed.

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

2.1. The Chairperson informed the Council that, in a communication dated 16 June 2017, the delegation of the Kyrgyz Republic had requested the Secretariat to include this issue on the agenda.

2.2. The delegate recalled that, at a previous meeting, the Council had approved the extension of the deadline for interested Members to withdraw substantially equivalent concessions until 12 February 2018 so as to ensure that Members' rights remained preserved pending the communication to the WTO Secretariat of the agreements reached in the context of GATT Article XXIV:6 negotiations. His delegation stood ready to communicate further with relevant partners so as to proceed on the basis of a mutually beneficial cooperation.

2.3. The delegate of the Kyrgyz Republic updated the Council on the processes under GATT Articles XXIV:6 and XXVIII following modification of the Kyrgyz Republic's concessions as a result of its accession to the Eurasian Economic Union (EAEU). The Kyrgyz Republic was continuing its informal consultations with those Members that had reserved their negotiating rights, clarifying and analysing statistical as well as other relevant data submitted in their claims of interest. The Kyrgyz Republic continued to carry out an inter-governmental coordination exercise in order to finalize its responses to the claims of interest that had been submitted, and would respond to those claims subject to consultations with and to the internal approval of its partners in the EAEU. He asked interested Members to be understanding with regard to these procedures and gave assurances that the Kyrgyz Republic would keep interested Members informed of further developments.

2.4. The delegate of the European Union thanked the Kyrgyz Republic for the updated information on this issue but expressed deep concern about the lack of progress in the renegotiation process. The EU had already stated in this Council that since it had submitted its claim of interest, more than 15 months ago, the EU had still not received an answer that would allow it to engage in substantial negotiations with the Kyrgyz Republic. Unfortunately this situation had not changed since the last CTG meeting. She urged the Kyrgyz Republic and Armenia not to delay the negotiations any further but rather to submit without delay an offer from Armenia, the Kyrgyz Republic, Kazakhstan, and the Russian Federation, in reply to the EU requests. Her delegation looked forward to resuming negotiations on that basis in earnest and stood available for bilateral rounds of negotiations. Otherwise, the EU would raise this issue again at the CTG and at the General Council.

2.5. The delegate of Ukraine emphasized the need to maintain a reliable, predictable, and mutually beneficial trading relationship between Ukraine and the Kyrgyz Republic and Armenia, particularly following their accession to the EAEU. He reiterated Ukraine's interest in the renegotiation process under Article XXVIII of GATT 1994, and recalled that trade between Ukraine and these two countries was currently governed by bilateral free trade agreements and by the Agreement on the Commonwealth of Independent States Free Trade Area. Since Ukrainian exports could be affected by the integration process within the EAEC, Ukraine would closely follow the evolution of the renegotiation process. Armenia and the Kyrgyz Republic should strictly follow the rules prescribed in GATT Article XXVIII so as to ensure predictability and to avoid any adverse effects on other WTO Members, including Ukraine, arising from these countries' accession to the EAEC.

2.6. The delegate of Japan thanked the Kyrgyz Republic for its update concerning the renegotiations and reiterated Japan's systemic interest in this issue. Japan looked forward to receiving an initial compensation offer from the Kyrgyz Republic so as to engage in negotiations and consultations with the Kyrgyz Republic and other interested Members, and in particular the members of the EAEU.

2.7. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

2.8. The Council so agreed.

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

3.1. The Chairperson informed the Council that, in a communication dated 19 June 2017, the delegation of the European Union had requested the Secretariat to include this item on the agenda.

3.2. The delegate of the European Union reiterated the points she had made under the previous agenda item concerning the accession of the Kyrgyz Republic to the EAEU. The EU again called upon Armenia and the Kyrgyz Republic not to delay the negotiations any longer and to submit a joint offer from Armenia, the Kyrgyz Republic, Kazakhstan, and the Russian Federation, in reply to the EU request.

3.3. The delegate of Canada encouraged Armenia to conclude its Article XXVIII negotiations for compensatory adjustments by the extended deadline of January 2018. Canada looked forward to advancing discussions with Armenia regarding its claim of interest.

3.4. The delegate of Ukraine reiterated the statement made under the same agenda item at the previous CTG meeting.[2]

3.5. The delegate of Japan reiterated Japan's systemic interest in this issue. Japan looked forward to engaging in negotiations and consultations with Armenia and other interested Members, in particular members of the EAEU, with a view to receiving appropriate compensation under GATT Articles XXIV and XXVIII.

3.6. The delegate of Chinese Taipei again encouraged Armenia to engage in negotiations and consultations with his delegation and other interested Members.

3.7. The delegate of Armenia thanked delegations for their interest in Armenia's renegotiations under GATT Articles XXIV and XXVIII, following its accession to the EAEU. As a full member of the EAEU, Armenia had undertaken to coordinate its trade and economic policy with other EAEU member countries. This implied a mutually agreed negotiation position. In this regard, Armenia had raised the issue of compensatory adjustment negotiations at the June meeting of the EAEU Council, where relevant instructions had been adopted to facilitate these ongoing negotiations. Intensive work was being undertaken by EAEU country members with a view to preparing a comprehensive reply to all WTO Member requests. Armenia stood ready to continue a pragmatic and constructive dialogue with interested Members. His delegation would convey Members' comments to Capital.

3.8. With regard to Ukraine's statement, he reiterated Armenia's position on this issue, namely that, unfortunately, it could not formally accept the claim of interest and enter into GATT Articles XXIV and XXVIII procedures with Ukraine given that a free trade regime with Ukraine already existed. In light of that already fully operational free trade regime, Armenia considered it redundant to enter into tariff reduction or compensatory adjustment negotiations with a country with which Armenia had already been trading at a zero tariff rate for more than two decades.

[2] See document G/C/M/128, paragraph 6.6.

3.9. Armenia would continue, on a regular basis, to inform the Council and all interested Members of ongoing compensatory adjustment negotiations .

3.10. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

3.11. The Council so agreed.

4 JORDAN – REQUEST FOR A WAIVER RELATING TO THE TRANSITIONAL PERIOD FOR THE ELIMINATION OF THE EXPORT SUBSIDY PROGRAMME FOR JORDAN (G/C/W/705; G/C/W/705/CORR.1; G/C/W/705/REV.1; AND G/C/W/705/REV.2)

4.1. The Chairperson drew Members' attention to document G/C/W/705/Rev.2 containing a waiver request and a draft waiver decision submitted by Jordan in respect of the transitional period for the elimination of the export subsidy programme for Jordan. He recalled that, at the April 2017 meeting of the Council, it had been agreed that the CTG would revert to this matter at its following meeting, at which Jordan would update Members on any developments.

4.2. The delegate of Jordan, when updating Members on Jordan's progress towards developing a WTO-consistent subsidies programme to replace the existing programme, informed the Council that, having completed the data collection and a revision process, and having then finalized a report with the assistance of USAID experts, the High Level Committee established by the government had met in April to decide on a new and WTO-consistent programme. The High Level Committee had recommended that, in compliance with the Agreement on Subsidies and Countervailing Measures (SCM), a certain percentage of the net income from industrial activities would be subject only to income tax, without any linkage to export activity. This recommendation had been sent to the Council of Ministers for its consideration and, if agreed by the Council of Ministers, the new programme would then be submitted to the legislative process. Consequently, once the new legislation had entered into force the current subsidy programme would be terminated.

4.3. He emphasized Jordan's commitment to the timetable contained in document G/C/W/705/Rev.2 for the implementation of a new subsidy programme. In the view of his delegation, the progress described above would ensure that the WTO-compliant subsidy programme would enter into force as scheduled, and that the current export subsidy programme would automatically be terminated by end-2018. He thanked Members for their cooperation and understanding of the critical circumstances currently challenging the Jordanian economy and requested to include this agenda item in the agenda of the next CTG meeting, in November 2017.

4.4. The delegate of the United States thanked Jordan for its report on Jordan's efforts to make the necessary changes to the subsidy programme at issue, and noted that Jordan had requested that this item be included on the agenda for this meeting solely to provide Members with an update on Jordan's progress towards establishing a WTO-compliant replacement programme. The US had been actively involved in providing technical assistance to Jordan in the context of its reform efforts and acknowledged the concrete progress that had already been made by Jordan. The US hoped that Jordan would continue to make progress so as to allow it to implement the necessary programmatic changes as soon as possible.

4.5. The delegate of Australia thanked Jordan for its update on the progress so far made to develop a replacement and WTO-compliant subsidy programme. He appreciated Jordan's transparency and open and constructive approach.

4.6. The delegate of New Zealand also thanked Jordan for its efforts to bring its export subsidy programme into WTO-conformity and its confirmation that, in any case, it would be terminated by end-2018. Her delegation remained ready to support Jordan in these efforts and looked forward to receiving further detail regarding Jordan's progress on this issue.

4.7. The delegate of Japan welcomed Jordan's report and reiterated that Japan expected Jordan to eliminate the export subsidy program by end-2018 at the latest. Japan would continue to follow this issue closely.

4.8. The delegate of Chinese Taipei appreciated Jordan's transparency and constructive approach to this issue, and welcomed Jordan's specific commitment to replace its current export subsidy programme with a new and WTO-consistent programme.

4.9. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made and that, as requested by Jordan, the Council agree to revert to this matter at its next meeting.

4.10. The Council so agreed.

5 TRADE RESTRICTIVE MEASURES BY CERTAIN MEMBERS – REQUEST FROM QATAR

5.1. The Chairperson informed the Council that, in a communication dated 15 June 2017, the delegation of Qatar had requested the Secretariat to include this item on the agenda.

5.2. The delegate of Qatar expressed deep concern regarding the measures adopted against Qatar in early June 2017 by the Kingdom of Saudi Arabia, the United Arab Emirates, and the Kingdom of Bahrain. These measures violated cornerstone WTO obligations and commitments.

5.3. At the Services Council meeting on 16 June 2017, Qatar had highlighted a number of the measures imposed by the aforementioned Members that prejudiced Qatar's WTO rights in relation to trade in services. Qatar wished also to highlight, at CTG level, the impact of those measures on its rights with regard to trade in goods.

5.4. The sudden and unannounced embargo against Qatar violated fundamental provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and other WTO agreements, including the new Trade Facilitation Agreement (TFA). The measures in question uniquely targeted and discriminated against Qatar, in violation of the Most Favoured Nation (MFN) principle, and included a complete prohibition on the importation from and exportation to Qatar of all goods. These measures had been applied in a variety of ways, ranging from closed land and maritime borders to absolute prohibition on the discharge of goods from Qatar.

5.5. The measures not only denied Qatar's rights but also the rights of all WTO Members with whom Qatar traded by blocking freedom of transit of goods through the territories of the aforementioned Members that were either destined for or coming from Qatar. The Members concerned had recently reaffirmed their commitment to freedom of transit in the TFA; however, these measures violated key TFA requirements.

5.6. The measures affected a number of important sectors, ranging from trade in cable and satellite television receivers, necessary for the supply of sports-related entertainment, to prohibition of the import and transit of aluminium originating in Qatar. Rather than pursuing their objectives in a WTO-consistent manner, the measures imposed against Qatar by the aforementioned Members constituted unilateral actions that were in gross disregard of Qatari and other WTO Member's rights.

5.7. The measures were especially pernicious given the customs union that existed between members of the Gulf Cooperation Council (GCC). This customs union had facilitated regional economic integration and had thus established an integrated single regional market in relation to which Qatari businesses were particularly sensitive, and especially with regard to any disruptions in that market. Qatar was disappointed that the measures at issue were being applied in a manner that favoured commercial stakeholders from Saudi Arabia and the UAE but was to the detriment of the long-term interests of Qatar's commercial stakeholders. As in the Services Council, in the Goods Council Qatar would like to ask the Members concerned to explain how their measures could be reconciled with the relevant WTO rules, and also when those measures would be published, given that the instruments establishing the coercive economic measures at issue remained unpublished. Qatar looked forward to receiving prompt responses to these questions and reserved all of its rights under the WTO Agreements.

5.8. The delegate of the Kingdom of Bahrain, on behalf of his delegation and of the delegations of the Kingdom of Saudi Arabia, the United Arab Emirates, and Egypt, argued that the measures were WTO-compliant and in accordance with GATT Article XXI, which provided for emergency

cases in international relations with any other WTO Member when measures were necessary to limit actions that would affect a Member's national security interests.

5.9. The delegate of Egypt reiterated that paragraphs (b) and (c) of GATT Article XXI related to security exceptions, that the measures adopted fell under this exceptional circumstance, that the measures were rooted in WTO law, and that they were consistent with the said provision.

5.10. The delegate of Turkey expressed the wish of his delegation that the issue, involving certain GCC countries and other states in the region, come to a prompt solution. The current situation was a cause of unease and undermined the good relations among the Gulf countries. Turkey believed that a longer-term resolution would only make the situation more complicated, especially in terms of the economic and trade relations in the wider region and beyond. Pressuring the people of Qatar economically and in terms of their commercial life and activity was a particular concern that might only calcify the situation and make it still more difficult to resolve. Turkey believed that the states concerned shared hundreds of years of strong fraternal ties and could therefore overcome this current situation and impasse.

5.11. The delegate of the United Arab Emirates regretted that Qatar had raised the situation in the Gulf at the CTG. The United Arab Emirates and its coalition partners had been forced to take measures in direct response to Qatar's failure to put an end to its funding and support of terrorism and extremism. Qatar had refused to refrain from funding terrorist groups and had thereby deliberately undermined the international community's efforts to impose sanctions on individual supporters of terrorism within the country. Dangerous groups, such as AQAP, Daesh, and the Taliban, continued to use Qatar as a source of funds, and the funds originating in Qatar continued to flow to groups that much of the world designated as terrorist organizations, including Al Nusra, Hamas, and the Muslim Brotherhood. Qatar's continued funding and support for terrorism and extremism constituted a direct threat to the United Arab Emirates' national security. The United Arab Emirates would not waver in its commitment to fight terrorism and extremism. The Government of the United Arab Emirates had a solemn duty to protect its citizens.

5.12. Moreover, the United Arab Emirates, like other WTO Members, had undertaken international commitments to combat terrorism funding under the various UN Security Council Resolutions and international treaties, including Resolutions 1373/2001, 1624/2005, 2252/2015 and, more recently, Resolution 2354/2017. Qatar was also a signatory to both the UN Convention Against International Organized Crime and the International Convention for the Suppression of the Financing of Terrorism. UN Resolution 2354/2017 and other international agreements were therefore binding upon Qatar, even as Qatar had chosen to ignore those obligations.

5.13. Despite its repeated failure to honour its international commitments, Qatar was now looking to the WTO in the hope that the WTO would intervene on its behalf. The United Arab Emirates considered this to be a dangerous ploy that should be rejected. Any endorsement at the WTO of Qatar's claims would be applauded by terrorist groups who would then view the WTO as an instrument that could be used to limit Members' attempts to block their funding.

5.14. The situation in the Gulf was very serious. At the core of the issues under discussion was the question of national security. However, these issues did not fall within the competence of the CTG or the WTO. Indeed, GATT Article XXI clearly recognized that WTO obligations did not prevent any Member from taking any action it considered necessary to protect its essential security interest or to pursue its obligations under the UN Charter for the maintenance of international peace and security.

5.15. The delegate of the United States urged all parties to remain open to negotiation as the best way to resolve this matter, and encouraged them to minimize rhetoric and rather to exercise restraint so as to allow for productive diplomatic discussions. The US was not going to get ahead of the current diplomatic discussions, particularly not in a technical WTO body; nevertheless, it would continue to stay in close contact with all the Members concerned and would continue to support the mediation efforts of the Emir of the State of Kuwait. The US believed that its allies and partners were stronger when they worked together towards stopping terrorism and countering extremism. Each country involved had something to contribute to that effort.

5.16. The delegate of Qatar expressed deep concern with regard to the various allegations that had been made by the United Arab Emirates and reiterated that the issues raised fell outside the purview of the WTO. He encouraged discussions that were relevant to the WTO Agreement and the specific measures undertaken and would therefore refrain from responding to those specific allegations.

5.17. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

5.18. The Council so agreed.

6 NIGERIA – IMPORT RESTRICTING POLICIES AND MEASURES – REQUEST FROM NORWAY AND THE UNITED STATES OF AMERICA

6.1. The Chairperson informed the Council that, in communications dated 14 and 16 June 2017, respectively, the delegations of Norway and the United States had requested the Secretariat to include this item on the agenda.

6.2. The delegate of Norway appreciated the constructive meetings that had been held between Norway and the Nigerian authorities. The currency restrictions issue and the import restricting measures imposed by Nigeria had been raised by Norway and other Members at the WTO and in other fora. However, Norway required further clarification as to whether or not the restrictions in place were in line with Nigeria's WTO obligations, as well as an update regarding possible developments on the currency restrictions issue.

6.3. The issue of customs valuation had also been raised on several occasions by Norway. Indeed, to calculate the customs value of fish imports to Nigeria, particularly stockfish, the Nigerian customs administration had made a calculation on the basis of a value that was higher than the agreed price indicated on the invoice, which resulted in additional duty and value added payments on imports. During its recent TPR, Nigeria had replied to Norway's questions on this topic although there appeared to be no intention on the part of Nigeria actually to change its customs valuation method. He therefore called upon Nigeria to ensure that the customs valuation methods used were in all cases in accordance with WTO methodology.

6.4. Norway recognized the importance of transparency with regard to Members' applicable import regulations, both in terms of currency restrictions and fish importation policy in general. A transparent, predictable, and rules-based trading system had to be the proper basis for trade. Norway would continue its bilateral conversation with Nigeria and looked forward to a continued dialogue on this issue in the CTG as well as at other WTO fora.

