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Council for Trade in Goods

MINUTES OF THE MEETING OF THE COUNCIL FOR TRADE IN GOODS 3 AND 4 JULY 2018

CHAIRPERSON: HE MR STEPHEN CORNELIUS DE BOER (CANADA)

The meeting of the Council for Trade in Goods (CTG, or the Council) was convened by Airgram WTO/AIR/CTG/11 and WTO/AIR/CTG/11/Add.1; the proposed agenda for the meeting was circulated in document G/C/W/754 and G/C/W/754/Add.1. The meeting proceeded on the basis of the following agenda:

The Chairperson informed delegations that, under Agenda item "Other Business", he would raise the matter of the date of the Council's 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 there had been three regional trade agreements notified to the Committee on Regional Trade Agreements:

- Treaty on a Free Trade Area between Members of the Commonwealth of Independent States (CIS) (WT/REG343/N/3);
- Free Trade Agreement between the EFTA States and Georgia (WT/REG386/N/2);
- Free Trade Agreement between China and Georgia (WT/REG391/N/1).

1.2. The Chairperson proposed that the Council take note of the information presented.

1.3. The Council so agreed.

2 PROPOSAL BY THE COMMITTEE ON REGIONAL TRADE AGREEMENTS (CRTA) TO THE COUNCIL FOR TRADE IN GOODS, THE COUNCIL FOR TRADE IN SERVICES, AND THE COMMITTEE ON TRADE AND DEVELOPMENT ON A TEMPLATE FOR NOTIFYING CHANGES TO AN EXISTING REGIONAL TRADE AGREEMENT (WT/REG/28)

2.1. The Chairperson drew Members' attention to document WT/REG/28 and the template reproduced in its annex to be used for notifications of changes to all existing RTAs. The document had been considered and adopted by the Committee on Regional Trade Agreements (CRTA), at its 89th Session, on 19 June 2018, and had been recommended to the CTG, the Council for Trade in Services (CTS), and the Committee on Trade and Development (CTD), for adoption.

2.2. The delegate of Brazil considered that it would be necessary to reflect further on the template proposed by the CRTA. The CTD would also discuss the issue, and Brazil was for this reason not yet able to approve the document in the CTG. Nevertheless, Brazil looked forward to continuing the discussion in the CTG and other fora.

2.3. The Chairperson proposed that the Council take note of the statement made and agree to revert to the matter at its meeting in November 2018.

2.4. The Council so agreed.

3 ENLARGEMENT OF THE EUROPEAN UNION: PROCEDURES UNDER ARTICLE XXVIII:3 OF GATT 1994 – REQUEST FROM THE EUROPEAN UNION

3.1. The Chairperson informed the Council that, in a communication dated 21 June 2018, the delegation of the European Union had requested the Secretariat to include this issue on the agenda.

3.2. The delegate of the European Union noted that negotiations following the EU 2013 enlargement had been finalized. The final agreement, with New Zealand, would shortly be ratified by the European Parliament, and the EU Council would conclude it soon thereafter; this would then lead, upon implementation, to its entry into force. The EU would then submit an addendum to its notification of 29 September 2017 on the corresponding final report on negotiations under GATT Articles XXIV:6 and XXVIII.

3.3. The Chairperson proposed that the Council take note of the statement made.

3.4. The Council so agreed.

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

4 KIMBERLEY PROCESS CERTIFICATION SCHEME FOR ROUGH DIAMONDS – REQUEST FOR AN EXTENSION OF A WTO WAIVER – REQUEST FROM THE EUROPEAN UNION, AND AUSTRALIA, CAMBODIA, CANADA, GUYANA, JAPAN, MALAYSIA, MAURITIUS, NORWAY, RUSSIAN FEDERATION, SOUTH AFRICA, SWITZERLAND, TURKEY, UKRAINE, AND THE UNITED STATES (G/C/W/753)

4.1. The Chairperson drew Members' attention to document G/C/W/753, which had been submitted on 20 June 2018 by the European Union, and Australia, Cambodia, Canada, Guyana, Japan, Malaysia, Mauritius, Norway, the Russian Federation, South Africa, Switzerland, Turkey, Ukraine, and the United States. The document contained a request and a draft decision for a six-year extension of the waiver of the Kimberley Process Certification Scheme for Rough Diamonds, effective 1 January 2019, until 31 December 2024.

4.2. He recalled that, in May 2003, after consideration and approval by the CTG of a draft waiver decision, the General Council had adopted, in document WT/L/518, a waiver concerning the Kimberley Process Certification Scheme for Rough Diamonds, effective 1 January 2003, until 31 December 2006. In December 2006, the General Council, after consideration and approval by the CTG of a draft waiver decision, had adopted in document WT/L/676, the extension of the said waiver, effective 1 January 2007, until 31 December 2012. Similarly, in December 2012, the General Council, after consideration and approval by the CTG of a draft waiver decision, adopted in document WT/L/876, had again extended the said waiver, effective 1 January 2013, until 31 December 2018.

4.3. The Chair also indicated that Sri Lanka and Brazil, in communications dated 26 and 29 June, respectively, had both requested to be included in the list of countries annexed to the Draft Decision.

4.4. The delegate of the European Union said that the EU, together with other WTO co-sponsoring Members, were requesting the extension of this waiver until 31 December 2024, to allow each such Member to take or continue taking measures necessary to give effect to the trade restrictions relating to international trade in rough diamonds outlined in the Kimberley Process Certification Scheme.

4.5. The delegate of the Republic of Korea said that her delegation supported the proposal, and again co-sponsored it as it had done previously, in 2003, 2006, and 2012.

4.6. The delegate of Sri Lanka noted that the Kimberley Process Certification Scheme aimed to prevent conflict diamonds from entering the legitimate diamond trade, and that it played an important role in the process of economic growth and overall development of many countries, including various developing countries. At present, the Scheme had evolved into an effective mechanism, which was recognized as a unique conflict prevention instrument promoting peace and security. In Sri Lanka, the export and import of rough diamonds were monitored by the National Gems and Jewellery Authority and Sri Lanka Customs. All imports into the country of rough diamonds had to be accompanied by a valid Kimberley Process Certificate, and it was also essential to obtain a licence from the National Gems and Jewellery Authority.

4.7. In addition, all re-export of finished products should be accompanied by a valid certificate issued by the National Gems and Jewellery Authority to the effect that such diamonds came from consignments that had been brought into the country in accordance with the provisions of the Kimberley Process Certification Scheme. As a founding Member of that process, Sri Lanka wished to join the EU and other co-sponsors in their request for an extension of the waiver.

4.8. The delegate of Brazil confirmed Brazil's support for the waiver request, and its willingness to be included in the Annex to the Draft Decision containing a list of waiver beneficiaries.

4.9. The delegate of India said that, as a member of the Kimberley Process Certification Scheme, India wished to co-sponsor the proposal and to be included in the Annex to the Draft Decision.

4.10. The delegate of Singapore said that his delegation supported the request for the waiver's extension considering the important role the Kimberley Process Certification Scheme played in breaking the link between trade in rough diamonds and armed conflict. Singapore wished to be included in the annex to the draft waiver.

4.11. The delegate of Kazakhstan registered his delegation's support for the waiver extension and co-sponsored the request.

4.12. The delegate of Panama requested for Panama to be added to the list of co-sponsors of the Kimberley Process waiver.

4.13. The Chairperson reminded Members that the waiver also applied to measures implementing the Kimberley Process Certification Scheme taken by any Member not listed in the Annex to the Decision that desired to be covered by the present waiver, and that notified the CTG accordingly or that had already done so pursuant to the existing waiver.

4.14. He proposed that the Council take note of the request contained in document G/C/W/753 and of the statements made. He also proposed that the Council agree to forward the Draft Waiver Decision contained in document G/C/W/753 to the General Council for adoption, and to include in the Annex the Republic of Korea, Sri Lanka, Brazil, India, Singapore, Kazakhstan, and Panama.

4.15. The Council so agreed.

5 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)

5.1. The Chairperson drew Members' attention to document G/C/W/705/Rev.2, containing both 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. As agreed at the CTG meeting of 28 March 2018, he invited Jordan to update Members on any developments.

5.2. The representative of Jordan said that Jordan's new WTO-compliant programme was in the legislative process to be incorporated in the Income Tax Law as of 1 January 2019, in line with the timetable for implementing a new programme established in document G/C/W/705/Rev.2. Jordan was also amending the 2014 Income and Sales Tax Law No. 34 to make it compatible with Jordan's commitments under the SCM Agreement. It was also committed to terminating the existing subsidy programme by end–2018, in accordance with Regulation No. 106 of 2016, which stipulated that income from exports of local origin was totally exempted from tax only until 31 December 2018. Jordan had recently submitted for circulation its final notification to the Committee on Subsidies and Countervailing Measures (SCM) regarding its existing subsidy programme. His delegation requested that the item remain on the Council's agenda.

5.3. The delegate of the United States thanked and congratulated Jordan for its comprehensive report on reform efforts undertaken for the approval of its subsidies replacement programme. The US looked forward to the termination of the support programme at issue and to implementation of the new programme in accordance with the schedule Jordan had reviewed with them.

5.4. The delegate of New Zealand expressed his delegation's appreciation for Jordan's commitment to keeping the Council updated and to bringing their policy into conformity with the Subsidies Agreement.

5.5. The delegate of Australia thanked Jordan for its update and expressed appreciation for Jordan's transparency and constructive approach.

5.6. The delegate of Japan expressed appreciation for Jordan's comprehensive update. Japan would continue to monitor the issue closely.

5.7. The representative of Jordan thanked previous delegations for their interest in Jordan's subsidy programme and indicated that her delegation was willing to follow up with them if they had additional questions. She asked the Council to revert to this issue at its next meeting.

