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Council for Trade in Goods

MINUTES OF THE MEETING OF THE COUNCIL FOR TRADE IN GOODS 23 AND 26 MARCH 2018

CHAIRPERSON: HE MR KYONGLIM CHOI (REPUBLIC OF KOREA)

The meeting of the Council for Trade in Goods (CTG, or the Council) was convened by Airgram WTO/AIR/CTG/10; the proposed agenda for the meeting was circulated in document G/C/W/751. The meeting proceeded on the basis of the following agenda:

Before the Agenda was adopted, the Delegation of China indicated that under Agenda item "Other Business" it intended to raise the following two issues: (i) the United States Section 301 Investigation and related measures; and (ii) the United States Civil Aviation Security Equipment Measures. The Chairperson indicated that, under the same agenda item, he would raise the matter of the date of the next meeting.

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 two agreements had been notified to the CRTA:

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

1.1 Economic Partnership Agreement between the European Union and the Southern African Development Community EPA States (WT/REG381/N/1/Add.1)

1.2 Closer Economic Partnership Arrangement between Hong Kong, China and Macao, China (WT/REG390/N/1)

1.2. The delegate of the United States thanked the Parties to those RTAs for their respective notifications; the US looked forward to learning more about these agreements during their review at the CRTA under the Transparency Mechanism.

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 STATUS OF NOTIFICATIONS UNDER THE PROVISIONS OF THE AGREEMENTS IN ANNEX IA OF THE WTO AGREEMENT (G/L/223/REV.25)

2.1. The Chairperson drew Members' attention to document G/L/223/Rev.25, containing the status of notifications under the provisions of the Agreements in Annex 1A of the WTO Agreement, and reminded delegations that at the CTG's April 2017 meeting, and as requested by the delegation of New Zealand, a thorough discussion had taken place under this agenda item regarding Members' notification performance. He invited those delegations interested in again raising the issue of transparency to address this matter after the Council's consideration of the Annual Report of Notification Obligations prepared by the Secretariat.

2.2. Before opening the floor for comments on the Annual Report, he indicated that the Secretariat had requested him to remind delegations of the most recent WTO Agreement, the Agreement on Trade Facilitation (TFA), which, in line with the amendment protocol adopted on 27 November 2014 became, as from its entry into force on 22 February 2017, an Annex IA Agreement of the Marrakesh Agreement, thus raising the question of how to reflect the TFA notifications in the report prepared annually by the Secretariat, particularly as the TFA contained a series of notification requirements of different kinds and with different ranges of coverage. A number of the TFA notification requirements were somewhat specific in that they applied only to certain Members and consisted essentially of information about when provisions were going to be implemented and whether or not they required support. But the TFA also mandated more traditional types of transparency notifications, which applied to all WTO Members. In this regard, and given that the Organization was Member-driven, the Secretariat felt that Members' guidance was required to understand how best to proceed. He therefore proposed that his successor hold consultations on this issue.

2.3. Returning to the Annual Report, he informed delegations that certain information regarding the TBT notifications submitted by New Zealand had not been reflected accurately in the report and that a corrigendum would be issued in this regard.

2.4. The delegate of the European Union thanked the Secretariat for the Annual Report and for its early distribution, which had allowed Members sufficient time to study it prior to the meeting. The EU had taken note of the Secretariat's comments on the TFA and would reflect upon this issue in advance of the proposed consultations on how to include TFA notifications in the report.

2.5. The EU had two key concerns regarding certain notifications and these had already been addressed at committee level: the first related to subsidies and state trading enterprises, and the second to import licensing. On the former, the EU was concerned that a significant number of notifications from major trading partners were outstanding, and that in certain cases these outstanding notifications extended across several notification periods. She urged all Members to submit their missing notifications without further delay. On import licensing, the overall notification performance appeared to be deteriorating. The discussions at the Committee on Import Licensing (CIL) on how to improve and streamline the notification process had unfortunately been blocked by certain Members but for reasons that were unclear to the EU.

2.6. Additionally, in the case of quantitative restrictions, the overall level and quality of compliance was very low, and notification content and presentation varied widely. The EU looked forward to the

April 2018 workshop organized by the Committee on Market Access (CMA) to share experiences of, and discuss improvements to, the notification process.

2.7. The EU was actively reflecting on how best to enhance notification performance and transparency. In its view, Members should discuss not only how best to improve their notification record, but also how best to enhance the quality of the information provided therein. The EU would wish these conversations to begin at Committee level, where notifications and reports about notification compliance were stand-alone items on committee agendas. These conversations could then be brought together at CTG level.

2.8. The EU also noted that it would be in contact with the Secretariat with a few comments necessary to clarify certain information relating to the EU contained in document G/L/223/Rev.25.

2.9. The delegate of Brazil indicated that, after the report's date of circulation, Brazil had submitted five notifications to the Committee on Agriculture (CA), on domestic support, market access, and export subsidies (documents G/AG/N/BRA/44, G/AG/N/BRA/45, G/AG/N/BRA/46, G/AG/N/BRA/47, and G/AG/N/BRA/48). He asked the Secretariat to record this information in these minutes and in further revisions of its report.

2.10. The delegate of Japan thanked the Secretariat for its report and reiterated its commitment to its notification obligations; nevertheless, it remained a significant challenge to understand how best to coordinate between different authorities and how best to identify the specific information on laws and regulations that was relevant and necessary. In this context, Japan believed that experience-sharing opportunities, such as that offered by the upcoming workshop on quantitative restrictions under the CMA, were an effective way to enhance Members' fulfilment of their notification obligations. Japan supported this type of approach.

2.11. On the Chair's statement on how best to reflect TFA notifications in the Annual Report, Japan was open to such a discussion among the Membership.

2.12. The delegate of Switzerland stated that Members' compliance with their notification obligations, and the listing of notifications contained in document G/L/223/Rev.25, was capital to the work of the WTO because it provided information essential to monitoring trade developments and rules. In this regard, Switzerland noted that the report reflected the status of notifications up to end-2017; nevertheless, Switzerland had submitted, since then, one notification on domestic support in agriculture, and a full notification pursuant to Article 25 of the SCM Agreement. Switzerland stood ready to discuss with other Members the subject of how the TF Agreement might best be reflected in the report.

2.13. The delegate of Canada thanked the Secretariat for having prepared and circulated its report in a timely manner. Canada had also taken note of the need to address the issue of TFA notification commitments in the context of the Annual Report, while taking into account the innovative nature of certain elements of that Agreement as well as its early stage of implementation. Canada encouraged all Members not only to review the report but also to use it as a means to evaluate and assess how best to ensure that all the numerous outstanding notifications would be submitted as soon as possible.

2.14. The delegate of the United States thanked and praised the Secretariat for its work on the report. Her delegation would also consider the issue of TFA Notifications and looked forward to possible consultations on this matter.

2.15. The US considered transparency to be an issue of critical and fundamental importance in the work of the WTO, to the point that it had introduced a proposal, to be discussed under Agenda Item 7, on how to enhance and strengthen notifications and notification requirements. The US would present its substantive comments on transparency under that agenda item.

2.16. The delegate of New Zealand thanked the Secretariat for its report and informed delegations that New Zealand had now fulfilled its notification requirements also under Article 15.2 of the TBT Agreement. Consequently, it had informed the ISO of New Zealand's compliance with the Code of Good Practice. He requested the Secretariat to reflect this in the report.

2.17. New Zealand believed that Members should work towards improving both the notification performance itself, and their awareness of their notification performance. He therefore encouraged the Secretariat to consider how it could present its report in such a way as to allow Members to extract a maximum value from it, and expressed New Zealand's interest in exploring how the reporting could also be used to encourage Members to improve their notification performance.

2.18. New Zealand was aware that Members often faced implementation challenges. However, in certain cases, failure to comply with notification obligations was particularly egregious and persistent, and this undermined the WTO system. The CTG should keep its attention on the issue of how Members could improve notifications, and what information was necessary to ensure that the notification reports were helpful.

2.19. New Zealand also considered that the CTG could play an important and constructive role by working on the issue of transparency in conjunction with its subsidiary committees. On how best to reflect the TFA in the report, New Zealand looked forward to engaging in further discussion of this issue.

2.20. The Chairperson proposed that the Council take note of the statements made and of the information provided. He also informed the Council that a corrigendum to document G/L/223/Rev.25 would be issued and that he would ask his successor to hold consultations with interested Members on how best to include the TFA notifications in the Annual Report on the Status of Notifications.

2.21. The Council so agreed.

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

3.1. At the 23 March 2018 session of this CTG meeting, the Chairperson informed delegations that, as he had explained at the informal meeting that had taken place immediately prior to this formal meeting, he had held consultations with Group Coordinators and interested delegations in order to submit to the Council a balanced slate of names of proposed candidates to chair the CTG's subsidiary bodies. However, despite his best efforts he was not yet able to submit such a slate of names for Members' consideration. He therefore proposed to suspend this agenda item in order to hold additional consultations on this issue, and that he would revert to it at the appropriate time.

3.2. The Council so agreed.

3.3. At the 26 March 2018 session of this meeting, the Chairperson reminded delegations that he had suspended this agenda item as there had been no consensus among Members regarding the slate of names that he had prepared after having held intense consultations with Group Coordinators and interested delegations. However, he had since been informed that the slate of names that he had prepared was now acceptable to all delegations. In this regard, he reminded delegations that the Guidelines for the Appointment of Officers to WTO bodies, contained in document WT/L/510 and adopted by the General Council on 10 December 2002, provided that the Chairperson of the Council for Trade in Goods would conduct consultations on the appointment of the chairpersons of the Council's subsidiary bodies. In addition, document JOB/GC/22, considered by the General Council on 27 July 2012, indicated that Group Coordinators should be involved in this process at an early stage.

3.4. He also recalled that, on 7 March 2018, all Members and Group Coordinators had been informed that he would be accepting proposals for candidates to chair the subsidiary bodies of the CTG. The consultations that he had then carried out on this matter had consisted of individual meetings with Group Coordinators and bilateral consultations with delegations that had expressed their interest in the consultation process. Based on the proposals made and suggestions received from Coordinators and Members that had responded to his call, he had prepared a balanced slate of names for the chairs of the subsidiary bodies of the CTG for 2018. The slate of names had been communicated to delegations in a fax dated 22 March 2018 and had been considered by Members in an open-ended informal meeting immediately prior to this formal meeting. At that informal meeting, Members had agreed on the proposed slate of names; therefore, he believed that he was then in a position to propose to this Council an agreed slate of names for the chairs of its subsidiary bodies, and which was a list that reflected the transparent manner in which the consultations had been carried out, as

well as the wide diversity of the WTO Membership. He reminded delegations that he had already presented the slate of names at the informal meeting and that there had been no opposition to it.

3.5. The list of names of Chairpersons for the subsidiary bodies read as follows:

Chairpersons of CTG Subsidiary Bodies	
Committee on Market Access	Ms Zsofia TVARUSCO (Hungary)
Agriculture	Ms Debora CUMES MARISCAL (Guatemala)
Sanitary and Phytosanitary Measures	Ms Noncedo VUTULA (South Africa)
Technical Barriers to Trade	Ms Kate SWAN (New Zealand)
TRIMs	Ms Carrie I-Jen WU (Chinese Taipei)
Anti-Dumping Practices	Ms Karine Mahjoubi ERIKSTEIN (Norway)
Subsidies and Countervailing Measures	Mr Pedro NEGUELOAETCHEVERRY (Argentina)
Safeguards	Mr Hyouk Woo KWON (Korea)
Import Licensing	Mrs Lorena RIVERA (Colombia)
Rules of Origin	Ms Thembekile MLANGENI (South Africa)
Customs Valuation	Mr Yuichiro OKUMURA (Japan)
State Trading Enterprises	Mr Antonius Yudi TRIANTORO (Indonesia)
Committee of Participants on the Expansion of Trade in Information Technology Products (ITA Committee)	Mr Muhammad Nur Hadri Bin SOPRI (Singapore)
Trade Facilitation	Ms Dalia KADIŠIENĖ (Lithuania)

3.6. He proposed that the Council agree with the nominations as indicated.

3.7. The Council so agreed.

3.8. The Chairperson recalled that, while all other subsidiary bodies of the Council had provisions in their respective Agreement or rules of procedure requiring them to elect Chairpersons, Working Parties did not. As a result, he proposed that the Council appoint the nominated Chairperson, Mr Antonius Yudi TRIANTORO (Indonesia), for the Working Party on State Trading Enterprises.

3.9. The Council so agreed.

3.10. The Chairperson then observed that, on the question of vice-chairpersons, his understanding was that, in cases where the option existed under the Agreement or rules of procedure, it would be for the subsidiary bodies themselves to decide if they needed a vice-chair, and that it was for the respective committee chair to hold the necessary consultations. He asked if the Council could proceed on that basis.

3.11. The Council so agreed.

3.12. The Chairperson thanked all Members and coordinators of regional groups for their constructive cooperation, speed, and flexibility, during the consultations, and thanked also those delegations that had decided to withdraw their candidacy in the course of the consultation process to help the Council agree on a slate of names.

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

4.1. The Chairperson informed the Council that, in a communication dated 12 March 2018, the delegation of the European Union had requested the Secretariat to include this item on the agenda.

4.2. The delegate of the European Union requested an update from Armenia and the Kyrgyz Republic regarding the compensation request it had submitted to both countries following their accession to the Eurasian Economic Union (EAEU). More than two years after its submission the EU was still waiting to receive a joint offer from Armenia, the Kyrgyz Republic, Kazakhstan, and the Russian Federation, to begin substantial negotiations. The EU understood that a compensation offer was now imminent and looked forward to receiving it. The compensation offer should address those tariff lines under which trade had been most affected by the EAEU enlargement, and tariff cuts should be made by all the EAEU members concerned. However, in the case of TRQs for agricultural products, compensations might be offered by Armenia and the Kyrgyz Republic only.

4.3. The delegate of Ukraine emphasized the need to maintain a reliable, predictable, and mutually beneficial trading relationship between Ukraine, the Kyrgyz Republic, and Armenia, particularly following the accession of these Members to the EAEU. He reiterated Ukraine's interest in the renegotiation process under Article XXVIII of GATT 1994, and recalled that trade between their respective 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 EAEU, Ukraine would closely follow the evolution of the renegotiation process. Ukraine urged Armenia and the Kyrgyz Republic to follow the rules set out in GATT Article XXVIII strictly to ensure predictability and avoid any adverse effects on other WTO Members, including Ukraine, arising from these countries' accession to the EAEU.

4.4. The delegate of Japan reiterated Japan's systemic interest in this matter and its readiness to engage in the negotiations and consultations with Armenia and the Kyrgyz Republic, respectively, with a view to receiving appropriate compensation under GATT Articles XXIV and XXVIII.

4.5. The delegate of Canada reiterated Canada's interest in receiving an offer from Armenia in response to its claim of interest submitted some time ago. Canada looked forward to an update from Armenia but, still more importantly, to action on this issue.

4.6. The delegate of Chinese Taipei urged Armenia to conclude this renegotiation by the extended deadline of January 2019, and looked forward to engaging in discussions with Armenia with a view to receiving appropriate compensation under GATT Articles XXIV and XXVIII.

4.7. The delegate of Brazil recalled that Brazil had also submitted a claim of interest to Armenia under GATT Article XXVIII, and thanked the EU for its call for a formal revised offer from Armenia. Like others, Brazil looked forward to receiving a revised offer from Armenia and stood ready promptly to resume bilateral consultations with Armenia on this matter.

4.8. The delegate of Armenia informed the Council that a number of consultations and exchanges with interested Members had taken place since the CTG's previous meeting, including discussions and an exchange of information on issues relating to the renegotiations. However, as a full EAEU member, Armenia was legally bound to coordinate its trade and economic policy together with other EAEU member countries; this implied reaching an agreed negotiating position. Armenia had made great efforts to intensify consultations with its EAEU partners in order to accelerate the process; these substantive discussions had now resulted in a new proposal with regard to compensation requests, which included a comprehensive list of goods for which Armenia was ready to consider the possibility of further liberalizing bound import duties. According to EAEU internal procedures, this list must first be approved by the Council and Board of the EAEU Commission, following which Armenia would present its new proposal to the EU. Armenia hoped that this new proposal would serve as a good basis for a new round of substantive bilateral and/or multilateral negotiations with all interested Members, and that progress would be made.

4.9. Regarding Ukraine's statement, he reiterated Armenia's position on this issue, namely that it could not formally accept Ukraine's claim of interest and enter into GATT Articles XXIV and XXVIII

procedures given that a free trade regime with Ukraine already existed. Armenia considered it redundant to enter into tariff reduction or compensatory adjustment negotiations when Armenia had already been trading with Ukraine at a zero tariff rate for over two decades.

4.10. The delegate of the Kyrgyz Republic informed delegations that the Kyrgyz Republic was still in the process of conducting consultations, both internally and with other EAEU members, intended to clarify data and other issues concerning the initial claims submitted by interested Members to his authorities. Following the next meeting of the Council of the Eurasian Economic Commission, the Kyrgyz Republic would provide answers to Members' questions. His delegation hoped that the EU and other interested delegations would understand that this process took time. The Kyrgyz Republic would continue to keep Members informed of progress.

4.11. The delegate from the Russian Federation took note of the concerns raised by the EU and other Members regarding the compensatory adjustment negotiations of the Republic of Armenia and the Kyrgyz Republic. His delegation stood ready to engage in constructive discussion with the EU and other Members with a view to achieving a mutually satisfactory agreement on compensatory adjustment and looked forward to further negotiations on this matter.

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

4.13. The Council so agreed.

5 ENLARGEMENT OF THE EUROPEAN UNION: PROCEDURES UNDER ARTICLE XXVIII:3 OF GATT 1994 (G/L/1051/ADD.9) – REQUEST FROM THE EUROPEAN UNION

5.1. The Chairperson drew Members' attention to document G/L/1051/Add.9, concerning the accession of the Republic of Croatia to the European Union on 1 July 2013. In this communication, the EU had indicated that it would not assert that Members that had submitted a claim pursuant to Article XXIV:6 of GATT 1994 were precluded from withdrawing substantially equivalent concessions under Article XXVIII:3 of GATT 1994 because this withdrawal occurred later than six months after the EU's withdrawal of concessions, provided that the claiming WTO Member withdrew concessions no later than 63 months after the EU's modification of concessions. He recalled that the CTG had extended the deadline on nine occasions, namely at its meetings of 27 November 2013; 9 April and 17 November 2014; 26 March and 10 November 2015; 15 March and 17 November 2016; and 6 April and 10 November 2017.

5.2. The delegate of the European Union stated that, as indicated at the previous CTG meeting, the EU considered the negotiations following the accession of Croatia to the EU in 2013 as finalized. She noted that the agreements with China, Uruguay, and Brazil had already been notified and reported to the Committee on Market Access, in September 2017, and that these were already in force and implemented. The last agreement, with New Zealand, had been signed on 13 March 2017, and was currently in the process of being ratified by the European Parliament. Following ratification, this agreement would enter into force and be implemented, and the EU would then submit an addendum to the notification already made and to the corresponding reports. She did not expect these last steps to require much time; nevertheless, the EU had preferred to request a three-month extension of the period in which affected Members would be allowed to withdraw substantially equivalent concessions.

5.3. The delegate of New Zealand thanked the EU for its continued engagement and celebrated the signature of New Zealand's agreement with the EU. His delegation looked forward to the agreement soon entering into force.

5.4. The delegate of the Russian Federation expressed Russia's deep concern over the EU's exclusion of the Russian Federation from the negotiations on compensatory adjustment under GATT Article XXIV:6, following the EU's 2013 enlargement. His delegation had already raised its concerns on multiple occasions bilaterally and at previous CTG meetings. Despite these calls, the EU had repeatedly refused to engage in substantive discussion, arguing that Russia's request had been submitted after the deadline set by the applicable Procedures for Negotiations under Article XXVIII, adopted in 1980 (that is, established within ninety days from the date when the EU had circulated its import statistics).

5.5. The Russian Federation was of the view that the EU was acting inconsistently with the WTO rules provided for in GATT Article XXVIII for the following reasons: (i) GATT Article XXVIII:1 established that a Member proposing to modify or withdraw a concession might do so by negotiation and agreement "with any Member determined by the Contracting Parties to have a principle supplying interest". Moreover, paragraph 4 of the interpretative note to Article XXVIII:1 stated that a Member "with a larger share in the trade affected by the concession shall have an effective opportunity to protect the contractual right which it enjoys" under the GATT; (ii) with regard to certain products in the EU's notification, Russia was identified as a WTO Member with a larger share in the trade affected by the concession. In other words, the EU had recognized Russia as a WTO Member having principal supplying interest; (iii) the Procedures for Negotiations under GATT Article XXVIII were not legally binding on Members, and according to their Chapeau they served as guidelines for renegotiations. Their non-binding nature had also been supported by the Panel in *EU – Poultry Meat (China)* (DS492). In sum, the Russian Federation was of the view that the 90-day guidelines should not be interpreted in a way that prevented any Member with a larger share in the trade affected by the concession from being given an effective opportunity to protect its contractual rights under the GATT. He therefore called again upon the EU to abide by its WTO obligations and to engage in compensatory adjustment negotiations with Russia.

5.6. The delegate of the European Union, in response to the Russian Federation, indicated that, according to WTO procedures for negotiations under GATT Article XXVIII, "Any contracting party which considers that it has a principal or a substantial supplying interest (…) should communicate its claim in writing to the contracting party. (…)", and that "Claims of interest should be made within ninety days following the circulation of the import statistics". She reminded Members that Russia had asked to enter into negotiations in a letter dated October 2013, well beyond the deadline that was set by the applicable Procedures. Moreover, the letter neither indicated any specific claim nor provided supporting evidence. Moreover, in 2016, Russia had submitted a specific request for compensation on poultry, but even if the request had been submitted in conformity with the procedures and within the deadlines, the Russian Federation would still not have had any entitlement to compensation. Indeed, the Russian Federation did not export poultry to Croatia during the reference period set up for establishing compensation and nor did Russia hold either negotiation or consultation rights on the tariff lines concerned.

5.7. The Chairperson proposed that the Council take note of the statements made and the EU communication contained in document G/L/1051/Add.9. He also proposed that the Council agree on the extension of the deadline as indicated in document G/L/1051/Add.9, until 1 October 2018.

5.8. The Council so agreed.

6 JORDAN – REQUEST FOR A WAIVER RELATING TO THE TRANSITIONAL PERIOD FOR THE ELIMINATION OF THE EXPORT SUBSIDY PROGRAM 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)

6.1. 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 Council's November 2017 meeting, 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.

6.2. The delegate of Jordan informed delegations that its new and WTO-compliant programme had been agreed by the Council of Ministers and was currently in the legislative process with a view to it being incorporated into the Income Tax law. This process was in line with the timetable for implementing a new programme contained in document G/C/W/705/Rev.2. The new programme, which would be implemented as from 1 January 2019, complied with the Agreement on Subsidies and Countervailing Measures (SCM) as it had no linkage to export activity. He assured Members that the current programme would be terminated by end-2018, and indicated that Regulation No. 106/2016 on the income law stated that income resulting from exporting goods of local origin was totally exempted from income only until 31 December 2018. Furthermore, Jordan was preparing its final notification to the SCM Committee of the current subsidy programme. Jordan was grateful for, and appreciated, Members' cooperation and understanding with regard to the challenges faced by the Jordanian economy, and requested that this agenda item be included in the agenda of the next meeting.

6.3. The delegate of the United States thanked Jordan for the comprehensive report on its reform efforts. The US looked forward to its completion before the end of this year and for the termination of the current support programme in accordance with Jordan's schedule as submitted to Members.

6.4. The delegate of New Zealand thanked Jordan for its efforts in bringing its export subsidy programme into conformity with WTO rules, and for confirming that the programme would be terminated by end-2018. New Zealand appreciated Jordan's efforts, remained ready and willing to support Jordan in its efforts, and looked forward to receiving Jordan's further update later in the year.

6.5. The delegate of Japan said that Japan expected Jordan to fulfil its commitment by eliminating its export subsidy programme by end-2018. Japan would continue to closely monitor this issue.

6.6. The delegate of Chinese Taipei also thanked Jordan for its efforts to bring its export subsidy programme into WTO conformity and for confirming that the programme would be terminated by end-2018. Chinese Taipei appreciated Jordan's transparent approach to this matter and looked forward to receiving further details of progress made on this issue.

6.7. The delegate of Australia thanked Jordan for its update on progress made concerning the development of a replacement WTO-compliant subsidy programme. Australia appreciated Jordan's transparency and open and constructive approach, and would welcome any further details of steps taken towards implementation of the new programme.

6.8. The Chairperson thanked Jordan for its update and delegations for their interventions; proposed that the Council take note of the statements made; and proposed, in addition, and as requested by Jordan, that the Council revert to this matter at its next meeting, in July 2018, when Jordan would again report on progress made.

6.9. The Council so agreed.

7 PROCEDURES TO ENHANCE TRANSPARENCY AND STRENGTHEN NOTIFICATION REQUIREMENTS UNDER WTO AGREEMENTS – COMMUNICATION FROM THE UNITED STATES (JOB/GC/148/REV.1 – JOB/CTG/10/REV.1)

7.1. The Chairperson drew Members' attention to document JOB/GC/148/Rev.1 – JOB/CTG/10/Rev.1, dated 12 March 2018 and circulated at the request of the delegation of the United States, concerning a draft decision for the General Council's consideration on procedures to enhance transparency and strengthen notification requirements under WTO Agreements.

7.2. The delegate of the United States indicated that, among the WTO systemic and institutional areas on which the US remained focused and wished to reinvigorate activity so as to put the Organization on a path towards a more successful and sustainable future, transparency was an especially important area of work, in particular to address the deficiencies and gaps in notification obligations. The Secretariat's Annual Report on Notifications, considered under Agenda Item 2 of this meeting, clearly indicated that compliance with notification requirements under the various WTO Agreements remained inadequate.