6.5. The delegate of the United States recalled that for nearly two years his delegation, together with other delegations, had raised concerns with regard to Nigeria's import restricting measures in each of the meetings of this Council. In mid-June 2017 WTO Members collectively had had an opportunity for an in-depth discussion of these matters during Nigeria's Fifth TPR. The discussion on that occasion was a testament to the value of the TPR mechanism, which allowed Members to acknowledge areas where Nigeria had made progress but also to flag issues of ongoing concern.

6.6. The Government of Nigeria had approached the TPR exercise positively, using the occasion to outline its plans for future reforms. It had also committed to reviewing policies that other governments had identified as problematic or potentially WTO-inconsistent. Therefore, the US Government would for the time being suspend raising these matters in the CTG but would continue to monitor developments in Nigeria closely, in all areas, so as to ensure that the Government followed through on its intended reforms so as to meet its WTO obligations. As his delegation had indicated at the TPR, the key to Nigeria's competitiveness and economic diversification lied in decreasing production costs and increasing the ease of doing business, not in maintaining counterproductive import restricting measures.

6.7. The delegate of the European Union said that the EU continued to be concerned about the issues mentioned by Norway and alluded to by the US. Her delegation had expressed its view on these issues in detail during past CTG meetings and also recently during Nigeria's TPR. The EU

looked forward to Nigeria's replies to the follow-up questions that it had posed as part of the TPR exercise.

6.8. The delegate of Chile echoed the concerns expressed by other Members with regard to the restrictive measures imposed by Nigeria and, in particular, the grounds given to justify such measures. He called upon Nigeria to bring its measures into conformity with the relevant WTO Agreements.

6.9. The delegate of Japan shared the concerns raised by other Members, both on systemic and commercial grounds. Japan considered the foreign exchange restriction on certain imported products to be a *de facto* import restriction that had negatively impacted upon the businesses of WTO Members, including those of Japan. Japan believed the measure to be inconsistent with the WTO Agreements and urged Nigeria to provide updated information on its domestic review procedures regarding the measures highlighted. Japan also urged Nigeria to revise those measures and to ensure that they would not adversely impact upon Members' exports.

6.10. The delegate of Uruguay echoed the concerns raised by Norway with regard to imports of fish and fish products and requested Members to refer to Uruguay's statements delivered at previous meetings of the Council.[3]

6.11. The delegate of Thailand echoed the concerns raised by others. Thailand considered the Nigerian measures to be inconsistent with its WTO commitments and called upon Nigeria to remove them immediately.

6.12. In the absence of a delegate from Nigeria, the Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

6.13. The Council so agreed.

7 BRAZIL – MEASURES RESTRICTING SHRIMP IMPORTS – REQUEST FROM ECUADOR

7.1. The Chairperson informed the Council that, in a communication dated 15 June 2017, the delegation of Ecuador had requested the Secretariat to include this item on the agenda.

7.2. The delegate of Ecuador stated that the long-standing prohibition imposed by Brazil on imports of Ecuadorian shrimp had yet to be resolved despite the efforts of her Government to achieve a resolution. As explained at meetings of the SPS Committee in March 2013, March 2014, October 2016, and March and April of 2017, for almost two decades Ecuador had been calling on the Brazilian Government to again allow market access to exports of Ecuadorian shrimp so as to re-establish a trading relationship that had operated smoothly until 1999. In November 1999, the "Instructive Normative 39" had been issued by Brazil, temporarily suspending import of shrimps into its territory, with an eventual reopening conditioned by a risk analysis to be carried out by the Department of Animal Defence.

7.3. For almost 20 years, Ecuador had been providing all the evidence necessary to address the concerns of the Brazilian sanitary authorities, including technical visits, submission of information, and presentation of proposals; all had been unsuccessful. In 2007, Ecuador had implemented a monitoring plan for residues and contaminants across the entire supply chain. On 23 August 2010, the Brazilian Ministry of Aquaculture and Fisheries had published the "Instructive Normative 12" on General Procedures for Risk Analysis of Fisheries and Aquatic Animal Imports, and in April 2011, Ecuador had subsequently submitted to Brazil a report on sanitary controls on Ecuadorian fisheries and aquatic export products. After a third meeting of a working group between Ecuador and Brazil, in November 2011, Brazil had assured Ecuador that Ecuador's request would be taken care of and that the conclusion of the first phase would be communicated shortly thereafter. When Ecuador had expressed its ongoing concern at the SPS Committee meeting of March 2013, Brazil had again indicated that the risk analysis report would be published imminently. On the 5 June 2014, Brazil produced a risk analysis on the import of shrimp. At around that time, a delegation of Brazilian inspectors had also travelled to Ecuador to conduct a verification of information mission. During a meeting in June 2016 with officials from the Brazilian Ministry of Agriculture, Brazilian officers in

[3] See document G/C/M/126, paragraph 8.15

charge of the technical report had admitted that there had been a delay beyond the normal risk assessment period. On 2 February 2017, through Memorandum No. 6, the Department of Animal Health of the Ministry of Agriculture of Brazil had established the sanitary requirements for imports of crustaceans. On 9 May 2017, through communication No. 9/26, the Brazilian Ministry of Agriculture had established that the Ecuadorian inspection system for sea food exports was to be understood as equivalent for the purposes of Brazilian sanitary requirements, meaning that exports would then be authorized.

7.4. Ecuador hoped that the measure, which had been in force for almost 20 years, and which had done such great harm to Ecuador, would at last be repealed. However, on 24 May 2017, a public civil action had been lodged by Brazilian producers to suspend the authorization of imported Ecuadorian shrimps, and a federal judge had subsequently upheld the request to suspend imports of Ecuadorian shrimps, alleging that thousands of jobs and the creation of new job opportunities were at risk.

7.5. Ecuador emphasized that the import prohibition imposed by Brazil on Ecuadorian shrimp was inconsistent with Articles 2.2, 5.1, 5.7, 2.3, 5.6, 5.5, 3.1 and the Annex C.1(a) of the Agreement on the Application of Sanitary and Phytosanitary Measures. The measure was also inconsistent with GATT Article XI, since it was a prohibition that was applied only to shrimp imports from Ecuador. The time that had elapsed without the issue being resolved indicated to Ecuador that Brazil's measure exceeded Brazil's legitimate stated intention with regard to its introduction of SPS measures, namely that they were to protect Brazil from entry into its territory of pests or disease, and that Brazil was in reality imposing unjustified trade restrictions that were greatly harming Ecuador, which was a small developing country.

7.6. Ecuador expressed its systemic concern over Brazil's failure to resolve this issue and found it extraordinary that almost twenty years could go by without one WTO Member completing a validation process of the SPS conditions of another WTO Member, and especially bearing in mind that Ecuadorian shrimps were exported to a large number of markets where SPS standards were very high. Such practices hindered small and vulnerable economies, such as Ecuador's, from benefitting fully from their trade and development potential.

7.7. The delegate of Brazil thanked the delegation of Ecuador for raising the issue and for informing the Council of certain new elements. He believed that positive developments had been seen since the last CTG meeting, including some already mentioned by the Ecuadorian delegation. His understanding was that the Brazilian market had already been opened for shrimp imports from Ecuador and that this change had been formally communicated to the Ecuadorian authorities in the letter mentioned by the delegation of Ecuador, Letter No. 926 of 9 May 2017, from the Brazilian Ministry of Agriculture.

7.8. He noted that Ecuador's inspection system for fisheries now enjoyed equivalence status in Brazil, meaning that plants were automatically authorized to export with the only remaining requirement being product registration. The sanitary and public health requirements were contained in the international sanitary certificates (CSI) for the export of fisheries or fish products to Brazil, which were supplemented by the animal health requirements contained in Circular Memorandum No. 6 of 2017, also mentioned by Ecuador, and which had also been communicated to the relevant Ecuadorian authorities. Exporting plants from Ecuador had also to formalize their requests for labelling approval to the appropriate Brazilian authorities, meaning the Department for Inspection of Animal Products. With regard to the ongoing judicial proceedings relative to this matter, he stated that the federal government was taking appropriate measures to reverse or to try to reverse the preliminary measure that had been adopted by the judicial body in question.

7.9. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

7.10. The Council so agreed.

8 INDONESIA'S IMPORT AND EXPORT RESTRICTING POLICIES AND PRACTICES – REQUEST FROM THE EUROPEAN UNION, JAPAN, AND THE UNITED STATES OF AMERICA

8.1. The Chairperson informed the Council that, in communications dated 16 and 19 June 2017, the delegations of the European Union, Japan, and the United States, had requested that the Secretariat include this issue on the agenda.

8.2. The delegate of the European Union noted that her delegation had been raising this issue for a very long time but unfortunately to no avail. Despite the reforms announced in Indonesia in 2015 the high number of restrictive trade measures applied by Indonesia had not yet decreased. Rather, additional barriers had recently been issued or reinstated. The persistently high number of restrictive and protectionist trade and investment measures as well as the lack of predictability and transparency negatively affected the business environment. For example:

- Use of local content requirements persisted in various sectors, such as telecoms, retail, energy, construction, and public procurement;

- high and discriminatory minimum capital requirements of USD800,000to establish a new company; for freight forwarders, USD4 million versus only USD150,000 for local companies;

- complex and time-consuming import requirements applied in a wide range of sectors; for instance, in the meat and dairy industry; for fresh plants, horticulture, wood, and forestry products; and for cosmetics. The measures were often amplified by the implementation of quantitative restrictions; for example, on meat, alcohol products, and steel;

- export restrictions continued to be applied to certain raw materials. These measures disrupted international markets, increased input costs for producers, and led to uncertainty in terms of supply;

- burdensome and discriminatory conformity assessment procedures as well as a growing proliferation of mandatory technical standards, which were trade barriers that should not be maintained because of their adverse impact on trade;

- a very far-reaching halal law, which affected food and beverages, pharmaceuticals, cosmetics, and leather goods exports. Its implementing measures, once finalized, could bring trade in these goods to a complete halt.

8.3. The EU expressed its concern over the new trade restrictions issued by Indonesia. For example, a new regulation, Regulation No. 77/2016, reintroduced limits on the importation of tyres. In addition, new draft rules in the dairy sector included a stipulation that "imports of milk would only be conducted if domestic production was not able to fulfil national demand". Her delegation urged Indonesia to eliminate existing trade barriers and to refrain from issuing new ones in line with its G20 commitments.

8.4. The delegate of Japan, as it and many other WTO Members had done on many previous occasions, at meetings of this Council and in other Committees, expressed its deep concern over a protracted series of laws and regulations introduced by Indonesia, namely, the Mining Law, the Law on Trade and Industry, restrictions in the retail sector, local content requirements on 4G mobile phones, and local content requirements for investment in the telecommunications sector. Japan strongly urged Indonesia seriously to review those laws and regulations and to implement the measures at issue in a manner consistent with the relevant WTO Agreements. Japan also urged Indonesia to share with WTO Members updated information about these measures, as requested at the CTG's previous meeting.

8.5. Japan had suffered adverse trade effects since January 2017 and the introduction in Indonesia of local content requirements for 4G LTE Mobile devices. Some Japanese companies had been obliged to cease exporting their products to Indonesia as a result. Japan considered the Indonesian measures, and specifically the imposition of local content requirements, to be inconsistent with GATT Article III:4 and Article 2 of the TRIMS Agreement, because the measures gave incentives to use domestic products and treated imported products less favourably than

domestic products. Accordingly, Japan again requested Indonesia to remove these measures and local content requirements.

8.6. On the issue of the Mining Law, the delegate of Japan noted that, in terms of low grade nickel ore, and based on the regulation issued in January 2017, mining companies were allowed to export their ores for a period of five years, although only if they did so in conformity with certain very strict conditions. Japan appreciated the reforms that had been made partially to lift the complete prohibition of nickel ore exports, as well as the export licences issued by the Indonesian government. However, Japan considered the measures to prohibit or restrict exportation of mineral ores by imposing certain export conditions to be inconsistent with GATT Article XI. Japan would continue to follow closely how Indonesia dealt with the revision of the measures at issue so as to bring them into conformity with the relevant WTO Agreements. He emphasized that Japanese industries had suffered economic injury as a result of the measures. Japan would also continue to monitor closely the situation surrounding the exportation of nickel and copper. Japan also urged Indonesia to share updated information on those measures with WTO Members, including information on Indonesia's local content requirements and mining-related measures. He noted that the same request had already been made at previous meetings of the CTG and the TRIMs Committee.

8.7. The delegate of the United States noted that the Council was well aware of his delegation's breadth of concerns with regard to an ever growing number of trade and investment restrictions in Indonesia, which affected a broad range of sectors, including information and communications technology, agriculture, consumer goods, and energy. The measures that Indonesia had adopted included localization requirements, import licensing requirements, standards requirements, preshipment inspection requirements, and export restrictions, including taxes and prohibitions, among others. The United States had on previous occasions also expressed its concern about a general lack of transparency in Indonesia. In addition, in previous interventions in this body, the United States had provided detailed information about specific policies as issues and concerns had emerged, and for the US those issues and concerns remained. He also noted that other Members had expressed concern about the policies at issue, at the CTG and other WTO Committees.

8.8. Indonesian officials had acknowledged that the Government's policies were intended to promote domestic manufacturing and to move the Indonesian economy up the value chain to a higher level of development. He noted that, while his delegation understood those objectives, the implementation of the policies at issue were damaging to Indonesia's trading partners. US efforts to work with the Indonesian Government, bilaterally and at the WTO, to address US concerns had to date produced relatively disappointing results, with only limited exceptions. The United States had been very patient while working with Indonesia on these issues and his delegation hoped that efforts in this and other WTO bodies, including bilateral work, would soon produce the results necessary to ensure free and fair trade.

8.9. The delegate of Australia stated that his Government continued to share the concerns of other WTO Members about Indonesia's import restricting policies in recent years, particularly as they affected agricultural trade. Australia noted that Indonesia frequently amended its regulations on the importation of agricultural products, often without notification and, when notified, with only limited opportunity for consultation with trading partners. He stated that notification and consultation were critical to the continuing effectiveness of the rules-based global trading system under the WTO. Consultation with trading partners also provided an opportunity for trade measures to be implemented in the most efficient way for all parties.

8.10. The delegate of Brazil reiterated, as on previous occasions in the CTG, his delegation's support for the expressions of concern voiced by previous delegations regarding restrictive Indonesian trade policies, in particular, in the case of Brazil, regarding poultry and beef. A number of the restrictive measures were currently being examined in proceedings in the dispute settlement mechanism. Brazil urged Indonesia to bring its trade measures into full conformity with its WTO obligations, especially in light of developments under the dispute settlement mechanism involving Indonesian measures.

8.11. The delegate of New Zealand echoed the concerns raised by the European Union, Japan, the United States, and other Members. As her delegation had noted at previous meetings of the Council, New Zealand believed that Indonesia's restrictions on agricultural imports undermined core WTO principles and were inconsistent with key obligations in the WTO Agreements. New

Zealand continued to have significant concerns over a number of import restrictions in Indonesia's laws and regulations that affected trade across a range of agricultural products, including horticultural and animal products. As her delegation had said before, Indonesia's restrictions did not hurt only exporters, but also Indonesian consumers, processors, and producers, all of whom had also been affected negatively by these measures; Indonesia's measures had contributed to rising food prices in Indonesia, including for basic foodstuffs and on ingredients for the domestic manufacturing sector. New Zealand hoped that Indonesia would in future implement its reform plans using policies that were consistent with its WTO obligations.

8.12. The delegate of the Republic of Korea shared the concerns voiced by other Members but, given that this item had been on the agenda of the CTG for a number of years, he chose on this occasion to address just two main issues of concern. First, his delegation had requested the Indonesian Government to reform the pre-paid corporate income tax on importers under Article 22 of the Income Tax Law of Indonesia in order to make it consistent with WTO rules. The tax in question was an unfair and discriminatory measure against imported goods. Second, Korea continued to have concerns over the Industry Law and the Trade Law of Indonesia and strongly encouraged Indonesia to formulate their implementation regulations in conformity with WTO rules and to share any progress made in a fully transparent manner. His delegation would continue to monitor these issues closely and hoped for a positive response from Indonesia in the near future.

8.13. The delegate of Norway shared the concerns raised by other speakers. Norwegian exporters had reported experiencing difficulties with the Indonesian import regime, in particular with regard to import licensing and customs procedures. The measures were affecting a broad range of sectors, including the seafood industry. Norway looked forward to continue working together with Indonesia on the issues in question.

8.14. The delegate of Switzerland echoed the concerns raised by other Members regarding regulations relating to Indonesia's halal law and, despite constructive bilateral exchanges, Switzerland would still welcome further clarification of the issue. He also indicated his delegation's interest in Indonesia's new draft regulation on supply and distribution of milk products. Switzerland would welcome from Indonesia any update on and/or clarification of this issue.

8.15. The delegate of Chinese Taipei stated that her delegation continued to be concerned about Indonesia's import and export restricting policies in recent years, and in particular the use of local content requirements for import licences for 4G-enabled devices. Chinese Taipei found that the requirements in question continued to be a significant and unnecessary obstacle to trade and again urged Indonesia to remove the trade restricting measures. Chinese Taipei had noted that, at the meeting of the Committee on Safeguard Measures of 23 June, Indonesia had notified to Members its intention to extend safeguard measures on the importation of Flat-Rolled Products of Iron or Non-Alloy Steel. At the same time, she noted that safeguard measures were among the most trade restrictive instruments and should be adopted with caution and only to protect fair trade in very exceptional circumstances, if absolutely necessary, and as a last resort. Chinese Taipei urged Indonesia promptly to withdraw the measures at issue.

8.16. The delegate of Canada welcomed the recent progress made on improving Indonesia's business climate but considered that more still needed to be done. Canada continued to share the concerns of other Members regarding Indonesia's ongoing import restricting policies and practices. Canada was particularly concerned by restrictions in the mining and oil and gas sectors, increasing local content requirements across many sectors, including renewable energy, and uncertainties surrounding halal certification requirements. Canada also remained concerned by import licensing requirements on horticultural products. Canada continued to encourage Indonesia to respect its WTO obligations.