5.8. The Chairperson proposed that the Council take note of the statements made and agree to revert to the matter at its next meeting.

5.9. The Council so agreed.

6 EUROPEAN UNION – QUALITY SCHEMES FOR AGRICULTURAL PRODUCTS AND FOODSTUFFS – THE REGISTRATION OF THE TERM "DANBO" AS GEOGRAPHICAL INDICATION – REQUEST FROM THE UNITED STATES AND URUGUAY

6.1. The Chairperson informed the Council that, in communications dated 13 and 21 June 2018, the delegations of Uruguay and the United States, respectively, had requested the Secretariat to include this item on the agenda.

6.2. The delegate of Uruguay regretted to have to raise this issue at the Goods Council, but despite attempts to solve the matter at the TBT Committee and in Brussels, concerns remained. As explained in documents G/TBT/W/469 and G/TBT/W/543, in 2012 the Danish Government had submitted to the EU authorities an application to register the terms "Danbo" and "Havarti" as geographical indications (GIs). Uruguay and other countries had argued that both terms were generic and therefore could not be registered as GIs and limited in their use.

6.3. Both applications had remained "pending" over several years and this had created legal uncertainty for producers and importers of Danbo cheese. Despite several requests to the EU at the TBT Committee to inform Members about the registration of such terms, the EU had limited its response to commenting only that there was nothing to report. However, on 19 October 2017, and without prior notice from the EU, Uruguay had noted the publication in the EU Official Gazette of EU Directive 2017/1901 registering the term "Danbo" as a GI, which in Uruguay's view constituted a lack of transparency in its regard.

6.4. Codex Stan 264 had been approved in 1966 and updated on several occasions, with EU approval. This standard, in Item 7.1 on labelling, clearly set out that the name "Danbo" could be applied in accordance with Section 4.1 of the General Standard for the Labelling of Pre-Packaged Foods (Codex Standard 1/1985), provided that the product was in conformity with such standard. Additionally, Item 7.2 of Standard 264 set out that the country of origin, namely, the country of manufacture, and not the country in which the name originated, should be declared. The generally accepted interpretation of Item 7 was that Members acknowledged "Danbo" as a generic term that could be produced in different regions as long as it met the requirements set out in the standard.

6.5. The findings of the panel in case *EC – Sardines* (DS231), had found that a Codex standard was a relevant international standard in line with Article 2.4 of the TBT Agreement and therefore could be used as a basis for the elaboration of Members' technical regulations. According to point 8 of EU Regulation 2017/1901, which granted the protection and registration of the term "Danbo" as a GI, in the present case the EU had not used the specific Codex Stan 264 as its basis for registration of the term "Danbo".

6.6. The measure as set out, and without considering any other option than "Danbo from Denmark", was not only an unjustified barrier to trade but also raised many questions with regard to the use of international reference standards at the WTO, such as those of the *Codex Alimentarius*. From a systemic point of view, it was alarming that a WTO Member would decide to ignore *Codex Alimentarius* standards; the EU could also have pursued alternative solutions to meet its objective without the creation of unnecessary barriers to trade.

6.7. Finally, since March 2017, the EU had continued to claim in the TBT Committee that the question should be addressed exclusively from the perspective of intellectual property rights, and therefore should not be addressed in the TBT Committee. The EU delegation had forgotten that the Standard under which those rights were granted had been notified to the TBT Committee by the EU itself, on 18 November 2013, under Notification G/TBT/N/EU/139.

6.8. Therefore, in accordance with the TBT Agreement itself, and the findings of panels and the Appellate Body, Uruguay believed that the measure was not an intellectual property issue but was relevant to the TBT Committee, contrary to the EU's claims. She therefore urged the EU to review the measure and to consider alternatives that would achieve the desired objective without creating unnecessary barriers to trade.

6.9. The delegate of the United States said that her authorities remained concerned by the registration of the term "Danbo" as a protected GI, completely disregarding an existing international Codex standard. The bilateral consultation process with the EU on the matter had been

unsatisfactory, including a lack of responsiveness to their requests at the TBT Committee for clarity. The registration lacked sufficient transparency, such as an explanation as to how the EU viewed existing Codex standards.

6.10. The US was also opposed to the EU granting GI protection for Havarti considering the international *Codex Alimentarius* standard for Havarti, which Codex members, including the EU, had reconfirmed in 2007, 2008, and 2010. Additionally, this application also lacked transparency and required a status update.

6.11. The EU Council's own decision, upon the EU's accession to the *Codex Alimentarius* Commission, affirmed that "Codex standards have acquired increased legal relevance by virtue of the reference made to Codex in the WTO Agreements and the presumption of conformity which is conferred on national measures when they are based on such standards". The EU and its member States had also supported and agreed to the Codex Committee on Milk and Milk Products' individual cheese standards, which contained labelling provisions, under Section 7, which preserved the generic nature and use of the names of those cheeses.

6.12. The terms "Danbo" and "Havarti" had undergone rigorous review to prove their use in the public domain and international trade, which indicated a need for clarification as to whether or not the EU's view of the legal relevance of Codex standards had changed since the publication of the Council's Decision.

6.13. The delegate of New Zealand endorsed the previous statements and emphasized the centrality of the standard-setting bodies, and the FAO *Codex Alimentarius* in particular. The nature of the decision taken by the EU went against its previous statements and good faith in that Organization. Moreover, the EU had helped to update the standard for "Danbo", most recently in 2010, and had admitted that the existence of the country of origin statement in the standard underscored the generic nature of that cheese, as would also be the case for Havarti.

6.14. Producers in many countries had invested in producing and marketing "Danbo" cheese under the legitimate expectation that they were entitled to use this term; and they were no doubt encouraged, too, by the Danish and EU authorities, which continued to assert the term's generic nature. For example, as recently as 2008, the Danish dairy board had explicitly recognized that "Danbo" was a generic term.

6.15. "Danbo" cheese had been produced in New Zealand. In addition to New Zealand, national standards existed in nine different countries, including in several developing countries, such as Uruguay, Argentina, and Kenya. The Danish Development Agency had assisted developing countries with the production of "Havarti" and "Danbo" cheese. The EU measure was an abrogation in a trading environment in which existing economic operators had legitimate expectations to produce an export. There were other options available to the EU, such as "Danbo Denmark", which they had chosen not to use. New Zealand requested the EU to provide a status update on the Havarti GI application, and urged the EU to reconsider its position on "Danbo".

6.16. The delegate of Argentina echoed previous interventions. The registration of the term "Danbo" as a GI for Denmark did not take into consideration the international Codex standards, and the consultation process for the registration also lacked transparency. The term "Danbo" could not be registered as a GI and nor could its use be limited in any way.

6.17. The delegate of the European Union said that the procedures for granting protection of the term "Danbo" as a GI in the EU had been finalized and were contained in Commission Implementing Regulation EU2017/1901 of 18 October 2017, which was publicly available. As stated in TBT Committee meetings, any issues strictly concerning intellectual property rights should be discussed in the appropriate fora, notably, the TRIPS Council. The Application for the registration of Havarti cheese as a geographical indication was under assessment by EU services.

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

6.19. The Council so agreed.

7 KINGDOM OF SAUDI ARABIA, KINGDOM OF BAHRAIN, AND THE UNITED ARAB EMIRATES – SELECTIVE TAX ON CERTAIN IMPORTED PRODUCTS – REQUEST FROM THE EUROPEAN UNION, SWITZERLAND, AND THE UNITED STATES

7.1. The Chairperson informed Members that, in communications dated 21 June 2018, the delegations of the European Union, Switzerland, and the United States, respectively, had requested the Secretariat to include this item on the agenda.

7.2. The delegate of the European Union said that the EU was concerned about the selective tax on energy drinks, carbonated soft drinks, and tobacco products, which had been implemented by the Kingdom of Saudi Arabia, the United Arab Emirates, and the Kingdom of Bahrain, in 2017. The selective tax had been implemented at 100% on energy drinks and tobacco, and 50% on carbonated soft drinks.

7.3. The EU had not received any convincing evidence nor scientific justification of the product selection, nor any indications that the measure would be notified to the WTO. The negative impact had been greater on importers than on domestic producers.

7.4. Saudi Arabia, the United Arab Emirates, and Bahrain should indicate their rationale for targeting only carbonated soft drinks, with and without sugar, as well as energy drinks. Many non-carbonated sugary drinks not subject to the tax had a much higher sugar content than those products that were covered by the selective tax.

7.5. There were a number of questions to be answered. For example, if the intention of the measure was to reduce sugar intake, what was the scientific rationale behind taxing carbonated soft drinks with almost no sugar content, and excluding many domestically available products that contained similar or even higher amounts of sugar? Had the use of an *ad valorem* excise tax instead of a tax based on the volume or quantity of the relevant ingredients been recommended by the World Health Organization (WHO)? Would the tax rates of 100%, and 50% be reduced, given that they exceeded the WHO's recommendations for such selective taxes?

7.6. The EU looked forward to receiving responses from the countries concerned and would continue to engage with them constructively with a view to resolving the issue.

7.7. The delegate of Switzerland said that Switzerland shared the legitimate objective of such a tax but was concerned about its design and implementation. Despite discussions with GCC members in search of clarification of the tax at issue, concerns remained regarding its unusually high rate and implementation. No clear explanation nor scientific basis had been provided to justify the imposition of a tax rate that was twice as high for energy drinks as for carbonated soft drinks that, in certain instances, contained far more sugar than the energy drinks themselves. For exporters, the effect was clear: the consumption of imported energy drinks had fallen by half and consumers had shifted to cheaper sugar-containing drinks, which had showed no reduction in rate of consumption. This was a clear indication of the discriminatory effect of the *ad valorem* tax.