7.3. In this regard, she drew Members' attention to a revised version of the proposal on procedures to enhance transparency that had been tabled by the US in October 2017 and considered by the CTG at its meeting of November 2017. The revised proposal not only introduced changes that reflected Members' feedback at that meeting, but also took into consideration that MC11 had already taken place, and thus that the US no longer sought a Ministerial outcome but rather a General Council Decision. Therefore, the explicit provisions pertaining to TBT notifications and the specific enhancements proposed regarding fisheries subsidy notifications had been removed. However, on fisheries subsidies, a paragraph had been included to take into account the Ministerial Decision agreed during MC11 to recommit to the implementation of existing notification obligations and to note that the Negotiating Group on Rules (NGR) would develop enhanced notification procedures as part of those ongoing negotiations.

7.4. An aspect of the original proposal that had not been significantly modified was the section on administrative measures. Nevertheless, a minor change had been introduced to this section and

consisted of the removal of any reference to the term "delinquent", over which many Members had expressed their concern. At the same time, the administrative measures had been maintained as previously proposed because, although the US remained open to discussion and negotiation of these measures, her authorities strongly believed that Members that had chosen not to provide transparency in a timely manner should be held to account. Furthermore, the US had to date not heard any clear reasoning as to why such measures, which were well-established WTO mechanisms derived from Budget Committee procedures, should not apply to compliance with existing notification requirements. Indeed, the administrative measures proposed were already and currently applied by the WTO for Members in arrears, as set out in document WT/BFA/W/410, entitled "Outstanding Contributions from Members and Observers". The US looked forward to receiving comments and questions, which would be forwarded for consideration to Capital, and remained open to discussing the proposal on a bilateral basis; in particular, the US welcomed additional ideas from Members as to how best to confront the serious problem of lack of notification and transparency.

7.5. The delegate of Ukraine shared the views of the US concerning the need to enhance transparency procedures under the WTO Agreements. The WTO Committees made every effort to improve Members' compliance with transparency requirements under the respective Agreements, providing guidance, technical assistance, and thematic workshops. Nevertheless, additional steps remained necessary, such as those outlined in the US proposal.

7.6. Concerning the proposal, "To instruct appropriate committees to report annually on Members' compliance with notification obligations", he noted that some Members may not have complied with their transparency obligations because of limited resources. In this regard, he proposed that the respective WTO committees could organize specialized workshops focused on ways to strengthen capacity, while also highlighting the practical benefits of transparency by showcasing Members' success stories in this area. Committees should also examine the reasons given by Members for non-compliance with transparency obligations and include this information in their annual reports for further consideration and action.

7.7. On the proposal on "counter-notification on behalf of another Member", he indicated that a number of notification procedures already contained clear indications and/or formats for counter-notification, namely in the area of non-tariff measures, such as the Agreements on Balance-of-Payment (BOP), Import Licensing Procedures (ILPs), and SCM. Encouraging counter-notifications could be a good first step to be considered by Committees with a view to amending their notification procedures and formats, as necessary. Ukraine favoured engaging in a frank discussion of all other available and potential options for giving relevance to the issue of transparency.

7.8. The delegate of Mexico thanked the United States for the revised proposal. Mexico was in favour of any efforts directed at strengthening the fulfilment of notification obligations. The US proposal was being carefully examined in Capital and, as part of this review process, Mexico addressed the following questions to the US. Paragraph 1(a) and (b) made a distinction between the Agreement on Agriculture and other Agreements and instruments. What was the reason for this distinction, and why had the TFA not been mentioned? Mexico acknowledged that the question of how these specific notifications should be handled was already under discussion but considered it important, nevertheless, to address and include them in any effort undertaken to enhance compliance in the area of notifications. Mexico noted that there were also other agreements that had not been included in the proposal and sought clarification from the US in this regard.

7.9. Paragraph 7 of the proposal made reference to counter-notifications, in particular under the Agreements mentioned in paragraph 1. Mexico asked the US if the US was in fact proposing to incorporate counter-notifications into all of the agreements listed there, including those which did not currently contain specific counter-notification clauses, such as the Agreements on Rules of Origin (ROO) and Customs Valuation (CV).

7.10. With regard to paragraph 8, Mexico asked for clarification from the US as to why those Members that were overdue in their notifications should justify that delay, when in the case of Agriculture notifications there remained a two-year deadline.

7.11. Mexico added that what was being proposed by the US in paragraph 10 was similar to the provisions contained in Annex 1 of document WT/BFA/W/410, but in the proposal a one-year period was granted with regard to the time-line proposed by the Committee on Budget and Finance. Mexico

asked the US to clarify the reasoning behind this proposal. Furthermore, Mexico sought clarification regarding the difference between paragraph 10(a)(iv) and paragraph 11 of the US proposal, and the specific role of the Director-General when contacting the Minister of a Member late in submitting its notifications.

7.12. Mexico had understood that paragraph 12 would take into account the Buenos Aires Decision on Rules, particularly with regard to the notification procedures relating to fisheries. This Decision also set out that "Members renew their commitment to the fulfilment of obligations in force in terms of notifications, as set out in paragraph 13 of Article XXV of the Agreement on SCM", but made no reference to a specific sector. Mexico was in favour of any initiative intended to strengthen notification procedures, including transparency measures. However, such an exercise might either distract Members or double their workload under the NGR. Therefore, the SCM Committee was surely the appropriate body to undertake this work. Mexico looked forward to receiving the US responses to these concerns.

7.13. The delegate of Canada referred to Canada's earlier statement on this issue, delivered at the CTG's previous meeting, which remained valid. Canada agreed with the US that poor notification records hindered the work of the WTO, and welcomed this further opportunity to discuss the US proposal. Ideas such as those contained in paragraphs 2 and 6 of the proposal, which referred to the organization of workshops at Committee level, and assessment of notification performance in Trade Policy Reviews, were helpful and constructive in terms of improving the Membership's performance in the area of transparency obligations. He cited, by way of example, the workshop on the preparation of notifications on quantitative restrictions (QRs), organized by the CMA, which would take place on 24–26 April 2018. Based on the agenda prepared by the Secretariat, the event certainly promised to be a useful exercise in terms of raising the bar on QR transparency. He therefore encouraged Members to participate in the event, including and especially the 130 Members that had not yet submitted any QR notification.

7.14. Regarding the revised US proposal, he acknowledged that the US had scaled down the provisions on fisheries subsidies in response to Members' feedback at the CTG's November 2018 meeting. Canada agreed that the NGR was the most appropriate forum for fruitful discussion on enhanced transparency requirements in the area of fisheries subsidies.

7.15. Finally, Canada asked the US delegation if it had reflected further upon the numerous comments made by Members during the November meeting on the so-called administrative measures set out in the proposal. Canada shared some of the concerns raised with regard to certain aspects of those provisions. Canada also questioned whether restricting access to documentation and technical assistance would serve to enhance notification performance among those Members currently striving to meet their commitments but lacking the resources or capacity effectively to do so. Similarly, Canada shared the concerns raised by other Members over whether the proposed administrative measures might not serve to weaken rather than strengthen Members' capacity to provide timely notifications. And even if the proposed new measures were inspired by pre-existing WTO measures, Canada questioned whether provisions currently used in a budgetary or financial context would really be appropriate for work in other areas.

7.16. The delegate of New Zealand thanked the US for its revised proposal. Members had clear and binding obligations; therefore, persistent non-compliance needed to be addressed through the development of appropriate incentives. New Zealand supported the general intent of the US proposal and many of its specific elements, especially with regard to the suggestions it contained for potential Secretariat work. New Zealand was interested in exploring the proposal in more detail with the wider Membership.

7.17. Like Mexico, New Zealand wished to receive clarification from the US concerning the scope of its proposal. New Zealand again questioned the "differential treatment" in the US proposal between the Agreement on Agriculture, certain other goods agreements, and certain missing agreements; the absence of notification obligations under the MC10 Export Competition Decision, and the MC9 TRQ Decision, were examples of the latter. New Zealand wished to know if and how these would be covered.

7.18. Equally, on domestic support in agriculture, New Zealand was eagerly awaiting notifications from a number of Members, including major subsidizers. In that regard, New Zealand continued to

question the rationale behind the generous extension of the time-frame for agriculture notifications, from its current 90 days, to as many as 720 days.

7.19. New Zealand understood that some Members had complex domestic support systems but was of the view that those Members able to administer such complex systems also tended to be those best able to compile the relevant information concerning their systems and then to provide that information to Members. Members should therefore ensure that the incentives proposed were the right ones, and not those that would instead serve simply to reinforce disengagement. In other words, it was also important to provide support and assistance to Members, in a combination of carrots as well as sticks.

7.20. The delegate of the Republic of Korea thanked the US for its revised proposal, which was currently being assessed in Capital. Korea shared the proposal's objective of strengthening and enhancing transparency, particularly as notification requirements were fundamental elements in WTO obligations. However, given this issue's technical character, and the comments made by previous speakers, Korea believed that sufficient time should be set aside for its further discussion.

7.21. The delegate of the European Union welcomed the revised proposal and reiterated the importance the EU placed on enhancing transparency and improving the quality of notifications. The US proposal was valuable in this regard. Further, the EU appreciated US efforts to address Members' concerns and believed that the revision had led to an improved document. Nevertheless, the EU wished to make the following preliminary comments: (i) the EU agreed that it was preferable, in the area of notifications, to rely on specialized committees rather than solely on the CTG. In fact, all subsidiary bodies under the CTG should be called upon to critically assess the notification performance in their respective areas, and whether or not the regular reporting and reviewing mechanisms were effective. The EU believed that reporting and discussion at the Committee level should focus not only on the number and timeliness of notifications received but also on qualitative aspects, such as whether or not the information contained in a notification was pertinent in light of the notification requirements set out, as well as operators' needs in terms of transparency. In this regard, the committees might benefit from horizontal guidance; (ii) the EU supported the reactivation of the Working Group on Notification Obligations and Procedures (WGNOP or WG), which had carried out some useful work in the 1990s, and suggested that Members discuss in detail their expectations with regard to the WG and, in particular, how it should interact with the committees. An outcome of the WG's deliberations was the document discussed under agenda item 2, on the listing of notification obligations and compliance therewith. As stated under that agenda item, the document in question provided a useful overview across agreements, but the scope and potential was there for making the document more useful still. The WG could also consider how reporting on notifications could in future incorporate certain qualitative aspects; (iii) the EU also agreed that it would be worthwhile to update the 20-year old Technical Cooperation Handbook on Notifications (WT/TC/NOTIF/INF/3); however, for this purpose, the Services and TRIPs Councils would also need to be involved; (iv) at previous CTG meetings various doubts had been expressed concerning the suggestion to impose on Members systematically lagging behind in their notification obligations similar administrative measures to those currently applied to Members in financial arrears. Certainly, the EU believed that systematic and deliberate non-compliance with key WTO rules should not be without consequence. Therefore, the EU was open to giving its consideration to the question of how certain measures used in the context of the Budget Committee could be adapted for non-compliance in the area of notification obligations; at the same time, the EU considered that any such measures must be realistic and proportionate, and this appeared doubtful in the case of cutting off a Member from access to official WTO documentation or to the WTO website; (v) the EU believed that the preparation of timely and complete notifications was resource intensive, and smaller developing country Members may often experience capacity challenges in this regard, despite assistance already available; for this reason, sanctions or administrative measures should be matched, where necessary, with adequate capacity building. In addition, a Member's exemplary performance, and specific key improvements, were equally as important as highlighting another Member's negative performance. The WG would perhaps be well placed to formulate appropriate incentives and to assess, in cooperation with the Secretariat, whether or not existing technical assistance and training on notifications needed to be made more effective.

7.22. The EU stood ready to discuss this matter further, and considered it important to continue the present discussion not only at CTG level, but also at committee level, and informally with Members.

7.23. The delegate of Japan thanked the US for its revised proposal. Japan not only supported the purpose and intended direction of this new proposal, but also believed it to be essential to the work of WTO bodies in implementing existing WTO Agreements. Japan was currently reviewing the details of the proposal and had taken note of Members' concerns over whether or not administrative measures would truly contribute towards strengthening notification compliance. For example, blocking access to the WTO Members' website, training, and technical assistance, might in fact discourage Members from fulfilling their obligations, and even become an obstacle to them doing so. Members should therefore be cautious about adopting such an approach. Japan stood ready to discuss this issue further among all Members.

7.24. The delegate of Chinese Taipei appreciated ongoing US efforts to enhance transparency and thanked it for the revised proposal that now took into account certain concerns that Members had raised at the CTG's previous meeting. Her delegation was still reviewing the new text but nevertheless wished to share some preliminary comments, particularly on paragraph 7, relating to counter-notification in the absence of a Member's own notification. Chinese Taipei noted, for example, that it might be problematical to notify technical requirements or conformity assessment procedures (CAPs), in particular in light of Article 2.9 of the TBT Agreement, because Members held different opinions on the issue of how to recognize whether or not a technical regulation or CAP did or did not have a significant impact on another Member's trade. She requested the US also to take these particular aspects into consideration.

7.25. With regard to paragraph 10, her delegation continued to reflect upon and look carefully at the kind of impact a punishment or an incentive-based system might have on improving and increasing notification compliance. In any case, Chinese Taipei attached great importance to enhancing transparency and believed that further consultations should be held in this regard.

7.26. The delegate of Brazil thanked the US for its revised proposal, and previous speakers for their comments, which helped Members to develop a clearer understanding and evaluation of the proposal, particularly with regard to certain shared doubts and questions in line with those raised by Mexico and Canada. Brazil attached great importance to transparency provisions and notification obligations in the WTO Agreements and remained open to discussing any initiative that could contribute to improvements in the implementation and monitoring of these commitments on the part of the Membership.

7.27. In this vein, Brazil recognized the improvements introduced in the revised US proposal, both in language and in substance, and in particular the changes made to paragraphs 2 and 3, which reinforced cooperative action to promote transparency, an aspect important to Brazil. Likewise, an attempt had been made in paragraph 9 to address concerns raised by Members at the CTG's meeting in November about the Secretariat role in making notifications on Members' behalf.

7.28. Brazil also welcomed the new approach in paragraphs 4 and 12, which, as indicated by Canada, reflected specific improvements in the area of notifications to the relevant committees of agricultural and fisheries subsidies. Nevertheless, Brazil still held reservations and doubts concerning the proposed differential treatment for agriculture indicated in paragraph 8.

7.29. While praising the proponent's efforts to take into account certain of the concerns expressed by Members at the CTG's meeting in November 2018, Brazil considered that the approach proposed by the US for tackling the problem in question remained the same, as had been recognized by the US delegation itself earlier in the meeting. This was particularly the case as concerned paragraphs 8 to 11, which had remained essentially intact. Brazil considered that, at the end, this proposed approach could undermine the collaborative nature of the work being carried out in the regular committees, without any clear benefit in terms of notification quality. In this regard, Brazil considered that the quality of notifications was as important as their timeliness, a point also made earlier by the EU.

7.30. For Brazil, doubts also existed over the legal character of the approach proposed in paragraphs 8 to 11 of the revised proposal. Brazil did not share the view that one approach to notification non-compliance could be to draw an analogy with administrative measures applied to Members in arrears with their financial contributions to the Organization. In Brazil's view, this was not appropriate, as the design and application of administrative measures applied to Members in

arrears with their financial contributions to the Organization was mandated by Article 7.2(b) of the Marrakesh Agreement. No such framework existed for non-compliance with notification obligations.

7.31. In Brazil's view, if the US wished to pursue this path, a General Council Decision would probably not be the appropriate instrument; rather, it would be necessary to propose these measures as amendments to the multilateral agreements. Nevertheless, Brazil stood ready to continue to engage in discussions on this important issue, with the US and the entire WTO Membership.

7.32. The delegate of Singapore welcomed efforts to improve transparency and appreciated the revised US proposal. Singapore had been supportive of and continued to support efforts to enhance Members' compliance with their notification obligations. Members' timely and complete notifications were crucial to the WTO's monitoring function and contributed to the overall predictability of the MTS.

7.33. Singapore considered it useful to understand the underlying reasons for non-notification. Sometimes non-notifications were the result of a lack of understanding or technical expertise necessary to fulfil the notification obligations in question; in this regard, Singapore supported capacity-building efforts to address these challenges. Singapore considered the US suggestion to update the Technical Cooperation Handbook on Notifications to be a constructive one; such an update could take into account more recent committee decisions and recommendations with regard to notifications.

7.34. Singapore was concerned by certain aspects of the administrative measures laid out in paragraph 10 of the proposal but nevertheless wished to engage with the US and all Members on the issue of how to improve transparency and adherence to WTO notification obligations; Singapore would therefore welcome further discussion of this proposal.

7.35. The delegate of Hong Kong, China indicated that her delegation supported all efforts to improve notification performance, considered transparency crucial to the well-functioning of the WTO and a predictable trading environment, and thanked the US for its revised proposal.

7.36. Hong Kong, China supported the suggestions in paragraph 2 of the revised proposal, namely that the appropriate committees and working groups could enhance efforts to assess and make recommendations to improve Members' notification compliance. Indeed, the complexity and technicalities involved in the notification obligations varied across different WTO Agreements, and the WTO body responsible for a particular Agreement would be best placed to assess Members' difficulties in relation to the notification obligations for that Agreement, and to address their challenges in the most effective and efficient way, whether by streamlining the notification procedures, by targeted technical assistance, or by setting an appropriate target and timetable for raising the compliance rate.

7.37. Concerning the role of the WGNOP mentioned in paragraph 3 of the revised proposal, she sought clarification from the US with regard to the 'systemic and specific improvements' that the WG would consider, and on how duplication of work between this WG and the current committees could be avoided. The WGNOP, established in 1995 under the Marrakesh Decision on Notification Procedures, with specific terms of reference, had not been active after completion of its report to the CTG in 1996. Hong Kong, China wondered whether the WG needed a modified mandate under the proposal.

7.38. Regarding the Secretariat's role in providing notifications on behalf of a Member, Hong Kong, China had doubts about such an option because of the limitations established in Article VI of the Marrakesh Agreement Establishing the WTO, which required that "[…] staff of the Secretariat shall not seek or accept instructions from any government …". She asked the Secretariat to provide information in this regard.

7.39. Concerning the administrative measures suggested in paragraphs 10 and 11, Hong Kong, China doubted if punitive measures would be effective in raising the rate of notification compliance in light of the operational challenges caused by the large number of different notification types and different timings for submissions. She asked if the same administrative measure would apply to a Member that could not submit any notification at all, as to another Member that had submitted all

but one of its notifications within the established deadlines. Considering the proposal tabled, and the possible role of working groups and committees in assessing and recommending how to improve the overall rate of notification compliance, perhaps it would also be worth leaving more flexibility for the WG or the relevant committee concerned to decide on the measures most appropriate. Hong Kong, China, looked forward to contributing constructively to this process.

7.40. The delegate of Norway thanked the US for its initiative to improve notifications. In Norway's view, the proposal contained several elements that could be reflected upon further, such as to revive the WG, to review and update the notification requirements and formats of the Committee on Agriculture, and to use the TPRs more actively. However, Norway was not of the view that the Secretariat should actually provide notifications on a Member's behalf, not even with the prior approval of the Member in question; nevertheless, the Secretariat did play an important role in assisting Members with capacity constraints to fulfil their notification requirements in a timely manner. Norway also believed that, if a Member did not comply with its notification commitments by a given deadline, the Member in question should explain the reasons for the delay and indicate to the Membership the intended date on which the notification would be submitted to the WTO.

7.41. As pointed out at the CTG's previous meeting, Norway believed that positive incentives might prove more effective than punitive actions in achieving the results desired; in particular, Norway did not believe that the suggestions put forward in paragraph 10(a)(1-3) would be conducive to better reporting, nor those put forward in paragraph 10(b) and paragraph 11, and these sections of the Draft Decision should, in Norway's view, be deleted. By contrast, Norway did wish to review paragraph 10(a)(4-6).

7.42. Concerning the ongoing fisheries subsidies negotiations, Norway believed that the instructions given at MC11 were sufficient at this stage; it was therefore unnecessary to seek additional guidelines.

7.43. The delegate of Switzerland noted that transparency was a fundamental and key element in a well-functioning MTS, as well as a prerequisite for effective monitoring of WTO rules. Switzerland had been a long-time advocate for enhanced transparency at the WTO and welcomed the objective of the proposal and its revision. Nevertheless, Switzerland had some comments and questions concerning the issue of counter-notifications in paragraph 7, such as how such a mechanism would work in practice, on the basis of what information, and with what consequences.

7.44. Regarding the proposed sanctions, Switzerland noted their similarity to those established under the Budget Committee. However, doubts remained over how such administrative measures as placing a restriction on access to documentation, or to the WTO Members' website, would effectively improve notification compliance rates. Instead, Switzerland believed that more consideration should be given to a stronger role for positive incentives and support.

7.45. Switzerland recognized the distinct nature of the notification obligations under the TFA, but recalled the importance given to timely and complete notifications in that case as well. Switzerland stood ready to engage constructively in further discussion of how to enhance transparency and strengthen notification requirements, and looked forward to clarification from the US on the various points that had been raised.

7.46. The delegate of South Africa indicated that her delegation had taken note of the revised US proposal. However, at the CTG's November 2017 meeting, South Africa had provided comments on the initial draft that the US had not taken into consideration, particularly as concerned administrative measures. She stated that, although transparency was a vitally important element in the WTO's work, the primary objective of the Organization was of still greater importance, including the development of a trade environment that supported and contributed to further development and growth globally, in particular for developing and LDC countries.

7.47. South Africa did not believe that the institutional effectiveness of the WTO would be enhanced by expanding the transparency mandate to include punitive administrative measures, the consequences of which would render Members inactive and without access to WTO resources. Such an approach could also subject WTO Members to dispute settlement. In short, the proposed course of action would have a disproportionately negative impact on the very Members requiring most assistance, that would effectively be further penalized as a result of their capacity constraints, a

cause for deep and genuine concern. Moreover, it was unclear from the proposal how once-only notifications, *ad hoc* notifications, and notifications without any clear deadline would also be subjected to punitive administrative measures based on timelines.

7.48. In addition, the proposal did not adequately consider how the varied reasons for inadequate notification compliance could be addressed in such a way as to assist and encourage Members to notify. And it was important to note that the reasons for delays in submission and absence of notifications were various and depended on a number of different factors.

7.49. The WTO Secretariat already monitored Members' compliance with regular notification obligations through its updates of document G/L/223 on the status of notifications in the different committees; and TPRs also gave often an update of Members' notification status. In this context, it was not clear what the proposed standardized focus on notifications for trade policy review would in fact entail. In any case, TPRs were not intended to serve as a basis for the enforcement of specific obligations under the WTO Agreements, for dispute settlement procedures, or to impose new commitments, but were intended instead to provide a clearer understanding of Members' trade policies and practices.

7.50. In addition, the WTO Secretariat could not submit notifications on behalf of Members regarding the agreements covered by the proposal when there was no mandate and certainly no agreement among Members for it to do so. Most WTO Agreements contained GATT Article X-type provisions, referring to publication and administration of trade regulations; these provisions concerned transparency and procedural due process. Therefore, the US should explain why the proposal focused only on Annex 1A Agreements, with a specific and standard focus on notifications relating to these agreements in Members' TPRs, while it excluded the Annex 1B General Agreement on Trade in Services.

7.51. South Africa did not agree that this proposed decision should be considered by the General Council; rather, all monitoring and notification requirements could be reviewed in the relevant WTO Committees. Nevertheless, South Africa did remain open to further discussion of how to improve Members' compliance with transparency procedures and obligations in the relevant committees.

7.52. The delegate of Cuba thanked the US for its revised proposal but regretted that the concerns raised by her delegation, in line with those raised by other delegations from developing countries, remained unaddressed. She therefore indicated that the statement made by Cuba on 10 November 2018 remained valid. From the earlier discussion, it was clear that no Member contested the importance of transparency within the WTO. However, it concerned Cuba that the proposal adopted a punitive approach to the issue of notification non-compliance. Cuba's view was that it was the DSU's role to examine the application of administrative measures, and that the issue already formed part of the discussions in that forum on framework and negotiations. The idea of adopting a mandate that would correspond to the subsidiary bodies was not in line with the logic followed in the WTO that preserved a bottom-up approach, and the initiatives on specific items, which included agriculture, should instead be submitted to the proper technical committees.

7.53. Cuba also considered that the recommendation contained in paragraph 6, on trade policy reviews, was not relevant to this Council; indeed, following the logic of the aforementioned paragraph, these initiatives should themselves be submitted and examined in the framework of the periodic reviews of the Trade Policy Review Body. This, after all, was the forum where, from a holistic perspective, all issues relating to the implementation of the reviews should take place, and where adoption, by consensus, should likewise take place. Similarly, the initiative relating to notifications on fishery subsidies should instead be a contribution made within the framework of negotiations on fishery subsidies. In summary, the proposal, given its selective approach, fell outside the remit of the CTG, as had already been clearly stated at the November CTG meeting.

7.54. Cuba could not support this initiative, considering its approach counterproductive. Many developing countries and LDCs were going to great efforts to comply with their notification obligations despite a persistent lack of resources and infrastructure. Therefore, the solution to the current challenges should be found through a collaborative approach and not through strengthened monitoring and punitive measures. Indeed, in today's circumstances, the WTO required collaboration

and cooperation more than ever as its foundational approach. In this spirit, Cuba was open to a frank and honest dialogue on this or any other issue within the WTO.

7.55. The delegate of Australia thanked the US for its proposal. Australia supported the objective of increasing compliance with WTO notification and transparency obligations, was interested in exploring the various options to do so, and looked forward to working with the US, and other Members, to support these objectives in 2018.

7.56. The delegate of China echoed others in thanking the US for tabling a revised proposal on transparency. China supported enhancing transparency in the WTO, of which notifications were an important element. Transparency had the merit of contributing to a stable, predictable, and transparent national trading environment; it also helped to promote trade liberalization and facilitation in general. China noted that the US had deleted the term "delinquent" from its initial proposal, and considered this to be a positive step. However, and as stated already on previous occasions, China was more inclined to support measures that encouraged cooperation and that assisted Members in meeting their notification obligations, rather than punitive measures of the kind set out in the proposal, which China believed would not help developing country Members in their goal of fulfilling their notification requirements.