8.17. The delegate of Indonesia took note of the concerns raised, which would be forwarded to Capital for appropriate consideration and in order to discuss the measures in question or undertake any necessary changes. Prior to the meeting, her delegation had contacted her Capital but unfortunately had not yet received any updates on some of the questions or concerns that Members had raised. She stated that Indonesia was willing to work with interested Members, in particular with those directly concerned or affected by certain aspects of Indonesia's national legislation. Picking up on certain points raised at previous CTG meetings, Indonesia would like to assure Members that its policies were implemented on an equal basis for all Members, and including in relation to its own nationals. The current administration was taking bold steps to

ensure predictability and ease of doing business in Indonesia while at the same time also ensuring that the social aspect of economic development would benefit Indonesia. Indonesia wanted to make sure that trade could be utilized as one avenue for growth and believed that it was the responsibility of each government to fulfil such an ideal while at the same time confirming a commitment to international rules. In that sense, certain policy spaces were necessary so as to address certain specific issues pertaining to the economy.

8.18. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

8.19. The Council so agreed.

9 BRAZIL – MEASURES RESTRICTING BANANA IMPORTS – REQUEST FROM ECUADOR

9.1. The Chairperson informed the Council that, in a communication dated 15 June 2017, the delegation of Ecuador had requested the Secretariat to include this item in the agenda.

9.2. The delegate of Ecuador stated that, since 1997, Brazil had suspended banana imports from Ecuador for SPS reasons linked to the alleged presence of disease, specifically the Black Sigatoka fungus. In June 2002, Brazil had referred to "Standard 41", indicating that it would determine what was required to assess whether or not the fungus was present in Ecuadorian bananas; Brazil would also inspect in particular bananas originating in areas infested with this plague. In July 2009, Brazil had issued Normative Instruction No. 29, establishing the criteria and procedures for fighting against this particular fungus so as again to allow bananas to be exported to Brazil. Following these procedures, Ecuador had provided all the technical information necessary to meet the requirements and satisfy Brazil's concerns. In this vein, a Memorandum of Understanding (MOU) was signed in which Brazil committed itself to provide an official response to Ecuador. However, to date, Brazil had still not provided any official response. In January 2012, an Ecuadorian delegation visited Brazil with the intention of resolving the issue and submitted a technical report according to which it was not possible to detect scientifically the plague in bananas originating in the Ecuadorian Amazonia. In turn, and in response to Ecuador's request, the Brazilian authorities issued a report questioning the health and SPS quality of Ecuadorian bananas.

9.3. During a further visit of an Ecuadorian delegation to Brazil, in November 2013, Brazil submitted a report concerning a particular virus that had been attacking bananas and announced that a technical visit to Ecuador's banana plantations would take place in order to inspect the Ecuadorian certification procedures and SPS measures on bananas in place in Ecuador. As a result of that visit, which took place in December 2013, a new agreement was signed that laid out a road map for identifying the presence of potential plagues that could prevent Ecuadorian bananas from entering the Brazilian market.

9.4. In October 2014, Ecuador had set out a work plan that was then submitted to the relevant Brazilian authorities. In 2015, the Brazilian authorities had requested further information, which Ecuador had provided in April 2016. Despite the above-mentioned exchange of information, and the actions taken by Ecuador in 2017, Brazilian customs nevertheless refused a container of Ecuadorian bananas, arguing that the container did not have the necessary authorization to allow it to enter the Brazilian market.

9.5. Ecuador's economy was highly dependent upon exports and its main non-oil export products were shrimps and bananas, two sectors that created millions of jobs in Ecuador. Therefore, a ban on imports of Ecuadorian bananas not only had a severe impact on Ecuador's economy but also ran counter to WTO rules. Ecuador considered the Brazilian ban of Ecuadorian bananas to be excessive, particularly as it had provided to the Brazilian authorities all the necessary guarantees and had also proven that its products were safe. Ecuador had met all the relevant SPS requirements although Brazil's measures had not followed the risk assessment and ran against Articles 5.1, 5.5, 2.2, 2.3, and 6 of the SPS Agreement, as they constituted an arbitrary and unjustified discrimination against a particular product and were not justified under Article 5.7 either because the measures were not provisional cautionary measures.

9.6. Ecuador hoped that the Brazilian customs authorities had now received the instructions that had been published in Brazil in March 2014, and which detailed the SPS standards that had been

implemented by Ecuador and the agreement that had been established between Ecuador and the Brazilian authorities. Brazil should honour the commitments it had made to Ecuador.

9.7. The delegate of Brazil indicated that his delegation had very recently received some updates and inputs on this issue that it had not been able to convey bilaterally to Ecuador. He explained that the Department of Plant Health of the Secretariat of Agricultural Protection had set up a Working Group to finalize the risk analysis process regarding plagues that affect bananas originating from Ecuador, and particularly the Mycosphaerella fijiensis. On 16 June 2017, the Department of Plant Health had asked Ecuador to modify two aspects of the Work Plan for plague risk mitigation that Ecuador had presented, and had also requested to receive a new version of the Plan containing those modifications. Furthermore, Brazil had given consideration to a comment submitted by Ecuador regarding Normative Instruction No. 3/2014 and was currently introducing certain adjustments to that regulation. Brazil hoped to be able to engage with Ecuador bilaterally on this issue and to provide copies of those communications, which had already been sent to Ecuador. He also requested Ecuador to provide its statement in written form.

9.8. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

9.9. The Council so agreed.

10 INDIA – IMPORT RESTRICTING MEASURES – REQUEST FROM CANADA, THE EUROPEAN UNION, NORWAY, JAPAN, AND THE UNITED STATES OF AMERICA

10.1. The Chairperson informed the Council that, in communications dated 16 and 19 June 2017, respectively, the delegations of Canada, the European Union, Norway, Japan, and the United States requested the Secretariat to include this item on the agenda.

10.2. The delegate of Canada reiterated the concerns raised by her delegation in the WTO Committees on ITA and Market Access regarding India's Customs Notification No. 11/2014, which referred to an increase in India's applied rates over the bound rates for several IT products. This was inconsistent with India's bound commitments and ran contrary to the objective of tariff liberalization.

10.3. Canada had a commercial interest in exporting some of the goods whose applied rates had been increased and was concerned that the tariffs in question might have an adverse impact upon Canada's exports of such goods to India. This was particularly the case for tariff line 8517.62.90, bound by India at a rate of 0% while the rate actually applied was 10%. In 2016, Canada had exported US$24 million to India on this tariff line alone. With regard to India's responses to the questions from certain Members about Customs Notification No. 11/2014, Canada asked India to confirm the tariff classification of the goods mentioned therein. Canada did not accept India's justification for applying tariffs above the rates set in India's bound commitments and sought clarification regarding recent reports that India was planning to raise its applied rates above its bound commitments also on additional products. Canada likewise urged India to consider the domestic impact of imposing tariffs on IT products, which had become an integral part of a growing and innovative economy. Canada believed that providing industry with access to competitively priced inputs was key to their success, whether finished goods were consumed domestically or exported for consumption abroad. She invited India to respect its Schedule of Concessions.

10.4. The delegate of Japan echoed Canada's concerns about India's applied customs duties on ICT products, an issue that had long been discussed in the ITA and Market Access Committees, and in the CTG. Despite the repeated calls that had been made to India these concerns remained unaddressed and India continued to apply duties of 10% on four ICT products that were higher than the bound duties of 0% for the same products. This was inconsistent with India's binding commitment. Japan called upon India to clarify in which HS code it classified the four ICT products in question, and looked forward to receiving India's prompt response. As stated at previous CTG, Market Access, and ITA Committee meetings, Japan continued to be particularly interested in digital cameras (HS 8525.8020) and printed circuit assemblies (HS 8538.9000), as well as in the imposition of customs duties on imported mobile phones. He called upon India promptly to clarify these issues.

10.5. The delegate of the European Union recalled that her delegation had raised this issue on several occasions in this Council, in the ITA Committee, and in the Market Access Committee. The EU shared the concerns about the 10% import duty applied by India on ICT products under HS code 8517, which were already covered by the ITA and therefore bound at 0% in India's tariff Schedule. In its replies to the EU's questions, India had confirmed that this was not an issue of classification, that the 10% duty was applied to a number of ICT products, and that India did not consider itself to be bound by its ITA commitments in this case, given that the products in question did not exist at the time that those commitments had been undertaken. However, the EU remained unconvinced by these arguments. India considered that these products were "new" products and therefore not covered by the ITA. The EU was of the view that this argument did not hold, particularly in light of past WTO case law on IT products in the European Communities, and in light of the fact that the ITA covered all products that had been classified in the WTO Model List of Items contained in JOB(07)/96. These products were identified through their harmonized system classification, which was regularly updated to take into account different HS revisions. Therefore, all of them fell within the scope of the ITA Agreement, regardless of their description, and enjoyed a 0% duty rate as bound in India's Schedule of Concessions. She called upon India to share its point of view on these aspects of the issue, as highlighted by the EU.

10.6. On previous occasions, the EU had also mentioned the cases of digital video cameras and so-called "other electronic integrated circuits (EICs)", classified under HS codes 8525.80.20 and 8542.39.00, respectively, which were two ICT products for which the applied tariff was neither in conformity with India's bound Schedule of Concessions, nor the ITA. The EU had also been informed recently that India intended to reintroduce customs duties on mobile phones, which also fell within the scope of the ITA, and which were also bound at 0% in India's Schedule of concessions. With these measures, India was continuing to ignore the EU's requests, and continuing to be in breach of its WTO commitments. India should also clarify this new issue.

10.7. The EU regretted to be compelled to raise these issues again, but after several attempts to solve them in different committees, as well as bilaterally, India had still not addressed them. Given the importance of these products in international trade, the EU again called upon India promptly to eliminate these tariffs, which violated its WTO commitments and created barriers to trade that were in opposition to the G20's call to roll back protectionism. The EU would continue carefully to monitor India's compliance with its WTO commitments.

10.8. The delegate of Norway echoed the concerns raised by previous speakers; there was indeed a discrepancy between India's applied rates and its bound commitments on certain products. Furthermore, reports in the Indian press had referred to discussions about or plans to increase customs duties on other IT products. In Norway's view, a Member's applied tariffs might not exceed those listed in their schedules and technological advancement within the product segment did not in any way alter that simple fact. If this were not the case, a very large number of Member's commitments would then be put into question. Given the economic and systemic implications of this issue, Norway looked forward to receiving additional clarification from India on this issue.

10.9. The delegate of the United States reiterated the concerns already raised by the US on multiple occasions, in Geneva, Washington, and Delhi, regarding the 10% applied tariffs imposed by India on four categories of telecommunications equipment, pursuant to Indian Customs Notification 11/2014. Despite the various calls made to India to clarify the tariff classification for the product categories identified in its Notification 11/2014, India had repeatedly failed to provide any information, arguing that "the main issue here is not the classification but the tariff binding commitments". The US agreed with India that the issue was fundamentally a question of India's binding tariff commitments – namely, the potential discrepancies between India's WTO bound commitments to provide duty-free access to certain products, and the non-zero import duties that were actually being applied at the border. If the telecommunications products identified in India's Notification 11/2014 had indeed been classified in a tariff subheading for which India's WTO schedule reflected a zero duty rate, then a decision by India to impose any tariff rate other than zero would be inconsistent with India's WTO binding commitment.

10.10. Indeed, India's WTO bound schedule for HS subheading 8517.62 was 0% but India's published and applied MFN schedule indicated a 10% duty for products classified within this subheading. This was certainly an issue of tariff binding commitments, as indicated by India; therefore, India must abide by its WTO commitments and revoke Customs Notification 11/2014.

10.11. Moreover, as indicated by his delegation at the meeting of the Committee on Market Access, in May 2017, concerns also existed over India's intention to increase import duties on mobile phones, and other technology products, in support of its "Make in India" campaign. He therefore drew Members' attention to India's Schedule of Concessions, specifically tariff line 8517.12.00, which covered "telephones for cellular networks and for other wireless networks", and for which India's binding tariff commitment was zero. The US called upon the Indian government to abide by its WTO commitments when considering whether or not to raise customs duties on imported mobile phones or any other technology product.

10.12. The delegate of Chinese Taipei echoed the concerns raised by previous speakers and recalled that these concerns had been repeatedly raised in the ITA and Market Access Committees, and at previous CTG meetings. Chinese Taipei also considered that an applied rate that stood above the bound rate of 0% for items under HS code 8517 was inconsistent with India's bound commitments. She urged India to honour its WTO commitments.

10.13. The delegate of Australia shared the concerns raised by previous speakers.

10.14. The delegate of Singapore expressed Singapore's concern with regard to this issue, which had already appeared on the agendas of this Council, and the Market Access and ITA Committees.

10.15. The delegate of Thailand shared the same concerns on this issue that other delegations had already expressed. Thailand held a commercial interest in the products in question and would closely follow up on this issue.

10.16. The delegate of Switzerland also shared the concerns already expressed by other Members regarding India's imposition of import duties on information technology products that were above the rates bound by India in its Schedule of Concessions, namely a bound rate of 0%. This represented a breach of India's WTO commitments and deserved clarification. Switzerland also urged the Indian Government to reconsider its intention to impose import duties on additional IT products, such as mobile phones, for which India's bound rate was also at 0%, as reflected in India's HS2007 certified Schedule for its tariff line 8517.12.00. Any decision to impose an import duty on these goods would be fully inconsistent with that commitment.

10.17. The delegate of the Republic of Korea said that, as an IT-exporting country, Korea had significant systemic concerns about this issue. India's tariff policy was not WTO-compliant and the arguments that it had raised at the last CTG meeting were not convincing. Concerns also existed with regard to India's intention to expand import duties to other ITA products, such as mobile phones. India should provide further clarification and justification of its tariff policy.

10.18. The delegate of India thanked Members for their continued interest in India's customs duty regime on certain electronics, IT, and telecom (ICT) products. The concerns raised by Members referred to three issues: (i) the imposition of customs duties on certain ICT items indicated in Customs Notification 11/2014; (ii) the apparent disparity in applied duties on certain tariff lines – such as 8525.80.20 and 8542.39.00, that covered digital still video cameras and EICs, with India's zero binding commitment under the ITA and WTO Schedule of concessions; and (iii) the likely imposition of customs duties on certain other goods, such as mobile phones.

10.19. In respect of the first concern, he referred to document G/IT/W/42, containing India's written responses to the questions posed by certain Members in document G/IT/W/45, as well as to the replies that had been provided by India at the meeting of the Committee on Market Access, on 2 May 2017, and at the CTG meetings of 17 November 2016 and 6 April 2017. Since there had been no change in India's position, interested Members might refer to India's written replies as well as to its oral statements made at the aforesaid meetings.

10.20. With regard to the second issue, he informed the Council that no duty had been applied on ITA items falling under tariff lines 8525.80.20 and 8542.39.00. India had exempted those items from customs duty through specific customs notifications.

10.21. On the issue of mobile phones, he indicated that the concerns raised by Members at this and previous meetings of the CTG and the Committees on Market Access and ITA had been and

would be forwarded to his authorities for consideration, and that, in addition, there was no customs duty on mobile phones to date.

10.22. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

10.23. The Council so agreed.

11 EGYPT – MANUFACTURER REGISTRATION SYSTEM – REQUEST FROM THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA

11.1. The Chairperson informed the Council that, in communications dated 16 and 19 June 2017, respectively, the delegations of the European Union and the United States had requested the Secretariat to include this item on the agenda.

11.2. The delegate of the European Union recalled the calls her delegation had made to Egypt in the TBT Committee inviting Egypt to suspend its measures that formed the basis of the manufacturers' registration system so as to fully abide by WTO rules. These measures overlapped with existing requirements in a number of sectors and lacked transparency. Like many other Members, the EU was concerned about the disproportionate obstacles to trade that these measures created, and which, in addition, were detrimental to Egypt's economy, and which had hampered EU exporters from reaching Egyptian markets for more than a year.

11.3. The EU acknowledged that the measures had been adopted in a context of serious foreign currency shortages but, following the recent implementation of an economic reform programme, including floatation of the Egyptian currency, foreign reserves were now almost at pre-2011 levels; there was thus no further need to maintain restrictive measures aimed at reducing imports. Therefore, once the files submitted by the companies concerned had been accepted and processed, the EU would appreciate the prompt granting of authorizations by the Ministry of Foreign Affairs for mandatory registration of foreign companies wishing to export to Egypt under Decree 43/2016.

11.4. She again called upon Egypt not only to suspend the measures without further delay, and actively to reconsider and revise them in consultation with stakeholders, but also to notify them to the TBT Committee before their enforcement.

11.5. The delegate of the United States said that, after many discussions of this issue in the TBT Committee, including at the most recent meeting, in mid-June 2017, the US was raising its concerns to the CTG in the hope that Egypt would now address them. Egypt's Ministerial Decree No. 43/2016 required that imports of products listed in HS Chapter 25, including apparel, toys, chocolate, cosmetics, milk and dairy products, motorcycles, and washing machines, would only be allowed into Egypt if produced by manufacturing facilities, or imported from companies owning trademarks, that were registered with the Ministry of Trade's General Organization for Export and Import Control, or GOEIC. However, it was unclear whether Egyptian manufacturing plants and companies were also subject to similar registration, surveillance, and inspection requirements, or whether some companies or countries were receiving exemptions from the Decree's requirements.

11.6. Additionally, Decree No. 991/2015 required pre-shipment inspection of 23 products listed therein. These largely overlapped with products listed in Decree No. 43/2016 to ensure their conformity with relevant Egyptian quality standards and regulations that were also managed under the GOEIC.