7.8. When imposing a 100% *ad valorem* tax on tobacco products, 100% on energy drinks, and 50% on carbonated soft drinks, GCC members seemed not to have followed WHO recommendations regarding fiscal policies for diets and prevention of non-communicable diseases, which recommended to use a specific excise tax based on either the sugar content or the volume of a drink. Such a tax, as opposed to a tax based on percentage of price, was the most effective way to achieve the goal of protecting the population's health. A specific tax based on sugar content or volume was likely to be the most effective approach as it would reduce incentives for consumers to revert to cheaper products.

7.9. Switzerland encouraged the GCC finance ministers at their meeting in October 2018 to make modifications to the tax, in line with WHO recommendations, which would not discriminate between locally produced and imported products that contained similar quantities of sugar. Switzerland also requested to be regularly informed of any developments, and to receive further details regarding the possible future application of a selective tax to other sugar-containing products, as well as to luxury goods.

7.10. The delegate of the United States supported the efforts made by Saudi Arabia, the United Arab Emirates, and Bahrain, to prevent and control non-communicable diseases, but expressed concern over the imposition of taxes on US companies that sold carbonated beverages with both sugar and other sweeteners. She encouraged the Members concerned to repeal the tax and instead to apply measures known to achieve better results than regressive taxes; and she also called upon other GCC member states not to implement such a tax. Instead, they should develop evidence-based measures that targeted improving public health outcomes.

7.11. The US considered the measures being implemented to be overly broad in certain respects and arbitrary in others, since they applied to diet beverages but not to other non-carbonated sweetened beverages. While food and beverage taxation might create shifts in consumer purchasing patterns, taxation had never been shown to improve public health outcomes.

7.12. The delegate of the Kingdom of Bahrain, speaking on behalf of Bahrain, Saudi Arabia, and the United Arab Emirates, indicated that the main objective of the Excise Tax measures concerned the protection of human health and the environment, but not the protection of domestic industry. The Excise Tax measures were fully compliant with GATT Article III as they were imposed on both domestic and imported products and were not intended to protect local industry. The Excise Tax measures were not applied to imported products at a higher or discriminatory rate than that imposed on domestic products, and nor did they confer any preferential treatment to domestically produced products; they were therefore fully in accordance with the principle of national treatment.

7.13. The three countries stood ready to engage with any other interested Member to provide any requested additional clarification of the GCC Common Agreement on Excise Tax.

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

7.15. The Council so agreed.

8 MEASURES TO ALLOW GRADUATED LDCs, WITH GNP BELOW US$1000, BENEFITS PURSUANT TO ANNEX VII(B) OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES – COMMUNICATION FROM THE CENTRAL AFRICAN REPUBLIC ON BEHALF OF THE LDC GROUP (WT/GC/W/742 – G/C/W/752)

8.1. The Chairperson reminded Members that, in a communication dated 13 June 2018, the delegation of the Central African Republic, on behalf of the LDC Group, had requested the Secretariat to include this item on the agenda.

8.2. The representative of the Central African Republic, on behalf of the LDCs, highlighted the importance of the request made by their Ministers of Trade in the Declaration adopted at MC11 to correct a technical oversight relating to Annex VII of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). The proposal, submitted on 19 April 2018, in document WT/GC/W/742 – G/C/W/752, contained a request and a draft decision to be adopted by the General Council concerning the possibility for graduated LDC Members to benefit from the exception provided under Article 27.2(a) of the SCM Agreement to developing countries listed in Annex VII(b). This would facilitate a smoother integration into the global economy for graduated LDC Members, and would also support the goals of the Istanbul Programme of Action for LDCs for 2011-2020. The proposal referred to the possibility for recently graduated LDCs to continue to benefit from this flexibility provided that their GNP per capita remained below US$1,000, an issue that was not clear in the 2001 Doha Decision on Implementation. In contrast, it did seem clear that graduated LDCs should benefit, like developing countries, from the exception provided to Members under Annex 7 of the SCM Agreement.

8.3. The LDCs asked Members to accept their proposal and to transmit the draft decision on graduation to the General Council for adoption at its next meeting.

8.4. The delegate of Nepal joined the previous statement and indicated that the Doha Declaration had also emphasized the need for implementation of the provisions of Article 27.2 and Annex VII(b) of the SCM Agreement. Graduating LDCs might have to relinquish several international support mechanisms upon graduation, including duty-free quota-free (DFQF) and preferential market access, preferential rules of origin, the LDC services waiver, and aid for trade, among others. It would be an

injustice if the generally accepted principle on the application of flexibilities for graduating LDCs were not applied. Several developing countries had been beneficiaries of Annex 7 of the SCM Agreement when they had achieved less than US$1,000 in income in 1990 constant prices.

8.5. Graduation was a continuous process of socio-economic development for a country; therefore, it was important to emphasize sustainable graduation. The LDC proposal was relevant and could support achievement of the legitimate development objectives of graduating LDCs; nor did it seek any amendment to the SCM Agreement.

8.6. The delegate of Bangladesh, on behalf of his Ambassador, said that Bangladesh echoed the statements made by previous delegations. The issue of LDC Graduation had received momentum after adoption of the Istanbul Plan of Action for LDCs by the United Nations, wherein a target was set to enable half of all LDCs to meet the graduation criteria by 2020. UNCTAD had projected that 16 LDCs were likely to graduate from LDC status by 2024.

8.7. The proposed revision would bring clarity to Annex VII of the SCM Agreement by addressing the concerns of graduated LDCs, allowing them to benefit from the flexibilities contained therein. The revision did not envisage these flexibilities being extended to all graduated LDCs. Nor did it foresee that those graduated LDCs enjoying the possibility of such flexibilities would automatically use them; rather, they would turn to them only when necessary, a matter dependent largely upon availability of resources.

8.8. The representative of Chad supported the statement made by the LDC Coordinator. The LDCs had always shown flexibility and open-mindedness. They had expressed their willingness to move forward on this issue and had always believed in negotiation as the way to reach consensus or compromise. LDCs were in a very vulnerable position; they faced specific structural challenges that prevented them from integrating fully into global trade flows. The LDC proposal was intended to accelerate and to improve their integration, given the LDCs' very low level of global trade in terms of market share, at just 1%.

8.9. Certain LDCs had specific needs and challenges that hampered their access to global markets, including those linked, in some cases, to a landlocked geographical location. Taking such important challenges into consideration, LDCs had made considerable efforts to graduate out of their LDC category, not least because no country wished to be categorized as an LDC – an uncomfortable position.

8.10. The aim of the proposal suggested by LDC Ministers of Trade at MC11 was to allow graduated LDCs to continue for a certain period to benefit from the flexibilities provided under Article 27.2 of the SCM Agreement on the exemption from the provision of export subsidies, provided that the GNP per capita of the country remained below US$1,000. The progress made by LDCs towards graduation had led to this proposal because LDCs wanted the WTO to correct a technical oversight and enable graduated LDCs to benefit from Annex VII if their GNP per capita again fell below US$1,000. The Decision did not introduce any new concept.

8.11. The delegate of Brazil expressed his delegation's support for the draft decision and its submission to the General Council for adoption.

8.12. The delegate of the United States thanked the LDC Group for the opportunity to discuss the proposal but questioned the need to change the rules in this area, particularly as the UN process already provided for a rather lengthy transition out of the LDC category, including possible extensions. The specific need for the proposal was also unclear as there did not appear to be export subsidy programmes in place for which an extension might be needed. To continue to discuss the matter in a meaningful way, the US considered that it would be helpful if the relevant Members could provide a subsidy notification to clarify the issue. The US also stood ready and willing to share its experience and technical knowledge, should any technical assistance be required.

8.13. The delegate of Norway said that his delegation saw some merit in the proposal but required more time to study it.

8.14. The delegate of the European Union reiterated the EU's readiness to engage constructively on development issues, particularly those concerning LDCs, but to do so based on analysis that clearly

explained where the specific problems were, and which justified specific courses of action. Developing countries, and LDCs in particular, should have access to flexibilities that would, in general terms, help them to achieve their development objectives; however, such flexibilities should be needs-driven and evidence-based. At this stage, the EU could not agree to any more general automatic exemption for all developing countries from existing rules and considered that, in the meantime, the countries concerned should seek assistance in reshaping any export subsidies to adapt them and make them fully WTO-compatible. In addition, the EU noted that graduated LDCs would remain on the list of Annex VII(b) until their GNP per capita reached US$1,000 in constant 1990 dollars for three consecutive years.

8.15. The EU asked if, once that condition was met, the provision of Article 27.2(b) of the SCM Agreement would still apply to graduated LDCs, thereby allowing them to grant export subsidies for eight years after leaving the list?

8.16. The delegate of Switzerland welcomed the proposal and shared the concerns expressed by LDCs. Even though the proposal's intention was to correct an oversight in Annex VII(b) to the SCM Agreement, Switzerland required more time to consider the details of the request and, in particular, to consider the process to follow for possible amendment to the annexes to the SCM Agreement, and the possible implications thereof. Like others, Switzerland had questions about the real need for a ministerial decision for such an amendment, and about which LDCs would benefit from such an exemption, currently or soon.

8.17. The delegate of Japan highlighted the importance of the issues relating to graduation from the LDC category and indicated that LDCs should be supported by the international community in navigating smoothly the process of graduation, and in realizing further integration into global trade with a view to achieving sustainable development. Japan was currently reviewing this proposal but remained open to engaging further in the discussion. He requested that the proponents provide Members with additional and detailed information as to which countries could benefit, based on latest statistics and relevant information on the domestic policies of the countries concerned.