7.57. Similarly, China believed that referring to a Member whose notifications were long overdue as an "inactive Member" went in a punitive direction; China did not consider this to be the appropriate term in this context.

7.58. Regarding the reference to TPRs and the possibility that specific parts of TPRs could be dedicated to notification issues, China noted that some Members had questioned such an approach. For its part, China requested further clarification from the US concerning how a standardized section in TPRs could be feasible given that Members held differing views on which specific or non-specific notifications were actually required of them. Given these differing interpretations it would certainly be difficult to standardize a section of TPRs only on notifications. China was also of the view that the cooperative measures suggested in the proposal were worthy of further exploration, and echoed other delegations in supporting the Secretariat in its role of enhancing Members' capacity via workshops. The Secretariat could organize additional training courses on notification disciplines and perhaps also invite those WTO Members that were successful in fulfilling their notification obligations to share their experiences and reflections.

7.59. In summary, China stood ready to work with the US and other Members towards improving transparency in notifications, but on the basis of a cooperative and not a punitive approach.

7.60. The delegate of Egypt thanked the US for its revised proposal and for trying to take into account Members' comments made at the CTG's November 2017 meeting. The proposal contained many constructive ideas, especially in paragraphs 2, 3, 4, and 5. Egypt noted that there was broad agreement among Members that enhancing transparency and improving Members' compliance with notification requirements were important objectives, even if there also existed many different possible approaches to achieving those objectives. Egypt believed that the main concern with the revised proposal remained the proposed administrative measures against Members, which in Egypt's view would not encourage Members to meet their notification commitments. Egypt believed that the right approach was rather to enhance notification compliance by giving priority to the needs of developing countries and LDCs in the areas of capacity-building and technical assistance. Egypt also noted that Members held differing views on whether or not a subsidy measure was "specific" and to be notified, and the US proposal failed to address such issues. In conclusion, Egypt stood ready to engage in any discussion at committee level of possible ways to enhance Members' compliance with their notification obligations.

7.61. The delegate of Pakistan said that his delegation agreed that improving Members' compliance with their notification requirements was an important objective. However, the administrative measures set out in the proposal, punitive in character, would most hurt those Members that were genuinely struggling to meet the requirements. In this regard, he observed that some of the notification requirements under the WTO Agreements were highly technical and required a lot of effort in terms of collecting the relevant data and coordinating among the various different designated authorities responsible for compiling the notifications. The suggestion by the US would be counterproductive to achieving the intended purpose. In other words, many Members faced

genuine capacity constraints which had to be considered and a more collaborative approach should be adopted. His delegation looked forward to engaging in further consultations on the proposal.

7.62. The delegate of Senegal also thanked the US for its proposal and, like others, highlighted the importance of transparency as a fundamental pillar in the WTO's work. Many Members faced administrative and financial limitations and should be encouraged to fulfil their obligations in a positive and constructive manner, such as by strengthening their capacity and updating the lists of obligations. Senegal shared other Members' concerns regarding a proposal to punish Members through administrative measures, particularly in the case of certain developing Members and LDCs, which faced technical, institutional, and financial limitations that should also be taken into consideration. Furthermore, Senegal was concerned by paragraph 12 of the proposal, which seemed to offer a mandate for enhanced notifications, an issue that did not fall within the scope of the Buenos Aires Decision. Senegal remained open to further discussion of this issue, based on a constructive approach and with the intention of developing a positive mechanism that would incentivize Members to meet their notification requirements.

7.63. The delegate of the Bolivarian Republic of Venezuela noted the changes that had been introduced into the US proposal and reiterated Venezuela's continued interest in strengthening notifications and the WTO's important transparency obligations. The proposal continued to be evaluated in Capital and Venezuela's concerns raised at previous CTG meetings remained valid, particularly over the punitive approach and the possibility of the Secretariat preparing notifications on a Member's behalf. In Venezuela's view, a more positive approach would be to improve the capacity of developing and LDC Members so as to help them more successfully to fulfil their transparency obligations.

7.64. The delegate of Turkey said that his delegation also believed transparency to be a fundamental pillar of the MTS, and supported the principle of strengthening transparency in the WTO. The new proposal was still being evaluated in Capital, but Turkey wished nevertheless to make three preliminary comments: (i) the notification requirements on fisheries subsidies beyond Article 25.3 of the SCM Agreement should be determined according to the agreed prohibitions in the ongoing negotiations in the NGR; (ii) the approach set out in the US proposal, especially in paragraphs 4, 9, and 10 therein, required caution so as to avoid damaging the overall structure and functioning of the WTO while trying to fix poor compliance with transparency obligations; and (iii) it might not be effective to impose new penalties with regard to existing transparency requirements. The punitive administrative measures were difficult to understand, especially when the infringement of certain very basic WTO rules and principles by some Members would not be subject to the same approach and treatment.

7.65. The delegate of India said that India strongly believed in transparency, considering it to be one of the main pillars of the rules-based multilateral trading system, which provided Members with information and clarity regarding other Members' laws, regulations, and new measures. India had significantly improved its notification compliance with regard to a number of committees despite the fact that India sometimes had difficulty collecting information, particularly from sub-national bodies such as state governments. Members should also distinguish between wilful defaulters and those Members defaulting on their obligations as a consequence of inherent constraints, such as the capacity constraints faced by developing and least developed countries. Despite a willingness to try to notify on time, and to fulfil their WTO obligations, developing countries suffered from constraints in resources and expertise. India noted that sometimes also interpretation issues caused delays in notifications.

7.66. The revised US proposal had been sent to Capital for review and his delegation would revert back to the US with its comments at a later stage. In the meantime, he wished already to provide some interim comments regarding the administrative actions proposed by the US as a way to address the issue of Members' non-compliance with their notification obligations. No Member could claim that it had complied with its notification obligations fully; this was evident from Members' statements in various WTO bodies, as well as in WTO dispute claims. Nevertheless, many Members did succeed in notifying various measures, even if the range and quality of the content contained in those notifications varied. However, to redress such imbalances and failings, the US had proposed measures that risked, rather, to flood committees with interpretational issues over notification requirements, such as coverage and content, which would serve only to create additional burdens on the existing system and its resources.

7.67. The WTO Secretariat had been helpful in compiling Members' notifications, and had regularly monitored Members' notification compliance for consideration by the respective committees, where Members enjoyed an opportunity to raise questions. However, any further burden placed on the Secretariat for further work on notifications would only divert the Secretariat's attention away from the more useful regular and mainstream work. In India's view, Members should explore first those avenues already available, such as cross-notification, and discussion in committees, rather than introducing further disciplines that would only increase the burden on those Members already in genuine difficulty, and penalize the non-wilful defaulters. Members should discuss other available options to improve the situation, if any, in approaches that were based on cooperation and collaboration.

7.68. The delegate of the United States said that they had heard many comments and concerns expressed regarding the proposed administrative measures but had not yet heard any satisfactory reasoning to explain why there should not be real consequences in cases of chronic failure to meet notification obligations. Was it credible for there to be no consequences whatsoever for failure to respect such basic obligations? Her delegation was open to further discussion with Members on the topic of how to craft administrative measures in the most effective way, bearing in mind that the US remained convinced by the principle that chronic disregard of notification obligations should have consequences, and that this principle should not be abandoned. The US welcomed additional thoughts on how to improve compliance and would also be interested to hear of any specific ideas that Members may have on possible positive incentives, as mentioned by several Members.

7.69. The US would revert back to those questions raised on the scope of the proposal, as well as on including the TFA, both in bilateral discussions with Members and at the CTG's next meeting. Members' engagement and feedback had been extremely useful and her delegation welcomed further discussion.

7.70. The Chairperson thanked delegations for their interventions and indicated that, taking stock of what had been said under this agenda item, and also under agenda item 2 on the status of notifications, it appeared that there was agreement among the WTO Membership that transparency was indeed very important to the work of the WTO. However, it was also clear that views differed as to how best to address the issue of enhancing transparency and improving Members' performance with their notification obligations. He therefore proposed that the Council take note of the statements made.

7.71. The Council so agreed.

8 INDIA – QUANTITATIVE RESTRICTION ON IMPORTS OF BEANS OF THE SPECIES VIGNA MUNGO HEPPER OR VIGNA RADIATA WILCZEK – REQUEST FROM AUSTRALIA

8.1. The Chairperson informed the Council that, in a communication dated 9 March 2018, the delegation of Australia had requested the Secretariat to include this item on the agenda.

8.2. The delegate of Australia expressed his authorities' ongoing frustration and disappointment at India's unwillingness to engage on the issue of the WTO basis of its quantitative restriction placed, in August 2017, on imports of beans of the species Vigna Mungo Hepper or Vigna Radiata Wilczek, commonly known as mung beans. The general prohibition on the use of quantitative restrictions was one of the core disciplines of the GATT and the WTO Agreement on Agriculture (AoA). Australia had repeatedly sought a response from India at the Committee on Agriculture (COA) meetings of October 2017 and February 2018, and at this Council for Trade in Goods on 10 November 2017. India on each occasion had responded that it would submit the notification and relevant information to the appropriate WTO Committee in due course but then failed in fact to do so. Further attempts by Australia and other WTO Members with an interest in mung bean exports to receive answers to their questions had resulted only in responses that Australia considered to be inadequate. Questions in writing to India from Australia's Department of Agriculture and Water Resources, in September 2017, as well as bilateral and plurilateral meetings in Geneva and New Delhi had likewise been unsuccessful. India's lack of engagement and inadequate responses to Australia's requests for further information on the WTO-basis of the restrictions was a source of concern to Australia. Australia looked forward to India adopting an appropriate level of engagement with WTO Members on this issue.

8.3. The delegate of Ukraine echoed Australia's systemic concerns on this issue. Transparency and predictability in Members' trade policies were the elements necessary to providing certainty when delivering cargo; such clarity was an indispensable condition in facilitating trade.

8.4. The delegate of the United States echoed the concerns raised by Australia regarding India's quantitative restrictions on imports of select varieties of beans. At the February meeting of the COA, the US had asked India to provide clarification concerning its quantitative restrictions (QRs), including with regard to time-frames and any plans that India might have to institute additional QRs on agricultural imports. The US had also asked India to explain how such quantitative restrictions were consistent with India's WTO commitments, although to date no response had been received from India. The US would appreciate receiving not only India's responses, but also any update that India might be able already to provide during the meeting. The US also remained concerned by India's attempts to limit imports of other pulses through the sudden raising of tariffs, on three occasions in recent months, and without any advance notification, including, and in particular, for shipments that were already *en route*.

8.5. The delegate of the European Union said that the EU shared the preoccupations raised by Australia and other Members, and reiterated its concerns about the effect of the measures on trade. The issue had been raised on several occasions, at the last CTG, and in the COA, but no substantial response had so far been received from India. Her delegation emphasized the importance of WTO Members respecting their transparency obligations and notifying to the WTO the introduction of any quantitative import restriction, export restriction, or export ban. The measure was part of a number of restrictive, protectionist measures, taken and announced by India, concerning pulses, in addition to a tariff increase and market price support. These measures had a negative impact on producers and exporters of pulses from the EU, and also from many developing countries.

8.6. The delegate of New Zealand reiterated New Zealand's systemic interest in this matter and, in line with what had been said under the agenda's previous item, encouraged transparency, and highlighted the importance of maintaining transparency, in relation to those WTO obligations that Members had undertaken.

8.7. The delegate of the Russian Federation expressed systemic interest in the issue of the application of QRs to agricultural imports.

8.8. The delegate of Canada echoed the concerns raised by Australia and others regarding India's QRs on "mung beans" and "black beans". QRs had also been placed on pigeon peas. He asked for clarification from India with regard to the basis for its imposition of such QRs, the committee to which India would notify its QRs, and the timing of that notification. He also asked India if it had applied or if it intended to apply similar restrictions to any other pulses or agricultural commodities. Canada looked forward to receiving India's responses to these questions. He emphasized the importance of receiving advance notice of changes to these types of measures so as also to minimize avoidable disruption to traders.

8.9. The delegate of Brazil expressed interest in following this discussion and in hearing India's clarification of the concerns raised by other Members.

8.10. The delegate of Japan expressed Japan's systemic interest in the discussion of this issue, which Japan would monitor closely.

8.11. The delegate of India appreciated the interest shown by previous speakers in India's import measures on the stated agricultural product. Since the last CTG meeting, India had been interacting on this issue with Members in the COA and had informed them that it would shortly be notifying the measure as a QR. Although Capital was still collecting the information, he addressed certain aspects of the QRs and questions raised by Members, and indicated that, as part of its biannual notification on QRs, India was in the process of consolidating the QR-related information in accordance with the prescribed WTO format, and would shortly submit to the CMA the consolidated QR notification. Regarding the duration, he indicated that these measures were temporary measures, as permitted under WTO rules. The restriction on pulses had been imposed through Notifications No. 19 and 22 of 5 and 21 August 2017, respectively, and all the declarations made prior to the notification dates had been cleared by Customs in accordance with paragraphs 2.17 and 9.11 of the "Foreign Trade Policy Handbook of Procedures of the Government of India". In addition, those declarations,

supported by a confirmed irrevocable letter of credit, had been authorized for imports as from the applicability of the notification, and cleared by India's customs authorities. Additional comments on this issue should be addressed in writing to his delegation.

8.12. The Chairperson proposed that the Council take note of the statements made.

8.13. The Council so agreed.

9 UNITED STATES – SECTION 232 INVESTIGATIONS AND MEASURES ON IMPORTS OF STEEL AND ALUMINIUM – REQUEST FROM CHINA AND THE RUSSIAN FEDERATION

9.1. The Chairperson informed the Council that, in communications dated 9 and 12 March 2018, the delegations of the Russian Federation and China, respectively, had requested the Secretariat to include this issue on the agenda.

9.2. The delegate of China expressed China's grave concern over, and strong opposition to, the US Section 232 investigation on imported steel and aluminium on which tariffs had been imposed as from the date of this meeting. China would take all measures necessary to safeguard its legitimate rights and interests. China's concerns referred to the factual evidence, the rules basis, and the international ramifications of the US measures.

9.3. On the factual evidence, and after examination, China believed that the results of the investigation were not based on solid evidence; indeed, during the investigation, many Members, including China, had submitted evidence to the US government demonstrating that exports of steel and aluminium products did not threaten US national security. However, those submissions had not been even-handedly discussed in the 232 investigation reports. In terms of volume, the US Department of Defence had estimated that US military requirements for steel represented only 3% of US steel production. In other words, US domestic production capacity for steel was roughly 32 times that of US national defence needs. Considering the number of major suppliers that had been temporarily exempted from the measure, whose exports should be counted as reliable for national security purposes, and that this exemption was likely to be further extended, the ratio of supply to demand for national security purposes was even larger. There was no evidence that such supplies were insufficient to meet the needs of US national defence; and this rendered the tariff groundless. In terms of product coverage, when compared with the 2001 Section 232 steel investigation, where no actions were taken, product coverage on this occasion was much wider. However, there was no breakdown analysis based on product types in the investigation report; therefore, questions remained as to the need for such broad product coverage. In terms of industrial indicators, such as price, capacity utilization rate, and sectoral employment, it was clear from the report that there had been no noticeable decline in trend since 2010. As to the declining number of blast oxygen furnaces, which was discussed in the report, this was neither the result of a steady drop in steel consumption, nor the result of an increase in imports, or globalization; rather, it was a direct result of the introduction of a new production technology called the 'minimill'. According to a paper published in 2015 in the American Economic Review journal, entitled "Reallocation and Technology: Evidence from the US Steel Industry", the minimill plants were significantly more productive than traditional steel plants. This productivity premium introduced a reallocation process whereby minimills displaced older technology known as vertically integrated production. China believed that a thorough and even-handed analysis should have given at least minimum consideration to these facts before reaching a final conclusion.

9.4. On the rules aspect, and as noted by other Members on previous occasions, China considered that the US measure violated multiple WTO rules, including its unilateral character and a lack of transparency in many aspects, including: in the investigation, in the process and conditions for country exemptions, and regarding the time-period during which these measures would apply. There were also multiple possible violations of relevant WTO and GATT rules, including Article I of the GATT and relevant provisions of the SCM Agreement. The impact on WTO rules was dangerous, not only in terms of commercial interest but also to the whole WTO system itself, as pointed out by The Economist when it indicated that the WTO was "in grave danger".

9.5. In terms of the international ramifications of this investigation, governments, industries, media, academia, and think-tanks around the world had all expressed their concerns over, and disagreement with, these US measures. In an online survey conducted by Chicago University, over

40 economists had expressed their disagreement with these measures. A 2016 Nobel Laureate, economist Oliver Hart, wrote that, "A robust result is that free trade increases national income. The cases where this is not true are rare and hard to spot." And a 2017 Nobel Laureate, economist Richard Thaler, wrote that, "In net we want more trade not less. This is unlikely to help and runs the risk of starting a trade war. Sad."

9.6. Regarding the history of Section 232 investigations, and as described by multiple experts, China noted that the clearest lesson from history was that extreme caution was needed to avoid misuse for political purposes, because such investigations risked not only to backfire but also to result in a chain reaction and a vicious circle of tit-for-tat. The GATT and WTO had been built on the belief that trade led to peace, and that trade rules defused tensions. Experience from the 1930s taught us that nations that erected trade barriers achieved just the opposite of national security; in contrast, 2008 taught us that maintaining an open trading system and taking collective action enhanced stability, security, and development. In this spirit, China hoped that all Members, including the US, would refrain from adopting unilateral measures, would follow WTO rules, and would seek to address their trade concerns by recourse to the existing WTO framework safeguarding normal international trade flows, thereby upholding the rules-based MTS.

9.7. The delegate of the Russian Federation recalled that this was the third time that the Russian Federation had raised the issue of the US Section 232 investigations and measures in this Council. Regrettably, Russia's worst expectations had materialized, and the US attitude towards the fundamental principles of fair and rules-based trade was disturbing.

9.8. The 25% duties on steel and 10% duties on aluminium obviously exceeded US bound levels. For Russian exporters, this meant a sudden limit on exports worth US$3.2 billion. In addition, the selective treatment of different suppliers went beyond any reasonable understanding of the MFN principle. According to publicly available information, imports from at least eight WTO Members would be exempted from duties. It was difficult to understand US motives and goals for such differentiation. Therefore, Russia requested the US to clarify the following: (i) if the measures were really intended to revitalize the US steel and aluminium sectors, why would the US exempt the majority of imports into its market? (ii) what criteria were applied for exempting certain countries from duties? (iii) did the US intend to adjust the final tariff levels applied to the rest of the world once exemptions had been agreed for certain countries? (iv) Russia's understanding was that the rationale behind these duties was excess capacity in the US steel and aluminium sectors. If so, why were the measures imposed on countries with historically stable volumes of capacity and foreign trade in steel and aluminium? and (v) what kind of positive effects did the US expect in terms of such elimination of excess capacity? Russia anticipated only a "domino effect" and a rise in protectionism also in other markets.

9.9. Despite Russia's numerous requests for it to do so, the US had failed to engage in multilateral and bilateral substantive discussions on the issue of ongoing investigations and duties already in place. His delegation had expected that the US would explain if, and how, the measures could be justified under WTO law; but Russia had not to date seen any such justification. On this issue, and as China had just summarized, much had been said at the General Council and other fora on US responsibility with regard to the implications of these measures for the MTS, which reflected the WTO Membership's common understanding. Russia looked forward to engaging in a constructive dialogue with the US on this matter.

9.10. The representative of the European Union recalled that the EU had previously expressed, notably at the previous General Council meeting, its concerns over the US measures in question, which took effect as of 23 March 2018, the date of this meeting. His delegation did not believe that these measures could be justified on the basis of national security considerations, and that attempting to do so risked undermining the MTS. In simple terms, the WTO national security exception did not allow import restrictions for the purposes of keeping a domestic industry alive and prosperous. The EU and its member States were deeply concerned by the direct and indirect impact that the announced measures could have on the US market, on the EU market, and on third country markets. The measures also raised significant systemic concerns.

9.11. The EU acknowledged that EU exports of steel and aluminium would now be temporarily excluded from these measures until 1 May 2018 (40 days). Nevertheless, it was fully determined to protect its commercial interests in a WTO-compatible manner. The EU approach would balance the

need for a proportionate and legally sound response, while at the same time leaving room for possible dialogue and an eventual solution. The EU reserved all its rights available under the WTO Agreements.

9.12. The US measures also distracted from the important challenge of addressing the root causes of problems in today's steel and aluminium sectors, namely the reality of global overcapacity caused by non-market based production. Tackling those problems required joint efforts in all relevant fora, working with the key countries involved. The EU had engaged actively with the US and other partners to this end and considered that sector-wide protection in the US was an inappropriate remedy for the real problems of global overcapacity in those two sectors.

9.13. The delegate of Japan shared the concerns expressed by other Members. It was regrettable that the US had put in place these trade-restrictive measures on steel and aluminium products. Japan was deeply concerned about their consistency with the WTO Agreement, and emphasized that unilateral measures posed a serious threat to the MTS and the global economy. His delegation was concerned that the measures in question could trigger a spiral of counter-measures. In that regard, Japan itself would take appropriate and necessary action, taking into consideration how the situation developed.

9.14. The delegate of the Bolivarian Republic of Venezuela aligned his delegation with the deeply felt concerns expressed by China and Russia, particularly over the application by the US of unilateral measures that affected the economic and trade interests of other countries. Those measures would affect international trade in its entirety and would have serious consequences for the MTS. Among those consequences, as mentioned by various delegations at previous meetings, would be an unprecedented trade war.

9.15. The delegate of Brazil thanked China and the Russian Federation for including this item on the agenda. Brazil believed that the global challenge of steel excess capacity affecting Members could only be addressed multilaterally and in an appropriate fora for doing so, such as the G20's Global Forum on Steel Excess Capacity. Furthermore, in the WTO Framework, there were appropriate instruments, rules, and procedures to address unfair trade practices. From the beginning of the Section 232 investigation, Brazil had contacted the US Government on several occasions to argue that Brazilian exports should be exempt from the restrictions. Brazil remained concerned about the systemic impact of the measure, and of the consequences of an elastic interpretation of GATT Article XXI in particular. However, Brazil was encouraged by recent statements that kept open the possibility of continuing to explore a bilateral track with a view to resolving this issue, and hoped that a solution would eventually be found through dialogue. In Brazil's view, the collective priority should be to avoid any systemic consequences of the US measures, which would not then be in the interests of any Member.

9.16. The delegate of New Zealand reiterated New Zealand's strong support for the WTO rules-based MTS and highlighted the benefits of clear and agreed global rules for trade so as to support economic growth and development. His authorities supported the reduction of trade barriers and the liberalization of markets but recognized Members' rights to take legitimate WTO-consistent actions to protect their interests. New Zealand encouraged all WTO Members to work within WTO rules and to resolve trade disputes through the DSU.

9.17. The delegate of Turkey expressed his country's deep concern over extra US duties on steel and aluminium imports. Apart from the detrimental effect that these would have on global trade, the imposition of unilateral tariffs ran contrary to the MFN principle and could not be justified by claims of national security. Under WTO rules, Members already had recourse to several legitimate tools to challenge unfair trade practices. All these tools urged Members to initiate and address investigations in a transparent and fair manner, and to adopt any necessary measures in compliance with WTO law. Furthermore, the US had already imposed 164 anti-dumping and countervailing duties against steel products from all over the world, with 20 additional cases still under investigation. Turkey requested the US to explain how its measures complied with WTO obligations. Turkey would continue its dialogue and consultation with the US but reserved all its rights under the WTO rules and agreements.

9.18. The delegate of the Republic of Korea shared the concerns of previous speakers regarding GATT Article XXI. Korea considered that the concept of "National Security" must be interpreted in a

very limited and strict manner, not only to prevent an unnecessary chain reaction of similar arbitrary measures by other Members but also to allow the WTO to continue functioning as a MTS.

9.19. The delegate of Hong Kong, China also shared the concerns of previous speakers over the unilateral trade-restrictive measures announced by the US further to its Section 232 investigations. Hong Kong, China had only a very modest volume of exports of aluminium and steel products to the US, which in no way threatened US national security or the viability of the US domestic industry. The measures imposed on exports from Hong Kong, China were therefore unreasonable and unjustified. Moreover, Hong Kong, China was concerned by the systemic implications of these measures and believed that such protectionism could trigger a domino effect; once triggered, this domino effect would be difficult to reverse. Any trade war that might follow would damage the MTS and the global economy. As a free-trade practitioner and staunch supporter of the MTS, Hong Kong, China asked Members to honour their tariff commitments and observe WTO rules. Hong Kong, China would monitor developments closely and take action as necessary.

9.20. The delegate of Singapore expressed the deep concern of his delegation over the US measures, which would adversely affect global supply chains and global growth, and also cause downstream impact on US industries that depended on those imports. More broadly, such actions, without any accompanying consultations, undermined the rules-based MTS. Overnight developments were worrying to small economies like that of Singapore. All Members now needed to exercise restraint and to avoid a further escalation in tensions. Any trade conflict would have a wide-ranging impact, hurting the global economy, global growth, and ultimately also workers and consumers. Specific to the US Section 232 tariffs on steel and aluminium, Singapore held both commercial and systemic concerns. Its companies had expressed concern over the direct and knock-on effect of the measure on their exports, as well as over the uneven treatment granted to exports from different Members. Singapore would closely monitor any developments and continue to engage with the US on these issues with a view to addressing Singapore's systemic and economic concerns.

9.21. The delegate of Thailand shared the concerns of previous speakers regarding the systemic impact of this unilateral measure taken by the US, which would have a negative direct and indirect impact on global trade, and risked retaliation and trade war. He urged all Members to implement their measures in compliance with WTO rules and obligations and reiterated Thailand's interest in this issue.