11.7. As previously noted in the TBT Committee, the decrees in question raised concerns about National Treatment and the fulfilment of Egypt's obligations under the WTO Technical Barriers to Trade (TBT) Agreement, which required there to be non-discrimination in the application of technical regulations, and that technical regulations should be no more trade restrictive than necessary in order to achieve their legitimate objectives.

11.8. Egypt's backlog in processing applications had a negative impact upon the trade in goods. Given the failure of US efforts to address these issues bilaterally and during the TBT Committee meetings, the US restated its priorities as follows:

(i) Egypt should suspend the application of the measure and allow further time for submission and consideration of comments by interested parties. As part of this consideration, Egypt should consider three TBT requirements:

- take the opportunity to consider whether its requirements needed to be altered to take into account the nature of particular goods and industries so as to avoid unnecessary obstacles to trade;
- consider if a use of international standards could appropriately meet Egypt's objectives; and
- consider the need to avoid unnecessarily duplicative requirements;

(ii) in order to provide greater confidence with regard to the processing of the applications in an efficient manner, Egypt should provide an update on: (a) the number of applications; (b) how many had been approved; (c) how many had been rejected; (d) how many were under consideration and when did Egypt expect to complete them;

(iii) Egypt should continue its engagement with the US and interested parties by continuing to provide updates on the development, adoption, and enforcement of this measure.

11.9. The delegate of Thailand echoed previous speakers and registered Thailand's interest in this issue.

11.10. The delegate of Switzerland referred to the concerns on this issue expressed by his delegation at previous CTG and TBT Committee meetings. He thanked Egypt for having provided some responses to the questions that Switzerland posed to it in the TBT Committee and in written communications. Switzerland encouraged Egypt to consider a less trade restrictive approach and to bring its legislation and implementation into compliance with WTO principles and rules, including the TBT Agreement. Switzerland remained concerned about the systems' lack of transparency as well as the lack of clarity in the registration process.

11.11. The delegate of Chile thanked the EU and the US for their statements, which also reflected Chile's concern over Egypt's registration system. Chile also wished for further clarity on the system and called upon Egypt to bring its measures into conformity with the WTO Agreements, particularly the TBT Agreement which required that any TBT measure not be more trade restrictive than necessary. He called upon Egypt to bring these measures into conformity with WTO rules so as to improve the predictability of trade between their two countries.

11.12. The delegate of Turkey thanked the EU and the US for having placed this issue on the Council's agenda. Turkey had been closely following and was concerned about Egypt's manufacturer registration system. Despite their previous attempts to do so, at bilateral and multilateral levels, Turkey had still not seen any improvement in the situation and many Turkish companies were still awaiting registration by the so-called GEOIC, even when the required formalities had all been completed. Others were yet to be informed about the relevant registration process. The Egyptian Registration System procedures were lengthy, costly, and complicated. Turkey considered that both the pre-application and the implementation of the registration system were burdensome, non-transparent, and created unnecessary obstacles to trade. Turkey therefore called upon Egypt to consider removing its manufacturer registration system.

11.13. The delegate of Egypt thanked the speakers for their statements and explained that there were two different decrees, Decree No. 43/2016, which required the registration of manufacturing plants and trademarks eligible to export their products to Egypt, and Decree No. 991/2015, regarding pre-shipment inspection to ensure conformity of the imported products with the relevant Egyptian standards. Both decrees had been notified to the TBT Committee where they had already been examined by Members.

11.14. Since its notification of Decree No. 43/2016, Egypt had held a number of constructive consultations with its trading partners and had also provided written responses to comments received through its TBT enquiry point. Egypt believed that any discussion relating to the

implementation of these decrees should occur under the TBT Committee. However, Egypt considered it appropriate to underline several points, mainly regarding Decree No. 43/2016. This Decree did not deal with or require broader compliance with new or current specific technical regulations as its nature was merely administrative and it therefore did not impose further burdens on producers or companies so as to comply with specific technical regulations.

11.15. Although Egyptian importers of products listed in the Decree represented only a fraction of total Egyptian imports, the Egyptian market had witnessed in the last years a sharp increase in the volume of such products; this was the consequence of illegal and counterfeited manufacturing which had a negative impact upon consumers' health and safety. Egypt also believed that this Decree represented an opportunity, rather than an obstacle, as it provided credible producers with a better competitive environment as it allowed for great control of counterfeited products imported into Egypt.

11.16. With regard to the registration backlog, he confirmed that the registration process largely depended on companies submitting a complete file, including all requested data and certificates. However, it was to be noted that, since the full implementation of the Decree, hundreds of producers and manufacturers had in fact been registered successfully.

11.17. He also confirmed that Egyptian manufacturing plants and companies were also subject to registration surveillances and to inspection requirements by numerous Egyptian regulatory authorities so as to ensure their compliance with relevant regulations. Egypt was fully committed to the WTO and believed that the registration requirement under Decree No. 43 was not more trade restrictive than necessary, and that it complied with WTO rules, and with the TBT Agreement in particular. He encouraged interested delegations to approach Egypt bilaterally or in the context of the TBT Committee.

11.18. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

11.19. The Council so agreed.

12 IMPORT LEVY BY WTO MEMBERS OF THE AFRICAN UNION – REQUEST FROM JAPAN AND THE UNITED STATES OF AMERICA

12.1. The Chairperson informed the Council that, in communications dated 16 and 19 June 2017, respectively, the delegations of Japan and the United States had requested the Secretariat to include this item on the agenda.

12.2. The delegate of Japan first welcomed the contributions made by the African Union (AU) to peacekeeping activities and then reminded delegations that, at the last CTG meeting, the AU Group Coordinator had indicated that Members' concerns on AU import levies would be conveyed to his Group for discussion at its next coordination meeting. Japan asked whether or not this issue had been discussed among WTO Members of the AU and, if so, how they intended to implement the AU Assembly Decision on import levies. Japan had heard that a few AU Members intended to impose, in addition to customs duties, a 0.2% duty on imported products from other Members, but without imposing the same duties on African Members. If this were the case it would be inconsistent with the WTO's MFN principle. Japan sought from all AU members that were also WTO Members further information as to how they intended to collect the required payments of 0.2% of total import duties. Japan emphasized that any decisions on this matter should be implemented in a consistent manner with the WTO obligations of AU members that were also WTO Members, including the MFN principle and a Member's binding commitments.

12.3. The delegate of the United States appreciated having this opportunity to discuss the trade-related aspects of the African Union's Decision for AU members to finance 100% of the AU's operational budget, 75% of its programme budget, and 25% of the AU Peace Fund by 2020, which had been unanimously adopted by AU member states in Kigali in July 2016.

12.4. The US had a number of updates to report since the April CTG meeting, as follows: (i) on 15 June, the US had reported to the UN Security Council that it continued to support the AU's efforts to increase financial self-reliance and advance plans to reinvigorate and endow the

AU Peace Fund. At that meeting, the US had emphasized its interest in working with African countries to identify non-trade mechanisms through which to raise funds for AU financing – rather than on the basis of trade mechanisms, which the US could not support; (ii) the US had understood that at least two AU members had indicated their intention to impose a new import levy as a revenue source for contributions to the AU and, at least in one case, that it was reportedly intended to apply the levy only to non-AU members, in contravention of the MFN principle. At least a few AU member governments had informed the US that they intended to use non-trade mechanisms to meet their AU commitments, and many African countries were still discussing in their Capitals how they intended to finance their contributions to the AU.

12.5. The US clarified that it was not in a position to support any WTO waiver that would authorize the use of trade measures to finance AU activities. The US looked forward to discussions outside the WTO on options for non-trade mechanisms that would support the AU's efforts to self-finance.

12.6. The delegate of the European Union reiterated the EU's support for the purpose and cause of the measure, which aimed at enabling the AU to finance its own activities and, in doing so, to support African countries. However, it wished to receive more information about the levy from AU members that were also WTO Members, and specifically to receive information with regard to their intentions and any measures that had already been adopted. The EU attached utmost importance to transparency and encouraged African WTO Members to notify the measures in question. The EU called upon African Members to adopt only WTO-compatible and compliant measures on this issue.

12.7. The delegate of Canada reiterated Canada's support for the AU's efforts to increase African resource mobilization to fund the operations and programmes of the African Union Commission. And, like African states themselves, Canada would like to see sustained, predictable, and flexible funding mechanisms identified by means of which to support the AU's peacekeeping operations. His delegation was encouraged by Africa's efforts to provide more sustainable funding, including for African Union-led peacekeeping operations, the AU Peace Fund. While Canada was pleased to support Africa's regional integration and free trade efforts, it was also keen to continue to develop its own trade with Africa, and so encouraged AU members that were also WTO Members to begin discussions with other WTO Members to ensure that any proposed import levy would be WTO-consistent in its implementation. Canada looked forward to receiving an update from the AU WTO Members on how they planned to approach this issue.

12.8. The delegate of Rwanda, speaking on behalf of the African Group, took note of the statements that had been made and would convey these to the relevant authorities.

12.9. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

12.10. The Council so agreed.

13 CHINA – TRADE DISTORTING MEASURES – REQUEST FROM THE UNITED STATES OF AMERICA

13.1. The Chairperson informed the Council that, in a communication dated 16 June 2017, the delegation of the United States had requested the Secretariat to include this item on the agenda of today's meeting.

13.2. The delegate of the United States said that his delegation had two specific concerns with regard to China's trade practices, and specifically with regard to the timeliness and completeness of China's subsidies notifications; at the same time, he noted that these same concerns had already been expressed by several Members in various CTG subsidiary committees.

13.3. In 2016, China had reported on its subsidies at the sub-central level for the first time. However, China had not covered all of its provinces in its reporting, and had also omitted several important sectors, such as steel, aluminium, and fisheries. This was significant given the important role sub-central governments had played in keeping failing firms afloat, especially in sectors experiencing overcapacity. The US urged China to address this problem promptly given that

China's practice to date had prevented Members from accessing crucial information about these programmes so as to better understand their operation and trade effects, and to engage with China on reform.

13.4. WTO Members had repeatedly expressed concern over China's government intervention and support in several key industrial sectors, such as steel and aluminium. China's practices had led to severe overcapacity, with much of the surplus Chinese products being dumped around the world. Members had repeatedly urged China to take concrete steps to stop its harmful government intervention and support and to rein in its excess capacity and excess production in these key sectors. Instead, China's efforts to address excess capacity had not resulted in meaningful reductions in total capacity and production had continued to increase even in the face of decreasing demand.

13.5. China also appeared set on increasing its intervention and support in other ways, as evidenced by a significant infusion of money into semiconductors and the "Made in China 2025" industrial plan, which targeted 10 manufacturing industries for technology acquisition, market share dominance in China, and significantly increased global market share by 2025. In other words, much more excess capacity and excess production was on its way.

13.6. In response to China's unwillingness to resolve these issues on its own, Members had had no choice but increasingly to adopt anti-dumping measures to address the resulting injury to their own industries. For example, of the 22 Members that had reported anti-dumping activity in the last six months, 18 Members (or 82% of the total) had done so vis-à-vis China. Of those 18 Members, 16 (or 89%) had involved steel or aluminium exports from China.

13.7. The US urged China to change its course and truly to commit to the market-based reforms it had promised to undertake when it joined the WTO. Until this occurred, industries injured by dumped imports would continue to seek relief, and their governments to provide it, to an extent commensurate with China's government intervention. The US looked forward to addressing this issue with China.

13.8. The delegate of the European Union recalled that, in April 2017, the EU had highlighted its concern about the existence and rapid growth of overcapacity in multiple sectors, both traditional and advanced, high-tech fuelled sectors; about the internal policies of certain Members, notably China; and about a recourse to non-market-oriented decisions that had led directly to overcapacity. Examples of such policies could be found in an extensive myriad of support measures that had led to a backlash against free trade. The EU thus called upon China to tackle the distortions that threatened the very foundations of the free trade system, a free trade system from which China had clearly benefitted since its accession to the WTO. However, China had not yet taken positive action on any of these issues. The intertwined web of subsidies granted to pre-defined strategic and pillar sectors had also been further amplified by a lack of notification under Article 25 of the SCM Agreement, which required Members to notify subsidies and whose objective was to ensure transparency so as to allow Members to review each other's actions in the area of subsidies.

13.9. Unfortunately, Members' level of compliance with this requirement had deteriorated significantly since 1995, as the share of Members that had notified their subsidies had decreased from 50% to 38%. Despite Members' obligation to notify their subsidies, out of 162 Members only 62 had notified their use of subsidies by 30 June 2015 during that year's cycle. Equally worrying was the fact that, while notifications were required for subsidies programmes implemented at both the central and sub-central levels of government, some Members, including China, did not notify sub-central subsidy programmes at all, or else did so in notifications that were inadequate. Indeed, the quality of actual notifications was often doubtful, including attempts by some Members, like China, to notify subsidy programmes that clearly fell outside the scope of the SCM Agreement so as to create an appearance of transparency without subjecting actual industrial subsidies to global scrutiny; this practice also deserved attention. The EU urged other Members, notably China, to start complying fully with their subsidy notification obligations under WTO rules and called upon China to avoid any trade spillovers as a consequence of overcapacity, particularly as these posed a systemic risk to global trade relations.

13.10. The delegate of Japan echoed previous speakers and stated that, as had been recognized at the G20 and G7 meetings, measures such as the granting of subsidies based on non-market-oriented policies distorted the market and were one cause of the global overcapacity problem. The need to strengthen the market function in response to those issues had also been recognized at the G20 and G7 meetings.

13.11. Japan had made a joint proposal at previous SCM Committee meetings highlighting the need to tackle subsidies that contributed to overcapacity in certain industries, including the steel and aluminium industries. Japan believed that it would be beneficial to deepen the discussion among WTO Members as to how best to respond to this issue. As also indicated at the last SCM Committee meeting, Japan considered that China's subsidy notifications were unsatisfactory, particularly regarding subsidies given at sub-national level. Therefore, Japan once again called upon China to submit the relevant notifications.

13.12. The delegate of Canada recalled Canada's calls at previous CTG meetings to take urgent action to address the problem of global excess manufacturing capacity. In Canada's view, such actions should be aimed at addressing the underlying causes of excess capacity, including government intervention in key sectors such as steel and aluminium. The persistence of government intervention and over-capacity in these sectors had led to an increase in the use of anti-dumping measures to address the dumping of goods onto the global market. Trade remedies were legitimate and necessary tools to remedy injurious dumping and would continue to be used if dumping persisted in international markets. Canada reaffirmed again the importance of the WTO framework for rules-based trade in responding to these issues.

13.13. The delegate of China took note of the previous statements and indicated that it was the second time that this issue had been raised at the CTG, where China had already provided its responses. Further, the issue of overcapacity did not form part of the CTG's nor of the WTO's terms of reference, thus the CTG was not the appropriate forum for this discussion.

13.14. China said that, in spite of the fact that certain Members' trade policy stances were under pressure to take an inward turn, as certain Members were swayed by an undercurrent of de-globalization and confronted with rising protectionism, China remained committed to its policy of further opening up and deepening reform. Indeed, in January 2017, President Xi Jinpin, in his visit to the World Economic Forum in Davos, and the UN headquarters in Geneva, had made clear China's policy of advocating economic globalization, safeguarding free trade, and upholding multilateralism. China would continue to promote trade and investment liberalization and facilitation, continue to commit unequivocally to anti-protectionism, and continue to proceed with its consistent and strong support for an open, transparent, inclusive, and non-discriminatory multilateral trading system.

13.15. Moreover, since the 3rd Plenary Session of the 18th CPC Central Committee, China had taken measures to comprehensively push its reforms to greater depth and actively and increasingly to open up to the world. The following three examples illustrated China's position in this regard:

(i) The supply-side structural reform: Reforms had been conducted in major areas, market access had been broadened, and the transaction costs of enterprises had been cut as a result of reduced taxes and fees. New industries, and new business formats and models, had been developing rapidly, and in a sound manner, thereby contributing to the transformation and upgrading of the Chinese economy;

(ii) Opening up further to foreign investment: In January 2017, the State Council issued a Circular on "Several Measures for Expanding, Opening Up and Actively Utilizing Foreign Capital", relating to measures to further boost foreign investment in sectors such as services, manufacturing, and mining. China would continue to implement facilitation measures and treat domestically funded and foreign invested enterprises on an equal footing;

(iii) Further improvement to the rules based and business enabling environment. In September 2016, the National People's Congress of China revised four laws regulating inbound investment, which provided for a negative list regime for the establishment of foreign invested enterprises. The types of investment that were outside the negative

list were not subject to pre-establishment examination or approval and only required filing for record. This approach would be further advanced and perfected.

13.16. As to the concerns raised at this meeting, China had already provided explanations and clarifications on a number of occasions and in various fora of the WTO. Overcapacity was a global issue that could not be overemphasized and that required collective international effort to be solved. Following the G20 call in 2016, a "Global Forum on Steel Excess Capacity" (GFSEC) had been established to deal with this problem through regular sessions. Therefore, China did not see any justification in introducing this issue into the WTO, and believed there was no causal link between steel overcapacity and any so-called "interventions" or "policy support" involving the steel sector. Relevant policies in China were generally aimed at encouraging environmental protection and energy conservation, supporting technological research, development, and innovation, as well as facilitating industrial structural adjustment. These policies were not specifically provided to the steel industry or to any steel companies, and nor were they contingent at all upon export performance, or intended for import substitution. China believed that similar policies were also applied in other countries and regions. Moreover, China had taken the initiative to directly address this global problem by pressing ahead with the supply-side structural reform and by phasing out excess steel capacity. In 2016 alone, over 65 million tons of steel capacity and 290 million tons of coal capacity had been eliminated. These were tangible efforts undertaken by China as a part of its contribution to the international community. Indeed, the steel and iron products produced by China were mainly targeted for its internal demand, and figures from 2016 show that steel and iron products exported from China only made up about 14% of China's total output in the country, which was far below the 40% equivalent in Japan.