8.18. The delegate of Canada indicated that Canada appreciated the need for flexibility for LDCs, as recognized in Annex VII to the SCM Agreement. However, Canada, like others, required further time to assess the implications of the proposal and looked forward to bilateral discussions on the issue. Canada also sought clarification from the proponents on issues such as which of the recently graduated LDCs would currently benefit from the proposal; how future determinations would be made to identify those Members that would benefit from the proposal; and how the proposal would operate in terms of fluctuations in GNP per capita above or below the US$1,000 mark.

8.19. The delegate of Cuba said that her delegation supported the proposal and considered it to be fair. Cuba considered that policy space should be available to LDCs based on their social and economic realities and agreed to the proposal being forwarded to the General Council for adoption.

8.20. The delegate of Pakistan said that Pakistan would analyse the proposal in light of the current discussion. His delegation requested the Secretariat to prepare, if possible, a brief document detailing the original negotiating history of Annex VII, with any relevant details, including the per capita GNP of developing and LDC Members likely to graduate.

8.21. The delegate of the Russian Federation said that Russia was assessing the proposal and suggested that the Council revert to the issue at its next meeting.

8.22. The delegate of India expressed India's support for the proposal and agreed with the principle that the GNP per capita threshold for graduation from Annex VII should be extended to include newly graduated LDC Members. India also supported the adoption of the draft decision.

8.23. The delegate of Australia said that his delegation wished to further discuss the proposal. Australia acknowledged the benefit of ensuring transparency where an LDC Member had graduated; for example, the SCM Committee could be apprised of graduations of LDC Members into the Annex VII(b) category. This could be achieved with the help of technical assistance from the WTO Secretariat. Additionally, the Secretariat could prepare a factual document updating Members on which LDC Members had graduated. This would be similar to the Secretariat updates relating to the calculations for the purpose of the Ministerial Decision on Annex VII(b).

8.24. The delegate of the Bolivarian Republic of Venezuela expressed the support of his delegation for the proposal and its adoption at the next meeting of the General Council.

8.25. The delegate of Sri Lanka supported the proposal but considered that the issue required additional time and further discussion.

8.26. The delegate of Chinese Taipei also said that they needed more time to assess the proposal and looked forward to further bilateral discussions with the Members concerned.

8.27. The delegate of Guatemala supported the LDC Group's proposal; however, Guatemala was still consulting on the issue and reserved its right to revert to it in future Council meetings.

8.28. The delegate of Afghanistan associated his delegation with the statement delivered by the Central African Republic on behalf of the LDC Group. His delegation favoured the adoption of the proposal at the next General Council meeting.

8.29. The delegate of China said that his authorities continued to study the proposal and would follow these discussions closely.

8.30. The delegate of Bangladesh thanked Members for their statements and indicated that the LDCs were not seeking a new flexibility but wished rather to address a missing element in the Uruguay Round and the Doha Declaration. In response to some of the statements made, he said that five LDCs had already been graduated, and that two others were in the process of graduation. The Secretariat could estimate or calculate the GNP per capita by US$1990 values based on the date when the LDC graduated officially; otherwise, it would be very difficult to do so, and difficult, too, to identify which LDCs should or could benefit from the Decision. The Secretariat regularly updated the Annex VII(b) list and, if agreed, the Secretariat could also prepare a paper on this issue.

8.31. The delegate of the Central African Republic thanked Members for their interventions. Almost all of the delegations that had intervened had considered it necessary to address the needs of LDCs. At the WTO, all countries were united in multilateralism, and it was a Member's duty to give and grant the same advantages to all, without discrimination or injustice. The LDC proposal claimed a perfectly legitimate right and was in perfect accord with the spirit of multilateralism.

8.32. The Chairperson proposed that the Council take note of the statements made and revert to the issue at its next meeting.

8.33. The Council so agreed.

9 MODIFICATION OF TARIFF CONCESSIONS AND APPLICATION OF TARIFFS HIGHER THAN THE LEVEL BOUND IN HAITI'S SCHEDULE XXVI – REQUEST FROM THE DOMINICAN REPUBLIC

9.1. The Chairperson informed the Council that, in a communication dated 21 June 2018, the delegation of the Dominican Republic had requested the Secretariat to include this item on the agenda.

9.2. The delegate of the Dominican Republic referred to document G/SECRET/39, dated 10 February 2017, which contained Haiti's notification of the modification of Schedule XXVI under GATT Articles XXIV and XXVIII, and to the statement made by the Dominican Republic at the meeting of the Committee on Market Access (CMA) held on 26 April 2018, on the same topic. In that notification, Haiti had submitted a list of 895 tariff lines whose concessions it hoped to modify in line with Haiti's accession to CARICOM and in order to apply the Common External Tariff (CET) as of 1 October 2017.

9.3. Three bilateral meetings had taken place between the two Members aimed at conducting negotiations on the modifications to these tariff lines, in September 2017, and February and May 2018. At the May meeting, the Dominican Republic had set forth a reduced list of 140 tariff lines on which it had a principal supplier interest. However, Haiti had not made any counterproposal with a view to achieving a reciprocal and mutually advantageous level of concessions as set out in GATT Article XXVIII:2; rather, Haiti had deemed that the negotiations had been concluded, and that

it would apply new tariff levels on a unilateral basis. While the negotiation process on Haiti's modification of tariff concessions had yet to be concluded, based on its Finance Laws, Haiti had already been applying tariffs above the bound level for a number of products, including rum, cigarettes, and pasta. The Dominican Republic reserved all its rights at the WTO as set out in Articles II, XXIV, and XXVIII of GATT 1994.

9.4. Article XXVIII was intended for use in exceptional cases and for only a small number of tariff lines. However, Haiti had proposed to modify 890 tariff subheadings, which covered 40% of the Dominican Republic's exports and amounted to a trade total of $289 million per year. This had adversely affected the Dominican Republic's exports and had resulted in an enormous social and economic impact. The proposed new tariff levels were extremely high, with some reaching 300% and, in many cases, they went far beyond CARICOM's CET. The immediate effect of the indiscriminate use of Article XXVIII would establish a serious precedent and produce serious systemic damage that could lead to retaliation and disputes before the DSB. Article XXVIII was intended to protect these advantages; therefore, the main responsibility was to achieve a balance created and applied on a good faith basis.

9.5. Haiti's Schedule XXVI was an integral part of the Agreement Establishing the WTO as well as of Part I of the GATT 1994, and therefore Haiti's Schedule, with its bound tariff obligations, must remain unchanged. Without prejudice to the Dominican Republic's rights under GATT Article XXIV, Haiti must accede to CARICOM using the range of flexibilities available to LDCs. Haiti was requested to keep the Council informed of any progress in this regard.

9.6. The delegate of the United States said that the US had significant systemic concerns with Haiti's request to raise hundreds of tariff lines well above CARICOM's applied tariff rates; this was not acceptable. The US also questioned the basis of Haiti's request given the extensive flexibilities afforded to CARICOM Members in their application of a CET, noting that it would be a source of concern if Haiti's request were to open the door to other CARICOM Members seeking to raise their own bound tariff levels. If Haiti were to proceed to raise its tariffs via its current budget process, it would do so without agreement from WTO Members, including the US, and the US urged Haiti not to take such a step. The US stood ready to assist Haiti to the extent possible in narrowing its tariff request so that Haiti's needs could then be met in a WTO-consistent way and without at the same time causing undue harm to Haiti's neighbours and trading partners.

9.7. The delegate of Brazil said that Brazil had submitted a claim of interest under GATT Article XXVIII and had undertaken and engaged in consultations and negotiations with Haiti in this regard. Brazil wished to see continued engagement on the part of Haiti, including by proceeding with consultations.

9.8. The delegate of Canada said that Canada had submitted a claim of interest to Haiti in response to its notification G/SECRET/39, and looked forward to furthering its discussions with Haiti in this regard.

9.9. The delegate of Japan said that Japan had submitted a claim of interest to Haiti and had requested Haiti to provide an update. Japan looked forward to further discussing the matter with Haiti.

9.10. The delegate of Haiti said that Haiti was fully aware of the problem being highlighted, and indicated that the negotiation process had two separate goals: (i) to harmonize Haiti's tariff concessions with CARICOM'S CET so that Haiti could trade fully with other CARICOM Members; and (ii) to ensure that Haiti's WTO Schedule of Concessions was compliant with WTO rules. Negotiations had begun with one of the five Members to have raised their interest, but agreement had not been reached due to some substantive divergences in opinion. Nevertheless, Haiti was committed to ongoing bilateral discussions and negotiations with all Members that had submitted a claim of interest. The results of the concluded negotiations would be notified to the WTO in due course.

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

9.12. The Council so agreed.

10 UNITED STATES – SECTION 232 INVESTIGATIONS AND MEASURES – REQUEST FROM JAPAN AND THE RUSSIAN FEDERATION

10.1. The Chairperson informed the Council that, in communications dated 21 June 2018, the delegations of the Russian Federation and Japan, respectively, had requested the Secretariat to include this item on the agenda.

10.2. The delegate of Japan expressed his delegation's concern over the additional customs duties and quotas imposed by the United States on steel and aluminium, arguing that these measures could not be justified on the basis of national security.

10.3. Japan was deeply concerned that potential measures based on the ongoing Section 232 investigation of imports of automobiles, including cars, SUVs, vans, light trucks, and automotive parts, would cause serious disruption to the world market considering the huge proportion of global trade accounted for by these products. Such measures could trigger a spiral of countermeasures and result in the collapse of the multilateral trading system based on WTO rules. Any trade measures introduced needed to be consistent with the WTO Agreements. Japan would take any appropriate and necessary future action in light of how the situation developed.

10.4. The delegate of the Russian Federation recalled that his delegation had raised previously the issue of Section 232 investigations on steel and aluminium, and regretted that the situation had worsened in the meantime. Indeed, the use of Section 232 was now not only limited to metals. On 23 May 2018, an investigation had been initiated with respect to imports of automobiles, but no clarity had been given on product and geographical scope, the possible form that the measures might take, and their rationale. Moreover, according to publicly available information, the US Department of Commerce may soon decide to begin a new investigation into imports of uranium products. The Russian Federation was deeply concerned by such prospects.