9.22. The delegate of Pakistan shared the economic and systemic concerns of previous speakers regarding the US unilateral measures. These measures could have serious consequences from a global perspective in general, and from a developing country viewpoint in particular. The US action had the potential to provoke full-scale protectionist retaliation from other WTO Members, which would not only lead to dire consequences for developing countries but also weaken the entire edifice of the global trading system. Pakistan urged all Members to continue to work towards multilateralism and trade openness, trade being the only way for smaller economies to flourish.

9.23. The delegate of Norway expressed Norway's deep concern over the restrictions on imports of steel and aluminium announced by the US Department of Commerce further to its Section 232 investigations. At more than 10%, steel and aluminium made up a significant share of Norwegian goods exports. Their trade was likely to suffer from such measures, directly and indirectly, through further depressed prices, diverted trade, and any escalation and retaliation. However, Norway was primarily concerned about the risks of undermining the MTS. Any trade measure on steel, aluminium, or otherwise, should be WTO-consistent, and the WTO framework provided ample scope to adopt any justified measure in a legal and coherent manner. All WTO Members should be mindful that there were certain buttons in the intricate machinery of the MTS that should not be pushed as to do so would entail a high risk for the system itself. Norway would continue to follow this issue closely and consider any appropriate steps.

9.24. The delegate of Australia expressed concern over the potential risk to the global rules-based trading system posed by the US measures and any reaction to them or counter-measures adopted in turn by other Members. Australia shared the concerns of others over the important challenges facing global steel and aluminium industries, and supported ongoing efforts to address this global issue cooperatively and in accordance with international trade rules.

9.25. The delegate of India joined others in expressing concern over the trade policy measures imposed by the US on steel and aluminium products. In India's view, this was an important systemic issue and a misuse of the security exceptions under the GATT; unilateral measures had no place in the trade arena and Members needed to exercise restraint and respect WTO rules. Such measures should also not be applied with the objective of erecting trade barriers that would be inconsistent with Members' WTO commitments.

9.26. The delegate of El Salvador thanked China and Russia for having included this issue on the agenda. El Salvador was deeply concerned over the use of such measures by the US, and the possible consequence that these measures might then trigger counter-measures from other Members, leading to a situation that would not benefit any Member. These measures not only had trade implications, but also an impact on the MTS, which was a bastion to be preserved. El Salvador, as a staunch believer in the benefits of the MTS, considered that the MTS should be preserved and strengthened through Members' support of and compliance with WTO rules. The value and volume of exports from El Salvador to the US were not significant enough to generate an impact on the US market; nevertheless, El Salvador still maintained a commercial interest in the imposition of the measures in question. Indeed, the impact on economies such as El Salvador's was potentially significant and the discriminatory nature of the measure was also of great concern, as previously indicated by other affected Members.

9.27. El Salvador would continue to follow developments in these ongoing investigations closely, including measures imposed by the US on steel and aluminium products, and other similar trade measures already announced. El Salvador urged the US to uphold the principle of transparency with regard to these measures, correctly to adhere to its multilateral commitments, and to provide additional information concerning the investigations and measures it intended to apply to steel and aluminium products, as this was necessary to allow for a proper evaluation of their impact on economies such as theirs, both at national and regional level.

9.28. The delegate of Switzerland echoed the concerns expressed by many other delegations over the US unilateral measures entering into force that day. Like many other Members, Switzerland would be affected by those tariffs, even if their exports to the US were relatively modest in volume and value and made up mostly of high-quality niche products that US consumers might not otherwise be able to find. At the same time, Switzerland was aware that there was a serious problem of global over-capacity in the steel and aluminium sectors; nevertheless, Switzerland was of the view that the issue needed to be addressed and resolved through dialogue, and in particular through dialogue among those Members primarily concerned. The OECD Global Forum on Steel Excess Capacity had been established precisely to address the over-capacity problem and Switzerland urged all of the main players to work constructively towards a solution within that framework, and to refrain from taking any unilateral measures.

9.29. The delegate of Paraguay echoed the economic and systemic concerns expressed by other Members. Paraguay's concerns referred mainly to the collateral effects of the measures on third countries, especially on small economies. Paraguay called on the US to seek a WTO-compliant solution consistent with the values of the MTS, which included the promotion of peace, and urged the US to avoid unilateral solutions that risked leading to an unprecedented problem on a global scale.

9.30. The delegate of Guatemala said that, as a steel producer, her country held an interest in this item and therefore wished to express its systemic concern. Guatemala would closely follow discussions on this issue.

9.31. The delegate of Kazakhstan thanked the Russian Federation and China for including this issue on the agenda, since Kazakhstan, like other Members, held systemic concerns over these measures and would closely monitor all developments.

9.32. The delegate of the United States, in response to Members' previous statements, provided additional information concerning the proclamations issued by the US President pursuant to Section 232 of the Trade Expansion Act of 1962, as amended, and consistent with the Decision Concerning Article XXI of the General Agreement taken by the GATT Council on 30 November 1982. In this vein, she indicated that, in January 2018, pursuant to Section 232 of the above-mentioned Act of 1962, the US Secretary of Commerce had delivered to the President the findings and

recommendations in investigations concerning the impact of steel and aluminium imports on US national security. The US Department of Commerce had published public versions of the reports on 16 February 2018.

9.33. In the investigations, the Secretary had found that the quantities of imports and circumstances of global excess capacity for producing steel and aluminium "threatened to impair the national security" as defined in Section 232 and recommended actions to the President to adjust the imports of steel and aluminium articles so that such imports would not threaten to impair the national security. On 8 March 2018, the President issued proclamations concurring with the Secretary of Commerce's findings and imposing 25 and 10% *ad valorem* tariffs on imports of steel and aluminium articles, respectively. The proclamations noted the President's determination that those tariffs were necessary to address the threat that imports of steel and aluminium articles posed to national security. The additional tariffs would apply to goods entered into the US or withdrawn from warehouses for consumption on or after 23 March 2018. The President's proclamations authorized the Secretary of Commerce to provide relief from the additional duties for steel or aluminium articles determined not to be produced in the US in sufficient and reasonably available amounts or of satisfactory quality, as well as on the basis of specific national security considerations. On 19 March 2018, the Department of Commerce published the requirements and procedures for requesting such exclusions as well as for submitting exceptions to the granting of exclusion requests.

9.34. In adopting the additional tariffs, the President recognized that the US had important security relationships with some countries whose exports of steel and aluminium articles to the US were weakening the US' internal economy, thereby threatening to impair US national security. The President also recognized the shared concern over global excess capacity, a circumstance that was contributing to the threatened impairment of US national security. The President's proclamations provided that any country with which the US had a security relationship was welcome to discuss with the US alternative ways to address the threatened impairment of national security caused by imports from that country. Should the US and any such country arrive at a satisfactory alternative means to address the threat to national security, such that the President determined that imports from that country no longer threatened to impair the national security, the President might remove or modify the additional tariffs set out in the proclamation. On 22 March 2018, the President had issued proclamations removing, for a period of time, the application of additional tariffs with regard to certain countries with which the US had a security relationship and with which the US was currently engaged in discussions on alternative means to address the threat posed to US national security by steel and aluminium article imports.

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

9.36. The Council so agreed.

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

10.1. The Chairperson informed the Committee that, in communications dated 12 March 2018, the delegations of the European Union, Japan, and the United States, respectively, had requested the Secretariat to include this item on the agenda.

10.2. The delegate of the European Union observed that this item had already been on the CTG's agenda for some time. Some efforts had been made to address cumbersome measures, including certain simplification of import procedures. However, there remained a high number of trade restrictive measures in Indonesia, which were symptomatic of the protectionist nature of Indonesia's trade policy, including, for example: use of local content requirements in telecoms, retail, energy construction, transport, and shipping of key commodities and public procurement; complex and burdensome import requirements for meat and dairy products, fresh plants, horticulture, wood and forestry products, and cosmetics (the latter actually further subjected to recently increased, very high registration fees); quantitative restrictions for meat, alcohol products, steel, and tyres; export restrictions for certain raw materials; burdensome and discriminatory conformity assessment procedures; and a growing proliferation of mandatory technical standards.

10.3. In particular, the EU requested precise information on the state of play of the implementing regulations of Halal Law 33/2014, whose scope was extremely broad and would affect food and beverages, pharmaceuticals, and cosmetic and leather goods. If fully implemented, this law would bring trade in these articles to a halt. Reportedly, at least two other governmental regulations were in preparation. Her delegation invited Indonesia to provide precise information on the scope, object, and timing of the measures under preparation and to notify them to the WTO in accordance with WTO rules. She called upon Indonesia to keep Halal certification and labelling voluntary, as a less trade restrictive measure, and requested a state of play of the rules and standards regulating the production of processed milk and relevant investments. The EU also requested Indonesia to update Members concerning Ministerial Decree 82/2017, which appeared to impose the regulation that export and import of key commodities be carried out and insured only by domestic companies. The EU urged Indonesia to eliminate its high number of trade barriers and to refrain from issuing any new trade-restrictive measures, in line with its commitments in the G-20.

10.4. The delegate of Japan said that, together with other co-sponsors, Japan continued to have strong concerns over such measures as Indonesia's LCR on 4G mobile phones, as had been repeatedly stated at previous CTG and TRIMs meetings, although little progress had so far been made to assuage these concerns. Japan again urged Indonesia to fully update Members on the series of measures that it had adopted, and to explain to Members its concrete actions in order to ensure their full compliance with the WTO Agreements. He reiterated his delegation's principal concerns, in particular in relation to the Mining Law. Japan understood that relaxation of the complete export prohibition of nickel ore was valid for only five years, provided that certain conditions for attaining export permission had been fulfilled. Japan believed this measure to be inconsistent with GATT Article XI and would monitor the situation closely.

10.5. The delegate of the United States noted that the CTG was fully aware of the breadth of US concerns over Indonesia's trade and investment regime. In previous CTG interventions, his delegation had reviewed in some detail its broad range of concerns, including localization requirements, import licensing requirements, standards requirements, pre-shipment inspection requirements, and export restrictions, including taxes and prohibitions, among others. These types of restrictions affected a broad range of sectors. Her delegation had also expressed its concerns over Indonesia's general lack of transparency. Despite US efforts to reduce the number of localization requirements, Indonesia had continued to put new requirements in place. At the CTG's previous meeting, her delegation had referred to new local purchase requirements on dairy products. Now Indonesia was considering new requirements on soybeans. And the US had also learned of separate localization requirements for veterinary pharmaceuticals that could also restrict imports. The US was also concerned by developments in the digital trade space, including Indonesia's recent issuance of a regulation that established tariff lines for electronically transmitted software and digital goods. Concerns also existed over reports that Indonesia planned to raise its import duty rates on those particular tariff lines; the US considered that such a move might contravene the moratorium on customs duties on electronic transmissions. US efforts to date to work with the Indonesian government–both bilaterally and at the WTO–to address these concerns had produced disappointing results, with only limited exceptions. The US had displayed great patience in its work with Indonesia and hoped that the efforts in various WTO bodies, and also bilaterally, would soon result in free and fair trade between the US and Indonesia.

10.6. The delegate of New Zealand echoed the concerns of other Members. New Zealand believed that Indonesia's restrictions on agricultural imports undermined core WTO principles and were inconsistent with key obligations in the Agreement on Agriculture. His authorities continued to have significant concerns over a number of import restrictions, which affected trade across a range of agricultural products. They were particularly concerned over the introduction of recent measures restricting imports of dairy and horticultural products. New Zealand welcomed Indonesia's commitment to implementing the recommendations of the Dispute Settlement Body, in *Indonesia – Import Licensing Regimes* (DS447/478), and was hopeful that the implementation process would result in meaningful long-term reform of Indonesia's restrictive import regime. Nor did Indonesia's restrictions only hurt exporters, because Indonesian consumers, processors, and producers were also affected by rises in food prices, including basic foodstuffs and ingredients for the domestic manufacturing sector. New Zealand hoped that Indonesia's reform plans would be consistent with its WTO obligations, and looked forward to working with Indonesia during the implementation process.

10.7. The delegate of Australia shared the concerns of other WTO Members over 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, even when notified, provided only limited opportunity for consultation with trading partners. 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 a discussion of how new trade measures could be implemented in the most efficient possible way for all parties.

10.8. The delegate of Switzerland also shared the concerns of other Members regarding Indonesia's restrictive trade measures, especially its new Regulation No. 26/2017, on supply and distribution of milk products, with regard to which companies had no or only limited clarity as to its functioning. Current trade was already either interrupted or under threat of being interrupted. This demonstrated that the measure's impact on trade had been critical. Therefore, Switzerland asked Indonesia to provide detailed information swiftly and to ensure full transparency regarding the new regulation and its implementation; otherwise, there would be no confidence in Indonesia's new regime. Indonesia should also ensure that the new regulation and its implementation were fully compatible with WTO law, and that local content requirements were not applied in such a way that foreign exporters would be discriminated against and excluded from Indonesia's market.

10.9. The delegate of Brazil thanked the proponents for again including this item on the agenda. The issue had been under discussion at the CTG for a long time and Brazil had consistently expressed its concerns, together with other Members, regarding Indonesia's trade-restrictive measures; in particular, those measures affecting Brazilian exports of poultry and beef. Brazil had initiated two dispute settlement procedures concerning these issues, one of which, DS484, had been the object of a panel report favourable to Brazil's main requests. His authorities were encouraged, at the same time, by the agreement on a reasonable period of time (RPT), recently concluded between Brazil and Indonesia, regarding the same DS484, which they expected would be fully implemented. Brazil would continue to work with Indonesia towards that objective.

10.10. The delegate of Canada welcomed some of the recent progress made on improving Indonesia's business climate although more work still needed to be done. Canada shared the concerns expressed by other Members over Indonesia's ongoing import-restricting policies and practices. Canada was particularly concerned over the restrictions in the mining and oil and gas sectors, the increasing number of local content requirements across many sectors, including the renewable energy sector, the uncertainties surrounding halal certification requirements, and also the import licensing requirements for horticultural products. Canada encouraged Indonesia to respect its WTO obligations and to take steps promptly to address Members' concerns.

10.11. The delegate of the Republic of Korea shared the concerns expressed by previous speakers. Korea was concerned about the pre-paid corporate income tax on importers and the vague and broad nature of the industry law and the trade law of Indonesia. His authorities encouraged Indonesia to formulate its regulations in line with WTO rules and to update Members in a timely manner on progress made. They would closely follow developments in Indonesia's commitments.

10.12. The delegate of Thailand shared other Members' concerns regarding Indonesia's import-restricting measures, especially Indonesia's import licensing and quantitative restrictions on agricultural products. Thailand's agriculture exports had already felt the impact of those trade-restrictive measures and his authorities encouraged Indonesia to bring all of its measures into full compliance with WTO rules. They would continue to monitor the issue closely.

10.13. The delegate of Chinese Taipei reiterated the concerns of her authorities over Indonesia's import and export restricting policies and practices. Despite the efforts made by Indonesia to improve their business environment, the number of restrictive trade measures that it applied had not yet decreased. Chinese Taipei shared the concerns of other Members regarding a series of laws and regulations introduced by Indonesia, particularly a Law on Trade and Industry, restrictions in the retail sector, and local content requirements on 4G mobile phones. These measures could adversely affect trade. Her delegation urged Indonesia to ensure that its measures were in full compliance with its WTO obligations.

10.14. The delegate of Indonesia said that her delegation had taken note of Members' concerns regarding some of Indonesia's trade policies or measures, which were alleged to be restrictive in nature. Indonesia's trade policies on the whole corresponded well to its commitment to the WTO, which naturally championed the free flow of trade in goods across, and within, its borders. The measures that certain Members may have perceived as restrictive in nature may well have been a consequence of Indonesia's efforts to cope with certain outstanding problems or negative impacts that they were confronting in relation to their openness to international trade. She reminded delegations that these outstanding problems were as follows: (i) more and more imported goods had been flooding the Indonesian market whose standards and quality were found to be below Indonesian standards; (ii) the loss of livelihood of most Indonesians working in productive sectors; and (iii) irresponsible and destructive exploitation of Indonesian resources. Indonesia understood that WTO law provided for flexibilities or exceptions in order to offset such problems. In conclusion, Indonesia stood ready to discuss any of these concerns with Members bilaterally with a view to finding solutions that would benefit all parties concerned.

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

10.16. The Council so agreed.

11 INDIA – CUSTOMS DUTIES ON ICT PRODUCTS – REQUEST FROM CANADA, CHINA, THE EUROPEAN UNION, JAPAN, NORWAY, CHINESE TAIPEI, AND THE UNITED STATES

11.1. The Chairperson informed the Council that, in communications dated 12 March 2018, the delegations of Canada, China, the European Union, Japan, Norway, Chinese Taipei, and the United States, respectively, had requested the Secretariat to include this item on the agenda.

11.2. The delegate of Canada said that his delegation was deeply disappointed that, despite the concerns raised by WTO Members at the CTG, as well as at the Market Access and ITA Committees, India continued to further increase its customs duties on ICT products well beyond its WTO bound duties. Indeed, as part of its 2018-2019 budget, India had further increased customs duties on several ICT products for which India's bound commitment was a zero rate of duty. The application of customs duties above bound commitments on a broader range of ICT products remained inconsistent with India's WTO commitments and ran contrary to the objectives of multilateral tariff liberalization. Canada retained both systemic and commercial concerns with regard to India's decision to introduce these customs duties on ICT products in excess of their bound commitments, and had not yet received any meaningful responses to the concerns raised by Canada in this area in any of the various WTO bodies. His delegation did not accept India's justification provided thus far for applying customs duties above the bound commitments and once again called upon India to immediately bring itself into conformity with the commitments set out in its Schedule of Concessions and to refrain from pursuing any further customs duty increases above those commitments. The ICT sector was just one example from a wide range of products affected by India's recent customs duty increases that negatively affected Canada's export interests. In addition to ICT products, Canadian exports of pulses were also being significantly affected by recent tariff increases.

11.3. The delegate of the European Union expressed concern over the recent announcement, in India's Union Budget for Financial Year 2018-2019, of increased customs duties in such key sectors as ICT products, cars, and car parts. The European industry, including companies that had invested in India, was deeply concerned about India's move towards import substitution. Her authorities understood that the increased duties formed part of the 'Make in India' initiative; nevertheless, such an initiative should not have a protectionist impact and raise concerns over India's commitment to ensuring a predictable trade and investment environment in full respect of WTO rules. Regarding ICT goods, the new duty hikes were even more regrettable given that the announcement followed upon the imposition of duties on several telecom products already in July 2014, and the introduction and further increase of duties on a wide range of ICT products in June, July, and December 2017.

11.4. On several occasions, in bilateral and multilateral meetings, the EU had already raised the issue of basic customs duties on products which the EU considered to be bound at zero in India's GATT schedules, and which were covered by ITA-1, to which India was a Party. Her delegation disagreed with India's claim that the products were not covered by ITA-1 concessions. The general principles of interpretation flowing from WTO jurisprudence had to be taken into account. The panel

in *EC-IT products*, for example, had concluded that a wide range of characteristics and technologies were covered by the scope of ITA-1 concessions, including some that had not existed when ITA-1 had been concluded. In 2017 and 2018, the EU Ambassador in India had sent letters on this issue, on three occasions, to the Minister of Communications, the Electronics and IT Secretary, and the Revenue Secretary, but had not received any response. The re-introduction and increase in import duties contradicted the desired perception of India as an open, non-protectionist economy, as well as India's efforts to attract more foreign direct investment. They not only had a negative impact upon European and other foreign companies, but also led to higher prices for Indian consumers and thus hampered the development of "Digital India". The EU called upon India to reconsider these duty impositions or increases which, in the case of ICT products, contradicted India's WTO commitments.

11.5. The delegate of Japan, together with other co-sponsors, continued to express its concern over the issues around India's customs duties on ICT products. Indeed, it was highly regrettable that the government of India had increased the tariffs applied to a broad range of products in December 2017 and February 2018. In particular, mobile phones were subject to 20% customs duties as a consequence of a series of duty increases made by Notifications No. 56/2017, No. 91/2017, and the Finance Bill 2018, and this tariff rate of 20% was clearly inconsistent with India's binding commitment at zero. Moreover, in the Finance Bill 2018, the government of India had repealed the Education Cess and Secondary and Higher Education Cess on imported goods, and had instead put in place a "Social Welfare Surcharge" at a rate of 10% of the aggregate customs duties on imported goods. This surcharge was inconsistent with India's binding commitments. Japan held commercial concerns with regard to this series of duty increases, which had resulted in a burden of increased costs for Japanese companies as well as an adverse impact on the business environment in India. Japan urged India to immediately reinstate zero duties on the ICT products in question.

11.6. The delegate of the United States regretted to raise this issue to the CTG level for the fifth time. But rather than responding to Members' concerns, India had continued along the same troubling path. Since her delegation had last raised this issue at the CTG, India had increased tariffs still further, and on even more ICT products; this had occurred on 1 July 2017, just one day after the Goods Council's summer meeting of that year. India then went on to introduce two subsequent rounds of tariff increases in the span of 60 days: on 14 December 2017, and then again on 1 February 2018, as part of India's 2018/19 budget proposal. With regard to tariff increases on ICT products, in July 2017, through Customs Notification 56/2017, India had imposed new customs duties on imports of several essential information technology products, including cell phones, base stations, and printer ink cartridges, in addition to the duties imposed on other telecommunications equipment pursuant to Customs Notification 11/2014. On 14 December 2017, India had issued Customs Notification 91/2017, which had further increased tariffs on cell phones, from 10% to 15% duty. The notification had also increased duties on a range of other ICT products, such as video cameras. Not even 60 days later, India's proposed 2018/19 budget had outlined further tariff increases on certain ICT products, including increases to 20% for smart watches and wearable devices.

11.7. The latest notifications, as well as the budget proposal, included product categories for which India had a WTO binding obligation to provide duty-free treatment, namely, tariff subheading 8517.12–cell phones–where India had a zero bound duty. The products under that subheading had entered the Indian market duty-free on 30 June 2017. However, as from 1 July 2017, the tariff had been increased to 10%, and then to 15% on 14 December 2017. On 1 February 2018, as part of the 2018 budget proposal, cell phones were identified for an increase to 20%. This was yet another example of India's apparent inconsistencies with its WTO tariff commitments, and highlighted the growing nature of the problem.

11.8. Another concern was that India's actions lacked transparency and created uncertainty for US and global companies. It was nearly impossible for traders to verify India's recent tariff increases because its official tariff schedule published on the website of India's Central Board of Excise and Customs was not updated on a regular basis. Any business looking for information on India's tariff on mobile phones (HS8517.12) or base stations (HS8517.61), for example, would have no way of knowing that India levied a duty of 10% pursuant to Customs Notification 2017/58 for base stations or a duty of 15% for cell phones pursuant to Customs Notification 2017/91.

11.9. To avoid further uncertainty for exporters, the US asked India to clarify as soon as possible the scope of Customs Notification 22/2018 because it was currently unclear how that notification affected increases outlined in the budget as well as how it related to Customs Notifications 56 and

57/2017. The resulting effect of the lack of transparency had been described by several US companies that had indicated that, for certain products, they were required to refer to multiple customs notifications issued over the course of a decade in order to determine the effective tariff rate. These were large multinational companies that were struggling to understand India's effective tariff rate; imagine, therefore, how much more difficult it must be for micro, small, or medium-sized enterprises to do so. To conclude, the US again urged India to revoke Customs Notifications 11/2014, 56/2017, and 91/2017, and to reinstate duty-free access as India had committed to do in its WTO schedule. The US also requested India to provide assurances that it would not further raise customs duties in its 2018 Budget Proposal on products on which it had made a WTO commitment to provide duty-free access to its market, to update the official tariff schedule published on India's Customs website, and to notify its current MFN applied schedule to the WTO without delay.

11.10. The delegate of Norway said that the issue was a WTO trade concern at the most basic level. A Members' applied tariffs could not exceed those listed in their schedules. Technological advancement within a product segment clearly did not change that simple fact. This was a basic and self-evident starting point for how WTO Agreements must be read and how WTO obligations must be understood. An interpretation implying that the product segment could automatically be released from binding commitments after technological advancement would seriously undermine the system. Thus, Norway had both an economic and a systemic interest in this issue. It was fundamental that all Members abide by their WTO obligations. Norway looked forward to receiving further clarification from India on this issue.

11.11. The delegate of China noted that, in February 2018, India had raised its applied tariff on many products, including cell phones and their parts. His delegation believed that this move was in violation of the ITA Agreement and GATT Article II, in particular regarding tariff lines HS8517.12, "Telephones for cellular networks or for other wireless networks" and HS8517.70, "Parts" for cell phones. China had taken note of India's explanation given at previous CTG meetings that some of these products were not ITA products but that India had made some classification parallels in its schedule. However, China's customs experts believed that the products at issue were indeed covered by the ITA. The ITA Agreement had been concluded using HS 1996, and under that HS nomenclature cell phones did not have an independent tariff line. Instead, they belonged under HS8525.20, the description of which was "transmission operators incorporating reception apparatus". Given technological advances, in the transposition of HS96 to HS2002, cell phones had been split from that tariff line and moved into HS851712. Even if the tariff line had moved, the obligation remained, as the European Commission had already mentioned in the jurisprudence set out in the panel report of DS375. China considered that, regardless of where a tariff line was classified, an ITA product should be granted duty-free treatment. China requested India to contact again its Capital and to check promptly with India's customs experts the question of whether these lines did indeed belong within the scope of the ITA, and then to reinstate duty-free treatment for those tariff lines accordingly.