13.17. China, as a responsible WTO Member, attached great and serious importance to its transparency obligations and notifications under the WTO. With regard to the concerns about transparency raised by previous speakers, she indicated that China had provided detailed explanations and clarifications during each and every session of the SCM Committee meetings in 2015-2017, and that in recent years China had also made continuous efforts to further enhance transparency with regard to its subsidy policies, and in particular at the sub-central government level. China acknowledged that a few years ago it had had some gaps with regard to its submission of notifications of this type. However, back in October 2015, it had submitted details of its central government level support of subsidy programmes, and immediately before China's Sixth TPR, in mid-2016, it had submitted the first sub-central government level subsidy notification to the SCM Committee. Members were asked also to recall that China was a vast country with an uneven level of development among its regions; therefore, the collection and compilation of all the different kinds of information needed for these highly technical notifications required a very high knowledge capacity from local officers. Nevertheless, China had successfully notified these subsidies and was currently at the same rate and level of notifications as the Members represented by the previous speakers, with the exception of Japan, which had recently submitted its 2017 cycle of subsidy notifications, while China and the aforementioned Members were still in the process of preparing their notifications for the current cycle. This positive track record had been recognized and recorded in SCM Committee meetings.

13.18. With regard to the completeness and timeliness of notifications, she reiterated China's position, expressed at the most recent SCM Committee meeting, that Members were required to consider two points when addressing this matter. First, that the so-called "specificity" issue might be different for each and every Member; the SCM Agreement thus authorized a Member to submit its notifications based on its own understanding of the subsidy definitions, as provided by Article 1, and on its own understanding of the specificity as provided for in Article 2 of the Agreement. Second, Members' understanding of the definition of subsidies at different levels might also be different. For China, for example, sub-central level subsidies in the absence of a clear definition in the SCM Agreement referred to programmes funded by local government alone, or jointly funded by central and local government, whereas the programmes solely funded by central government were central level subsidies. As it had done in the past, China would continue to respond to the questions raised by the US and other Members based on the rules and disciplines in the SCM Agreement. However, China contested the US's invariable and groundless complaints as to China's alleged unwillingness to fulfil its obligations, which ignored the tremendous progress that China had already made in this direction. China could not accept such a constantly negative tone with regard to its record on subsidy notifications.

13.19. Nor could China see any logical link between the so-called "incompleteness" of a notification with an abusive use of anti-dumping or countervailing measures; this was not a forceful argument or reasoning in defence of an abusive use of trade defence tools.

13.20. With regard to the "Made in China Programme 2025", she indicated that this programme had been formulated according to China's current level of industrialization and that it was consistent with the WTO core objective of improving the quality of Chinese products and equipment. The implementation of this programme would bring about huge market opportunities for both domestic and foreign companies alike, and more overseas equipment and manufacturing products and technology were expected to flow into the Chinese market. More sino-foreign cooperation in the area of equipment and technology would also be witnessed. With regard to the green development aspect of the programme, the same policy support would be provided to both domestic and foreign companies registered in China.

13.21. In conclusion, she invited interested Members to study China's statements and responses already provided in the CTG's subsidiary bodies, like the SCM Committee, very carefully; in doing so, they would enjoy a clearer understanding of what China was achieving with regard to its transparency obligations.

13.22. The delegate of the United States thanked China for its responses to the concerns raised but indicated that, whatever reductions or eliminations of capacity had been undertaken by China, there had been no decrease in overall capacity, but rather the opposite. Further, with regard to the completeness of notifications, he noted that China would have Members believe that they did not have a single subsidy programme to support their steel and aluminium industries.

13.23. The delegate of China said that she did not know the source of the statistics mentioned by the US delegate regarding the absence of reduction in overcapacity and repeated that in China's view the appropriate place to deal with this issue was the Global Platform. She also indicated that, at the spring meeting of the SCM Committee, China had submitted an Article XXV:8 request for information regarding US support measures in the steel sector; two of those measures were at federal level and four at state and local levels. However, none of the support measures in question had been notified. She repeated that overcapacity was a global issue that involved many factors and players . Therefore, rather than incriminating others, it would be more appropriate to join efforts, to exchange information at the appropriate forum, and to search a solution and agree an outcome. Indeed, China had displayed a leading role in this regard, as China had taken its own initiatives to eliminate so-called excess capacity. However, China would like to know what others had done or to what degree they had conducted similar internal efforts to this end. In addition, China did not find it proper to exercise protectionism in the name of overcapacity, and Members should be against an abusive use of protectionist measures; this was particularly the case in the current climate, where protectionism was gaining ground.

13.24. The delegate of the United States welcomed China's expression of interest in working directly with the US on some of these issues, particularly regarding the subsidy notifications issue, and looked forward to meeting bilaterally with China after all these years to discuss these issues in advance of future subsidy committee meetings.

13.25. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

13.26. The Council so agreed.

14 THE RUSSIAN FEDERATION – TRADE RESTRICTING PRACTICES: EXPORT BANS, CEMENT STANDARDS, GMP CERTIFICATES – REQUEST FROM THE EUROPEAN UNION

14.1. The Chairperson informed the Council that, in a communication dated 19 June 2017, the delegation of the European Union had requested the Secretariat to include this issue on the agenda.

14.2. The delegate of the European Union regretted to refer again to the same four issues that had already been raised at the last CTG meeting but no progress had been made since then. The four issues in question were as follows: (i) the GOST cement standard, which was a concern raised

not only in this Council but one that had also been discussed at the TBT Committee; (ii) good manufacturing practices for pharmaceuticals; (iii) the ban on exports of skins and hides; and (iv) the list of goods subject to export bans.

14.3. With regard to the GOST standards, the EU deplored the fact that the Russian Federation had resorted to certification requirements and enforced them without prior consultation or even notification (for example, the 2017 amendments to the GOST standard on cement certification, the standard GOST R 56836 2016 had not been notified). She requested Russia immediately to make public the content of the legislation. Russia had not consulted prior to the adoption of the first GOST Standard in 2016 and had notified it only after its enforcement. The current system was such that all imports had become impossible except for a few white cement shipments, for which it seemed that Russia was not self-sufficient; this could possibly have explained why the authorization was made on a piecemeal basis for EU exports. There was no rationale for such disproportionate certification requirements and controls, which included, among others, strength tests to be carried out exclusively at the border, and quality controls to be issued by bodies that were not nominated. These technical questions had also been raised by the EU in the TBT Committee.

14.4. With regard to the "good manufacturing practice" certificates for pharmaceuticals, this was a requirement that had not yet been notified to the WTO, although it had been adopted, in December 2015, and had entered into force on 1 January 2016 for new products, requiring them to have marketing authorization. It entered into force on 1 January 2017 for renewals of marketing authorization. In addition, her delegation had indicated at the last TBT Committee meeting that the requirement in question implied a high number of controls abroad, which was hardly compatible with the existing Russian resources in terms of trained and available inspectors. For that reason, the EU had called for several measures to be taken by the Russian Federation, including an appropriate transition time,. Finally, they had also requested that the specific issue of veterinary products of double inspection of sites manufacturing "Active Pharmaceutical Ingredients" and final products be reconsidered by the Russian Federation.

14.5. On the issue of the ban on exports of skins and hides introduced by Government Decree No. 826 of 19 August 2014, she recalled that it had been established initially for a period of six months but had been several times extended subsequently. As a result, the export ban would be in place for approximately three years if one considered that it had been introduced in August 2014 and had been recently renewed up to 18 August 2017. Therefore, the EU no longer considered it to be a temporary ban but rather a ban that had been in place for three years. Her delegation had raised the issue several times in the Market Access Committee but the replies from Russia had not been convincing, especially since the latest renewal of the ban, already in place, would invalidate GATT Article XI(2)(a). Her delegation would appreciate further details and explanations regarding the latest renewal of the ban.

14.6. On the updated list of goods that could be subject to export ban she indicated again that Government Decree No. 19 of 18 January 2017 introduced amendments to the list of goods that were essential to the internal market of the Russian Federation and in respect of which temporary restrictions or export bans could be imposed in exceptional cases. Her delegation would appreciate knowing what Russia's intentions were in that regard and if Russia planned to adopt export restrictions/bans on that basis for birch logs HS code 4403 95 0001, for example.

14.7. The delegate of Ukraine shared the concerns raised by the EU and urged the Russian Federation fully to comply with its WTO notification commitments in order to ensure predictability and transparent conditions for trade, and to remove unjustifiable bans and discriminatory barriers to trade.

14.8. The delegate of the United States echoed the concerns raised by the EU with regard to various measures and practices adopted by the government of Russia that were having an adverse impact on US exports. The US had noted Russia's failure to notify TBT measures, and the resulting lack of transparency. It was a fundamental principle of the WTO that measures should be notified prior to their adoption in order to allow interested Members sufficient time to provide comments, and for those comments to be taken into account. Like the EU, the US had raised concerns about the "good manufacturing practice (GMP)" certificates for pharmaceuticals, most recently in the March meeting of the TBT Committee and in the April meeting of the CTG, but the situation since then had not changed.

14.9. The US had also raised a number of questions in the TBT Committee about Russia's good manufacturing practices measure and looked forward to receiving timely and fulsome responses from Russia. The US also looked forward to the imminent removal of Russia's continued "temporary ban" on exports of skins and hides that continued to be in place, which in fact suggested that it was not temporary at all. As also noted at the April meeting, the US was troubled by Russia's expansion of the list of products that could be subject to export restrictions, contained in Government Decree No. 19 of 18 January 2017, and looked forward to receiving an explanation from Russia about its intentions regarding the possibility to export any of the products on the list, as well as confirmation of the consistency of these measures with Russia's WTO obligations.

14.10. The delegate of the Russian Federation thanked the delegations of the EU, Ukraine, and the US, for their interventions. With regard to the export ban on leather semi-products, she indicated that the measure had been reintroduced several times following certain intervals of time during which exports of skins and hides had been possible. The measure was first reintroduced from 1 February to 1 August 2017 by Government Resolution No. 20 of 18 January 2017. The Russian Federation had carefully considered the EU's question on this matter and was still preparing the appropriate answers.

14.11. With regard to the list of goods mentioned by the EU and the US, she indicated that this related to the Federal Law "On the Fundamentals of State Regulation of Foreign Trade Activity" No. 164-FZ of 8 December 2003, and clarified that the goods that had been qualified as significantly important were not necessarily intended to be subject to any export limitations. She also indicated that the quantitative restrictions, currently in force, had been notified by Russia in a timely manner in the document G/MA/QR/N/RUS/3. Regarding the GMP and cement certifications, she recalled that the issue had already been raised at the last TBT Committee, where the Russian Federation had provided explanations and comments on the measures at issue. Russia had discussed the matter with interested delegations and was ready to continue working with them.

14.12. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

14.13. The Council so agreed.

15 UKRAINE – ANTI-DUMPING MEASURES ON IMPORTS OF CERTAIN NITROGEN FERTILIZERS ORIGINATING IN THE RUSSIAN FEDERATION – REQUEST FROM THE RUSSIAN FEDERATION

15.1. The Chairperson informed the Council that, in a communication dated 19 June 2017, the delegation of the Russian Federation had requested the Secretariat to include this issue on the agenda.

15.2. The delegate of the Russian Federation said that, despite the calls made to Ukraine by his delegation at the last meeting of the Anti-Dumping Committee regarding Ukraine's anti-dumping investigation on imports of nitrogen fertilizers, in May 2017 Ukraine had imposed definitive anti-dumping measures on imports of these products.

15.3. Indeed, when the main facts of the investigations had been disclosed, these had shown that, after having established a range of dumping margins for different Russian exporters (between 19 and 31.84%), Ukraine had decided to apply a flat measure on the basis of the highest duty rate to all Russian exporters and thus completely disregarded the individual results of the investigation. The GATT and Anti-Dumping Agreements explicitly stated that the duty rate had to be "not greater in amount" and "shall not exceed" the margin of dumping. Additionally, the Appellate Body (AB) in *US – Zeroing* had confirmed that "the margin of dumping established for an exporter or foreign producer operates as a ceiling for the total amount of anti-dumping duties". By imposing on all Russian exporters the same duty, equal to the highest dumping margin calculated within the investigation, Ukraine had violated its WTO obligations.

15.4. Russia also believed that Ukraine was in violation of Article 2.2 and Article 2.2.1.1 of the Ant-dumping Agreement (ADA) in its construction of the normal value by rejecting natural gas costs actually incurred by Russian exporters and replacing them with the price of gas exported from Russia to Ukraine. This also contradicted recent Appellate Body findings in, for example, the

case of *EU – Biodiesel*, where it had established that the exporter's costs could not be evaluated "pursuant to a benchmark unrelated to the cost of production in the country of origin".

15.5. There were many other flaws in the investigation at issue, but Russia's intention was to highlight Ukraine's practices in the area of determining normal values and appropriate levels of final anti-dumping duties. Overall, in violation of its WTO obligations, Ukraine was now applying artificially inflated duties on all Russian fertilizers without considering the results of the investigation and actual exporters' price policies. Consequently, Russia believed that Ukraine's sole intention was to squeeze Russian products out of the Ukrainian market. He urged Ukraine to bring this measure into conformity with WTO rules by immediately terminating its application.

15.6. The delegate of Ukraine informed delegations that the decision on the application of definitive anti-dumping measures on imports to Ukraine of certain nitrogen fertilizers originating in the Russian Federation had been adopted in December 2016 based on the findings of the Anti-Dumping Investigation (ADI). This investigation had been conducted in accordance with the requirements of the ADA taking into account current Ukrainian legislation. Moreover, during the anti-dumping investigation all interested parties, and Russian producers and exporters in particular, were given the opportunity to provide written evidence and other information in defence of their interests. The decision to apply definitive anti-dumping measures had been taken in accordance with the positive conclusions reached with regard to the existence of dumping of certain nitrogen fertilizers originating in the Russian Federation, the injury to national producers, and a causal link between the dumped imports and a material injury. As indicated by Russia, anti-dumping measures on imports of certain nitrogen fertilizers originating in Russia came into operation in Ukraine on 22 May 2017.

15.7. Ukraine believed that WTO rules allowed Members to use trade defence instruments, practices, and requirements within the WTO framework, while responding attentively to the legitimate concerns of any WTO Member. Ukraine abided by these rules and remained ready to cooperate and clarify its obligations under the WTO Agreements if requested to do so.

15.8. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

15.9. The Council so agreed.

16 UNITED STATES OF AMERICA – SECTION 232 INVESTIGATIONS ON THE EFFECT OF IMPORTS OF STEEL AND ALUMINIUM PRODUCTS ON US NATIONAL SECURITY – REQUEST FROM THE RUSSIAN FEDERATION

16.1. The Chairperson informed the Council that, in a communication dated 19 June 2017, the delegation of the Russian Federation had requested the Secretariat to include this issue on the agenda.

16.2. The delegate of the Russian Federation indicated that, in April 2017, the United States had initiated two investigations on the effect of imports of steel and aluminium products on US national security. Both procedures had been authorized by Section 232 of the Trade Expansion Act of 1962. Currently, the US Department of Commerce (US DOC) was considering whether steel and aluminium were being imported into the United States in such quantities and under such circumstances as to threaten to impair national security. In the case of an affirmative finding, the US DOC would recommend remedy measures to adjust imports of those products.

16.3. To illustrate Russia's substantial interest in both cases she indicated that, in 2016, Russian exports of iron and steel products into the US accounted for US$1.36 billion, which represented 6% of total US imports under HS group 72. Russia had become the fifth largest supplier in the US market of such goods, and in certain segments was the leading supplier. For example, 58% of US imports of pig iron originated in the Russian Federation, and Russia was also the second largest supplier of semi-finished products, accounting for 31% of US imports.

16.4. As for aluminium, in 2016, the Russian Federation was the third largest US trading partner, guaranteeing 7% of total US foreign supplies under HS group 76. In absolute figures, this

constituted US$1.37 billion. Russia's major export item was unwrought aluminium, since 16% of US imports came from Russian companies.

16.5. In Russia's view, both of the current procedures lacked transparency and predictability since the key parameters of the investigations remained obscure. She asked for clarification from the US of the following issues: (i) the intended dates of the reports' publication and the introduction of the measures, because the US DOC would have 270 days to carry out its investigation but US officials had indicated that they expected both the outcome and the report to be published imminently; (ii) the product scope which had not been defined in either instance; the official publications merely referred to "steel" and "aluminium" imports in a broad sense; (iii) the geographical scope, as apparently the measures had been designed with differential restrictions according to a product's source , that is, special treatment may be granted to countries with which the US had a free trade agreement or so-called "allied relationship"; (iv) the right of defence, because the interested parties had been given an opportunity to provide written comments, but some exporters, including Russian exporters, had not been granted a comparable opportunity to present their cases in oral hearings. Thus, it was not clear on the basis of what grounds and rationale the Russian exporters were being treated differently; (v) the commercial aims, because the opinion of US officials published so far had suggested that the investigations were intended to help to overcome the effects of dumping, subsidies, and overcapacity. This created doubts as to the need on the part of the US to impose additional trade limitations on top of the 154 anti-dumping measures and countervailing orders currently applicable to steel and aluminium imports. The US should clarify its justification for imposing more limitations; (vi) the form of the measures, as there was still no official indication as to their configuration, except for a limited indication from US officials that the measures may take the form of tariffs or quotas. The US should clarify the form or forms the measures would take and reassure Members that any planned measures would fall within US bound levels and not constitute quantitative import restrictions. Additionally, the US should confirm that such measures were consistent with its obligations under GATT Articles I, II, VI, X, XI, XVI, and XIX, under the ADA, under the SCM Agreement, and under the Safeguards Agreement.