10.5. The proclaimed objective of the measures was to bring relief to US industries in order to strengthen the US economy; however, the appropriateness of recourse to Section 232 in pursuit of such aims was doubtful. In fact, the US was punishing its own economy, as deliberate elimination of competition by the US authorities would only lead to higher prices and poorer quality goods, with the result that the ability of US downstream companies to export would also be reduced.

10.6. The potential political gains for the US were as blurred and unclear as any potential economic gains to be derived from the measures at issue. The US was losing its reputation as a trusted trading partner and was also establishing the record as the WTO Member posing the greatest threat to the rules-based trading system; this had become a systemic challenge for the entire WTO Membership. The Russian Federation urged the US to reconsider its approach to trade defence instruments and to give up measures that brought reciprocal harm both to itself and to its trading partners. The US should abide by WTO rules, stop the ongoing Section 232 investigations, and refrain from starting new Section 232 investigations.

10.7. The delegate of the European Union expressed the EU's concerns over the launch of the new US investigation under Section 232 on imports of cars, car parts, and light trucks. In the EU's view, there was no justification for measures restricting imports of these products on grounds of national security. Nor was there any apparent economic threat to the US automobile industry which, having steadily expanded domestic production in the last 10 years, was healthy. Any trade-restrictive measure in this sector would have a serious negative impact not only on the EU but also on the global economy overall. The EU was determined, in a WTO-compatible manner, to fully protect its commercial interests.

10.8. The delegate of Canada said that Canada had requested consultations with the US under the WTO's dispute settlement mechanism concerning the US measures on imports of steel and aluminium from Canada pursuant to Section 232. Canada was concerned about the use by the US of Section 232 investigations and potential tariffs as protectionist tools. There was no link between US national security concerns and imports of automobiles and automotive parts.

10.9. The delegate of Switzerland said that Switzerland was also affected by the tariffs on steel and aluminium imposed by the US under Section 232. The US customers of Swiss steel and aluminium-producing firms bought their steel and aluminium from Switzerland not because the

products were cheaper but because they were unable to find the same products at home. Indeed, the additional tariffs in force since 23 March 2018 were already having a negative impact on the supply chain, on Swiss producers and exporters, on US downstream industry, and therefore, in turn, on US consumers. The US had granted the possibility for US-based companies to request product exemptions, but the procedure was cumbersome, costly, and, in addition to the high number of requests, very slow.

10.10. Switzerland echoed the concerns expressed by many other delegations and had doubts about the conformity of the US measures with WTO rules, which had started to trigger a dynamic of measures and countermeasures that were harmful to all. Certainly, there was a serious problem of global overcapacity in the steel and aluminium sectors; however, to impose import duties at the border would not solve the global overcapacity problem. Instead, it needed to be addressed and resolved through dialogue and negotiation between those Members primarily concerned. The OECD Global Forum on Steel and Excess Capacity had been established exactly to solve the overcapacity issue, and Switzerland urged the main players to work constructively towards a solution in that context, and to refrain from taking unilateral measures.

10.11. The delegate of Norway joined others in expressing Norway's deep concern over new potential trade barriers for autos and auto parts. Norway had both commercial and systemic interests in the matter and urged the US to take into consideration the serious consequences of any such action for the US, the global economy, and the multilateral trading system (MTS).

10.12. The delegate of Turkey reiterated that US export duties on steel and aluminium imports could not be justified on the basis of national security, and that such unilateral action breached the core principles of the WTO. Any action applied to the automotive industry would only worsen the situation. The measures applied by the US were safeguard measures, which had not been adopted in accordance with the substantive and procedural requirements of GATT Article XIX and the Agreement on Safeguards.

10.13. In line with the Agreement on Safeguards, Turkey had suspended concessions against the US in response to its safeguard measures, which were substantially equivalent to the amount of trade affected by the US measures. Imposing unilateral tariffs, and protectionism in general, only worsened Members' welfare and ignited protectionist measures worldwide, as could already be observed. Turkey called on the US to reconsider its measures in light of the need to maintain the integrity of the rules-based MTS. While continuing dialogue and cooperation with the whole Membership, including the US, Turkey reserved its rights under the WTO rules and Agreements.

10.14. The delegate of Costa Rica expressed Costa Rica's concern over the situation facing global trade. The rules-based trading system had been a key pillar in Costa Rica's development policies. Costa Rica considered that there was scope to continue strengthening and improving the MTS, and that the best way to do so was through enhanced commitments, strengthened disciplines, and better governance. Only through further and improved involvement and collective effort would it be possible to build a more robust proposal for updating the WTO system to enable it to meet current needs. Costa Rica called upon Members to open all possible channels for dialogue and to prioritize solutions that were in line with the WTO rules-based system, while at the same time respecting those rules and making all necessary efforts to render the MTS stronger and more inclusive.

10.15. The delegate of Hong Kong, China said that, since March, there had been increasing trade tensions globally, which in turn were creating further uncertainties in the international trading environment. The unilateral tariff measures implemented by one Member had triggered countermeasures by others. There was currently no sign of these tensions abating, and if the situation persisted no economy would remain unaffected. In the end, everyone stood to lose. Hong Kong, China, was deeply concerned not only about the impact on its own businesses, but also about the implications for the rules-based multilateral trading system in general. For these reasons, Hong Kong, China, called on all parties to exercise restraint and to engage in constructive dialogue with a view to reaching WTO-compatible solutions.

10.16. The delegate of the Bolivarian Republic of Venezuela reiterated Venezuela's systemic concerns regarding the implementation by one Member of unilateral measures, including investigations and measures under Section 232 on National Security; these measures had adversely affected other countries' interests.

10.17. The delegate of Singapore expressed deep concern over the punitive tariffs imposed by the US on several products, which would adversely affect global supply chains and global growth. There would also be a downstream impact on those US industries that depended on these imports. More broadly, such actions undermined the rules-based multilateral trading system, and the continuing escalation of tensions was worrying. Singapore urged all Members to exercise restraint and avoid escalating the tensions further. Trade conflicts had a wide-ranging impact and would hurt the global economy, global growth, and ultimately workers, and consumers, too. Singapore had both commercial and systemic concerns regarding the US Section 232 tariffs on steel and aluminium. Its companies had expressed concerns over both the direct and the knock-on effects of the measure on their exports, and remained concerned, too, over the uneven treatment of exports from different Members. Singapore was closely monitoring the ongoing Section 232 investigations on automobiles and auto parts given the potential negative impact of the measures on Singapore.

10.18. The delegate of China said that the US import duties on steel and aluminium products, under Section 232, were not consistent with WTO rules. In March 2018, the US had decided to impose additional tariffs on imported steel and aluminium products on the grounds of national security. However, most steel and aluminium products imported by the US were products intended for civilian purposes, which could not prejudice US national security. Section 232 measures had been adopted to protect the commercial interests of US domestic industries. Therefore, the measures were purely trade-protectionist, posing under the guise of national security concerns, and would seriously undermine the MTS. In contrast, China consistently supported the authority and stability of the MTS.

10.19. On 5 April 2018, China had raised a case under the WTO dispute settlement system against the US measures under Section 232, and afterwards, WTO Members, including Canada, the EU, India, Mexico, Norway, and the Russian Federation, had also requested consultations under the DSU. The US measures had therefore been strongly opposed by most WTO Members. China urged the US to respect the WTO's multilateral trading rules and to withdraw the measures at issue as soon as possible.

10.20. China also recalled that Mr Peter Navarro, the Director of the US White House National Trade Council, had recently said that any country currently exempted from the tariff would subsequently be subject to a quota and other restrictions. China sought clarification from the US as to whether or not this statement was true, and also as to whether or not the US had reached any agreement of quota or any form of voluntary export restriction with those WTO Members exempted from the Section 232 measures.

10.21. China also noted that, despite the strong opposition from most WTO Members, on 23 May 2018 a new Section 232 investigation had been initiated against imported automobiles and parts thereof. Automobiles and parts and components thereof imported by the US were mostly products for civilian purposes and did not involve any risk to national security. China believed that the frequent US investigations under Section 232 were protectionist investigations, under the guise of "national security" concerns, which would significantly distort global markets and value chains. Such abuse of so-called national security measures not only disturbed the normal international trade order of the products concerned, but also brought serious challenges to the MTS.

10.22. China and other WTO Members had repeatedly expressed their clear opposition to such measures and investigations. China would follow developments closely and work together with all WTO Members to tackle this challenge while at the same time taking all necessary steps to safeguard China's legitimate rights and interests. In the context of the current complicated and difficult international economic and trade situation, China would continue to take concrete actions to safeguard the authority of the WTO, and called on the whole Membership to join China in firmly fighting against unilateralism and protectionism.

10.23. When China referred to the US Section 301 investigation and the relevant unilateral protectionist actions, and indicated that on 15 June 2018, the USTR had announced the imposition of an additional duty of 25% on $50 billion worth of Chinese imports, under Section 301 of the US Trade Act, the delegate of the United States raised a point of order given that China was taking the opportunity to raise an issue that did not fall under the agenda item, and that China had not inscribed on the agenda.

10.24. The delegate of China responded that the reference to Section 301 formed part of China's integral statement under the current agenda item as China had significant concerns over the US unilateral and protectionist measures.

10.25. The Chairperson invited China to limit its comments to Section 232 only and observed that China should have indicated that it would raise the Section 301 issue under "Other Business".

10.26. The delegate of China indicated that the US actions amounted to a severe violation of the fundamental principles of the WTO, would seriously damage the MTS and disrupt the global trade order, and that Section 301 and Section 232 investigations were typical unilateral actions that were inherently incompatible with the multilateral trading system.