11.12. The delegate of Chinese Taipei stated that, as a co-sponsor of this issue, Chinese Taipei echoed the concerns raised by previous speakers. Chinese Taipei was particularly disturbed to learn that India had further increased its import duties on seven products only in December of the previous year, including on mobile phones, digital cameras, and microwave ovens, under its Customs Notification 91/2017, and that in February of the current year, India had even proposed an increase on customs duty on certain ICT products. An increase in customs duties by India on the goods in question was totally inconsistent with Article II of the GATT. India repeatedly referred to the goods at issue as being new technologies or new products, and argued on that basis that the said products were neither covered under India's ITA commitments, nor by its tariff binding commitments. However, based on the Secretariat Note on HS2007 amendment in relation to ITA products and a model list in HS2007, the goods in question were covered in the ITA-1 commitments and India had therefore already incorporated them, as such, into its 1996 Schedule of Concessions, as well as into its current Schedule of Concessions. India was asked to kindly eliminate the tariff at issue.

11.13. The delegate of Singapore said that they remained concerned that India continued to impose tariffs on ICT products that were already covered under India's ITA commitments. Bilateral engagement with officials in New Delhi was ongoing and they hoped that the issue could be resolved quickly and with minimal impact on trade.

11.14. The delegate of Thailand shared Members' concerns over this issue, which regrettably continued to escalate. His delegation reiterated the commercial and systemic interests they held in the products in question. His delegation looked forward to further clarification from India and urged it to bring its tariff regime into line with its WTO commitments.

11.15. The delegate of the Republic of Korea said that, as one of the contracting parties to the ITA, Korea was concerned over this issue from a systemic perspective. India should give duty-free access to any goods belonging to HS lines to which India had committed to provide duty-free access. Korea requested India to reinstate a zero-duty rate on IT products covered under the ITA.

11.16. The delegate of Switzerland said that her delegation shared the concerns of other Members regarding the duty treatment applied to certain telecommunications equipment in India. The issue was India's binding commitments. IT products listed in India's Schedule, for which the bound rate was zero, should not be subject to any import duty when imported into India. The MFN published tariff on mobile phones was inconsistent with India's commitment in its 2015 certified Schedule. Switzerland therefore asked India to abide by its WTO commitments.

11.17. The delegate of India thanked previous speakers for their interventions regarding the concerns that had been expressed over India's tariff increase in its Unit Budget for Financial Year 2018-2019, on the non-ITA-1 products; the ITA products where the duty had been increased; transparency and the duty calculation; how to read the notification 22 of 2018 vis-à-vis the notification of 2017; the comparability of HS8517.90 with the HS8525.20 of the HS96 vis-à-vis the HS2007, and the binding commitment and the duty increase and inconsistencies in India's ITA HS2007 commitment.

11.18. Regarding India's transparency in its duty calculation, a customs duty calculator was available on the government website, www.cbic.gov.in, which provided the customs duty, including the basic custom duty, as well as the GST, if relevant. This was a new facility provided by the Department of Revenue. The customs notification, also available on the website, provided information on whether or not there had been any changes to tariff lines as it was not possible to update the website information on an immediate basis. For traders experiencing difficulty accessing the relevant information, the importer would immediately provide information on the duty component. Concerning Notification 32/2018 vis-à-vis the 2017 notification, he was willing to clarify this issue on a bilateral basis. Regarding China's reference to HS8517.90 and its comparison to HS8525.20, and once he had received the relevant information, he would reply in either a bilateral or a multilateral forum, as required.

11.19. Turning to the major question of the increase in duty, if it were not even a listed ITA item, then India was within its rights to increase the duty, which it had done in the Unit Budget for 2018-2019, within the bound rates. With regard to ITA-1 products, India had already provided its explanations of this issue, in various fora, where it had tried to explain how this situation had occurred and to try to provide its interpretations of the existing provisions. On the questions previously raised by certain Members, India had provided its written responses in document G/IT/W/45. In addition, his delegation had provided the answer to Members' concerns at the CMA and the CTG, while noting that it was important to keep the technological progression in perspective as well as the HS transposition of the telecom and IT products.

11.20. India was ready to discuss any specific views regarding the comparison of the two tariff lines, including the technical aspects of these products, through bilateral technical discussions regarding whether or not these products were covered under the ITA. On the duty imposed on certain telecom products in 2017 and 2018, India signed the ITA-1 and presented its schedule of commitment in the year 1997, as certified in document WT/Let/181. India did not intend to commit what was there beyond the scope of its ITA-1 commitment. Extensive discussions and consultations had taken place among stakeholders and the relevant agencies on the coverage of those products and India's ITA commitments. India considered that the items on which duties were raised were not part of the ITA-1 as signed by India. His delegation sought inputs from delegations with regard to their perception of the different aspects relating to the coverage of those products under ITA-1, as well as the customs duty imposed by other Members on such products. With regard to the issue of India's bound rates for certain specified products in its HS2007 schedule, as notified to the WTO, Members had the right to re-visit the same and place the necessary rectification request before the CMA. India was working on that, would revert back to Members soon, and was ready to discuss the technicalities of the products bilaterally with any Member.

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

11.22. The Council so agreed.

12 UNITED STATES – MEASURES RELATED TO IMPORTS OF FISH AND SEAFOOD PRODUCTS – REQUEST FROM CHINA AND THE RUSSIAN FEDERATION

12.1. The Chairperson informed the Council that, in communications dated 9 and 12 March 2018, the delegations of the Russian Federation and China, respectively, had requested the Secretariat to include this item on the agenda.

12.2. The delegate of the Russian Federation returned to the issue of the US Seafood Import Monitoring Program (SIMP). The SIMP consisted of two major elements: reporting at the point of entry into the US and record keeping of information on the chain of custody for two years. As specified in the proposed and final rules, the main goal of the programme was the exclusion of misrepresented products and products deriving from Illegal Unreported and Underregulated (IUU) fishing from entry into commerce in the US. The SIMP became effective in January 2017. Its mandatory compliance was required from 1 January 2018. While it was envisaged that in the future SIMP would cover all species that were exported to the US, at this stage only eleven species were subject to new requirements. The Russian Federation shared the goal of combatting IUU fishing; however, the US reasoning behind its differentiation of fish species in the context of its "anti-IUU fishing" policy was unclear. The fact that particular species imported from certain countries were subject to additional requirements, while other similar species supplied from other Members were not, raised serious questions regarding the SIMP's compliance with the basic MFN principle. His delegation had already raised the issue that certain information required under the SIMP was confidential by nature. Russia would appreciate receiving notice from the responsible US agency that sensitive commercial and financial information collected under the SIMP would be sufficiently secured.

12.3. Certain media reports had indicated that there were concerns among some importers regarding their inability to guarantee the accuracy of information provided by suppliers. In this regard, his delegation underlined once again that reporting and record-keeping requirements alone could not address the problem of IUU fishing. Without a proper verification scheme, new requirements were too burdensome for exporters and importers of fish and seafood products and, as a result, were more trade restrictive than necessary. The measure would take full effect in April 2018, and meanwhile the Russian Federation would continue to carefully monitor the measure's implementation in light of WTO rules.

12.4. The delegate of China expressed China's ongoing concern over the two aquatic products-related bills that the US had issued in 2017, the "Aquatic Products Import Supervision Plan", and the "Fish and Fish Products Import Regulations" under the "Marine Mammal Protection Act" (MMPA). In China's view, there were many unreasonable aspects to these bills. The US stated that the objective of the "aquatic products import supervision plan" was to combat IUU fishing and seafood fraud. However, aquaculture products bore no relation to the false capture of marine mammals, and the traceability of aquaculture products outside the US did not help prevent IUU fishing or aquaculture products fraud. He therefore requested the US to explain the reason and rationale behind these two bills, and why they included cultivated species into their scope of application. China attached great importance to combatting illegal fishing, as well as to protecting marine mammals, and was willing to further strengthen the cooperation with the US in combating IUU fishing. However, China hoped that the US would consider adjusting these two bills in order to remove aquaculture aquatic products from the product coverage, and that the US would also formulate the relevant laws and regulations on the basis of WTO rules and without creating any unnecessary trade barriers or affecting international trade in aquaculture products. China also requested the US to provide any updates on their internal considerations or consultations with regard to these concerns.

12.5. The delegate of the United States thanked Members for their interest in the Seafood Traceability Rule, the objective of which was to combat IUU fishing and seafood fraud. The Rule thus required US importers to report certain information upon entry into the US and retain other information that allowed the shipment to be traced back to the point of catch or harvest in order to prevent the US market from being used as a place to sell fraudulently marketed seafood or seafood

products produced from IUU fishing. The Rule went into effect on 1 January 2018 for all species covered therein except for shrimp and abalone, where the requirements had been stayed indefinitely. On 17 January 2018, NOAA published a proposed rule to establish a voluntary "trusted trader" programme for US importers of SIMP-covered species. It was intended to reduce costs to both the government and industry, and streamline the processing of import entries. There was a 60-day comment period and comments were due by 19 March 2018. Her delegation looked forward to working with Members on the implementation of this Rule and on combatting IUU fishing more broadly. Her delegation had understood from both China and the Russian Federation that this agenda item would cover expressly the Seafood Traceability Rule and not the issues that China had raised in its intervention. She did not have any information to convey to China at that time with respect to the intervention made, but would follow up with China bilaterally.

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

12.7. The Council so agreed.

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

13.1. The Chairperson informed the Council that, in communications dated 12 March 2018, the delegations of the EU and the US, respectively, had requested the Secretariat to include this item on the agenda.

13.2. The delegate of the European Union said that no progress had been made with regard to a number of issues that her delegation had already raised, with one exception, regarding excessive tariffs, which had still to be confirmed. They had even observed in several cases some worsening of the situation. There were no tangible changes with regard to several important issues that had first been raised in November 2017.

13.3. The cement certification requirement, introduced in March 2016, continued to block EU exports to Russia; importing companies still faced difficulties in obtaining certificates; and systematic controls at the border amounted to clear discrimination. Indeed, the discriminatory nature of the Technical Regulation currently in place (GOST standard on cement certification or GOST R 56836-2016) had been recognized by the Russian Federal Anti-Monopoly Service in August 2017, but the technical regulation had still not been adjusted. The EU requested Russia to correct this discriminatory dimension and, in doing so, to respect all WTO rules in terms of notification to other WTO Members, especially given that the current measure had not been properly notified. The EU also called upon Russia and the other four members of the Eurasian Economic Union (EAEU) not to replicate the discriminatory character of this measure in the technical regulation that was under preparation at EAEU level.

13.4. The requirement of "good manufacturing practice" (GMP) certificates for pharmaceuticals, which had not been notified to the WTO so far, also remained an important obstacle to imports of pharmaceutical products into the Russian Federation. The procedure to obtain GMP certificates was more complicated for importing companies than for domestic producers as there were too few inspectors. Moreover, obtaining GMP certificates was necessary before a request could be made for a marketing authorization, which was not the case for domestic producers. The EU was aware of legislative developments since the beginning of the year to allow importing companies to request in parallel GMP certificates and marketing authorization, which could ease the situation for part of the problem, although the EU did not yet see any real progress in the legislative procedure.

13.5. The ban on exports on raw hides and skins, introduced in August 2014 initially for six months, had now been extended for the sixth time since then, through Decree 1130/2017. The measure could not therefore be considered a temporary ban. And a renewal of the ban would no longer meet the requirements of GATT Article XI(2)(a). Her delegation wished to receive further detailed explanations and replies to its written questions on the subject of that ban and likewise remained concerned by the embargo on fishery products from Estonia that had been in place since June 2015, allegedly for SPS reasons. Since then, the EU had raised this issue in the SPS Committee on several occasions. As for the wine taxation regime, as modified in the summer of 2017, this unfortunately

had not evolved positively. Last summer, Russia had passed a law setting a taxation regime that was heavier on imported wines than on domestic wines.

13.6. The only positive development regarding the issues raised by the EU concerned the correction by the Russian Federation of excessive tariffs on several lines that had previously been mentioned by the EU; indeed, the applied import duties had been corrected on several lines already and the EU understood that the remaining correction would be in place by 24 March 2018, at the latest. They noted this positive development and welcomed Russia's action to keep its applied tariffs within the limits of its bound schedule.

13.7. Nevertheless, the EU underlined two new issues. The first new issue concerned the increasing difficulty that importing companies, in the case of goods, and foreign companies, in the case of services, faced in terms of participation in Russian SOEs' purchases. A series of measures had been put in place since 2015 to restrict the access of importing and foreign companies to these purchases, the latest dating to December 2017, with a further control of purchases of aeroplanes and ships. The EU and other WTO Members had raised these measures several times at the TRIMS Committee. The EU urged Russia to reply to the EU's questions on this matter. The second issue concerned the regime to be applied to the automotive sector as of 1 July 2018. When joining the WTO in 2012, Russia had been allowed to maintain several WTO-incompatible measures. Those measures allowed the Russian Federation to import car parts free of duty on the condition of local content requirements, an exemption that was due to end by 30 June 2018. The EU urged the Russian Federation to inform Members of its decision, first, effectively to put an end to the current WTO-incompatible regime, and second, possibly to adopt measures to take over from the current regime. The information should be timely to allow consultations to take place before the entry into force of any new measures, in line with the provisions of Russia's WTO accession report.

13.8. The delegate of the United States added its voice to the concerns raised by the EU regarding Russia's "temporary" ban on exports of raw hides and skins. This so-called "temporary" ban had now been in place for nearly four years. The US had intervened in the past in opposition to other Members' export bans on the grounds that they were contrary to WTO rules, except under limited circumstances. As the US had noted before, they were concerned that the Russian ban was yet another manifestation of Russia's increasing reliance on import-substitution policies, and its rejection of the core market-opening principles of the WTO. By prohibiting exports, Russia depressed domestic prices and encouraged consumption of the domestic product, to the detriment of imports. On the issue of GMP certificates, the US appreciated that Russia had extended the validity of previously issued pharmaceutical certificates until 2025, removing the most immediate threat of delays in review and pharmaceutical shortages. Nevertheless, the US remained concerned over the Russian Federation's limited resources through which to implement its GMP requirements, and also the slow pace of inspections. Her delegation urged the Russian Federation to work closely with industry to respond to the needs and concerns of US stakeholders to ensure that the market remained open to US exports of pharmaceutical products. The US echoed the EU on its concerns regarding the discriminatory taxes applied to imported wines but not to wines domestically produced, and asked Russia to address this issue.

13.9. The US also expressed concern over a discussion on market access that was occurring in the TRIMS Committee. Over a number of years, the US had sought information from Russia about its local content requirements–measures that effectively discriminated against imported goods. For over two years, the US had asked Russia specifically about its Law No. 223-FZ "On the Purchasing of Goods, Works, and Services by Certain Types of Legal Entities", as well as about a variety of subsidiary measures implementing Law No. 223-FZ. That law, in conjunction with other laws and their implementing measures, created a web of local content requirements and preferential treatment applied to the purchasing decisions of state-owned enterprises. These measures, which discriminated against imports of goods from other Members, undermined the core principle of MFN. However, the Russian Federation had declined to respond to US questions on this matter submitted in May 2016, April 2017, and January 2018. Her delegation had also requested the Russian Federation to explain how its local content requirements were consistent with its WTO obligations under GATT Article III, and when the US could expect to receive answers to its three sets of questions.

13.10. The delegate of Ukraine shared the concerns raised by the EU and the US on issues that had already been raised at other WTO fora, even if no progress had been made since then. The following issues had also been raised in the TBT Committee, for example: rules of cement certification;

technical regulation of the Customs Union "On safety of toys"; and state registration of medical devices and draft technical regulation on safety of alcoholic beverages. Unfortunately, bilateral consultations on all of these measures had failed to lead to any practical result. His delegation called upon the Russian Federation fully to comply with its WTO commitments in order to ensure predictability and transparent trading conditions, and also to remove any unjustifiable bans and discriminatory barriers to trade.

13.11. The delegate of the Russian Federation said that Russia had taken note of the concerns raised by previous speakers. His delegation, in past meetings of the TBT and TRIMS Committees, the CMA, and the SPS Committee, had provided explicit explanations regarding all of the measures that had been raised again by the three delegations on this occasion.

13.12. On cement, he indicated that the practice of the GOST-R (56836-2016) application had shown the necessity for changes and, in order to implement those changes, draft amendments to the GOST-R had recently been developed and published on the website of the Federal Agency for Technical Regulation and Metrology. Public consultations on the draft ended on 1 March 2018 and the final text was being finalized taking into consideration all of the comments received during the public consultation process. The document, *inter alia*, provided for the elimination of additional inspection controls. The Russian Federation continued to assess the practice of applying cement certification rules in light of the concerns of interested Members. With regard to pharmaceuticals and good manufacturing practice, Russia was convinced that the Russian GMP inspection system fully complied with international standards and recommendations in that area. The State Institute of Pharmaceutical Products and Good Practices, which was subordinated to the Ministry of Industry and Trade of the Russian Federation, was the body authorized to conduct GMP inspections. The schedule of inspections published on the Ministry of Industry and Trade website for foreign production sites included more than 300 inspections during the period from February to August 2018. Moreover, the Russian Federation and the EAEU were ready to discuss issues of mutual recognition of GMP inspections with interested WTO Members.

13.13. Regarding the issue of raw skins and hides, his delegation emphasized that the measure had been introduced in order to ensure the implementation of national defence procurement. The Russian Federation considered that the measure was in full compliance with WTO rules. Turning to imports of fish products from Estonia and Latvia, some progress had been made over the last three months; for example, following inspections carried out in 2016, on 15 December 2017 the Veterinary Service of the Russian Federation had lifted restrictions from one Estonian and one Latvian establishment. Final results of the above-mentioned inspections would be sent to the EU competent authorities in due course.

13.14. Regarding wine taxation, the Government of the Russian Federation was currently working on possible ways of improving the working of its geographical indications protection system. They were convinced that promotion of production of high quality wine in localities boasting a unique geographical situation could help them to reach the goal of sustainable population development in such regions. They were currently carrying out the necessary work in order to elaborate more effective and transparent ways on the basis of which to promote the use of GI protection by wine producers. The tariff issue did not need any additional comment as it was merely explanatory.

13.15. Regarding Russia's import substitution policy, and as his delegation had previously explained in other relevant WTO bodies–in particular, the TRIMs Committee–import substitution policy had nothing to do with displacing foreign products from the Russian market. Rather, its goal was to increase the share of Russian suppliers in production chains, to strengthen their competitiveness, and to improve the standing of Russian-made goods. Measures implementing import substitution policies were designed, with all possible effort, to ensure their consistency with WTO rules.

13.16. His delegation believed that it was better to discuss the questions and answers raised within the relevant committees and not to refer these questions to the CTG. They were ready to continue communicating with the US with regard to these questions.

13.17. Concerning the Industrial Assembly Mode, he said that the work on its transformation was currently under way. The parameters of future measures that might be applied after 1 July 2018 in respect of producers operating in the regime had not yet been defined and the responsible authorities still held differing views on the matter. Russia would be able to share its views with interested

WTO Members as soon as the consolidated position had been worked out and the regime had been adjusted.

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

13.19. The Council so agreed.

14 MEXICO – CUSTOMS PROCESSING FEE IMPOSED BY MEXICO ON CERTAIN IMPORTS ENTERING ITS TERRITORY – REQUEST FROM ECUADOR

14.1. The Chairperson informed the Council that, in a communication dated 6 March 2018, the delegation of Ecuador had requested the Secretariat to include this item on the agenda.

14.2. The delegate of Ecuador recalled that, during Mexico's last TPR, Ecuador had posed questions to Mexico regarding its Customs Processing Fee applied in line with the 1981 legislation and its subsequent reforms. In particular, Ecuador remained concerned about the discriminatory nature of the fees as these were not imposed on all goods and exempted certain goods originating in countries with which Mexico had signed commercial agreements. Goods entering into Mexico's territory under preferential regimes were also exempted from these fees, including tax services. This was not permitted under the MTS. It could be argued that the service rate was applied in line with the tariffs, but there would nevertheless be discrimination considering that there was no duty because of these commercial or preferential arrangements. Ecuador requested Mexico to provide greater detail about its Customs Processing Fee and the way in which it was applied.

14.3. The delegate of Canada expressed his delegation's interest in receiving more information on this issue.

14.4. The delegate of Mexico thanked Ecuador for its interest in its trade policies and, in particular, in the Customs Processing Fee. Mexico had provided its responses at its last TPR, where it had pointed out that the processing fee was applied to all international trade operations, and all goods were subject to them. However, Mexico had signed various FTAs that exempted from customs processing fees goods originating in countries that were signatories to those FTAs.

14.5. Paragraph 5(a) of Article XXIV of the GATT provided that, in respect of a free trade zone, customs duties and any other trade practices that were applicable to Members that did not make up part of the trade agreement at the time when the zone was established must not be higher or more strictly applied than those in force before the creation of the free trade zone. In other words, as a result of a preferential trade agreement (PTA), there were customs fees and trade rules that were more restrictive than those applied to Members that were party to the PTAs. This was clearly the current case, because Mexico applied the fees to all Members, while keeping with the trade agreements that currently existed. Mexico remained open to continued dialogue with Ecuador on this or any other matter that Ecuador might wish to clarify.

14.6. The Chairperson proposed that the Council take note of the statements made.

14.7. The Council so agreed.

15 EGYPT – MANUFACTURER REGISTRATION SYSTEM – REQUEST FROM THE EUROPEAN UNION AND THE UNITED STATES

15.1. The Chairperson informed the Council that, in communications dated 12 March 2018, the delegations of the European Union and the United States, respectively, requested the Secretariat to include this item on the agenda.

15.2. The delegate of the European Union appreciated the exchange that had taken place between the EU and the Egyptian authorities on Ministerial Decrees No. 991/2015 (G/TBT/N/EGY/115) and No. 43/2016 (G/TBT/N/EGY/114). Unfortunately, despite these numerous exchanges, the implementation of the Egyptian decrees continued to create unnecessary obstacles to trade. The EU industry, in particular small and medium-sized companies, continued to report serious difficulties with regard to the duplication of procedures and, in particular, long delays in the registration process.

Moreover, the process was not transparent, as the list of registered companies had not been made available to the public. The EU asked Egypt to suspend the application of the measures, to review them in light of WTO principles, and to re-notify them under the TBT Agreement.

15.3. Without prejudice to requesting the suspension of the application of the measures, the EU also wished the Egyptian authorities to consider some improvements to the implementation of the Decrees, in particular, and as mentioned on other occasions: (a) setting a strict deadline for the decision on registration requests; (b) creating a publicly accessible database of registered companies; (c) providing an opportunity of appeal to companies in case of refused registration; and (d) registering without further delay all the companies that had submitted complete documentation and that were awaiting ministerial approval of the registration. The EU also invited Egypt to avoid the need for repeated registrations by the same companies for the same products in various registries. Once a company had been listed as a "trusted importer" under Decree 991, this should already be considered as sufficient assurance of the quality and safety of its products. The EU called on Egypt to take these comments into account and to inform Members of steps taken to make its manufacturer registration system less burdensome for companies.

15.4. The delegate of the United States thanked the EU for again raising this issue. The US continued to have similar concerns, and while US companies did not have any pending registration requests, US authorities did regularly hear concerns that the registration process was trade-restrictive, lacked transparency, and took many months to complete. Her delegation had suggested to Egypt certain steps it could take to ensure that its system was not unnecessarily trade restrictive, and they would welcome any updates from Egypt in this regard.

15.5. The delegate of Ukraine thanked the EU and the US for raising this issue. Ukraine had been closely following the issue and was concerned about Egypt's manufacturer registration system. Despite Ukraine's previous engagement with Egypt, both at bilateral and multilateral level, they had still not seen any improvement in the situation, and Ukrainian companies were still waiting for registration by Egypt's General Organization for Import and Export Control, even when all required formalities had been completed. Still others were yet to be informed about the relevant registration process. The Egyptian Registration System procedures were lengthy, costly, and complicated. Ukraine considered that both the pre-application and the implementation of the registration system were burdensome, non-transparent, and created unnecessary obstacles to trade. They called upon Egypt to consider removing its manufacturer registration system.

15.6. The delegate of Switzerland reiterated Switzerland's ongoing concern over Decree No. 43/2016, as raised at previous meetings of the TBT Committee. Like others, Switzerland remained concerned by the non-transparent application of the quality certification and registration requirements. The lack of adequate time-periods for the registration process, and the subsequent decree by the Minister of Foreign Trade, were also additional burdens for economic operators, as the approval of registration requests remained uncertain and advanced only slowly. In addition, the renewal of registration also contributed to the challenges facing Swiss industry. Indeed, Switzerland was concerned that that these ongoing problems were driving Swiss companies out of the Egyptian market. She thanked Egypt for their bilateral exchanges on the issue and looked forward to further constructive cooperation on this topic.

15.7. The delegate of Egypt thanked previous speakers for their ongoing interest in this matter. His delegation took note of all of the concerns raised and referred interested Members to Egypt's replies provided at previous meetings of the CTG and the TBT committee.

15.8. Egypt highlighted several points concerning these Decrees: (i) the registration process under Decree No. 43/2016 was administrative in nature and any credible manufacturer could easily comply with its requirements. The decree did not impose further burdens on producers or companies in order to comply with specific technical regulations. The decree provided credible producers with a better competitive environment as it allowed for more control of counterfeited products imported into Egypt; (ii) Egypt recognized that the verification process of documentation required by Decree No. 43/2016 might have caused delays in some cases but explained that this had only been in the early phase of the system's introduction, due to the huge number of registration applications received, coupled with limited human resources. However, Egypt had recently taken appropriate measures to accelerate the registration process; (iii) after more than two years of implementation, Egypt strongly believed that the registration requirements under the decree were not more trade-restrictive than necessary, and that they were in full compliance with WTO rules, and especially with

Egypt's commitments under the TBT Agreement; (iv) the government of Egypt was periodically reviewing and assessing its measures and regulations that affected imports and trade in general, with the goal of enhancing the business environment and facilitating trade. In that context, not only had Egypt accelerated the process of registration, but it had also improved its transparency, and once the registration process had been finalized, the companies concerned had been duly informed. His delegation would share the lists of the registered companies with interested delegations; (v) Egypt confirmed that its manufacturing plants were also subject to registration, surveillance, and inspection requirements by the Egyptian regulatory authorities so as to ensure also their compliance with relevant standards and regulations. Therefore, Decree No. 43/2016 did not contravene the National Treatment principle.