16.6. Overall, the Russian Federation believed that, to stabilize world markets of steel and aluminium it would be better if the US refrained from introducing any trade restrictive measures following the investigations at issue, given that such restrictions would not eliminate the root causes of the market imbalances and would not therefore provide any lasting solutions. What was needed was a more energetic and concerted international action from the G20 in the context of best efforts made at the Global Forum on Steel Excess Capacity. The Russian Federation looked forward to receiving the replies and confirmations from the US concerning these issues.

16.7. The delegate of the European Union recalled that no GATT exception justified an import restriction taken outside of the framework of trade remedies for the purposes of protecting a domestic industry against foreign competition. While GATT provided for security exemptions, the scope of such exemptions was circumscribed by specific situations and conditions that appeared to be absent in the cases at issue.

16.8. The EU believed that a proliferation of Section 232 actions would create an unacceptable systemic risk and that the issue related to overcapacity, which was an issue addressed earlier by the EU under agenda item 13, in support of the US.

16.9. The EU had been informed about the acceleration of the Section 232 investigation of the US DOC into the national security aspects of US imports of steel. Apparently, the report was imminent and might recommend restrictions on imports from third countries, including the EU. The EU regretted that normal procedure and due process had not been followed in this investigation. There had been no in-depth study of the sector by the International Trade Commission, no questionnaire had been sent to producers on downstream users of steel, the public hearing had been hasty and had allowed for only a limited number of stakeholders to make their views known. The investigation was not petitioned by industry but self-initiated by the administration. US steel production, if one examined price, stock market valuation of relevant companies, and production volumes, was in fact picking up, and was much healthier than it had been a few years ago.

16.10. All indications suggested that the EU would be the US trading partner most affected by these possible measures. If Canada and Mexico were excluded from the measures, and considering that Chinese exports were for the most part already subject to trade defence measures, the

EU could be the WTO Member most affected by the import restricting action under consideration. The EU would be firm in taking all necessary actions if import restrictions were applied to its exports.

16.11. The delegate of China echoed the points made by the Russian Federation as China was also concerned about the US investigations under Section 232 initiated in April 2017 on the import of steel and aluminium products, which intended to assess the impact of imported products on national security grounds. National security was a wide concept and lacked a clear definition.

16.12. China believed that imports of steel and aluminium products had not threatened US national security and that the current Section 232 investigations were inconsistent with Article XXI of GATT 1994. Only two months after launching the investigation did the US DOC indicate its decision to publish in the near future the results of this investigation. A number of WTO Members, including China, were highly concerned with the due process unfairness of US investigation proceedings. Accuracy, adequacy, and completeness of investigation evidence for such complex investigations had been conducted in a rush and within a very limited period of time. China urged the US to take a prudent and restrained attitude regarding the use of these trade policy tools.

16.13. In conclusion, China argued that the impact of Section 232 investigations needed to be assessed carefully and fairly so as to avoid creating trade barriers in the name of national security, which would definitely affect the normal flow of international trade, and the flow in trade of steel and aluminium products in particular.

16.14. The delegate of Brazil echoed the views expressed by previous speakers, namely the EU, and China, and noted that Brazil had already transmitted its specific comments to the US authorities with regard to the ongoing Section 232 investigation.

16.15. WTO Members were familiar with the provisions and very strict boundaries of GATT Article XXI. Brazil did not exclude the possibility that, within those boundaries, circumstances may arise where essential security interests were at stake. However, Brazil was concerned by the systemic implications for trade if Members did not continue to follow the time-tested approach of not resorting to trade restrictive measures based on security concerns unless those concerns fell clearly within the bounds of Article XXI. On the contrary, an elastic interpretation of what constituted security interests for purposes of international trade could lead to results that would not be in the interests of any Member.

16.16. The delegate of Japan expressed interest in this issue and would closely follow US actions to address it.

16.17. The delegate of Australia stated that Australia's steel and aluminium industries had also been affected by global excess and a range of government interventions in the sectors at issue. Australia had imposed trade remedy measures to address injurious dumping and subsidization of imports in Australia's market. Undoubtedly, this was a global challenge and Australia shared the concerns of others that, in addressing this global challenge, international trade rules should nevertheless still be upheld.

16.18. Australia acknowledged that US Section 232 investigations to determine the extent to which steel and aluminium imports impaired US national security interests were still under way, and believed that any recommendations and subsequent actions resulting from these investigations might still remain consistent with international trade rules and be objectively justifiable. Any unjustifiable measures could further exacerbate global market distortions and result in retaliation and tit-for-tat measures, which would then harm Members' economies.

16.19. The delegate of Chinese Taipei indicated that her delegation also had a systematic concern with regard to this issue and would be closely monitoring the investigation as it proceeded.

16.20. The delegate of the United States thanked the Russian Federation for its interest in Section 232 investigations on the effect of imports of steel and aluminium products on national security. The Secretary of Commerce had initiated investigations under Section 232(b)(1)(a) of the Trade Expansion Act of 1962 to determine the effects on national security of steel and aluminium

imports. As required by the statute, the investigation would consider a number of factors, including the following:

(i) The domestic production needs and capacity of domestic industries to meet such requirements existing in anticipated availabilities of human resources, products, raw materials, and other supplies and services essential to the national defence, the requirements of growth of such industries and such supplies and services included in the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use of those affect such industries in the capacity of the US to meet national security requirements;

(ii) the close relation of the economic welfare of the nation to the US national security, as well considering the impact of foreign competition in steel and aluminium on the economic welfare of individual domestic industries;

(iii) any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive steel and aluminium imports;

(iv) the status and likely effectiveness of US efforts to negotiate a reduction in the levels of excess steel and aluminium capacity worldwide.

16.21. The Secretary of Commerce had initiated these investigations in light of the critical role steel and aluminium served in the US national security industrial base, and the continued increase in steel and aluminium imports. The Department of Commerce had issued official notices notifying the public of the investigations and public hearings and soliciting public comments. Public hearings were held, on 24 May 2017 for steel, and on 22 June 2017 for Aluminium, with 37 and 32 witnesses, respectively.

16.22. Close to 200 written comments had been submitted on the steel investigation and about 60 comments had been submitted on the aluminium investigation, and a representative of the Russian Federation had testified at both hearings.

16.23. The Secretary of Commerce would report to the President on the findings of the investigation.

16.24. If the Secretary of Commerce found that steel or aluminium was indeed being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the Secretary would recommend actions and steps to be taken to adjust the imports of steel and aluminium so that those imports would no longer threaten to impair the national security.

16.25. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

16.26. The Council so agreed.

17 UNITED STATES OF AMERICA – TRADE DISTORTING MEASURES – REQUEST FROM THE PEOPLE'S REPUBLIC OF CHINA

17.1. The Chairperson informed the Council that, in a communication dated 19 June 2017, China had requested the Secretariat to include this item on the agenda.

17.2. The delegate of China reminded delegations that China had already brought to the Councils' attention its concerns over US trade-distorting measures. China believed that the USTR 2017 President Trade Policy Agenda submitted to US Congress, and its implementation, had sent troubling signals with regard to the US' commitments to its international obligations, to safeguarding the authority of the WTO Dispute Settlement Mechanism, and to its adherence to the cause of multilateralism. China was concerned about the trajectory of the US' trade policies and their potential impact on the global economy and world trade.

17.3. The four issues that China wished specifically to raise were in reference to the following: US Seafood Import Monitoring Program (SIMP); abuse of trade remedy measures; failure to implement the obligation under Article 15 of China's Accession Protocol to stop using "surrogate country" methodology in anti-dumping investigations; and Section 232 investigations on the effect of imports of steel and aluminium products on US national security. China had raised these concerns on various occasions, including in this Council and in its subsidiary bodies, but these concerns were still to be addressed by the US.

17.4. Regarding the SIMP, published by the US National Oceanic and Atmospheric Administration in February 2016, China believed that: (i) it lacked transparency as it was a conformity assessment procedure (CAP) that had been published within the US but never notified to the TBT Committee; nor had the US, according to the TBT requirement, provided Members with at least a period of 60 days for comments and a six month transition period; (ii) it was inconsistent with the non-discrimination principle. The US requirement of traceability and catch certification for species at risk only applied to imported fish and fish products, but not to domestically caught and sold products. This was inconsistent with the WTO principle of national treatment; (iii) it lacked scientific justification as it was applicable to all imported aquatic products regardless of their respective risk levels or the difference between aquaculture products and wild capture fisheries. Thus, the US should remove the aquaculture products from the list of species; (iv) it posed unnecessary barriers to international trade because it required excessively burdensome information and data to be filed and retained for imported aquatic products given the huge difficulty in getting complete information on traceability.

17.5. The program also overlapped with other US regulations, and the above-mentioned issues significantly increased the time cost and cost of funds for enterprises exporting to the US and also constituted unnecessary restrictions on international trade.

17.6. Regarding trade remedies, China was concerned about the abusive US use of these measures, including with respect to subsidy investigations, the designation of public bodies, the selection of external benchmarks, and the identification of the specificity of a subsidy.

17.7. With respect to anti-dumping investigations, China urged the US to fulfil its WTO obligations on trade remedy investigations, to increase transparency, and to stop using such practices as separate rates, the abuse of adverse facts available, the addition of the VAT export rebate, and the addition of preferential rates to the dumping margin in anti-dumping investigations. According to recent statistics, since the new US administration had taken office, the US Department of Commerce had initiated 24 anti-dumping and countervailing investigations against products from 12 Members. Of those, seven investigations had targeted China, and in those anti-dumping and countervailing investigations against China, the US investigation authority (IA) had adopted irrational practices and artificially increased the rates of anti-dumping duty and the rates of countervailing duty. For example, in the biaxial integral geogrid products case, the anti-dumping duty rate for all enterprises concerned was as high as 372.8%, and the countervailing duty rate, as high as 152.5%. In the amorphous silica fabric case, the anti-dumping duty rate was as high as 162.47%, and the countervailing duty rate, as high as 165.39%.

17.8. In addition, China had noticed that the US had recently initiated Section 201 investigations on Crystalline Silicon Photovoltaic Cells and Modules. Members should remember that the Section 201 Investigations on steel and iron products launched by the US back in 2002 had triggered a surge of steel safeguard measures globally. China was concerned by the possible negative impact on the flow of international trade of such trade restricting actions as they reflected the protectionist bias of US trade policy. She asked the US to clarify the reasoning behind and legitimate goals of the increasing number of trade restrictive measures it had recently taken.

17.9. On 16 January 2015, the WTO DSB had adopted the Appellate Body (AB) report and panel report on DS437, *US—Countervailing Duty Measures on Certain Products from China*. In that case, 15 US countervailing measures against China were found to be in violation of WTO rules. To comply with the case rulings, the US had reinitiated the investigations. However, the US had continued with its practices, although they had already been found to be in violation of WTO rules, and specifically its practices on such key issues as public bodies, external benchmarks, and the specificity of raw materials; it had then upheld the original investigation determination, and continued to apply the countervailing measures to the products in question. China was concerned

about such practices, which not only unfairly impaired China's national and industrial interests but also harmed the rules-based multilateral trading system.

17.10. Article 15 of China's Accession Protocol was a sunset clause for the "surrogate country" methodologies in anti-dumping investigations against Chinese imports, and after 11 December 2016, Members were no longer to use "surrogate country" methodologies in their anti-dumping investigations against Chinese products and companies. This had been agreed 16 years ago in a bilateral agreement between China and the US. The deadline had been clearly set. The words had been written in black and white. Sixteen years ago, the US negotiators at the time had also delivered a clear statement to Congress.

17.11. Chinese companies had waited 15 years for this "sunset". All they were asking for was that the US honour its commitment. China had emphasized that it was a legal issue and therefore should not be politicized. It was an international obligation that should not be circumvented by reference to domestic law. It had nothing to do with the so-called "market economy status" (MES), so the US should not use the "MES" requirement in its domestic laws as an excuse to stop honouring its international obligations. China urged the US to respect its obligations under Article 15 of China's Accession Protocol and to stop using "surrogate country" methodologies in anti-dumping investigations against Chinese companies, and to do so in a timely manner.

17.12. In conclusion, and as China had already indicated under agenda item 16, China was highly concerned about the Section 232 Investigations on imports of steel and aluminium products to assess the impact of imported products on US national security, and urged the US to take a prudent and restrained attitude toward the use of trade policy tools, to assess the impact of the Section 232 investigations in a cautious and fair manner, to avoid triggering a surge of trade barriers put up in the name of national security, and to refrain from negatively affecting the flow of international trade and, in particular, the trade in steel and aluminium products.

17.13. The delegate of the Russian Federation shared China's concerns over the US SIMP and recalled that her delegation had raised certain issues in that regard at the CTG meetings of April and November 2016 and of April 2017. Russia reaffirmed its interest in this issue and wished to see how the measure would be implemented in practice, especially the data verification aspect requiring proof that fish and seafood were not from IUU fishing. Russia believed that, in the absence of such verification, new requirements could be considered simply as excessively burdensome for importers, exporters, and processors of seafood alike, and especially for SMEs.

17.14. The Russian Federation was of the view that the measures on combating IUU fishing should be an essential part of a government's fisheries management policy. Nevertheless, such measures should comply with the relevant provisions in the WTO Agreements, should be drawn up in close cooperation with other countries and should not be more trade-restrictive than necessary.

17.15. The delegate of the United States, when referring to the SIMP, indicated that concerns with regard to this program had already been raised in the past in the CTG and that the US had addressed them previously, both in the TBT Committee and in this Council. The US position had not changed since then.

17.16. As stated earlier by the US, there was a rising trend among WTO Members, both in number and types of action, to find ways to address the injurious and systemic impact that imports were having on Members' systems. Much of this impact was a result of the unnecessary creation of an overcapacity situation in strategic and sensitive industries. Such overcapacity could have been avoided had Members simply operated under market-oriented principles. As this had not been the case the need for action had escalated. The types of action being contemplated by the US simply underscored how past attempts to deal with this challenge had been inadequate.

17.17. The US believed that all these concerns could have been avoided, and that they showed the seriousness of the situation now facing the US, where seldom used tools were now needed as other conventional tools had proven inadequate. In any case, the US believed that the CTG was not the appropriate forum in which to discuss a matter that was currently before the DSB, where the US had already presented this issue in great detail. In the DSB, the US had explained to Members that the expiration of a single provision of China's Protocol of Accession to the WTO did not require Members to grant China market economy status, or to discontinue using a non-market

economy methodology. Rather, the WTO Agreements permitted Members to treat China as a non-market economy for as long as the facts on the ground showed that such was the case. The US referred delegations at the CTG level to the statement that it had made in the DSB, and which it would be glad to provide.

17.18. The delegate of Japan said that Japan was of the view that the WTO Agreement, including China's Accession Protocol, continued to allow WTO Members to use methodologies that were not based on a strict comparison with domestic prices or costs in China.

17.19. The delegate of China, with regard to the US response and Japan's intervention, indicated that China looked forward to hearing from the US side with regard to any updates on the SIMP, and indicated that the over-capacity issue had already been discussed at length. China reiterated its position that overcapacity should never be used as an excuse for any protectionist or abusive use of trade remedies. The US and Japan had stated that the WTO allowed Members to use either the so-called market economy status or to treat any other Member as a non-market economy. However, there was no definition of the so-called "Market Economy Status" in the WTO Rulebook, even if a definition could be found in the domestic laws of certain Members. However, domestic laws could not supersede the international obligations undertaken by a Member over 16 years ago.

17.20. Rather than pointing at other Members' trade policies, she invited the US to be an example of a Member faithfully implementing its international obligations, avoiding the imposition of trade protectionist measures, and avoiding to send protectionist signals to the rest of the world. China expected the US delegation seriously to address China's and other Members' concerns with a view to preserving the multilateral trading system.

17.21. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made.

17.22. The Council so agreed.

18 TEMPORARY ADMISSION OF CONTAINERS, PALLETS AND PACKING MATERIALS – COMMUNICATION FROM AUSTRALIA (G/C/W/738)

18.1. The Chairperson drew the Council's attention to document G/C/W/738, dated 19 June 2017, which contained a communication from Australia on the temporary admission of containers, pallets, and packing material.

18.2. The delegate of Australia introduced the document, which contained an initiative that Australia believed would reduce trade costs, assist MSMEs, was environmentally friendly, and of benefit to all. Packed goods were travelling faster and more frequently and to a greater spread of destinations than ever before. This included stackable containers for food, customized containers for car parts, and containers used to dispatch garments. With so many goods criss-crossing the globe, pallets, container, and packing costs had a significant impact on world trade and on the environment.

18.3. The aim of the initiative was to establish binding international rules ensuring the duty-free temporary admission of containers, pallets, and packing materials. The concept behind it was simple: containers, pallets, and packing materials should be provided duty-free temporary admission at the border. This would reduce trade costs and bureaucracy at the border, the costs of which were normally passed on to businesses and consumers.

18.4. It would also assist MSMEs, which were disproportionately affected by bureaucratic red tape. Indeed, the reduction of bureaucratic, costly, and inefficient measures was at the heart of this initiative. Businesses would also benefit from a clear universal approach. Currently, the disparate customs procedures between countries meant that businesses could not be certain of the measures they would face.

18.5. As the initiative concerned the use of reusable containers, pallets, and packing materials, the initiative was environmentally friendly and reduced post-harvest losses and food waste by facilitating the use of containers designed to protect their contents. Certain customs authorities

currently imposed duties on the return of empty containers, effectively penalizing this more sustainable method of transport.

18.6. The initiative also built upon the achievements of the TFA, which provided for temporary admission of goods but did not specifically address the issue of containers, pallets, and packing materials.