10.27. The delegate of the United States again raised a point of order, reiterating that at the start of the meeting China had not indicated its intention to refer to Section 301. Therefore, the point of order raised by the US referred both to this agenda item and to any intention that China may have to raise a Section 301 issue under "Other Business".

10.28. The Chairperson requested China to limit its comments to Section 232, as indicated in the title of the agenda item.

10.29. The delegate of China said that Section 232 investigations were typically unilateral actions, which were inherently incompatible with the MTS. History showed that if unilateralism went unrestrained it would bring destruction to the world economy and all WTO Members, especially developing Members.

10.30. While it was not clear which country and which product would be the next target of US unilateralism, if WTO Members were not able to fight and control the current unilateralism and protectionism, the whole WTO Membership, including the United States, would be the victims of it.

10.31. China wished the United States to respect both the facts and the rules. At the same time, China would take all necessary measures to fight against unilateral actions and defend its legitimate rights and interests under the multilateral trading system.

10.32. The delegate of Brazil said that, like other Members, Brazil had emphasized on several occasions, in the CTG and elsewhere, its systemic concerns with investigations and measures conducted or adopted by the US under its Section 232 investigations, justified on the grounds of national security.

10.33. Recent developments, particularly the launching of similar investigations regarding automobiles and auto parts, further highlighted the risks inherent in a flexible interpretation of the security exception contained in GATT Article XXI. Brazil urged the US to reconsider its approach.

10.34. The delegate of the Republic of Korea said that Korea had serious concerns over recent developments. History had shown that the spread of trade-restrictive measures did not bring about desirable outcomes in the long run. Therefore, the notion of national security in GATT Article XXI must be interpreted in a very limited and cautious manner in order to secure the rules-based MTS.

10.35. The delegate of Mexico joined other speakers in expressing concern over the implementation of Section 232 measures. Problems linked to overcapacity in certain sectors, such as steel and aluminium, did exist; nevertheless, imposing unilateral measures would never be the solution. Solutions came instead through dialogue and strict respect for multilaterally agreed rules. In Mexico's view, the US investigation regarding light vehicles, trucks, and their parts, and the application of such measures, would have a devastating impact on international trade.

10.36. The delegate of Qatar joined other Members in stating their concern about the US Section 232 measures and their implications for the MTS. For its part, Qatar was committed to the multilateral trading system and the rules-based system of dispute settlement. Within this context, Qatar did recognize that certain measures were permissible when intended to protect essential security interests. However, Members needed to exercise restraint before they invoked such defences.

10.37. If there were to be a dispute concerning WTO-inconsistent measures that were being justified on the grounds of essential security interests, then it would be the WTO rules-based framework that would provide the proper forum for settling such a dispute. As with any affirmative defence, a party invoking the defence had to prove the elements it put forward, and any defence measure would be subjected to multilateral oversight.

10.38. The delegate of Thailand shared the concerns of other Members regarding the systemic and commercial impact resulting from the US measure and its extension into imports of automobiles and auto parts. The measure had already resulted in a direct and indirect negative impact on global trade and economic growth and had also escalated the risk of retaliations and counter-measures. Thailand had noted the connection between the measure and the issue of over-capacity and urged all Members to resolve their trade issues in compliance with WTO rules and obligations.

10.39. The delegate of India joined other Members in expressing concern over the US Section 232 trade policy measures enforced on steel and aluminium products. It was an important systemic issue and a misuse of the security exceptions under the GATT. Such unilateral measures had no place in the trade arena and Members needed to exercise restraint and to respect the WTO rules. The application of such measures should not have the objective of creating trade barriers. Such measures should also be consistent with Members' WTO commitments.

10.40. Since the impact of the measure on India's exports of aluminium and steel products was substantial, India had taken action under the Agreement on Safeguards, and had also expressed its concerns by resorting to the WTO Dispute Settlement Mechanism for the matter's early resolution. India would be watching developments closely.

10.41. The delegate of the United States said that its Section 232 investigation on steel and aluminium was an issue that had been referred to the Dispute Settlement Body. Matters subject to dispute did not belong on the agenda of the Council. Members should refer to the US statements that had been made in the SCM Committee as well as at the DSB for further information on the US position.

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

10.43. The Council so agreed.

11 BAN ON THE OVERLAND EXPORT OF 23 PRODUCTS FROM THE DOMINICAN REPUBLIC TO HAITI – REQUEST FROM THE DOMINICAN REPUBLIC

11.1. The Chairperson informed the Council that, in a communication dated 21 June 2018, the delegation of the Dominican Republic had requested the Secretariat to include this item on the agenda.

11.2. The representative of the Dominican Republic expressed her authorities' concern over the effects on their exporters of the ban on overland export applied by Haiti since October 2015. Haiti's measure consisted in the ban on overland export of 23 products from the Dominican Republic into Haiti that, even though it had been imposed almost three years ago, had still to be notified to the WTO. The ban was leading to enormous losses for Dominican Republic producers of the 23 products, which covered 60 tariff headings. Additionally, a resulting domino effect had resulted in considerable unpredictability and insecurity for traders, which was negatively affecting a total of 1,227 tariff lines.

11.3. The measure affected a whole range of categories of goods, including: food products such as flours, vegetable products, edible oils, pasta, and drinking water; construction products, such as cement, rods, and PVC tubes; and other products, such as washing powder, soap, and mattresses. Since the implementation of the measure, Dominican Republic exports of products covered by the ban had fallen by 48% and overall exports from the Dominican Republic to Haiti had fallen by 43%.

11.4. Haiti was an important trading partner of the Dominican Republic, accounting for 56% of Dominican Republic exports of the 60 tariff lines directly affected by the ban; and more than 37% of the tariff lines affected by the ban represented 50% of Dominican Republic exports. Additionally, Haiti was the only export market for the remaining 11% of the tariff lines affected by the ban.

11.5. Since the ban had been applied exclusively to overland exports it only affected products from the Dominican Republic, as the Dominican Republic was the only country to share a land border with Haiti. Since the same products from third countries continued to arrive to Haiti by sea, Dominican Republic exports had been replaced by products originating in other countries.

11.6. The ban on overland export consequently led to a very costly and burdensome export process that meant that exporters from the Dominican Republic had to export their goods by sea, which made the process of export extremely expensive, consequently undermining the competitiveness of the Dominican Republic products concerned. This clearly had an impact on trade flows between the two nations, and treatment given to products from the Dominican Republic was discriminatory because it was less favourable than the treatment given to similar products imported from elsewhere.

11.7. In addition, the measure taken by Haiti had not been published in the Official Journal, meaning that governments and traders had not been made aware of how the measure was being implemented. Interested economic operators had not been given an opportunity to comment on the regulations, and the measure had not been notified to the WTO. The ban affected the export of other products, too, since it had also been extended to include transport operators from the Dominican Republic. As a result, goods were being removed from vehicles at the Haiti border in order to be transported in Haitian territory by Haitian transport operators.

11.8. The measure, which had not been officially notified, was inconsistent with Articles I:1; V; X:1 and X:2; and XI, of the GATT 1994. For developing countries like the Dominican Republic, predictability and transparency were key factors to earning the trust of investors leading to the development of its trade and export capacity. The MTS and its rules had to be respected by all Members and Haiti should therefore withdraw its measure, respect the relevant rules, and keep the Goods Council informed of the measures that it was taking or intended to take to resolve the situation.

11.9. The delegate of Haiti said that the aim of his Government was not to create unnecessary obstacles to trade but rather to address the porousness of the land border between the two countries. Following the earthquake that had struck Haiti in 2010, which had destroyed certain physical infrastructure, customs offices, and police stations, the border between the two countries had become even more porous, resulting in increased smuggling and, consequently, to a loss in customs revenue for the Haitian State.

11.10. Statistics showed that there had been a net decrease in revenue generated by imports transported over land compared to revenue from imports transported by sea. To address this problem, Haiti had introduced the temporary measure while it sought a viable solution. In this regard, the customs authorities of both countries were fully aware of the severity of the problem and, following a number of working meetings, had together engaged to exchange information and other practices to help fight contraband and smuggling. However, there had been to date no positive results and the measure had therefore remained in force.

11.11. Haiti wished to continue to work closely with the Dominican Republic to find a viable solution that would lead to the removal of the measure at issue.

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

11.13. The Council so agreed.

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

12.1. The Chairperson informed the Council that, in communications dated 21 June 2018, the delegations of the European Union, Japan, and the United States, respectively, had requested the Secretariat to include this item on the agenda.

12.2. The delegate of the European Union noted that, despite some efforts made to address them, including a certain simplification of import procedures, there remained a high number of cumbersome trade-restrictive measures in Indonesia's trade policy that were of a symptomatically

protectionist nature, and which did not help to develop Indonesia's trade, business, and investment climate. The unclear legal framework and the uncertain state of implementation of various of Indonesia's laws generated legal uncertainty.

12.3. The EU cited examples of such laws, as follows: the use of local content requirements in telecoms, retail, energy, construction, transport, and shipping of key commodities and public procurement; the complex and burdensome import requirements for meat and dairy products, fresh plants, horticulture, wood and forestry products, alcohol, and cosmetics; cosmetics further subjected to recently increased, very high registration fees; quantitative restrictions on meat, steel, and tyres; export restrictions on certain raw materials; burdensome and discriminatory conformity assessment procedures; and the growing proliferation of mandatory technical standards.