15.9. Egypt stood ready to engage constructively on this issue with any interested delegation, and was ready to provide assistance regarding any implementation obstacles encountered by foreign companies. He encouraged Egypt's trading partners to approach his delegation directly with their concerns, and thanked those trading partners concerned for the constructive consultations that they had held during the course of the week, on the margins of the TBT Committee meetings. He had taken note of all of the points raised, would convey these new concerns to Capital, and would revert back to interested delegations in due course.

15.10. The Chairperson proposed that the Council take note of the statements made.

15.11. The Council so agreed.

16 CHINA - CUSTOMS DUTIES ON CERTAIN INTEGRATED CIRCUITS – REQUEST FROM THE EUROPEAN UNION, JAPAN, CHINESE TAIPEI, AND THE UNITED STATES

16.1. The Chairperson informed the Council that, in communications dated 12 March 2018, the delegations of the European Union, Japan, Chinese Taipei, and the United States, respectively, had requested the Secretariat to include this item on the agenda.

16.2. The delegate of the United States recalled that her delegation had elevated its concern with regard to a change in China's applied duty rates on semiconductor products for the first time at the CTG's previous meeting, an issue that had previously been raised at both the ITA Committee and the CMA. Since the November meeting of the CTG, China had engaged with concerned Members, and in the last two weeks had shared with them information regarding its transposition calculations. However, this recent information had not alleviated US concerns, which the US detailed as follows. Since 1 January 2017, China had been imposing tariffs on a number of semiconductor products that had previously been duty-free by virtue of China's WTO bound commitments. To date, the situation had not changed and semiconductor shipments were still subject to duty when less than one year ago such shipments would have been duty-free. The US did not see how this situation could be consistent with China's WTO binding tariff commitments; instead, it appeared to form part of a worrying trend in support of China's "Made in China 2025" campaign.

16.3. China had responded that it was a technical issue, and that they had simply used one of the WTO-sanctioned methodologies to perform a complex HS transposition for those particular semiconductor products. The US was still studying the transposition document that China had recently shared but nevertheless had some initial concerns over it, specifically pertaining to the starting point for the base rates that China had used to calculate its averages in the respective tariff lines. It appeared that China had calculated the base rates for its averages prior to any ITA Expansion tariff cuts. For example, when considering tariff line 8415.90.10, it seemed that the base rate for China's calculation was 10%. However, China's tariff rates after the first ITA Expansion cut in September 2016 were applied at 8.3%. Given that the concordance occurred in January 2017, the starting point for the average should have been the tariff rates that were in place in December 2016, and which reflected the first round of ITA Expansion tariff cuts. However, China appeared to have reverted to the tariff rate applied prior to the first ITA Expansion tariff cut. Setting the specific calculations aside, the WTO General Council Decision on HS transpositions, to which China often made reference, made clear that the bound rates in the new HS nomenclature should fully reflect the same level of concessions as granted under the old nomenclature–namely, the scope of concessions should remain unchanged. But the fact remained that the scope of China's concessions had changed substantially, and the value of the concession had been impaired, in that semiconductor products that had been duty-free for over a decade were now facing duties.

16.4. The GC Decision on the HS transposition allowed for the use of an alternative methodology only if combining tariff lines was "unavoidable" as part of the HS transposition. However, in the case of multi-component semiconductors (MCOs), the use of a simple arithmetic average was most certainly avoidable. For example, China could have chosen to apply the lowest rate of any previous tariff line to the whole of the new tariff line–in this case, zero duty. But the US was not asking China to apply a zero duty to the products that had been previously subject to duty. Instead, the US was asking China to maintain its duty-free concessions by creating additional national tariff lines under tariff heading 8542 for certain end-use products such as appliances. This was the standard methodology that Members should apply in a transposition. The US also noted that other ITA Members had managed to implement the HS2017 transposition without difficulty and without raising tariff rates on semiconductors, and so they again questioned why China did not do the same. Her delegation urged China to reinstate zero duties on all products previously classified under duty-free tariff lines in HS2012 nomenclature. China had an obligation to provide duty-free treatment pursuant to its WTO bound commitments, and to do so without delay.

16.5. The delegate of the European Union thanked China for its engagement on this issue, both bilaterally and in other contexts, such as at the GAMS setting. Following exchanges on the matter at the CTG, the ITA, and the Market Access Committees, China had finally provided the calculation it used for the transposition of tariffs on MCOs towards tariff heading 8542 under HS2017, for which the EU was grateful. Although the method used was now clearer to the EU, a number of questions still remained: for example, why did China not make an ex-out for those lines already applied at zero? When implementing reclassification under HS2017, China had calculated two different averages: one of 3.4%, obtained by averaging the previous duty rates of the 17 MCO lines, the other of 3.2%, averaging the previous duty rates of only 16 of the 17 product lines (Isolated Gate Bi-Polar Transistors (IGBT) modules were excluded). China allocated the 3.2% average to one single subheading and the 3.4% to three different subheadings. This led to the following questions: Why did China apply two separate averages to MCOs? Could China explain the criteria used to allocate the 3.2% and 3.4% to the different products? One specific line – IBGT Tariff line HS 8504.40.91 – was being treated differently. Assuming that IGBT was considered as an MCO, could China explain why neither the 3.4% nor the 3.2% average duty rate applied, and why a duty rate of 5% was applied instead?

16.6. The delegate of Japan joined other Members in expressing Japan's concern over the issues of customs duties on certain products using MCOs. As stated at the last CTG meeting, Japan had not yet received a response from China regarding which specific tariff line and tariff rate had been used to calculate the current MCO applied tariff rates. He requested China to provide a "correlation table" that clarified the relationship between the previous rates of duty for each tariff line at issue and the current rates of duty. He asked China to provide written information demonstrating that China was committed to fulfilling the phase-out schedule under the ITA expansion, including the complete elimination of duties on all MCO products in 2021. He thanked China for the explanation provided so far; however, Japan remained concerned over the issue. The tariff that China had imposed on MCO products was higher than its bound rate and was therefore in violation of China's obligation under GATT Article II. The measure seriously undermined the benefits accruing to Japanese industry. Japan requested China to provide its justification for the method used, and also to provide the necessary last three years of import data for the MCO products at issue. Japan urged China immediately to delete the tariff rate applied to imports of these MCO products.

16.7. The delegate of Singapore registered her delegation's interest in the implementation issue, which they would be monitoring closely.

16.8. The delegate of the Republic of Korea reiterated his country's concern regarding this issue. Korea believed that China should impose tariff rates on MCO items that were fully in keeping with the spirit and principle of the ITA Expansion Agreement, and to provide a detailed explanation for why it was not doing so.

16.9. The delegate of Switzerland shared the concerns expressed by previous speakers, and noted that this was not a technical issue. Examining China's ITA II schedule in HS2007, there was a clear commitment to bind duties at zero for all electronic integrated circuits classified under HS heading 8542. As a technical process, any HS transposition should not modify any concessions already granted. Switzerland therefore invited China to remedy the situation as soon as possible.

16.10. The delegate of China thanked the previous speakers for their comments. His delegation had been engaging with the US and the EU, among others, in the GAMS framework, where China's technical officers from the Ministry of Finance and the Tariff Commission had presented their correlation table. As requested by Japan, China would also provide the table to Japan in due course, as well as written information concerning China's ITA Schedule.

16.11. The question had been discussed at various meetings, including at the ITA, and the Market Access Committees, and also at the last CTG meeting. China's faith in implementing the ITA Expansion commitment should not be questioned given that the increase on certain MCO and certain ICT products that had previously been treated as zero duty was purely because of a transposition that had been carried out in 2017. Had that transposition not been carried out, the duty rate would have remained the same. In any case, the duty rate would go to zero after the implementation period. In the context of the ITA Expansion Agreement, MCO had been one of the most debated lines, including in the last round and during last-minute negotiations, and for that line China had secured a five-year implementation period. He assured the Membership that, five years after implementation, all MCOs would be reduced to zero. The technical questions posed by the US would be referred back to Capital. The written notice from the EU on the question of why there were two different averages, and which line corresponded to which, would likewise be studied in Capital in due course. China was implementing the ITA Expansion Agreement in good faith, had participated in good faith in the ITA Expansion Agreement negotiations, and would also honour its commitments in good faith.

16.12. The Chairperson proposed that the Council take note of the statements made.

16.13. The Council so agreed.

17 VIET NAM – DECREE ON THE REGULATION ON CONDITIONS FOR AUTOMOBILES MANUFACTURING, ASSEMBLING, IMPORTING, AND AUTOMOTIVE WARRANTY AND MAINTENANCE SERVICES – REQUEST FROM JAPAN AND THE UNITED STATES

17.1. The Chairperson informed the Council that, in a communication dated 12 March 2018, the delegations of Japan and the United States, respectively, had requested the Secretariat to include this item on the agenda.

17.2. The delegate of Japan said that the impact on the export of automobiles to Viet Nam of Viet Nam's Decree 116 of 1 January 2018 had been significant, and requested Viet Nam to take measures quickly to improve the system, while considering also the comments that had been submitted from industry stakeholders. In particular, in relation to the import of finished automobiles, the decree required the submission of a copy of the quality certificate of automobile types issued by foreign authorities. Japan believed that such a form of regulation was without precedent. Since domestically produced automobiles required only vehicle type approval issued by the Vietnamese authorities, Japan requested that the same treatment be applied to imported automobiles. As for the requirement of a security/emissions inspection and test, which were carried out lot-by-lot, Japan noted that, in comparison with domestically produced automobiles, imported automobiles were subject to stricter and less favourable treatment in terms of the frequency of inspections. Japan therefore requested the same treatment for imported automobiles as that applied to domestically produced automobiles. At the same time, Japan urged Viet Nam to ensure that its measures were in accordance with WTO principles, which stipulated that Members not discriminate between domestic and foreign products or impose greater trade restrictions than necessary to fulfil a legitimate policy objective.

17.3. The delegate of the United States supported the comments made by Japan. The US was extremely concerned about Decree 116, which further tightened conditions for automobile manufacture, assembly, importation, automobile services, and warranties, and introduced extensive changes to testing and verification requirements for imported vehicles. US automobile manufacturers were unable to comply with the Decree and, as a result, imports of US-manufactured vehicles had ceased as of 1 January 2018. In addition, the lot-by-lot testing requirements did not apply to domestically produced vehicles, resulting in discriminatory treatment for imports. The US requested Viet Nam to immediately suspend its implementation of Decree 116 and its implementing circular, and instead to develop a long-term, workable solution that did not effectively close the marketplace to foreign vehicles. They also requested that the decree and circular be amended in

consultation with industry stakeholders and the US Government so that US automobile manufacturers could again resume exporting their vehicles into Viet Nam.

17.4. The delegate of Thailand thanked Japan and the US for raising this issue, which had already been raised by his delegation at the most recent meeting of the TBT Committee, bilaterally, and also via written comments to Viet Nam's Enquiry point. Thailand was concerned by the serious impact on the automobile trade of Decree 116. Viet Nam had notified Decree 116 to the WTO on 7 March 2018, after its effective date of entry into force had been 1 January 2018; thus, interested parties had not received an opportunity to comment on the proposed regulation. The formation and application of the Decree also appeared to be inconsistent with Viet Nam's WTO obligations and, furthermore, the regulation was applied in a non-transparent, trade restrictive, and discriminatory manner. The requirements were burdensome and costly, and created unnecessary obstacles to trade. In addition, it also appeared that cars of Vietnamese origin were treated more favourably than those originating in other countries, since their testing results and certificates were valid for 36 months, whereas imported cars were subjected to lot-by-lot inspection. In this regard, Thailand would appreciate it if Viet Nam would take Thailand's concerns into consideration and fulfil its obligations under the WTO.

17.5. The delegate of Canada indicated that Canada held a significant interest in this issue, and in Viet Nam's Decree, because the vast majority of vehicles manufactured in Canada were built to US Federal Motor Vehicle Safety Standards (FMVSS). Those standards and, by extension, Canadian Motor Vehicle Safety Standards (CMVSS), had consistently provided stringent and comprehensive performance outcomes with regard to vehicle safety. Conformity assessment procedures were as important as technical regulations in facilitating trade. WTO obligations required that compliance, testing, and conformity assessment procedures, were no more trade restrictive than necessary. Canada encouraged Viet Nam to maintain a flexible vehicle certification process, and one that allowed for both type approval and self-certification.

17.6. The delegate of the European Union said that the new testing procedures under this Decree, and the request for a Vehicle Type Approval certificate, different from the UNECE, would cause delays at customs and impose an additional cost burden on EU exporters. In turn, this would harm their competitiveness vis-à-vis locally manufactured brands. The EU regretted that, while the Decree had entered into force on 1 January 2018, it had only been notified to the TBT Committee on 7 March 2018, thus not allowing Members time to comment. The EU recalled that, in accordance with the TBT Agreement, notifications to the WTO should take place at an early and appropriate stage, when amendments to the measure could still be introduced, and that reasonable time should be allowed for comments, so that such comments could then be taken into consideration. The EU requested Viet Nam to postpone the application of the Decree so as to allow sufficient time for comments. Furthermore, Viet Nam should allow for a reasonable interval of time between the publication and the enforcement of the adopted measures, so as to afford producers from exporting Members sufficient time to adapt their products or methods of production to new Vietnamese requirements. Finally, Canada wished also to emphasize that conformity assessment procedures should not be prepared, adopted, or applied with a view to, or with the effect of, creating unnecessary obstacles to trade.

17.7. The delegate of Viet Nam thanked delegations for their interest and concern with regard to Decree 116 on requirements for manufacturing, assembly, and import of automobiles and trade in automobiles warranty and maintenance services, which had been notified to the WTO on 7 March 2018. It thanked those Members that had held bilateral meetings with Viet Nam to discuss this issue further. Viet Nam had promulgated this measure believing that its legitimate public policy objective was to ensure consumers' safety and environmental protection. Furthermore, the fundamental principle of non-discrimination between domestic and foreign enterprises had been upheld. In the meantime, his delegation took note of all of the comments and concerns that Members had raised and would duly relay these to the relevant authorities for further consideration and response.

17.8. The Chairperson proposed that the Council take note of the statements made.

17.9. The Council so agreed.

18 CHINA – NEW EXPORT CONTROL LAW – REQUEST FROM JAPAN

18.1. The Chairperson informed the Council that, in a communication dated 12 March 2018, the delegation of Japan had requested the Secretariat to include this item on the agenda.

18.2. The delegate of Japan noted that this was the first time that the issue of China's draft Export Control Law, which had been released by China in June 2017, had been raised at the CTG. The draft law was under consideration by China's National Congress; nevertheless, Japan wished already to raise several issues of concern regarding the draft law, and in particular regarding its compliance with GATT Article XI, Quantitative Restrictions, and to request further clarification from China.

18.3. First, the scope of the "Protection of Important Strategic Rare Materials" was unclear. In standard international practice, export controls should be limited to the minimum restrictions necessary to ensure national and international interests, including safety and security. However, the draft Export Control Law clearly stated that it took into account such commercial factors as technological development, industrial competitiveness, and international market supply, in formulating the list of products subject to export control. In addition, the subsidiary research and consultative institution under China's Ministry of Commerce, the Chinese Academy of International Trade and Economic Cooperation (CAITEC), had issued a report that had emphasized the need to include rare materials under its security export controls as a means of coping with the issue of international litigation. Thus, Japan was concerned that the scope of this draft new export control law could be unreasonably expanded to cover such rare materials as rare earth, rare metals, and so on. They requested China to provide clarification on this point.

18.4. Second, Japan believed that the requirement for disclosure of technological information at export would be excessive. In the draft law, exporters were required to submit a written application to the Authority at export, which included "Technical description or testing report of the export controlled items", among others. This was an unnecessary requirement for ensuring appropriate export control, and one that would result in an adverse impact upon exports from companies that protected business and technological confidentiality.

18.5. Third, the purpose of responsive measures could not be consistent with international export control regimes. The draft law contained a provision that allowed Chinese authorities to take responsive measures if any country took discriminatory export control measures against China.

18.6. If these measures were put in place, they could result in a negative impact on exports from industries in China, including those from Japanese companies, and on international supply chains. In that regard, industry associations from the EU, the US, and Japan, had submitted a joint communication on the draft Export Control Law in February 2018. His delegation requested China to give serious consideration to Japan's concerns over the draft law, and to ensure that appropriate consultations were held with interested Members and industry associations. Japan also asked China about the future timeline for implementing the law and encouraged China to ensure the provision of a sufficient transitional period.

18.7. The delegate of the United States thanked Japan for raising this issue at the CTG. The US also had an interest in China's draft law, and its implications, and would welcome further clarification from China.

18.8. The delegate of the European Union noted that the EU had submitted comments during the consultation period, in July 2017. The EU welcomed China's efforts to consolidate various existing export control provisions into a single draft export control law. The EU attached great importance to the convergence of export controls globally for preserving international security and ensuring a level playing field, and acknowledged that the draft law could consolidate and strengthen China's export control system, its strategic export controls derived from international obligations and commitments, and related objectives in terms of international security and non-proliferation of weapons of mass destruction. Against this background, the draft law contained certain provisions that required further clarification in terms of their alignment with international security standards and their conformity with WTO multilateral trade rules.

18.9. The EU sought China's explanation of the reference to the "development interests of the State", which was mentioned in Article 1 of the draft law as an objective of Chinese export controls

and a basis for export control decisions and, in particular, its compatibility with international law and China's commitments under the WTO. The same concerns applied to a number of other references, found throughout the draft Law, to economic development and industrial competitiveness factors that should be taken into account when developing the list of controlled goods. Considering that strategic export controls reflected international security considerations and were not conceived as trade defence instruments, further information would be appreciated on the reference to their use as retaliatory measures against "discriminatory export control measures", including whether this principle was compatible with international law and China's commitments under the WTO.

18.10. The scope of the draft law included military and dual-use items, but also potentially other items. The scope of controlled goods might be set too broadly, especially in the light of the reference, in the draft explanation, to the "protection of important strategic rare materials". The EU was also concerned that unnecessary excessive technology disclosure might be required as part of the license application process in Article 33 of the draft, and hoped that the written comments that the EU had provided would be taken on board when developing that particular aspect of the draft legislation. The EU looked forward to further discussion of this subject with China with a view to ensuring mutually beneficial convergence of export controls in line with international rules and standards.

18.11. The delegate of China thanked delegations for their questions but commented that the title of the agenda item was highly misleading as the measure was a draft export control law, not a new export control law. His delegation had explained bilaterally to certain Members that the law was new in the sense that it was a law, but not in terms of any more regulations for military exports and exports of dual-use products. In basic terms, this draft legislation consolidated existing regulations, but at a higher level. In June 2017, the draft was openly published on the website of the Ministry of Commerce of China, for public opinion, and a number of comments had been received that had resulted in the introduction into the draft of certain modifications.

18.12. In terms of the legislative process, in February 2018, the draft law had been submitted to the State Council, and the Legislative Office of the State Council would then conduct a legislative review of the draft. Following this process, the draft law would once again be submitted to the National People's Congress for further legislative review.

18.13. Regarding Japan's concerns over whether or not this draft legislation would cover rare earths, China said that rare earths had been subject to WTO dispute settlement, and that this process had produced a binding result on China, which it had implemented. Therefore, whatever this draft legislation would look like in its final form, China would honour both its WTO commitments and the findings of the dispute settlement procedures that had already taken place. Regarding the disclosure requirements, and the protection of business and technical confidentiality, he assured Members that these aspects of the law would closely follow international common practice in this area.

18.14. Regarding the questions on the purpose of this element of the law, the EU had mentioned the objective of industrial development. If a certain item was currently under export control, although the same product was available elsewhere in the market, then the exporter could argue that, because of levels of global industrial development, it was no longer necessary to control the export of such technology. This was a very reasonable provision and also common practice. Nevertheless, China had taken note of all of the technical questions from Members, and requested delegations to submit these questions to China in writing so as to facilitate his delegation's consultations with Capital on this matter.

18.15. The Chairperson proposed that the Council take note of the statements made.

18.16. The Council so agreed.

19 MONGOLIA - QUANTITATIVE RESTRICTIONS AND PROHIBITIONS ON IMPORTATION OF CERTAIN AGRICULTURAL PRODUCTS – REQUEST FROM THE RUSSIAN FEDERATION

19.1. The Chairperson informed the Council that, in a communication dated 12 March 2018, the delegation of the Russian Federation had requested the Secretariat to include this item on the agenda.

19.2. The delegate of the Russian Federation noted that, in 2013, Mongolia had established a quota regime for the importation of certain agricultural products, including wheat flour and milk. Indeed, the Ministry of Food, Agriculture, and Light Industry of Mongolia had established an import prohibition on wheat flour, late in 2016, which was still in force. Mongolia's wheat flour imports had dropped significantly as a result of that measure and Russian exporters had suffered substantial losses. The Russian Federation considered the general elimination of quantitative restrictions to be one of the core disciplines of the GATT and WTO legal systems, and urged Mongolia to intensify its discussions with the Russian authorities in order to resolve the issue promptly. Her delegation had been addressing these issues in bilateral consultations with Mongolia since November 2017.

19.3. The delegate of Mongolia thanked the Russian Federation for its interest in Mongolia's trade policy. The measures concerned had been taken in accordance with the laws on food and food security, which explicitly named only a few products, including flour, wheat, and milk, as strategic and staple foods that were essential for the livelihood and well-being of the people of Mongolia. Nevertheless, Mongolia had proposed bilateral discussions to the Russian Federation aimed at finding a mutually satisfactory solution in conformity with the WTO Agreements. Mongolia stood ready for further consultations with Russia.

19.4. The Chairperson proposed that the Council take note of the statements made.

19.5. The Council so agreed.

20 EUROPEAN UNION – AMENDMENTS TO THE DIRECTIVE 2009/28/EC, RENEWABLE ENERGY DIRECTIVE – REQUEST FROM MALAYSIA

20.1. The Chairperson informed the Council that, in a communication dated 12 March 2018, the delegation of Malaysia had requested the Secretariat to include this item on the agenda.

20.2. The delegate of Malaysia expressed Malaysia's concern over the discriminatory treatment of biofuels and bio-liquids produced from palm oil under the proposed amendments of the Directive of the European Parliament and of the Council on the Promotion of the Use of Energy from Renewable Sources, which had been adopted by the European Parliament on 17 January 2018. The amendments were still being discussed at the Trilogue negotiations in Brussels, and Malaysia was in various ways still concerned by these proposed amendments. The proposed Amendment 307 of the adopted text specifically singled out palm oil, as follows: "The contribution from biofuels and bioliquids produced from palm oil shall be 0% from 2021". Therefore, the use of biofuels from palm oil would not be counted towards the EU renewable energy targets from 2021, as compared to biofuels from other competing raw materials, such as rapeseed oil, which would continue to be counted towards the targets until 2030. In Malaysia's view, the different treatment given to competing raw materials was discriminatory and contradicted the national treatment principle of GATT Article III, as palm-based biofuels would be put at a disadvantage in terms of EU market access. Malaysia had requested the EU to clarify and explain the rationale and scientific evidence used to justify singling out biofuels from palm oil for exclusion from the renewable energy targets of the EU from 2021, vis-à-vis other crop-based biofuels until 2030.

20.3. There were several key features in the resolutions of the European Parliament dated 4 April 2017, on palm oil and deforestation of rain forests, which appear to have been adopted in the proposed amendments of the Renewable Energy Directive: Recommendation 49 "calls on the Commission to initiate a reform of the Harmonised System (HS) Nomenclature at the World Customs Organisation (WCO) that would allow a distinction between certified sustainable and unsustainable palm oil and their derivatives"; General consideration 24, on the other hand, "calls on the Commission to develop a single certification system for palm oil", which was discriminatory in nature, taking into account that only palm oil would be subject to the certification scheme, while other vegetable oils, which were like products, were not. In this context, unnecessary barriers would be created to the trade in palm oil. Furthermore, Recommendation 36 called on the Commission to "immediately develop a recognisable sign for all products containing palm oil, and strongly recommended that the sign was included on the product or packaging or was easily accessible through technological features".

20.4. The proposed amendments did not ban biofuels from palm oil but would impose unnecessary barriers and restrictions to the trade in biofuels produced from palm oil from Malaysia, given that

the use of biofuels from palm oil would not count towards the EU's renewable energy targets, and therefore would not be eligible for financial support.

20.5. This had clearly been stipulated in the following adopted text: (i) Amendment 67 of the adopted text on "The production of agricultural raw material for biofuels, bioliquids and biomass fuels, and the incentives for their use provided for in this Directive, should not have, or encourage, a detrimental effect on biodiversity within or outside the Union"; and (ii) Amendment 232 of the adopted text on "(c) eligibility for financial support, including fiscal incentives, for the consumption of biofuels, bioliquids and biomass fuels". If implemented in the current form, the quoted amendments, as well as recommendations of the European Parliament resolution of 4 April 2017, would possibly constitute a breach of the EU's commitments under various WTO Goods Agreements. Malaysia requested the EU to provide the Council with further information as to how it intended to make these amendments and Resolutions operational, and to keep Members continually updated on the progress of the Trilogue negotiations in Brussels.

20.6. Being a major exporter of palm oil products to the EU, Malaysia continued to be concerned also by the EU's increasingly restrictive measures on palm oil. The amendments, if implemented in their present form, would have negative repercussions on the palm oil industries of developing countries and would also not reflect well against the stated EU commitment towards meeting the Sustainable Development Goals (SDGs), whose objective was to address poverty and to raise the income levels of farmers. The proposed amendments also failed to recognize the positive impact of the Malaysian oil palm industry on enhancing the livelihood and the living standards of 650,000 smallholders in the context of the socio-economic development of the country. This would certainly have a negative impact and would deny those who were dependent upon the palm oil industry from freeing themselves from poverty. The proposed amendments disregarded the initiatives, efforts, and measures by Malaysia in the area of forest and biodiversity conservation, as well as the international pledges by Malaysia in the context of forest and tree cover conservation and reduction of greenhouse gas emissions. Indeed, Malaysia had pledged, under the Nationally Determined Contribution (NDC) of the Paris Agreement under the United Nations Framework Convention on Climate Change (UNFCCC), to reduce its greenhouse gas emissions intensity of GDP by 45% by 2030 relative to the emissions intensity of GDP in 2005.