18.7. It was also in line with a number of conventions in this area to which many Members were parties, such as the Revised Kyoto Convention, where 103 parties had provided recommended practice for temporary admission for containers, pallets, and packing. The relevant annex of the Istanbul Convention, with 50 parties, had also included temporary admission concerning containers, pallets, and packing. Moreover, in recognition of the volume of goods now shipped globally, and the overall significance of this issue, the International Chamber of Commerce (ICC) had also indicated a need for progress in this area.

18.8. Australia would hold an information session on this issue after the summer break; all Members would be invited to attend it and further details would be conveyed in due course. Australia would also welcome Members' engagement in developing a formal proposal with the aim of securing an outcome at MC11.

18.9. The delegate of Switzerland thanked Australia for introducing its communication and registered Switzerland's interest in this issue. Switzerland was also of the view that avoidance of taxing temporary goods was a strong facilitating measure that would primarily benefit not only small companies, but especially small companies in developing countries, where the average size and value of parcels would be significantly lower. Switzerland looked forward to the information session to be held in September so as to continue a discussion of this issue.

18.10. The delegate of Chinese Taipei thanked Australia for its efforts to facilitate international trade by submitting this proposal. Her delegation shared the Australian approach, supported the proposal, and would welcome an outcome on this issue at MC11.

18.11. Chinese Taipei made additional comments about packing materials for future implementation at the border by customs authorities. Customs officials in her Capital had indicated that they could easily identify the containers and the pallets but that this was not the case for packing materials. Australia's proposal did not contain any definition or scope for the term "packing material"; this could be due to the multiple uses and broad scope of the packing materials themselves. Chinese Taipei believed that the term "packing material", subject to temporary admission, should be clearly identified and that there was a need for a clearer scope and understanding of what constituted "packing materials". She hoped that Australia would consider these arguments and further develop a formal proposal. Her delegation looked forward to working constructively with Australia in this regard.

18.12. The delegate of Japan expressed Japan's interest in the Australian initiative. Indeed, the temporary admission of containers, pallets, and packing materials, could well facilitate trade and lower trade costs, which Japan believed should be explored. Japan therefore supported this initiative but was of the view that the coverage of the temporary admission, in particular for pallets and packing materials, needed to be carefully examined throughout the discussions, and particularly in light of the international conventions and individual schemes of each country that were already in place. Japan looked forward to engaging in this work with other Members.

18.13. The delegate of New Zealand thanked Australia for having explained its proposal and indicated that this could both facilitate trade and reduce costs for business and consumers. A reduction in red tape and bureaucracy would add value for SMEs, particularly those in developing Members, who were often disproportionately affected by these kinds of trade barriers. New Zealand looked forward to participating in the ongoing dialogue on this proposal prior to MC11.

18.14. The delegate of the European Union thanked Australia for its submission and its worthy objectives. However, the substance of the emerging proposal needed to be further developed and clarified. Currently, it did not seem necessary, nor timely, to seek to build on, or to complement, the TFA, which already contained a closely related commitment. Given that the Istanbul Convention on Temporary Admission remained the primary instrument to assist Members to enjoy

the benefits in question, it would be appropriate to consult first with the World Customs Organization, which administered it. Such technical analysis and support would be pertinent to the proposal.

18.15. The delegate of the Russian Federation welcomed the initiative to discuss ways to reduce costs and facilitate logistical processes, an issue that had already been covered by the Istanbul Convention on Temporary Admission and some other international treaties. Given that not all WTO Members were parties to these treaties Russia believed that a consideration of the elimination of duties and other taxes on containers and pallets used in the transportation of goods at the multilateral level, within the WTO framework, would improve the business climate and facilitate trade. The initiative would also contribute to improving the predictability of engaging in trade across the board. Russia supported the idea, saw it as a possible deliverable at MC11, and looked forward to receiving the textual proposal so as to continue a discussion of this issue.

18.16. The delegate of Singapore welcomed all initiatives, such as that from Australia, under discussion, which would contribute to trade facilitation and, in particular, Singapore welcomed those initiatives that responded directly to commercial realities in contributing to a facilitation of MSMEs' participation in international trade. Singapore looked forward to engaging with Australia and other interested Members on this issue.

18.17. The delegate of the Republic of Korea supported Australia's initiative on temporary admission for containers, pallets, and packaging materials. Korea believed that eliminating obstacles to the admission of containers, pallets, and packaging was necessary to fulfil the purpose of the TFA. Korea would cooperate closely with Australia and other Members in the discussion in the information session foreseen, and whose intention would be to develop a more specific proposal on this initiative.

18.18. The delegate of China indicated that, in principle, China could support Australia's proposal, the main aspects of which were currently being examined in Capital. As a preliminary comment, she indicated that Article 10.9 of the TFA provided disciplines for the temporary admission of goods. China would appreciate clarification from the Secretariat regarding the relation between the definition of "goods" in the said Article, and the containers, pallets, and packing materials that were the focus of the Australian proposal.

18.19. The delegate of Guatemala welcomed the proposal and indicated that it was necessary to identify the tariff codes for containers, pallets and, in particular, for packing material. Guatemala was analysing the issue bearing in mind that the products in question formed part of the NAMA negotiations. Like China and Chinese Taipei, Guatemala requested clarification of these issues and indicated that it would engage fully in any discussion of this topic.

18.20. The delegate of the United States thanked Australia for its submission, which was intended to contribute towards the development of a formal proposal for Members' consideration. In this regard, the US was concerned by the disruptions that such a proposal might create in relation to the ongoing efforts by Members to implement the TFA. The US asked Australia to be mindful of the WTO collective priority to see the TFA ratified and implemented by all WTO Members. Members already had processes under way to implement the TFA, including stakeholder consultations in order to complete their Category B Notifications relating to transition periods. Moreover, numerous Members were still in the process of formalizing domestic acceptance and ratification of the Agreement. The US remained concerned about any proposals that could detract from the very important work that was currently being undertaken to implement the TFA and its ratification by all Members.

18.21. The delegate of South Africa indicated that the Australian proposal was still being assessed in her Capital as for South Africa it raised certain questions and concerns. Her delegation reserved its right to revert to this issue at a later stage.

18.22. The delegate of Brunei Darussalam thanked Australia for its proposal and its initiatives to further facilitate trade and looked forward to a further discussion of the issue with Australia and other interested Members.

18.23. The delegate of Australia thanked Members for their interest and for their comments on its proposal. Australia looked forward to working on this initiative with all interested Members. The initiative built upon what had already been achieved in the TFA and the commitments that a number of Members had already undertaken in other conventions. Australia believed that its proposal would bring clarity to an important aspect of the TFA. Modern times needed modern rules. Rules on temporary admission would provide clarity to businesses, reduce costs to economies, and help the environment. Australia looked forward to working on this issue with all interested Members.

18.24. With regard to China's request for the Secretariat to provide clarification of some of the issues concerning the TFA, the Chairperson indicated that it was primarily Members' responsibility to interpret WTO Agreements. Consequently, the issue could be discussed at the information session proposed and to be organized by Australia. He also thanked delegations for their interventions and proposed that the Council take note of the statements made.

18.25. The Council so agreed.

19 WORK PROGRAMME ON ELECTRONIC COMMERCE[4]

19.1. The Chairperson reminded delegations that, at the Council's previous meeting, the interim Chairperson had recalled that Ministers in Nairobi had adopted the decision contained in document WT/L/977 on the "Work Programme on Electronic Commerce" (Work Programme, or WPEC). In that Decision, Ministers had reaffirmed not only the mandate of the "Work Programme on Electronic Commerce", adopted on 25 September 1998 and contained in document WT/L/274, but also the subsequent Ministerial Declarations and Decisions on the Work Programme. Therefore, Ministers had decided to continue the work under the WPEC since the last session, based on the existing mandate and guidelines and on the basis of proposals submitted by Members in the relevant WTO bodies, as set out in paragraphs 2 to 5 of the Work Programme. To this end, they had instructed the General Council to hold periodic reviews in its sessions of July and December 2016 and July 2017 and to report to the next session of the Ministerial Conference based on the reports that might be submitted by those WTO bodies entrusted with the implementation of the Work Programme. In this vein, and in order to fulfil the mandate, he invited delegations to express their opinions and to make suggestions as to how to work on the preparation of the periodic reviews to be held in the General Council at its session of July 2017.

19.2. He also recalled that, at the last CTG meeting, an extended discussion of E-Commerce had taken place, in which 27 delegations had taken the floor to explain the specifics of their submissions and/or to express their views on different aspects of E-Commerce. As indicated in the meeting's Agenda, four JOB documents had been submitted by a number of delegations and to various WTO bodies, including this Council. He therefore invited those delegations that had submitted documents on this issue to take the floor first, to be followed by other delegations that also wished to provide comments and views on the proposals tabled or with regard to any particular aspect or topic of E-Commerce, mindful of the fact that at the next meeting of the General Council he would, under his own responsibility, present a factual report of the discussions held in this Council.

[4] The following documents were submitted to the CTG:
(i) COMMUNICATION FROM THE PEOPLE'S REPUBLIC OF CHINA (JOB/GC/110 – JOB/CTG/2 – JOB/SERV/243 – JOB/DEV/39);
(ii) COMMUNICATION FROM ARGENTINA, BRAZIL AND PARAGUAY (JOB/GC/115 – JOB/CTG/3 - JOB/SERV/247 - JOB/IP/20 - JOB/DEV/41);
(iii) COMMUNICATION FROM CANADA, CHILE, COLOMBIA, CÔTE D'IVOIRE, THE EUROPEAN UNION, THE REPUBLIC OF KOREA, MEXICO, THE REPUBLIC OF MOLDOVA, MONTENEGRO, PARAGUAY, SINGAPORE, TURKEY AND UKRAINE (JOB/GC/116/REV.2 - JOB/CTG/4/REV.2 - JOB/SERV/248/REV.2 - JOB/IP/21/REV.2 JOB/DEV/42/REV.2)
(iv) NON-PAPER FROM BRUNEI DARUSSALAM; COLOMBIA; COSTA RICA; HONG KONG, CHINA; ISRAEL; MALAYSIA; MEXICO; NIGERIA; PAKISTAN; PANAMA; QATAR; SEYCHELLES; SINGAPORE; AND TURKEY (JOB/GC/117 - JOB/CTG/5 - JOB/SERV/249 - JOB/IP/22 - JOB/DEV/43);
(v) COMMUNICATION FROM ASEAN (JOB/GC/126 – JOB/CTG/6 – JOB/SERV/260 – JOB/IP/23 – JOB/DEV/44).

19.3. The delegate of China reminded delegations that, in November 2016, China and Pakistan had submitted a communication on the WPEC to this Council, the CTS, the CTD, and the General Council. At the CTG meetings of November 2016 and April 2017, China had provided detailed explanations of its proposal, and had reiterated its position that, at the current stage, the discussions on E-Commerce in the WTO should continue on the basis of the existing mandate, should uphold the development dimension, and should focus on the areas of common interest to Members. China had also encouraged Members to exchange information and compare best practice on E-Commerce under the relevant WTO bodies, so as to facilitate a better understanding of E-Commerce among Members, especially developing country Members, and thereby to enable the development of E-Commerce and benefit from it while fully reflecting the inclusiveness of the multilateral trading system.

19.4. The proponents and Members had made pragmatic contributions and provided inputs that had served as a basis for the discussions on E-Commerce. In turn, China wanted to share some of its practices in the area of facilitating cross-border trade in goods enabled by the internet, as China believed that this would stimulate discussion of this topic with a view to seeking a possible landing zone of common interests.

19.5. As Members were aware, thanks to the increasing enthusiasm among Chinese consumers for overseas products, and thanks also to an improvement in policy environment, cross-border E-Commerce had developed rapidly in China and had now become a new engine in the expansion of foreign trade, and an important factor driving economic growth. The Hangzhou cross-border E-Commerce comprehensive pilot-zone was the most relevant example of facilitated development of cross-border E-Commerce in China. Located in the customs free-zone in Hangzhou, it was launched in 2014 as an imports business specialized in cross-border E-Commerce, and currently it had up to 249,000 square meters' of bonded warehouses for cross-border E-Commerce purposes. In this pilot-zone, bonded stocking or bonded retail import was the main model for carrying out cross-border E-Commerce. It operated as follows: the merchants of cross-border E-Commerce platforms, also called "E-Commerce business operators", imported and transported batches of goods from overseas into the zone, based on international logistics, and then stored the imported goods in bonded warehouses. Following receipt of an online order from a customer, the E-Commerce business operator, for inspection and clearance purposes, was required to submit to the customs authorities the relevant information regarding the order, including the freight bill, and payment details, after which the goods were packed and delivered to the customer using domestic logistics.

19.6. In this process, "bonded warehouses" in the "free-zones" played an important role. As special customs regulatory areas located in a Member's territory but outside its customs territory, free-zones not only had facilitated imports of cross-border E-Commerce, but had also delivered threefold benefits to the E-Commerce operators, customers, and regulators. For operators, imported goods could be stored in advance of purchase in the bonded warehouses located in the free-zones, and then be delivered directly to consumers upon electronic order. Consequently, the intermediate stages of cross-border delivery had been decreased and the supply chain efficiency had been improved. For customers, the waiting time for the purchased goods had been reduced and their shopping experience enhanced. For regulators, cross-checking the transaction information, logistics, and payment information, and ensuring the authenticity and effectiveness of trade had not only helped in the accuracy of trade statistics, but had also made the regulation of such trade more convenient and effective.

19.7. "Free-zones" and "bonded warehouses" were not new concepts; their definitions could be found in the "Specific Annex D" to the Kyoto Convention, whose specific title was "International Convention on the Simplification and Harmonization of Customs Procedures". The free-zones and bonded warehouses had not only played an important role in traditional trade, but had also played a key role in facilitating the development of E-Commerce. This facilitating role comprised ensuring that the relevant goods were permitted to be stored, unpacked, and grouped, collected for repacking, and packed at free-zones and customs warehouses in the importing destinations. They then followed the standard importing procedures, including customs declaration, payment of tariffs, and internal taxes, in accordance with the electronically placed transaction orders, and then were transported from free-zones and customs warehouses for delivery to the buyer. Such free-zones and customs warehouses were also located sometimes in a third territory, other than that of the importing or exporting country, but nevertheless offered the same facilities in support of the importation of the goods as mentioned earlier.

19.8. Such a facilitation role might sometimes also include permitting relevant goods to be stored, unpacked, and grouped, collected for repacking, and packed in the free-zones and customs warehouses also of the exporting source, where the relevant exporting procedures, including export declaration, export tax refund, and so on, would then be completed in due course. Following these operations, and based on the location of the electronically placed order, the goods could be transported and delivered to the final destination upon completion of all necessary import procedures, including customs clearance, tariffs, and internal tax payments. China believed that it was likely that other Members applied similar practices with regard to free-zones and customs warehouses so as to facilitate cross-border E-Commerce.

19.9. In China, cross-border E-Commerce had promoted trade to the benefit of all participants. It had also encouraged a win-win cooperation among its participants. China invited other Members to share their experience in this area, and to promote and to deepen discussion as to how to facilitate E-Commerce still more effectively. China stood ready to continue its engagement with Members on this subject with a view to achieving positive progress in the WTO context.

19.10. The delegate of Canada said that an important exchange of views had taken place at the last CTG meeting under this agenda item, and thanked Members for their submissions, and China for sharing its views on E-commerce. Canada observed an ongoing interest among Members for substantive work on E-Commerce to be carried out in the context of the CTG. Fruitful discussions at past meetings had ranged over a number of topics, including electronic authentication, robust implementation of the TFA, the contribution of the ITA and its expansion, as well as the customs duty moratorium. Canada looked forward to continuing these discussions in future meetings of the Council.

19.11. The delegate of the European Union welcomed all communications but the new communication by ASEAN in particular, as it highlighted the benefits to SMEs and emphasized the importance of legal certainty in regulatory frameworks.

19.12. The EU, a co-sponsor of document JOB/CTG/4/Rev.2, welcomed the additional co-sponsorship by the Republic of Moldova and Ukraine, and expressed its satisfaction with the discussion generated by this proposal in the regular bodies. This communication had the advantage of mapping out all the relevant issues pertaining to trade and the digital economy. Discussions had also referred to several elements relating to trade in services, where multilateral rules in the WTO context would also be beneficial. This was reflected in this proposal, which had also been submitted to the Council for Trade in Services–Special Session (CTS–SS).

19.13. The EU believed that the discussions on trade in goods needed to be deepened and intensified. In this vein, the EU welcomed China's submission on E-Commerce, which allowed Members the possibility to focus their attention onto more concrete and practical issues. The EU looked forward to engaging further on these concrete E-Commerce aspects of the trade in goods.

19.14. The delegate of Singapore, when referring to document JOB/CTG/5 entitled "Electronic Commerce and Development", indicated that Singapore continued to support further discussion on the relationship between E-Commerce and development. With regard to Members' interest in paperless trading and e-signatures, raised by some Members at previous meetings, Singapore had shared its experience on the National Single Window, and its efforts to upgrade this to a "National Trade Platform". Singapore would welcome hearing other Members' perspectives and experiences with regard to these issues.

19.15. Regarding document JOB/CTG/6, entitled "Can E-Commerce Trade Rules Help MSMEs from Developing Countries", she informed Members that this paper had grown from a lunch panel held during the UNCTAD E-commerce Week, on 27 April 2017. The event had been organized by ASEAN with a view to finding synergies between discussions in UNCTAD and WTO on the development aspect of E-Commerce. Thailand's Vice-Minister for Commerce had provided the opening remarks, and several panellists from the WTO, Singapore, Cambodia, the Global Express Association, and ITC, had made presentations that had encouraged a broad discussion of the issue, including with regard to existing WTO rules that apply to E-Commerce, and the common types of E-Commerce rules found in RTAs. Panellists also referred to how E-Commerce had enabled MSMEs to integrate more fully into the global economy.