12.4. The EU requested Indonesia to provide precise information on the state of play of the implementing regulations of Halal Law 33/2014. The scope of the Law was extremely broad and would affect food and beverages, pharmaceuticals, cosmetics, and leather goods. If fully implemented, it would bring trade to a halt. Since at least two governmental regulations were under preparation, Indonesia should provide Members with precise information with regard to their scope, object, and the timing of the measures, and also to notify them in accordance with WTO rules. In the EU's view, Indonesia should rather apply voluntary Halal certification and labelling, which would be a less trade-restrictive measure.

12.5. The EU also requested to receive information about the state of play of the rules and standards regulating the production of processed milk and relevant investments and of Ministerial Decree 82/2017, which appeared to mandate that export and import of key commodities was to be carried out and insured by domestic companies. Indonesia was urged to eliminate its many trade barriers and, in line with its G-20 commitments, to refrain from erecting new barriers.

12.6. The delegate of Japan referred to its statements delivered at the previous CTG and TRIMs meetings, and again registered its significant concern over the various trade-restricting measures of Indonesia, such as LCO on 4G mobile phones. Japan urged Indonesia to fully update Members on those measures and to explain its concrete actions in a manner compliant with the WTO Agreements. With regard to the Mining Law, Japan continued to believe that relaxation of the complete export prohibition of nickel ore was still inconsistent with GATT Article XI.

12.7. At the last meeting of the Council, Indonesia had stated that the purpose of the measure was to protect its natural resources from exploitation. However, that argument did not justify the fact that natural resources were allocated in a discriminatory manner that gave favourable treatment to the domestic industry, a point clearly supported by the Decision in *China – Rare Earths* (DS431).

12.8. The delegate of the United States said that, in previous interventions at this Council, her delegation had reviewed in some detail the broad range of US concerns, including its concerns over localization requirements, and requirements on import licensing standards, pre-shipment inspection, and export restrictions, including taxes and prohibitions, among others.

12.9. The US had also expressed its concern over Indonesia's general lack of transparency with regard to these measures. In particular, the US was significantly concerned by Indonesia's systemic use of local content requirements, as imposed by Indonesia across a broad range of sectors, including telecommunications, mobile technology, energy, agriculture, retail, and franchising. The US also noted that, at the most recent TRIMS Committee meeting, more than half of the matters raised, six of eleven, had concerned Indonesia.

12.10. Despite US efforts to reduce the number of Indonesia's localization requirements, Indonesia continued to forge ahead with these policies by implementing local purchase requirements on dairy products, and by developing new local content requirements for human and veterinary pharmaceutical products.

12.11. In addition to the increasing number of localization requirements, the US also remained concerned by various other trade-restrictive measures in Indonesia. Regarding agriculture, for example, Indonesia was developing new requirements on soy beans, which would ban imports during the domestic soy bean harvest period.

12.12. Indonesia's recent regulation that established tariff lines for electronically transmitted software and digital goods was also a cause of concern, particularly as reports indicated that Indonesia planned to raise the import duty rates on those tariff lines, a move that could contravene the moratorium on customs duties on electronic transmissions.

12.13. The US hoped that its work would soon produce results that would ensure that trade between Indonesia and the US would be free and fair.

12.14. The delegate of Thailand shared the concerns of other Members regarding Indonesia's import-restricting measures, especially Indonesia's import licensing and quantitative restrictions on horticultural products, which had been found to be inconsistent with WTO rules. Thailand's agriculture exports had been negatively affected by these trade-restrictive measures. Thailand encouraged Indonesia to bring all its measures into conformity with the WTO's rules and obligations and to provide updates on any actions that it had undertaken to that end.

12.15. The delegate of the Republic of Korea shared other Members' concerns and encouraged Indonesia to formulate its implementing regulations in line with WTO rules and to share any progress made in this regard in a timely manner.

12.16. The delegate of Switzerland also shared other Members' concerns regarding Indonesia's regulation No. 26/17 on the supply and distribution of milk products. Companies continued to confront the significant negative impact of Indonesia's local content requirement regime, and trade was either interrupted or under threat of being interrupted.

12.17. Indonesia should provide detailed information and ensure full transparency under the new regulation and its implementation measures, particularly the procedure for granting import recommendations by the Ministry of Agriculture and the ways in which these are translated into import permits by the Ministry of Trade. The delay in providing adequate information was a critical issue for supplying countries and did not help them to develop confidence in Indonesia's new regime.

12.18. Indonesia should ensure the full compatibility with WTO rules of its new laws and their implementation, and local content requirements should not be applied in such a way as to discriminate against foreign exporters and to exclude them from the Indonesian market.

12.19. The delegate of New Zealand echoed Members' previous concerns. New Zealand believed that Indonesia's restrictions on agricultural imports undermined core WTO principles and were inconsistent with key obligations under the WTO Agreements. New Zealand continued to have significant concerns over the number of import restrictions that were affecting trade across a range of agricultural products, and particularly over the recent introduction of measures that restricted imports of dairy and horticultural products.

12.20. However, New Zealand welcomed Indonesia's commitment to implement the recommendations of the Dispute Settlement Body in *Indonesia – Import Licensing Regimes*, (DS477/478), and it was hopeful that the implementation process would result in meaningful long-term reforms to Indonesia's restrictive import regime. Indonesia's restrictions did not just hurt exporters but also Indonesian consumers, processors, and producers, as the new measures contributed to rises in food prices in Indonesia, including for basic foodstuffs and ingredients in the domestic manufacturing sector. New Zealand hoped that Indonesia would in future implement its reform plans using policies that were WTO-consistent.

12.21. The delegate of Canada continued to share the concerns of other Members regarding Indonesia's persisting import restricting policies and practices, although Canada also welcomed the limited progress that had been made on improving the business climate in Indonesia; nevertheless, more progress was required. Restrictions in the mining, oil, and gas sectors, increasing local content requirements across many sectors, including renewable energy, and the uncertainties surrounding Halal certification requirements, caused particular concern. Canada also remained concerned by the import licensing requirements in place for horticultural products. Canada concluded by encouraging Indonesia to adhere to its WTO commitments.

12.22. The delegate of Brazil shared other Members' concerns regarding the trade-restrictive measures that, in the case of Brazil, had been particularly harmful to its 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. Brazil encouraged Indonesia to adopt measures that eliminated barriers and to implement the panel recommendations and findings in the case of DS484.

12.23. The delegate of Australia said that Australia valued its trading relationship with Indonesia but continued to share other Members' concerns over Indonesia's import-restricting policies in recent years, particularly as those policies increased the risks and costs of agricultural trade. Indonesia frequently amended its regulations on the importation of agricultural products, often without notification and, even when notified, did so giving only limited opportunity for consultation with trading partners.

12.24. 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 the opportunity for trade conditions to be implemented in the most efficient way for all parties, and for the benefits of trade to flow efficiently also to Indonesian consumers and producers who relied on imported inputs for their production.

12.25. The delegate of Chinese Taipei said that her delegation continued to share other Members' concerns regarding a series of laws and regulations introduced by Indonesia, particularly concerning trade and industry restrictions in the retail sector, and local content requirements on 4G mobile phones. They had already voiced their concerns in other meetings but now had a particular concern over Indonesia's increasing use of local content requirements. Chinese Taipei urged Indonesia to inform WTO Members of any developments, and to make further efforts to review the measures at issue to ensure that they were fully compliant with the WTO Agreements.

12.26. The delegate of Indonesia said that Indonesia had carefully considered the concerns raised by Members regarding a number of its policies or measures that had been interpreted to be trade restrictive in nature. However, Indonesia nevertheless considered that its trade policies corresponded well to its WTO commitments.

12.27. Those measures that certain Members had perceived to be restrictive in nature, could well be a result of Indonesia's efforts to cope with certain outstanding problems and negative impact that they were confronting in relation to Indonesia's process of opening up to international trade. Indonesia had updated Members on the measures at issue in the WTO's relevant bodies.

12.28. Indonesia had also noted that exports of goods to Indonesia from those Members sponsoring the agenda item had in fact shown a positive growth, well beyond their average total global export growth for 2016-2017. Indonesia stood ready to discuss these concerns bilaterally with a view to finding a mutually beneficial solution.

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

12.30. The Council so agreed.

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

13.1. The Chairperson informed the Council that, in communications dated 21 June 2018, the delegations of the Russian Federation and China, respectively, had requested the Secretariat to include this item on the agenda.

13.2. The delegate of the Russian Federation indicated that the US Seafood Import Monitoring Program (SIMP, or US SIMP) consisted of two major elements: reporting at point of entry in the United States, and record keeping of information on chain of custody for two years. The programme's objective was the exclusion from the US market of misrepresented and illegal, unreported, and unregulated (IUU) fish products.

13.3. The US SIMP had become effective in January 2017, with mandatory compliance effective as from 1 January 2018. It was foreseen that the SIMP would eventually cover all fish species exported to the United States; however, only 11 species were currently subject to the new requirements. The

differentiation between fish species was unclear and raised questions about SIMP's compliance with the MFN principle. The new requirements were burdensome for importers and exporters of fish and seafood products and could amount to being a measure more trade restrictive than necessary. The Russian Federation would continue to monitor closely the SIMP's implementation in order to verify its compliance with WTO rules.

13.4. The delegate of China said that China also considered the SIMP to be inconsistent with WTO rules, as it not only lacked transparency but was also applied only to imported seafood. In addition, the SIMP was subject to conformity assessment procedures (CAPs) under the TBT Agreement, public consultations had only taken place in the United States, and the Programme had not been notified to the TBT Committee. Thus, Members had not enjoyed at least 60 days to comment on these requirements, and nor had they been extended a transition period of at least six months, as required by the WTO transparency provisions.

13.5. The US National Oceanic and Atmospheric Administration (NOAA) had indicated that the SIMP would only apply to imported shrimp and abalone once the commensurate reporting and/or record keeping requirements had been established for the US domestic aquaculture raised shrimp and abalone production. However, according to a recent announcement in the US Federal Register, the programme would apply to imported shrimp and abalone by end-2018. China therefore sought clarification from the US as to whether or not the commensurate reporting and/or record keeping requirements had been established.