20.7. Malaysian palm oil was produced in a sustainable manner and the palm oil industry was committed to producing palm oil in accordance with the sustainable principles and criteria under the Malaysian Sustainable Palm Oil (MSPO) certification scheme, which would be implemented on a mandatory basis by 31 December 2019. The proposed EU amendments to discriminate palm oil undermined the efforts carried out by Malaysia towards ensuring the future sustainability of the Malaysian palm oil industry. Her delegation urged the EU to consider providing equitable treatment across all crop-based biofuels, including palm-based biofuels, and also urged the EU to provide scientific evidence to justify singling out biofuels and bioliquids from palm oil not to be counted towards the EU's renewable energy targets. Malaysia would continue to monitor developments with regard to the intended amendments of the EU Renewable Energy Directive and looked forward to hearing the EU's response.

20.8. The delegate of Colombia reiterated the comments made by his delegation at a recent TBT Committee meeting. Colombia was interested in the EU's decision to introduce a policy intended to protect and promote the use of renewable energy but shared the concerns expressed by Malaysia that this policy should not become an unnecessary trade barrier, or be more trade restrictive than necessary. If it were to be adopted, it would be incompatible with the MFN and a number of other WTO principles, including with regard to the TBT Agreement and GATT Article XIII. Nevertheless, Colombia believed that the suggested amendments made by the European Parliament in January 2018 would not be the very final version of this Directive, and that the EU legislative process implied that other bodies would also have their say.

20.9. However, the modifications raised concerns for Colombia, particularly with regard to their incompatibility with WTO obligations, notably those concerning biofuels made from palm oil. The Directive set out goals for 2030 where energy coming from renewable sources would be less than 35% of all of the energy consumed within the EU, and at least 12% of energy consumed in all forms of energy used in transport. Therefore, the key definition was energy from renewable sources. Article 2 of the Directive listed different forms of energy that could be characterized as energy coming from renewable sources, and this included energy produced from biomass; by the same

principle, biofuels produced from palm oil probably fell into that definition and should therefore be taken into account when calculating energy use from renewable sources by members of the EU.

20.10. Article 7 of the proposal allowed for the use of biofuels based on food crops for fuels at a limit of 7% in road and rail transport. However, this article set out that the contribution of biofuels or liquids produced from palm oil would be zero per cent as of 2020. This would explicitly mean that fuels from palm oil would not fall into the gulf for rail and road transport until 2021. This would create a clear disincentive for producers to use any form of fuel coming from palm oil because they would not be able to write it off as a renewable energy source and therefore help meet the goals of minimal energy from unrenewable sources. This would clearly be a discriminatory measure, because it did not apply to similar products like oils produced from other forms of vegetables, such as sunflower oil and rapeseed oil. It was also incompatible with the obligations set out in Article 2 of the TBT Agreement, and GATT Articles I and III(4). The use of biofuels from palm oil would therefore be discouraged, and this would negatively impact Colombia as an exporter of biofuels from palm oil. Colombia asked the EU to explain how it could reconcile the discriminatory aspect of the measure with the MFN principle and the impact that this would have on countries that produced biofuel from palm oil.

20.11. The delegate of Thailand thanked Malaysia for raising this issue on the Renewable Energy Directive (RED), which had been adopted by the European Parliament on 17 January 2018, and which could have a profound impact on the future use and consumption of palm oil biofuels. While its adoption by the Parliament was not final it would, if adopted, discriminate palm oil against other types of vegetable oils. A particular product should not be treated in a discriminatory manner, and any discrimination should be on justifiable grounds. Thailand looked forward to receiving further information, clarification, and updates from the EU with regard to these amendments, and would continue to monitor the matter closely.

20.12. The delegate of Indonesia highlighted the importance of this issue to her country. The purpose of the revision was to diversify energy supplies within the EU by 2020 for environmental reasons, including in light of deforestation. The Indonesian Government supported environmental sustainability and contributed to controlling deforestation. Indonesia had also enacted Government Regulation 104 in 2015, which tightened the permit for the conversion of forest areas. Indonesia had also committed to the 2015–2030 SDGs with the pillars of social, economic, environmental, and sustainable development. The linkage of the renewable energy directive with palm oil was of paramount importance to Indonesia given the fact that any de-linkage would potentially affect the livelihoods of 17 million small-scale farmers in Indonesia, all of whom heavily depended on palm oil for their incomes. In terms of global land use, palm oil only occupied 10% of land compared to the total land use of other vegetable oils. If the current provision were applied, Indonesia would be concerned over a proposed difference in treatment between the use of palm oil as a biofuel feedstock compared to the use of other vegetable oils. In addition, the European Parliament had stated that vegetable oils derived from other sources would still be allowed to be used as biofuels feedstock, while biofuels derived from palm oil would be phased out. Given the importance of this issue to Indonesia, he urged the EU to ensure that the proposed amendments in the RED were consistent with WTO provisions.

20.13. The delegate of Guatemala stated that, as a producer of palm oil, Guatemala was concerned by the RED, which might become an unnecessary barrier to trade. Guatemala believed that it might potentially affect some 70% of exports of palm oil from Guatemala to the EU, given that the measure set out a disincentive to use palm oil as a source of fuel, a disincentive not applied to other vegetable oils. In Guatemala, the palm oil industry generated some 28,000 jobs directly, in particular in rural areas of the country. Guatemalan production was recognized around the world, given that it had the highest productivity level, and also resulted from an effort and a commitment by producers in the country to meet sustainability goals and good agricultural practices, thus ensuring the sustainability of their production. From March 2017 to February 2018, a number of palm oil-producing countries, including Guatemala, had sent communications to the President of the European Parliament, the European Commission, and the European Council. However, those complaints appeared not to have been taken into consideration. Indonesia reiterated its commitment to meeting the UN SDGs, and supported the certification of sustainably produced palm oil as part of the Millennium Development Goals. Guatemala stood ready to discuss this matter in Brussels with both the Parliament and the Commission. Guatemala also stood ready to discuss this matter with those EU member States willing to take into account Guatemala's arguments and to work towards the adoption of measures that were non-discriminatory in favour of other vegetable oils, and that did not violate WTO principles.

20.14. The delegate of Costa Rica reiterated Costa Rica's continued interest in the proposed amendments to the RED, given their possible trade and systemic consequences. Costa Rica had been monitoring closely the work that had been begun in Brussels, as well as the discussions that had been held at the CTG and its subsidiary bodies.

20.15. The delegate of Nigeria indicated that Nigeria held a systemic interest in this issue.

20.16. The delegate of the European Union recalled that the revision of the EU RED had been discussed in a number of recent bilateral meetings between the EU and interested Members; moreover, the issue had also been discussed in the last TBT Committee meeting. She indicated that one of the overall objectives of the Commission's proposal on the RED revision was to reduce the carbon footprint of the transport sector. In that context, the Commission's proposal included a gradual reduction of the contribution of all conventional biofuels to the EU renewable energy targets– not only those from palm oil. The EU was aware of the concerns raised in relation to an amendment adopted by the European Parliament in January 2018 as part of the legislative process; in that regard, she emphasized that, on substance, the amendment was not intended to be a ban on palm oil-based biofuels on the EU market. Biofuels from palm oil could continue to be produced or imported and consumed in the EU, even if they would no longer count towards meeting the EU Renewable Energy targets. In addition, and as already mentioned by some Members, the European Parliament proposal adopted in January 2018 did not represent the final outcome of the legislative procedure; rather, that procedure was ongoing. In the coming months, the Commission would continue to work closely with its co-legislators, namely, the European Parliament, and the Council, in the so-called "trialogues" mentioned by Malaysia. The EU stood ready to work together with producing countries to strengthen the sustainability of palm oil production.

20.17. The Chairperson proposed that the Council take note of the statements made.

20.18. The Council so agreed.

21 CHINA – MEASURES RESTRICTING THE IMPORT OF SCRAP MATERIALS – REQUEST FROM THE UNITED STATES

21.1. The Chairperson informed the Council that, in a communication dated 12 March 2018, the delegation of the United States had requested the Secretariat to include this item on the agenda.

21.2. The delegate of the United States expressed her country's concern over China's measures notified on 18 July 2017 to the TBT Committee, and their subsequent implementation banning or severely limiting the import of scrap materials (CHN 1211 and 1212). The notified measures banned the import of scrap post-consumer plastics, mixed paper, and textiles, and set new border inspection and identification rules for materials China classified or qualified as "waste". China had implemented these measures on 31 December 2017. On 15 November 2017, China had also notified CHN 1224 to 1234 restricting the import of a variety of scrap materials through revised quality parameters; the commodities covered included industrial plastics, paper and paperboard, non-ferrous scrap and wire, ferrous scrap and wire, and metal and electrical appliance scrap, among others. These new barriers had entered into force on 1 March 2018. In many cases, the new quality parameters were technically infeasible and as a result acted as a *de facto* ban on the import of many scrap materials.

21.3. In sum, those measures outright banned or effectively banned imports of scrap materials that were destined for recycling and reuse in downstream manufacturing processes. China's import restrictions on recycled commodities had caused a fundamental disruption in global supply chains for scrap materials, directing them away from productive reuse and towards disposal. While the US recognized and appreciated China's interest in addressing environmental concerns, including potentially by pursuing measures to improve its management of recovered scrap materials, the approach that China was taking appeared to be having the opposite effect. The US had observed that these new barriers had entered into force without any reasonable time interval during which industry could make the necessary adjustments to their supply chains. As the world's largest processor of scrap materials, China's implementation of these measures had had an immediate and negative impact on global recycling networks. Further, the abrupt implementation of the measures had created a global shortfall in recycling capacity that had diminished supply in valuable recycled commodities, placing upward pressure on commodities prices for both virgin and non-virgin materials.

21.4. The delegate of the European Union shared US concerns over China's measures in the context of China's national treatment obligations. For a vast number of materials outlined in China's ban and import control standards, China had no mandatory commensurate domestic standard in place. The EU was concerned both with the broadly trade-restrictive nature of the import control measures and with the apparent fundamental differences between requirements for foreign and domestic commodities, and requested that China immediately halt the implementation of these measures or at least revise them in a manner consistent with existing international standards for trade in scrap materials, which provide a global framework for transparent and environmentally sound trade in recycled commodities.

21.5. The delegate of Canada shared the concerns raised by previous speakers about the uncertainty and disruptions that China's restrictions on the import of solid waste were creating for traders. Canada had also raised the issue at the TBT and Import Licensing Committees and was now also raising its concerns at the CTG. Canada did so because it had observed in China a range of measures with related objectives that cut across multiple subsidiary bodies of the CTG. Indeed, on 1 March 2018, China had implemented revised standards that had imposed stricter requirements on imported waste and scrap. At the same time, it appeared that China had sharply reduced the available import quotas for products subject to the applicable standards. Numerous Canadian and international stakeholders in the metal, plastic, and paper recycling sectors had raised their concerns over the revised standards and the drastically reduced quotas issued for imports of recyclable materials. These measures appeared to be more trade restrictive than necessary to fulfil China's legitimate environmental protection objectives. Canada was also concerned that China's prohibition of imports of recyclable post-consumer plastics was unnecessarily trade restrictive. While Canada recognized China's right to address its environmental concerns in relation to imports of solid waste, China's recent restrictions severely curtailed legitimate and mutually beneficial trade in valuable scrap commodities. Furthermore, research had found that the environmental imprint associated with the use of recyclable materials was significantly lower than that associated with the use of new materials. Canada encouraged China to ensure that any trade measures implemented in pursuit of its objective to limit harmful environmental impact would be the least trade restrictive possible.

21.6. The delegate of Australia stated that his country appreciated China's efforts to reduce pollution through a broad range of measures. However, the Australian Government had a number of concerns about China's measures on certain waste and scrap imports, and supported the comments made by previous speakers. The measures would have a significant impact on Australian exporters, and might cause a large amount of waste to go to landfill, instead of being recycled in China and recovered for intermediate materials. Australia would appreciate further information on what were the specific public health, animal or plant, and environmental protection objectives, and how these would be fulfilled by the measure. Australia questioned whether the measure was more trade restrictive than necessary to achieve the desired objectives, and sought clarification as to what measures were applied to China's domestic waste products, how such measures were enforced, and if the domestic waste contamination standards were the same as those for foreign waste. If not, then what were the reasons for such different standards. Australia urged China to reconsider these standards and to allow for a comprehensive consultation process.

21.7. The delegate of the European Union said that the EU shared the environmental objectives of China that were behind this measure. However, the short time period provided for the entry into force of China's measures would have a counter-productive effect in the short term. Indeed, the scheduled exports to China would be rerouted to third countries that might not have adequate facilities for safe recycling, or end up in landfill or incineration, thus resulting in a negative impact on the global environment. A more reasonable time-period would be necessary in order to avoid such undesirable effects. Furthermore, the short time period did not allow for a discussion in the TBT Committee of the notified measures, including comments on the lack of clarification in relation to the products affected, the science-based justification for the measures, in particular contaminant levels, the possible alternative measures available to fulfil the same environmental goals, and the application of similar measures to domestic production. The EU sought clarification on how the implementation was being controlled and with regard to all the relevant customs procedures.

21.8. The delegate of Japan expressed Japan's interest in this issue and stood ready to discuss the issue further with China and other interested Members.

21.9. The delegate of the Republic of Korea registered Korea's interest in China's measures on scrap materials. His delegation would need more time and information to analyse the impact of these measures but would closely monitor all future developments.

21.10. The delegate of New Zealand shared the concerns and interests of other Members on this issue and looked forward to being updated on it.

21.11. The delegate of China said that the issue had been discussed on multiple occasions, including very recently at the TBT Committee, where a thorough discussion of the technical aspects of the measure had taken place. He reiterated that the environmental protection purpose of the measure on solid waste treatment and disposal was a shared environmental issue faced by all countries around the world. In accordance with internationally recognized principles of waste generator responsibility and disposal to the nearest, every country had the obligation to dispose of its domestically generated solid wastes. China, as the developing country with the largest population, might understandably make the inevitable choice of restricting and prohibiting imports of solid waste while improving domestic solid waste treatment and disposal. While China still welcomed the normal trade flow in raw materials processed out of solid waste, the import of solid waste would be strictly controlled and regulated in order to safeguard environmental, safety, and human health.

21.12. China was currently seeking a path towards modernization that would ensure the harmonious co-existence of human beings and nature. In the adjustment process of relevant policies, the Chinese Government would take into full consideration the demands of domestic and international communities, coordinate economic growth and environmental protection, balance trade and non-trade interests, safeguard a smooth transition policy, and fulfil its transparency obligations under the WTO. On the US intervention, he requested further information concerning the exact standards that the US was referring to, so that China could evaluate them further. With regard to the issue of National Treatment, his delegation was not entirely sure if this discipline applied to rubbish. Regarding Australia's reference to landfill sites in Australia, this was not the right forum to discuss the issue. If there were international standards to be followed, his delegation stood ready to discuss them.

21.13. The Chairperson proposed that the Council take note of the statements made.

21.14. The Council so agreed.

22 IMPORT LEVY BY WTO MEMBERS OF THE AFRICAN UNION – REQUEST FROM THE UNITED STATES

22.1. The Chairperson informed the Council that, in a communication dated 12 March 2018, the delegation of the United States had requested the Secretariat to again include this item on the agenda.

22.2. The delegate of the United States commented that it was necessary once again to raise the trade-related aspects of the African Union's Decision, unanimously adopted by member States in July 2016, in Kigali, for African Union members to finance 100% of the African Union's operational budget, 75% of the program budget, and 25% of the African Union's Peace Fund by 2020. While the US supported the African Union's self-financing initiative, including its efforts to fund 25% of the African Union's Peace Fund, the US did not support the use of trade measures to fund that decision. To generate funds to implement the Kigali Decision, some African Union members were already implementing new country-specific import levies and others were contemplating doing so. These levies in all probability contravened African Union Members' WTO obligations. Based on its latest information, the US had noted that the countries that had already started collecting the 0.2% levy were the following: Cameroon, Chad, Côte d'Ivoire, the Democratic Republic of the Congo, Djibouti, Ethiopia, Gabon, the Gambia, Guinea, Kenya, Morocco, Rwanda, Sierra Leone, and Sudan. Additionally, Benin, Ghana, Malawi, and Senegal, had also initiated internal legal and administrative processes to allow for the implementation of such a levy.

22.3. The more than 40 African Union members that already belonged in the WTO, and the nine that were in the process of acceding, needed to apply any funding mechanism, including an import levy, in a transparent manner that adhered to all existing WTO commitments. At the CTG, the US had repeatedly requested transparency from African Union members but had unfortunately been

given none–and now there were countries applying non-transparent levies against US exports. Her delegation asked the African Union WTO Members applying a levy when they would provide the relevant details to the CTG. The US would continue to raise the issue, as appropriate, at various venues–including the General Council, country TPRs, and WTO accession negotiations–until they could be sure that all African Union WTO Members were abiding by their WTO obligations.

22.4. The delegate of Japan continued to express Japan's support for the objective of the African Union's peace support operations, which encouraged Members to pursue self-assisting efforts to further contribute to the funding necessary. However, the implementation status of the African Union decision on the 0.2% levy was not clear, and Japan was concerned that, depending on how the levy was implemented, it could be inconsistent with the WTO Agreements. Japan requested the relevant Members to provide detailed information regarding the current status of the levy, and its expected implementation decision, in a manner consistent with the WTO Agreements.

22.5. The delegate of the European Union said that the EU strongly supported the purpose and cause of the 0.2% levy for the African Union to finance its activities and support African countries. However, the EU would appreciate more information about the process. They expected that some of the African Union Members would provide information on their intentions in terms of implementation or on the measures that they had already adopted, if this were the case. The EU attached utmost importance to transparency and had encouraged African WTO Members to notify the measures in question, which had to be WTO compliant.

22.6. The delegate of Canada supported the efforts of African Union members to increase African resource mobilization to fund the operations and programmes of the African Union. Like African states themselves, Canada would like to see sustained, predictable, and flexible funding mechanisms identified to support African Union peace and security efforts, including peace support operations. In that regard, Canada was encouraged by Africa's efforts to self-finance African Union activities, particularly the African Union Peace Fund. Canada was also pleased to support Africa's regional integration and free trade efforts. And it likewise welcomed the signature of the African Continental Free Trade Area the previous week in Kigali. Canada was keen to continue to grow trade with Africa and encouraged African countries to maintain trade-friendly policies and regulations with their foreign partners. In that regard, Canada encouraged African Union member states to begin discussions with other WTO Members to ensure that any funding mechanism that was or would be implemented was transparent and consistent with WTO obligations. Canada remained interested in receiving an update from the African Union WTO Members on the implementation of the import levy.

22.7. The delegate of Norway expressed Norway's systemic concerns regarding this issue. It was the responsibility of all WTO Members to act in a transparent and predictable manner and to ensure that their respective trade laws and practices complied with WTO rules and obligations.

22.8. The delegate of South Africa said that, on behalf of the African Group, South Africa had taken note of the statements made and would convey these to the African Union.

22.9. The Chairperson proposed that the Council take note of the statements made.

22.10. The Council so agreed.

23 UNITED STATES – SAFEGUARD MEASURES AGAINST IMPORTED CRYSTALLINE SILICON PHOTOVOLTAIC CELLS AND RESIDENTIAL WASHERS – REQUEST FROM CHINA

23.1. The Chairperson informed the Council that, in a communication dated 12 March 2018, the delegation of China had requested the Secretariat to include this item on the agenda.

23.2. The delegate of China wished to raise a number of questions with regard to this item, commenting at the outset that safeguard measures targeted fair trade and had to be used with great caution. He went on to point out certain flaws in the US 201 investigation.

23.3. First, China had noticed that almost all of the important data had been restricted as confidential information by the US in these two 201 investigation reports, and this was not in line with the Agreement on Safeguards. In particular, the information of evidence against the safeguard measures had either been redacted or replaced with asterisks for all the relevant figures. Second,

how did the US determine that the "such increased quantities" (the imports surge) in the report were in accordance with Article XIX of the GATT and the Agreement on Safeguards? What was the calculation method or formula? Why was there only quantitative analysis but an absence of qualitative analysis in the reports? And how did the US prove that the import growth of related products was urgent, sudden, and obvious? Third, which indicators were evaluated by the US with regard to the determination of "serious injury"? Why were some other factors not considered in the report, such as possible other causes for domestic companies' bankruptcy, such as the domestic demand which could not be fulfilled by the limited capacity of the domestic industry, and the impact of the global market downturn? Fourth, how did the US prove that there was a causal link between increased imports and injury to the domestic industry? How did the US take into consideration the fact that the Suniva company, the applicant of the CSPC 201 case, had experienced a deterioration in its business, while the company had not actually produced any products since its operation? Fifth, the US did not discuss the "unforeseen developments" in the 201 investigation report of the Large Washing Machine, which was obviously not in line with GATT Article XIX and the Agreement on Safeguards. Sixth, the export volume of Chinese-related products to the US had sharply decreased due to the existing anti-dumping and countervailing measures taken by the US against China, in particular, the export volume of Large Washing Machines had dropped to *de minimis* levels. Given these facts, why did the US not exclude China from safeguard measures in accordance with Article 9 of the Agreement on Safeguards? And when would the US implement the procedure of elimination? Seventh, and lastly, would the US publish the relevant industrial adjustment plan and, if so, when would it be announced? Which US department would be in charge?

23.4. The delegate of the European Union expressed its deep concern over the US use of safeguards. The US had not used this instrument in almost 15 years. The WTO criteria for imposing safeguard measures were very strict and the EU doubted that they had been met, either in the solar panels' case or in the case regarding residential washing machines. Safeguard measures targeted imports from all sources, including those that were not causing any injury, which was the case of EU imports. The EU represented less than 2% of total US imports and imports from the EU had much higher prices than imports from Asia. In addition, it was likely that the US measures would create trade diversion and disrupt markets, including in the EU.

23.5. The EU had carried out consultations under Article 8 of the Safeguard Agreement with the US authorities. They had tried to achieve a less penalizing measure, such as a quota allocated by country or a minimum import price, but without success. The US had also turned down the EU's request for compensation. Both countries had agreed to monitor trade flows and to continue the discussion. The EU urged the US to refrain from taking any other broadly trade-restrictive actions and to revert instead to more proportionate trade defence measures that caused less collateral damage.

23.6. The delegate of Switzerland said that Switzerland was deeply disappointed by the US decision to impose safeguard duties on crystalline silicon photovoltaic cells, a decision that was also affecting producers in Switzerland. Switzerland's solar industry was not subject to any subsidy programme, and its limited exports were hardly in competition with US producers. Switzerland requested the US to reconsider both these measures and their application.

23.7. The delegate of the Republic of Korea said that Members' common understanding was that safeguard measures were to be taken only with great caution and only to the extent necessary. In that regard, Korea was not convinced that the US safeguard measures against washing machines and solar panels were consistent with the relevant WTO rules. Korea had held a bilateral consultation with the US pursuant to the relevant article of the Safeguard Agreement and continued to look forward to hearing good news on this issue in the near future.

23.8. The delegate of Malaysia said that Malaysia had formally requested a consultation with the US under Article 12.3 of the SCM Agreement, and looked forward to engaging with the US constructively towards a mutually agreed solution of the issue.

23.9. The delegate of Singapore said that the US safeguard measure on CSPV Cells had impacted Singapore companies significantly. Imports of particular CSPV cell products were a necessary complement to domestic production to support the booming US solar industry. The broad-based safeguard measure would dampen the growth of the US solar industry and result in increased cost to consumers, particularly for those CSPV products that were not produced domestically. Singapore had undertaken bilateral consultations with the US pursuant to Article 12.3 of the WTO Safeguards

Agreement and had found those bilateral consultations held to date useful. Singapore looked forward to a solution to the issue that would ensure minimal disruption to trade.

23.10. The delegate of the United States responded that, as had been indicated in its notifications to the Committee on Safeguards, the US International Trade Commission had reached separate affirmative determinations that certain crystalline silicon photovoltaic cells, whether or not assembled into other products, and large residential washers, were being imported into the US in such increased quantities as to be a substantial cause of serious injury, or threat of serious injury, to the domestic industry producing a like or directly competitive article. For solar products, the measure went into effect on 7 February 2018, and would last for four years in the form of a tariff rate quota. For each year, measures would not be applied on the first 2.5 gigawatts of cells, with a tariff to be applied outside the quota. The tariff to be applied would be progressively liberalized on an annual basis.

23.11. For large residential washers, the measure also went into effect on 7 February 2018, and would last for three years and one day, with separate duty rates for large residential washers and parts. For each year, parts would be subject to a tariff rate quota and measures that would be progressively liberalized on an annual basis. The tariffs for washers would also be liberalized on an annual basis. The President had excluded certain countries from these measures, because: (i) they were WTO developing countries, whose share of total imports of the products concerned, based on a recent representative period, did not exceed 3%, provided that imports that were products of all such countries with less than 3% import share collectively accounted for not more than 9% of total imports of the product; (ii) they were non-WTO Member developing countries that met the same criteria; or (iii) their imports neither accounted for a substantial share of total imports nor contributed importantly to the serious injury or threat of serious injury found by the ITC.

23.12. The US offered and had conducted consultations under Article 12.3 of the Safeguards Agreement with all Members that had requested such consultations, and had begun jointly to notify to the CTG the results of those consultations. They expected to complete the notifications of these consultations in the coming weeks. The measures were a result of absolute increases in imports, and all of the steps taken by the US were consistent with its obligations under GATT Article XIX and the Agreement on Safeguards. Responses to all of the questions raised by Members at this meeting could probably already be found either in the ITC's determination or in the US's WTO notifications. These measures would also be reviewed by the Committee on Safeguards at its end-April meeting. For any outstanding responses, delegations were requested to provide their questions in writing to be forwarded to Capital.