19.16. The panel addressed with interest the question of how E-Commerce cut across development levels in ASEAN, where there already existed some E-Commerce disciplines, such as the ASEAN Australian-New Zealand FTA. Moreover, ASEAN Members were looking to negotiate an ASEAN E-Commerce Agreement. All these reflections were summarized in the submission and Singapore looked forward to engaging constructively with other interested Members on how in the WTO to take forward the work on E-Commerce.

19.17. The delegate of the Russian Federation said that the number of submissions tabled clearly indicated Members' interest in E-Commerce. Most of the submissions had been circulated horizontally to the WTO bodies mentioned in the Work Programme. This confirmed that E-Commerce was a cross-cutting issue.

19.18. The submissions to the CTG contained topics that Russia would like to see explored further, such as creating an enabling environment for MSMEs, streamlining customs procedures for the online trade in goods, including paperless trade and end-secure online payments, e-platforms, e-signatures, and e-contracts, online consumer protection, and privacy and security issues. However, the complexity of the topics, although related to goods, did not exclusively fall within the goods context; they might also raise and affect services, intellectual property, and development issues. Russia reiterated its view that E-Commerce discussions should primarily be held horizontally and in an holistic manner. By identifying cross-cutting issues and appropriate ways to discuss them, Members could then finally move to exploring the issue of E-Commerce in substance.

19.19. The delegate of South Africa, on behalf of the African Group (AG), recalled the statement delivered at the last CTG meeting on this issue[5], and thanked the proponents for their submissions. And, in the view of the African Group, tabling these documents in the CTG was fully in accordance with paragraph 1.1 of the WPEC, as reaffirmed in paragraph 1 of the Nairobi Ministerial Decision.

19.20. She recalled that, for the African Group, the appropriate exploratory approach for discussions under the WPEC was one giving paramount importance to the development implications of E-Commerce, taking into account the economic, financial, and development needs of developing countries. In this vein, the African Group had invited Members to exchange their views and experiences in the CTG on the basis of the current Work Programme. The African Group believed that priority should be given to a complete assessment of the wide-ranging disruptions that would result from the Fourth Industrial Revolution, the growth of digital trade, and E-Commerce.

19.21. As discussions continued under the Work Programme, the African Group wanted the CTG to take up the issues related to the needs of developing and least developed countries on E-Commerce and to place them at the centre of the discussions, and especially the challenges of the digital economy for developing and least-developed countries, the possible ways to enhance their participation in E-Commerce, in particular with regard to exporters of electronically delivered products, and the role of improved access to infrastructure, transfer of technology, and the movement of natural persons.

19.22. An informal meeting of the African Group on digital industrial policy and development that had taken place the previous day had served two purposes: it was the first concrete step towards scoping the depth of the challenges faced by developing countries and the digital divide, particularly for countries that were striving to industrialize, and it also helped to identify the types of national measures that some Members had employed to build their national capabilities so as to place themselves in a leadership position in today's global E-Commerce landscape. During the discussion it had become apparent that, much as a digital transformation was under way, and that digital technologies and solutions were emerging, many of these would be seriously disruptive to many economies around the world, and that developing countries and LDCs were still confronted by the reality of a deep, widening, and persistent digital and technological divide.

19.23. Discussions had also shown that Members' paths towards achieving global leadership in the digital economy had not all been the same, and that active policies and deliberate efforts were required to develop the necessary infrastructure and to manage digital flows for a national digital

[5] See document G/C/M/128, paragraphs 20.63–20.68.

catch up. Other lessons learnt were that global integration needed to be preceded by the building of national capabilities through what was described as a "digital industrial policy". The importance of digital rights and how a balance needed be found on the international agenda with regard to issues pertaining to E-Commerce and internet governance had also emerged from the panel discussion.

19.24. The African Group looked forward to seeing more engagement on these issues and encouraged Members to share their experiences with regard to specific policy, regulation, infrastructure development, and measures that they had used in order to achieve digital integration and advancement. The E-Commerce discourse had compelled the African Group to consider the importance of digital rights, since data was the raw material of the digital economy, and there was value held in its control, management, and flow.

19.25. Given the extremely high market concentration levels existing in the current global E-Commerce space, evident both in terms of how E-Commerce trade was distributed across the global economy and in terms of the number of firms that dominated the space in terms of their capitalization, the African Group believed that it would benefit from a discussion of these issues as it explored its own policy options through which to respond to changes brought on by the so-called Fourth Industrial Revolution, vis-à-vis Africa's long-standing developmental objectives of industrial development, structural transformation, and employment.

19.26. The delegate of Tanzania, on behalf of the LDCs Group, recalled the statement delivered at the last CTG meeting and requested that it be included in the records of this meeting.[6] He indicated that the WPEC had allowed its Members sufficient opportunity to engage in an extensive and exhaustive discussion of E-Commerce. The WPEC had no negotiating mandate and its discussions were exploratory in nature.

19.27. He noted that the E-Commerce phenomenon in theory provided a critical gateway for consumers and businesses in weaker countries, allowing them to surmount some of the obstacles they traditionally faced when competing internationally and with enterprises from among the stronger players in the trading system. However, in reality, most LDCs faced a number of constraints due to insufficient basic infrastructure and access to the internet, and the high cost of broadband connectivity, among others. These obstacles acted as bottlenecks that hindered LDCs from taking advantage of the opportunities theoretically available to them through E-Commerce flat platforms.

19.28. Different agencies had organized various seminars that had benefitted LDCs; during these, it had become apparent that there were Members, including developing Members, which had generated a lot of revenue from E-Commerce. What had not been clearly indicated was the kind of domestic regulatory policy frameworks that had been adopted by those Members, especially the developing countries that afforded their domestic industries the necessary policy space and protection to grow and to thrive until such a time that they had become strong, emerging, or dominant players. The LDC Group therefore requested that major players share their experience with regard to the digital industrial policies that they had put in place and that had helped to guarantee their digital rights and to ensure their current prosperity.

19.29. In this context, the LDCs Group appreciated the panel discussion organized by the African Group on digital industrial policy and development. For the first time in the WTO, Members of the LDCs Group had had the opportunity to listen to a realistic narrative on E-Commerce, according to which the benefits were neither self-evident nor automatic, and that countries had to undertake deliberate measures with a view to ensuring and guaranteeing that there was a trickledown effect from those benefits. As envisaged under the 1998 WPEC, this was precisely what his Group had always suggested in this Council and at other regular bodies.

19.30. One thing learnt from the panel discussion was that the digital divide between developed, developing, and least developed countries, was huge and still growing, and that if it was not addressed it would create even bigger future divides, such as in the areas of technology, income, workforce, and infrastructure, between those who had and those who did not have the necessary infrastructure. In other words, inequality would increase and most developing and least developed countries would be left further behind because multilateral rules would entrench these imbalances.

[6] See document G/C/M/128, paragraphs 20.69–20.77.

The existing global E-Commerce space was extremely asymmetrical and the gains were not shared equitably.

19.31. A further lesson learnt was that data was the raw material of the future, and that the ways in which countries treated, managed, and exported data would determine their development path in the digital age. It was also of note that there was not a single prescriptive theoretical policy or regulatory approach that would be a guaranteed recipe for success, but rather that Members had used policy space to nurture and develop their domestic industries. While development might mean different things to different Members, the implications of the Fourth Industrial Revolution, which would be driven by the digital age, would be far reaching. It was therefore important for Members to develop industrial policies and to avoid constraining their policy space in their digital economies.

19.32. His Group had previously stated that most of the submissions on the table fell outside the scope and mandate of the Work Programme. He therefore reiterated the request to Members to narrow their submissions to issues specific to each particular body and that, if this were not possible, to focus on the development-related aspects of the Work Programme with a view to examining ways to achieve improved access to infrastructure, transfer of technology, movement of natural persons, and use of information technology in the integration of developing and least developed countries into the digital economy. These issues were at the heart of the discussion on the digital divide and they needed to be resolved so as to build on E-Commerce-readiness before LDCs would be in a position to engage in any kind of rules-setting in this area.

19.33. The delegate of the Bolivarian Republic of Venezuela indicated that his authorities were looking at E-commerce issues in a holistic manner, and were also examining in detail the various proposals submitted by Members to this Council and other WTO bodies, as well as the outcomes of other discussions of this issue taking place in parallel in other multilateral organizations. Technological development was under way, the results of which had yet to be quantified by most Members. E-Commerce was only a part of a more complex revolution, but unfortunately not all Members were ready and prepared for this revolution, and confronting it on equal conditions. Given these many complexities, Venezuela called upon Members to reflection further upon these issues and to proceed with great caution and acting always within the boundaries of the existing Work Programme. As South Africa and Tanzania had already indicated, Venezuela considered that this Council was required to consider the interests of developing and LDC Members and to engage with those Members in an exchange of experiences.

19.34. The delegate of Chinese Taipei thanked ASEAN for its submission on the subject of how E-Commerce could help MSMEs. In this regard first UN-MSMEs Day had taken place the previous day, where the discussion addressed the question of how E-Commerce had changed the way of doing business in the modern world, and also the experience of how E-Commerce had allowed MSMEs, as well as young entrepreneurs, to gain access to the global market for the very first time.

19.35. She stated that Chinese Taipei believed that the WTO could and should play a crucial role in the promotion and facilitation of E-Commerce, and that it was important to narrow the gap in digital connectivity. Ways had to be found to bridge the digital divide so as to help LDCs and developing Members gain access to the necessary ICT infrastructure and services so as to enhance their E-Commerce readiness. The most useful way to analyse the E-Commerce topic was by examining the fundamental differences that existed between E-Commerce and traditional trade.

19.36. The availability and efficiency of digital transmission had created a new trading method as well as more opportunities to trade, such as in the case of e-books, 3D printers, tele-medicine, cloud computing, and so on. E-Commerce had not only blurred customs borders but had also given rise to "barriers to digital trade" which were quite different from those that occurred in the context of traditional trade, where customs duties and/or non-tariff barriers were familiar and well known challenges. Indeed, most of the "cyberspace trade barriers" were applied during the early stages of the transactions and usually in the context of comparing the price or location of an order. In other words, when certain barriers were applied that restricted access to data or information on the internet they actually prevented potential buyers from becoming aware of the existence of a foreign commodity. If the necessary data or information was not transmitted efficiently, any comparison of goods or services in subsequent orders and shipments was not possible. Thus, such a "cyberspace trade barrier" could often and at an early stage completely wipe out all competing trade opportunities. This was a serious problem for MSMEs, which might not have any other

channels through which to access potential foreign buyers. Consequently, Chinese Taipei considered it to be of fundamental importance that the WTO ensure that all Members enjoy reciprocally equal access to the internet.

19.37. Her delegation looked forward to further discussion of the proposal with other Members.

19.38. The delegate of Japan said that it was meaningful and useful to concentrate the discussion at the CTG level on the positive impact of E-Commerce on the trade in goods, and how to address the technical issues created by the development of E-Commerce and digital trade. In this vein, Japan thanked China for its explanation of its experiences with E-Commerce and, in particular, China's experience in the area of cross-border zones. Japan was ready to engage fully in such discussions in the context of the CTG.

19.39. The delegate of Norway welcomed the new submission from ASEAN. Norway considered it useful, as part of experience-sharing, to hear more about the work towards and the objectives of an ASEAN Agreement on E-Commerce, and whether such work might also draw upon parts of the WTO Agreements. Norway considered that Members should now concentrate on the following: development and MSMEs issues; how E-Commerce was an enabler for trade; and what was required from domestic and global regulations to support these aspects of E-Commerce. Such a discussion would include concrete technical conditions for cross-border E-Commerce, such as electronic signatures, authentication, and certificates that pertained to E-Commerce, both for goods and for services.

19.40. The WTO worked with rules but did not work in an isolated environment. Therefore, it was important to take into account a wide general perspective that included what was being done by governments, and domestic and international businesses, as well as by bilateral and multilateral development organizations, to put in place the necessary infrastructure and capacity in developing countries. This exchange of information should continue in seminars and at the Council.

19.41. The delegate of Hong Kong, China, also thanked ASEAN for its submission, focusing on MSMEs from developing countries, and which highlighted not only the opportunities but also the critical challenges for MSMEs in the area of E-Commerce. Since there were a large number of MSMEs in Hong Kong, China, her delegation supported all initiatives that helped to create a reliable business environment so that MSMEs could effectively leverage E-Commerce in order successfully to access global markets.

19.42. The delegate of New Zealand thanked the proponents for their submissions, some of which had been co-sponsored by a number of both developed and developing Members. Previous discussions in the CTD, CTS, and TRIPS Council, had reinforced the diversity of interests in the area of E-Commerce, as well as its broad relevance across the membership. These discussions had also underscored the wider transformative effect of digital technologies and services on Members' economies. He therefore welcomed the new ASEAN submission.

19.43. New Zealand also welcomed the messages that had come from the UNCTAD panel discussions, which had demonstrated the ongoing relevance of E-Commerce to the WTO agenda, as well as the need for further work in the WTO on a liberalization and facilitation agenda, as these too both affected and were affected by E-Commerce.

19.44. Further to a Work Programme of some 20 years, it was now time for the WTO seriously to address the digital economy. Members needed to consider how to move from a general discussion in this Council and at other WTO bodies to more concrete and focused work on MC11 deliverables, including laying a path for future work.

19.45. The delegate of Australia again thanked proponents for their submissions and presentations. She recalled Australia's intervention at the previous CTG meeting on the subject of these submissions and also welcomed the ASEAN document. In view of MC11, Australia welcomed the ongoing engagement by Members on E-Commerce issues and reiterated the role of E-Commerce in promoting inclusive global growth.

19.46. The delegate of India thanked the proponents for their submissions. India agreed that E-Commerce was indeed becoming a major driving force in international economic activity,

including international trade. Even in India itself, E-Commerce was transforming the way business was done and was one of the fastest growing segments of the economy, witnessing exponential growth over the past few years. However, as with any new and emerging area of technology, the regulatory frameworks and institutions to support E-Commerce were still at an evolutionary stage.

19.47. It was also well known that most developing countries and LDCs were grappling with basic access and connectivity issues, such as providing an uninterrupted power supply, improving patchy internet connectivity, and enhancing bandwidth. In India, around 70% of the population, often in rural areas, did not have access to the internet. There was therefore a huge digital divide within and among WTO Members and this digital divide needed to be bridged. Furthermore, the growth of E-Commerce activities had given birth to new challenges, both for domestic as well as cross-border trade, including issues relating to consumer protection, sales of counterfeit goods and services, safety of online payments, balancing cross-border data flows and privacy concerns, digital signatures, taxation of the digital economy, issues relating to a lack of skilled workforce, human resource development, and logistics. In India, as in most developing countries, regulatory frameworks on these and related areas were still evolving. There was therefore a need to discuss how Members had addressed these issues domestically and especially within a developmental context.

19.48. Given that the growth of E-Commerce activities and digital trade had given birth to many new challenges, cooperation among WTO Members through a sharing experiences and best practice relating to the issues mentioned above would be of particular value. Members should focus on collectively addressing ways to reduce the digital divide and promote increased internet access, as well as on enhancing ways of financing the needs of developing countries, in particular LDCs, so as to ensure that the necessary digital infrastructure was in place.

19.49. India agreed that E-Commerce could become a driver of inclusive growth and sustainable development. However, in order to realize its full potential, significantly larger efforts were required by national governments and the international community to enhance the readiness of many developing and least-developed countries and to bridge the digital divide; only then would these countries be in a position to engage in and benefit from multilateral rules in the area of E-Commerce.

19.50. The delegate of the Republic of Korea reiterated that Korea was actively engaged in the discussion on E-Commerce with a view to achieving a meaningful outcome on E-Commerce at MC11. Korea therefore welcomed the various proposals that had been tabled and recognized their value. Korea believed that Members should exchange their experiences in E-commerce at the CTG and hoped that the discussions in this Council would contribute to the larger and overarching E-Commerce discussion. Given the holistic nature of E-Commerce, Korea was of the view that Members needed to explore the issue of the appropriate forum for this discussion and what would be a feasible path towards a substantive outcome on E-Commerce at MC11 and beyond. Korea would continue to be constructively engaged in this discussion.

19.51. The Chairperson thanked delegations for their interventions, which had contributed to a new round of rich discussion on the subject of E-Commerce. Based on the interventions, he considered that there continued to be a very significant interest among Members on this issue, including with regard to an exchange of experiences, practices, and viewpoints. However, differences remained as to perspectives and priorities and he had not observed any indication of an emerging convergence in any particular direction. He therefore encouraged all delegations to continue to reflect on this issue, to talk to one another, and to build on common elements. His doors would remain open to any delegation wishing to approach him and to share with him its views and proposals on this issue. He proposed that the Council take note of the statements made.

19.52. The Council so agreed.

19.53. The Chairperson reminded delegations that, as indicated in his opening remarks on this issue, in order to fulfil the Nairobi Mandate, and based on the discussions held in this Council in April and July 2017, it was his intention to make, on his own responsibility, a factual report to the General Council in July 2017; he asked the Council if this could be agreed.

19.54. The Council so agreed.

20 OTHER BUSINESS

20.1. The Chairperson informed the Council that its next meeting had been scheduled to take place on Thursday, 9 November 2017. The agenda would close on Friday, 27 October 2017.

20.2. With regard to the closure of the CTG Agenda, he reminded delegations that, according to the Rules of Procedure, meetings of WTO bodies were convened by a meeting notice (Airgram) issued not less than ten calendar days prior to the date set for the meeting. The agenda itself therefore closed one WTO working day prior to circulation of the meeting notice; in other words, 11 calendar days before the date set for the meeting (or, if the date fell on a weekend, the previous Friday).

20.3. The meeting was closed.