23.13. The Chairperson proposed that the Council take note of the statements made.

23.14. The Council so agreed.

24 WORK PROGRAMME ON ELECTRONIC COMMERCE

24.1. The Chairperson recalled that Ministers in Buenos Aires had adopted the decision contained in document WT/MIN(17)/65 on the "Work Programme on Electronic Commerce" (Work Programme, or WPEC). In that Decision, Ministers had agreed to continue the work under the existing Work Programme since their last session, based on the existing mandate as set out in document WT/L/274, adopted on 25 September 1998, and endeavour to reinvigorate the work of the WTO on electronic commerce (E-Commerce). To this end, the Decision had also instructed the General Council to hold periodic reviews in its sessions of July and December 2018, and July 2019 based on the reports submitted by the relevant bodies, among them the Goods Council; and to maintain the current practice of not imposing customs duties on electronic transmissions. To fulfil the renewed mandate, the E-Commerce issue had been included as a stand-alone agenda item and, in this vein, the Chairperson invited delegations to continue to express their opinions and to make suggestions as to how to work in the future. He also informed Members of two non-papers that had been tabled by Chinese Taipei.

24.2. The delegate of Chinese Taipei, when introducing its two submissions, circulated in documents JOB/CTG/12 and JOB/CTG/13, indicated that JOB/CTG/12 referred to cyberspace trade barriers, and that it identified quantitative and fundamental differences between E-Commerce and traditional trade. One such difference was the so-called atoms/bits transformation in the digital

world, where it was observed that hindering the flow of bits could have similar or even greater trade-restrictive effects than traditional trade barriers on atoms. In this regard, the term "cyberspace trade barriers" had been employed to describe the intervention by governments in the cross-border transmission of information by electronic means, which had a restrictive effect on international trade. The paper also suggested that the term "information" or "data" should cover all types of information transmitted across the internet, including any internet searching, surfing, and communications, made between potential online buyers and sellers. She highlighted that, to secure the free flow of information among Members across the internet, and to ensure that all Members had the right to access each other's network, was essential. Thus, trade opportunities would be fully available to all potential participants, especially SMEs.

24.3. Regarding JOB/CTG/13, she indicated that it shared observations on 3D printing and the shared economy. In this vein, she noted that most "digitizable" goods were already being traded online and many of the transactions were bypassing traditional border controls. The advent of 3D printing had made it possible for a digital blueprint to be sent electronically, from one country to anywhere in the world, and the physical products to be locally manufactured in the consuming country, by a 3D printer. She went on to note that such goods would therefore be identified as local products and it was not clear how GATT rules, which dealt with border measures, would apply to these new trade and manufacturing patterns. She invited Members to further explore the issues arising from these new E-Commerce trading patterns and encouraged them to address any possible asymmetric regulatory treatment that could lead to a business environment of unfair competition between new and traditional trading measures and models.

24.4. Chinese Taipei hoped that these technical papers would clarify certain of the fundamental issues in E-Commerce and facilitate future discussion at the WTO, and looked forward to engaging with all interested Members on these and other topics.

24.5. The delegate of Japan thanked Chinese Taipei for their contribution and recalled that, in Buenos Aires, Ministers had agreed to continue the work based on the Work Programme and to reinvigorate the E-Commerce discussions at the WTO. Japan believed that the two Chinese Taipei submissions were consistent with the direction agreed upon by consensus in Buenos Aires. On trade in physical goods in E-Commerce, Japan considered that the Trade Facilitation Agreement (TFA) could address some of the challenges relating to how countries were dealing with the increasing flows of low-value parcels. They suggested that the Committee on Trade Facilitation (CTF) should address this issue through a robust implementation of the TFA. In this vein, Japan would be actively engaged in the work of the CTF.

24.6. The delegate of Norway stated that the Decision from Buenos Aires to continue work under the Work Programme signalled an interest and willingness among Members to advance the WTO's work in the area of E-Commerce. Norway was appreciative of the fact that a number of submissions had been put forward and that useful discussions had taken place in various Committees. She also thanked Chinese Taipei for their two technical papers, and expressed the hope that further papers on E-Commerce would be submitted in due course.

24.7. Norway believed that it would be useful for WTO Members to seek common elements in their respective submissions, especially concerning the necessary conditions for E-Commerce to work to the benefit of all, not least, and especially, in terms of the potential advantages for developing Members. Norway would remain actively engaged in following-up on the Work Programme, and would also take an active role in the Joint Statement on Electronic Commerce initiative, and encouraged all interested Members to proceed in the same way.

24.8. The delegate of Panama thanked Chinese Taipei for its technical papers and indicated that, as co-sponsors of the proposal on electronic commerce and development, contained in document JOB/CTG/5, Panama placed a high level of interest in these topics.

24.9. Panama considered that electronic commerce facilitated transactions and had a great potential for global growth. According to UNCTAD estimates, E-Commerce in Latin America would grow by an average of 17% annually, until 2019. In addition, electronic commerce would allow access to new markets and provide exponential opportunities to all types of sellers. Nevertheless, micro, small, and medium-sized enterprises (MSMEs) faced important challenges in order to harvest the full benefits of E-Commerce, especially in developing countries.

24.10. Latin American MSMEs played an important role because of their contribution to employment and the overall economy. In this regard, it was important to identify solutions that would support greater integration of MSMEs into international trade through the use of technology. He noted that MSMEs required training, access to adequate infrastructure, access to global markets, and non-discrimination of E-Commerce transactions. In addition, electronic commerce would allow micro-sellers to have an almost unlimited growth potential if the right channels and incentives were in place. Notwithstanding the above, Panama recognized that challenges persisted in the area of facilitating the use of E-Commerce by the most vulnerable agents in the economy. Consequently, Panama considered it important to discuss E-Commerce at the CTG and to continue to work on the Work Programme.

24.11. The delegate of Cuba welcomed the resumption of discussions under the Work Programme and appreciated recent contributions by Members. Cuba believed that it was relevant to discuss E-Commerce in a multilateral forum, as had been agreed by Ministers in Buenos Aires, and therefore recognized the 1998 Work Programme as the only mandate. On that basis, her delegation remained ready to continue working in a constructive manner on this issue.

24.12. Document JOB/CTG/12 indicated that land-locked countries and small and medium-sized enterprises (SMEs) had benefited more from electronic commerce than developed countries and large multinational companies; she requested evidence supporting such assertions and asked how such benefits were measured, particularly as Cuba had had no such experience in this regard. Cuba considered it chimerical to imagine that SMEs in developing countries could sell directly to consumers in developed countries, under improved competition conditions, in large part due to technological limitations. She also expressed concern over the abuse in recent debates of the idea that E-Commerce provided greater benefits to SMEs than to large companies and developed countries.

24.13. Cuba believed that cyberspace was an integral part of each State, such as land, maritime, and aerial space, and thus that, based on sovereignty principles, it should be governed by national legislation. With regard to the reference made to public intervention in cyberspace and the impact on providers, she requested concrete examples of the type of intervention being referred to, and how it produced such an effect on providers. She also questioned if the very legitimacy of such interventions had been taken into consideration in the analysis. Cuba believed that rules on online activities should always correspond to the development plans and programmes of each country. Therefore, governments should rightly have the authority to intervene in their internet traffic. While it was possible to facilitate the free movement of data flows, such flows should be regulated according to the economic and security interests of each nation. The delegate stated that it was necessary to recognize the rights of Members to regulate activities through the identification of the scope of legitimate public policy objectives that would justify cyberspace trade barriers.

24.14. As for an open and free internet, Cuba was in favour of democratic and participatory governance that should be based on centralized regulation, and considered that the technological neutrality of GATS had not achieved consensus among Members and remained a topic under consideration in the Council for Trade in Services (CTS).

24.15. With regard to the comments on future work and suggestions, Cuba believed that it was premature to decide on the proposals discussed during the meeting, and that additional debates and taking stock of how other international organizations were dealing with the electronic commerce issue were also important.

24.16. She indicated that any analysis on E-Commerce should be based on the recognition of the digital divide, which was real and widening. Chinese Taipei, in its document, accurately recognized the importance of internet access as a fundamental and necessary condition to taking part in electronic trade. Nevertheless, half the global population did not have the benefit of such access, or only to an extremely limited extent. She therefore invited Members to reflect collectively on how to address this issue because, in Cuba's view, precipitating the establishment of rules would only perpetuate the current imbalances, which Cuba could certainly not afford. Cuba looked forward to its continued and constructive participation in these discussions.

24.17. The delegate of South Africa also thanked Chinese Taipei for its submissions and recalled that South Africa had already provided substantive comments on such papers at the CTS on 2 March 2018. However, she wished still to share the following preliminary remarks at the CTG level:

(i) if the assertions on paragraphs 1.1 and 1.2 of JOB/CTG/12 were accurate, the benefits of the internet to international trade had already occurred, and thrived in the absence of rules. With regard to paragraph 1.2, in particular, she indicated that it would be useful to have access to the research cited in the paper; (ii) that the internet had created favourable conditions that benefitted big companies in developed countries more than MSMEs in developing countries, at least in absolute terms. The figures showed that, while the relative growth might have been higher for MSMEs in developing countries, it paled in comparison to the absolute growth, revenue, and market capitalization of the largest companies in developed countries. In fact, when the numbers were put into perspective, the wealth of such companies outstripped the economies of many countries; and (iii) the asymmetry in the existing global digital environment posed an important challenge for inclusive and sustainable growth and development. According to South Africa, the paper had made a number of broad assumptions that could not be taken as given.

24.18. On suggestions for future work, she said that the papers from Chinese Taipei had leapt to conclusions about securing the free flow of information among Members across the internet and in terms of ensuring that all Members had an unequivocal right to access each other's network on a reciprocal and equal basis. She also indicated that, the suggestion that there be an even more restrictive approach to general exceptions, namely, that these should be measures taken in "exceptional circumstances", and explicitly agreed upon by Members, seemed in fact to go against the perceived flexibility offered by general and security exceptions in the WTO Agreements. This position equated to a necessity test to achieve legitimate policy objectives.

24.19. She also emphasized that a meaningful debate on E-Commerce trade-related issues under the Marrakech Agreement required the prior establishment of international norms, principles, and rules on competition, anti-trust, abuse of market power, platform dominance, and taxation of the cyber economy. However, several of these issues could not be negotiated at the WTO because they concerned areas not related to trade, but rather to human rights law, tax law, and anti-trust law. Consequently, the WTO should only become involved once agreements had been reached in the relevant international bodies that dealt with those aspects of international law, and its involvement should be limited to trade.

24.20. South Africa also questioned the sequencing of the two submissions, given that Chinese Taipei had highlighted the importance of discussing the economic implications of international cyber-transactions, notably taxation, but without there being any broader discussion, and the data flow question was pre-empting such a discussion, and was therefore premature. Within the context of paragraph 1.3 of the Work Programme, South Africa remained ready to engage in a deeper discussion at the CTG on these issues, and reaffirmed its commitment to do so within the multilateral framework established by the Work Programme.

24.21. The delegate of China recalled that the Work Programme mandated Members to discuss trade-related aspects of E-Commerce, which differed from concepts such as digital trade and cyberspace trade barriers used in communications. China hoped that Members would focus their discussion within the current WTO mandate and noted that the submissions also recognized Members' rights to regulate online activity. Given the increasing popularization of and reliance on the internet, cybersecurity was becoming an ever more important issue. The threat of internet viruses, rogue programmes, and phishing software had already caused severe damage to China's cyberspace and data security, which in turn had led to information and asset losses of internet users globally. Therefore, China believed that it was essential for governments to regulate cross-border data flows and to guarantee a sustainable and healthy development in the area of E-Commerce. These regulations were also commonly used to achieve various national policy objectives by Members, which were not related to trade. China encouraged Members to consider the need for cross-border data flows in the era of economic globalization, and to find a balance between cybersecurity and guaranteeing data flows as, in its view, it was legitimate for Members to design regulatory measures in line with their specific conditions and needs so as to protect the interests of their people.

24.22. China was also of the view that the evolution of the internet and economic globalization had created the need for cross-border data flows, and had also brought challenges to cybersecurity and personal information protection, which should never be ignored. Guaranteeing these aspects should therefore be preconditions for legal and open data flows, and inclusive and sustainable trade growth.

24.23. The delegate of Chinese Taipei thanked the previous speakers for their interventions and, in response to questions by Members, clarified that the papers had been based on the results of publicly available investigations. Her delegation remained open and eager to engage with interested Members on these and other issues. Given the importance of E-Commerce to global economic growth, it was relevant that Members kept exploring any possibility and discussion under the framework of the 1998 Work Programme.

24.24. With regard to possible future CTG work on E-Commerce, the delegate of China recalled that, before MC11, Members had submitted more than 30 communications on this issue, and had undertaken extensive discussions of the matter. Meanwhile, Members like the Friends of E-Commerce and Development (FED), Mexico, Indonesia, Korea, Turkey, and Australia (MIKTA) and the African Group, had held a number of seminars on E-Commerce in Geneva, which had contributed to a better understanding of the particularities of E-Commerce, especially its development dimension. China appreciated Members' efforts to support the MTS, particularly as these efforts had contributed towards the Ministerial Decision in Buenos Aires, requiring Members to "continue the work under the Work Programme on Electronic Commerce".

24.25. China had consistently valued and supported multilateral discussions on E-commerce. As reiterated in 2017, it considered that E-commerce helped the WTO to remain relevant and responsive to the needs of businesses, and helped MSMEs, women and young people from developing Member countries, to participate in global trade and benefit from the inclusiveness of the MTS. He indicated that, following MC11, Members should maintain the momentum for multilateral discussions on the trade-related aspects of E-Commerce, and reflect innovatively on efficient approaches that might allow Members to move these discussions forward, and which should give appropriate consideration to Members' different development stages, as well as the developing Members' needs, in particular the LDCs. In this regard, he encouraged Members to submit constructive suggestions to the CTG, and urged the WTO to enhance its cooperation with such international organizations as the World Customs Organization (WCO) and the Universal Postal Union (UPU), with a view to exploring the development dimension of E-Commerce, and to exchanging relevant research outcomes.

24.26. He recalled that, in the past two years, Members had discussed the issue of E-Commerce under the relevant WTO bodies, and had submitted several proposals suggesting, among other matters, that the issue of internet-enabled trade facilitation in goods be further discussed, as well as related services such as payments and logistics services. The exchange of experiences on this issue had proven to be helpful to Members, and was worthy of further discussion at the CTG.

24.27. He stated that, in light of the rapid development of E-Commerce globally, many international organizations had been involved in relevant discussions of this new business model. In February 2018, the First Global Cross-Border E-Commerce Conference, jointly organized by the WCO and the General Administration of Customs of China (GACC), had been convened in Beijing. Nearly 2,000 delegates from the WCO Member Administrations, other government agencies, international organizations, and business and academic societies of 145 countries and regions, had attended the conference, and had exchanged experiences on promoting cross-border E-Commerce. Regarding this event, he reported that the theme of the Conference had been an innovative, inclusive, strategic, and collaborative approach to sustainable cross-border E-Commerce. The Conference had focused on panels such as "New Face of Trade–How Can We All Benefit", "Status Quo Is Not a Strategy–What Should Be Done to Adapt Regulatory Procedures", "Transformative Technologies Driving E-Commerce", "New Challenges, New Solutions", "What Next–Futuristic Vision", "Leveraging the Belt and Road and Other Initiatives for Balanced Development", "New Opportunities for Fostering Partnerships", and "Enhancing Capacities and Facilitating E-Commerce", and had conducted in-depth discussions on cross-border E-Commerce from the perspective of customs administrations.

24.28. The Conference had reached general consensus on the principles of the Framework of Standards on Cross-Border E-Commerce, which would be the first guiding document for the regulation and service of cross-border E-Commerce for customs globally. The Conference had also adopted the Beijing Declaration to demonstrate the consensus and vision of the customs community and other stakeholders regarding the development of cross-border E-Commerce.

24.29. In addition, cross-border E-Commerce businesses had jointly issued the "Call for Actions by Global Cross-Border E-Commerce Enterprises", encouraging businesses to enhance self-governance and self-discipline, and appealing to businesses and government agencies to work closely for sustainable growth of cross-border E-Commerce. The Conference had also called for the

establishment of relevant rules and standards relating to cross-border E-Commerce, with a view to creating a more transparent and predictable trading environment, and also promoting connectivity. China believed that this was also the goal of the E-Commerce discussion at the WTO. Indeed, while customs regulation was an important aspect for internet-enabled trade in goods, there were many more topics to be discussed and explored at the WTO; therefore, in order to help the Membership better understand the issue of E-Commerce, China encouraged the WTO to enhance its cooperation with such international organizations as the WCO and the UPU.

24.30. Pursuant to the mandate of the 1998 Work Programme on E-Commerce, China recalled that the discussion on E-Commerce by relevant WTO bodies "should take into account the work of other intergovernmental organizations". Bearing this in mind, China suggested that the WTO and the WCO enhance its information-sharing on cross-border E-Commerce. In particular, China proposed that the two organizations hold a joint seminar on E-Commerce, which could invite stakeholders such as relevant international organizations, experts, and enterprises, to conduct active dialogues on E-Commerce, introducing latest developments, experiences, and policy suggestions on cross-border E-Commerce, thus promoting inclusive trade growth. This joint seminar could be organized before end-July 2018.

24.31. The delegate of Argentina stated that Members should, without question, focus the discussion on E-Commerce within the WTO, as had been decided by Ministers in Buenos Aires. In this regard, Argentina expressed its unbridled support for the proposal made by China regarding a possible E-Commerce Workshop.

24.32. The delegate of Pakistan also supported China's proposal, as Pakistan believed that there was positive work being done at the WCO and that this could contribute to the work at the WTO, especially with reference to the trade facilitation aspect of E-Commerce.

24.33. The delegate of Nigeria, as one of the co-sponsors of the E-Commerce initiative, noted and welcomed the efforts made by China in suggesting that the WTO and the WCO should host a seminar that would enhance Members' information-sharing on cross-border E-Commerce. Indeed, many developing countries, particularly in the African region, would benefit from such an event, being the first of its kind to be hosted jointly by the WTO and the WCO.

24.34. The delegate of Costa Rica also expressed Costa Rica's support for China's proposal of organizing a joint seminar, hosted by the WTO and the WCO. His delegation would also welcome the possibility of holding other events with international organizations that could likewise be interested in E-Commerce.

24.35. The delegate of Mexico also considered that China's proposal was appropriate, and supported the initiative.

24.36. The delegate of the European Union thanked China for its suggestion regarding this possible seminar. However, the EU looked forward to receiving more detail before taking a final position on this issue. As a preliminary reaction, the EU was open to considering an event hosted by the WTO, in association with the WCO. However, the EU believed that the scope of the discussions for such an event should not be limited to goods or services, but should rather be cross-cutting. The EU looked forward to receiving more information on this issue and to further discussion.

24.37. The Chairperson concluded the discussion on the Work Programme by indicating that, according to the interventions made, this issue remained very important for many delegations and that Members, indeed, had been given a renewed mandate to revitalize the work in this area. He indicated that he would ask the incoming Chair to consult with Members on how best to advance, including on the possibility of holding a seminar in the WTO with the WCO, as had been suggested by China. He also proposed that the Council take note of the statements made.

24.38. The Council so agreed.

25 OTHER BUSINESS

25.1. The Chairperson recalled that, at the start of the meeting, the delegation of China had indicated that it would like to raise two issues under Other Business; one issue concerned the Section 301 investigation, and the other, measures to aviation security equipment.

25.2. The delegate of China said that, on 22 March 2018, the US had published the final conclusions and measures of the Section 301 investigations against China. China firmly opposed this action by the US. The unilateral action of the US Section 301 investigations would not only impair the rights and interests of China and other WTO Members, but also seriously undermine the multilateral trading system.

25.3. Section 301 investigations and measures were purely unilateral which were *per se* prohibited by Article 23 of the DSU, and violated the most fundamental values and principles of the WTO. According to the WTO rulings and the US commitment, the US should by no means determine unilaterally, based on a Section 301 investigation, that other Members had violated WTO rules. When it came to matters relating to the WTO Agreements, the US should strictly abide by WTO rules and the findings of the DSB. What the US had done contradicted its commitments, including that the US "explicitly, officially, repeatedly and unconditionally confirmed", before the Panel in DS152, that the USTR would base a Section 301 decision only on adopted DSB findings. The panel in DS152 also warned that "should the US repudiate or remove in any way these undertakings, the US would incur state responsibility since its law would be rendered inconsistent with the obligations under Article 23."

25.4. For a long time, the US had frequently launched unilateral investigations on the trade and economic policies of other countries or regions, and then implemented retaliation and sanctions such as raising tariffs and restricting investment for reasons of domestic industry protection. Since 1974, the US had launched 125 Section 301 investigations, which had affected almost all WTO Members. The unilateral measures of US Section 301 ceased after the establishment of the WTO; however, the US was now setting a very bad precedent by bluntly breaching its previously made commitment to the world. WTO Members should jointly prevent the resurrection of Section 301 investigations and lock this beast back into the cage of the WTO rules. China was fully prepared to react to the Section 301 conclusions and measures, and would firmly take the WTO rules and other necessary means to safeguard its legitimate rights and interests. Undoubtedly, China was facing a tough test, and it was prepared for the difficulties ahead. The character of China was like a bamboo, resilient enough to dance in the wind, but strong enough to withstand tremendous pressure. Unilateralism was fundamentally incompatible with the WTO, like fire and water. In the open sea, if the boat capsized, no one was safe from drowning. Members should not stay put watching someone wrecking the boat. The WTO was under siege and all Members should lock arms to defend it.

25.5. The delegate of Japan said that his delegation was closely examining the USTR Section 301 Report released last week. Japan shared the US view of the importance and of the need for stronger protection of intellectual property, and its effective enforcement; Japan also shared US concerns over China's requirement for disclosure of technological information and discriminatory licensing practices. Japan believed that any trade measure must be consistent with the WTO Agreements and expected that the US would implement such measures in a manner consistent with the WTO Agreements.

25.6. The delegate of the European Union said that her delegation had taken note of the US action against China under Section 301 of the 1974 Trade Act. The EU fully shared the US concerns with regard to the need for greater reform and market openness in China, including in relation to its practices in the field of technology, intellectual property, and innovation. However, the EU was of the firm view that any trade actions taken should be fully compatible with the WTO framework, which provided numerous tools effectively to deal with trade differences, and called on the relevant parties to ensure that their trade actions were WTO-compliant.

25.7. The delegate of the United States said that, because China had not inscribed this item on the agenda, but rather had raised it under "Other Business", the US would not comment on China's intervention in substance or detail at that time. However, if other WTO Members were interested in learning more about the US actions under Section 301, they could refer to the USTR website, on which they would find a factsheet and an extensive report. The report estimated that Chinese forced

technology transfer policies and practices were causing billions of dollars in losses annually to US businesses and individuals. Those Chinese policies or practices would also apply to other WTO Members. In addition, other WTO Members interested in learning more about China's technology licensing practices of concern should refer to the WTO consultation request that had been filed by the US the previous week. China appeared to be denying patent holders their exclusive rights to prevent unauthorized use, and also appeared to be discriminating against foreign technology holders through licensing requirements that did not apply to Chinese technology holders. Both of these practices appeared to breach China's obligations under the TRIPS Agreement

25.8. The Chairperson proposed that the Council take note of the statements made.

25.9. The Council so agreed.

25.10. On the issue of aviation security equipment, the delegate of China said that the Transportation Security Administration of the US (TSA), the US governmental agency responsible for civil aviation security, had issued criteria for minimum performance requirements in civil aviation equipment (TSA criteria) and carried out certification of civil aviation equipment (TSA certification).

25.11. The TSA criteria were a technical regulation in the sense of the WTO TBT Agreement, while the TSA certification was a conformity assessment procedure (CAP) under the TBT Agreement. According to the TBT Agreement, the TSA, as a conformity assessment body, should accord national treatment to suppliers from other Members in terms of access and rights to the certification procedure. However, China's civil aviation equipment manufacturers had been denied rights to conformity assessment with regard to X-ray machines for air cargo, for multiple applications in recent years, without any explanation and with their enquiries going unanswered.

25.12. Article 5.1 of the TBT Agreement mandated that national treatment be granted to suppliers of other Members in terms of rights to assessment of conformity, and conformity assessment should not be applied with the effect of creating unnecessary obstacles to international trade. Article 5.2 mandated that, when receiving an application, the competent body should promptly examine the completeness of the documentation and inform the applicant in a precise and complete manner of all its deficiencies and, among other requirements, inform the applicant of the stage of the procedure upon request, with any delay being explained. China believed that the US had an obligation under the TBT Agreement to make sure that the TSA granted national treatment for Chinese civil aviation equipment manufacturers in the certification process.

25.13. The delegate of the United States noted that, because China had not inscribed the item on the agenda but was raising it under "Other Business", the US would not comment on the intervention in substance or in detail at this meeting.

25.14. The Chairperson proposed that the Council take note of the statements made.

25.15. The Council so agreed.

25.1 Date of the next meeting

25.16. The Chairperson informed the Council that the next meeting of the Goods Council would be held on 3 July 2018. The agenda would close at 4.30 p.m. on 21 June 2018. With regard to the closing of the agenda, he reminded delegations that, according to the rules of procedure, meetings of WTO bodies were convened by a meeting notice 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.

26 ELECTION OF CHAIRPERSON OF THE COUNCIL FOR TRADE IN GOODS

26.1. The Chairperson recalled that the Chairperson of the General Council had carried out consultations on a slate of names for chairpersons to the different WTO standing bodies, in accordance with the established guidelines for the appointment of officers. Those proposed nominations had been approved by the General Council at its meeting on 7 March 2018. In line with

the nominations, he proposed that the CTG elect Ambassador **Stephen de Boer**, from Canada, as Chairperson of the Council by acclamation.

26.2. The Council so agreed.

26.3. The meeting was adjourned.