13.6. Moreover, the SIMP lacked scientific justification as it covered all imported seafood without distinction between high and low risk products, or between aquaculture and fishing products. China believed that, given its lack of scientific basis, the SIMP should not include aquaculture products.

13.7. The SIMP also created unnecessary trade restrictions, in particular because of the complexity of its data requirements for the entry of seafood into the US, which made it difficult to collect the complete traceable information as required by the program. The program also overlapped with other existing monitoring measures that, taken together, resulted in delays and increased financial costs for enterprises, thus creating unnecessary restrictions on international trade.

13.8. China urged the US to adjust the SIMP to ensure its WTO consistency, and to avoid erecting new trade barriers; in this way, a normal bilateral flow of seafood trade between China and the US would again be possible.

13.9. The delegate of Norway expressed Norway's concerns over the US SIMP's negative effects on its trade with the US, particularly as the US was a key market for Norway's seafood exports. The Atlantic Codfish species had been included in the SIMP despite good management regimes being already in place for the protection of codfish. The US SIMP treated all seafood at species level and did not consider that various stock components could have different stock status and therefore be subject to different management regimes. Norway had an internationally recognized, well-functioning management regime, and a good track record in combatting IUU fisheries.

13.10. The US authorities had indicated that the SIMP would be extended to cover all seafood. This would constitute a fundamental departure from the risk-based approach that allowed that importing countries could only implement such import restrictions in concrete cases supported by a well-documented risk analysis.

13.11. The delegate of the United States said that the SIMP's objective was to combat IUU fishing and seafood fraud. The final rule required US importers to report certain information upon entry into the US and to 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 from IUU fishing.

13.12. The final rule was the result of a transparent process of public notice and comment involving all interested stakeholders, as well as direct outreach to exporting nations. Compliance with SIMP requirements for 11 priority species had come into effect on 1 January 2018. The NOAA had recently published a final rule that required two additional species, shrimp and abalone, to comply with the SIMP requirements as of 31 December 2018. Shrimp and abalone had been included in the

SIMP but had been stayed indefinitely as gaps were being identified in the traceability requirements for domestic aquaculture-raised shrimp and abalone.

13.13. NOAA was also working to promulgate a comparable domestic regulation for the collection and retention of information for domestic aquaculture shrimp and abalone products. It was committed to advising shrimp and abalone importers and exporters on SIMP requirements.

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

13.15. It was so agreed.

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

14.1. The Chairperson informed the Council that, in communications dated 21 June 2018, the delegations of Canada, China, the European Union, Japan, Norway, and the United States, respectively, had requested the Secretariat to include this item on the agenda.

14.2. The delegate of Canada expressed Canada's disappointment that, despite the concerns raised by WTO Members at the CTG, as well as at the Committees on Market Access (CMA) and the Information Technology Agreement (ITA), India had, as part of its 2018–2019 Budget, further increased its tariffs on a range of ICT products above its zero bound commitments in India's Schedule of Concessions. This was inconsistent with India's WTO commitments and ran contrary to the objectives of multilateral tariff liberalization.

14.3. Canada had both systemic and commercial concerns over India's decision to introduce tariffs on products that surpassed its bound rate, and found India's justification unacceptable. India should immediately rescind these tariff increases and refrain from pursuing any further tariff increases above its WTO commitments.

14.4. The delegate of the European Union said that India's increased duty rates constituted a *prima facie* violation of India's WTO commitments as the tariff lines in question were subject to duty-free treatment in India's Schedule of Concessions. European industry, including European companies that had invested in India, was concerned about India's move towards import substitution and increased protectionism. The "Make in India" initiative should not lead to foreign companies being increasingly concerned about the initiative's protectionist impact or about India's commitment to respecting WTO rules.

14.5. The EU disagreed with India's claim that the products at issue were not covered by ITA-1 concessions. The panel in *EC – IT Products* had concluded that a wide range of characteristics and technologies fell under the scope of and were therefore covered by ITA-1 concessions, including certain products that had not existed at the time that the ITA-1 had been concluded.

14.6. Between 2017 and 2018, the EU's Ambassador to India had addressed communications to the Indian Minister of Communications, the Electronics and IT Secretary, and the Revenue Secretary. In May 2018, the EU Commissioner for Trade had also contacted the Indian Trade Minister, indicating that the EU had been assessing all possible means of finding a solution to the increased import duties.

14.7. The re-introduction of and increases in import duties on ICT products had not only negatively impacted European and other foreign companies but had also led to higher prices for Indian consumers and hampered the development of "Digital India".

14.8. The delegate of Japan said that the current customs duty rates of 20% on mobile phones and 15% on their parts violated India's zero per cent bound commitment at the six-digit level. Japan continued to have commercial and systemic concerns in this regard and urged India immediately to reinstate zero duties on the ICT products in question. Japan also requested to receive an official response to the communication that it had sent to the Indian authorities, specifying the legal issues and products concerned.

14.9. The delegate of the United States expressed US concerns over India's continued actions to increase its duties on telecommunications and other ICT products, which appeared to breach India's WTO bound commitments. India had not yet responded to the concerns raised by numerous Members in the WTO and, to the contrary, had increased duties on additional ICT products in early April 2018. The most recent increases, together with the implementation of India's 2018-2019 budget proposal, had doubled the list of ICT products for which India had increased tariffs in the first half of 2018, and included product categories for which India had a WTO duty-free bound obligation.

14.10. The US rejected India's arguments that the products concerned were new technologies. Any product classified within the scope of a tariff category that was covered by India's bound duty-free commitments must benefit from duty-free treatment even if it were a product that had not been on the market at the time when India had undertaken its binding commitments.

14.11. The delegate of China said that India's increased tariff rates had exceeded its WTO bound rates, were inconsistent with the ITA and with GATT Article II, and nullified China's interests. India should readjust its duty rates and bring them into conformity with its WTO bound rates.

14.12. The delegate of Norway referred to Norway's statement on this issue delivered at the CTG's previous meeting (see document G/C/M/131, paragraph 11.10), and emphasized that India's interpretation, which implied that a product segment could automatically be released from binding commitments upon technological advancement, would seriously undermine the WTO system.

14.13. The delegate of Thailand reiterated Thailand's commercial interest in the products in question and the systemic concerns and implications that would result from India's application of tariffs above its bound rates.

14.14. The delegate of the Republic of Korea reiterated Korea's systemic concerns over India's imposition of duties on additional products under HS tariff lines subject to the ITA that exceeded India's bound rates.

14.15. The delegate of Singapore reiterated Singapore's concerns over India's continued imposition of duties on ICT products covered by India's ITA commitments.

14.16. The delegate of Australia reiterated Australia's concerns already expressed at previous CTG meetings regarding India's compliance with its WTO obligations.

14.17. The delegate of Switzerland said that Switzerland considered that IT products listed in India's Schedule of Concessions and bound at zero rates should not be subject to any import duty when imported into India. In this regard, the MFN tariffs published by India for mobile phones were inconsistent with India's commitment in its 2015 certified Schedule. Switzerland requested India to abide by its WTO commitments.

14.18. The delegate of Chinese Taipei expressed concern over India's increased import duties on seven products, including mobile phones, digital cameras, microwave ovens, and other ICT products listed in its 2018–2019 budget proposal. Such increases were totally inconsistent with GATT Article II.

14.19. The delegate of India thanked delegations for their continued interest in India's customs duty regime on certain telecommunications and other products.

14.20. With regard to the concerns raised over India's imposition of customs duties and its increases on certain IT and telecom items, as well as with regard to India's views on the transposition of certain items such as cellular phones, PCBs, and base stations, under HS96 and HS2007, he indicated that India had already provided its written responses to the questions addressed to it in document G/IT/W/45. India had also addressed these concerns at various meetings of the CMA, the CTG, and the ITA Committee.

14.21. With regard to products other than those allegedly contained in ITA-1, he said that, according to Members' rights under the WTO, India had increased the duties within its bound rates

and, as evidenced over several decades, India had displayed caution when raising any such duties despite the policy space it enjoyed at the WTO.

14.22. India was fully aware of its obligations and commitments under the ITA-1 and had been abiding by them. India had signed the ITA-1 in 1997 and had presented its Schedule of Concessions, which had been certified in document WT/Let/181. India did not intend to make any commitment beyond the scope of its ITA-1 commitments.

14.23. There had been extensive stakeholder consultations among relevant agencies on the coverage of ITA-1 products and India's ITA commitments, and India considered that the items on which duties had been raised were not part of the ITA-1 that India had signed. He invited delegations to share their perceptions of the coverage of those products listed under the ITA-1, as well as on the customs duties imposed by other Members on such products.

14.24. The precise scope of the products covered under ITA-1 was a complex matter, involving consideration of the technical nature and description of the items originally included, the technological innovations and developments that had occurred over time, as well as the fact that there was a strong possibility of certain ambiguities in the HS transpositions that had taken place since ITA-1 had first come into effect.

14.25. India remained willing to consider any specific views regarding the technical aspects of the products at issue as well as their classification, while keeping in perspective both the question of technological progression, as well as HS transposition of telecom and IT products. Capital-based experts likewise stood ready to engage at the technical level with their counterparts from the complaining Member in order to help them to better understand specific concerns and apprehensions and to resolve any issue in an effective manner.

14.26. With regard to India's bound rates for certain specified products in its HS2007 Schedule, as notified to the WTO, he said that Members had the right to revisit its Schedule and to make the necessary rectification requests before the ITA Committee. India was working on this and would revert to the matter at Committee level.

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

14.28. It was so agreed.

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

15.1. The Chairperson informed the Council that, in a communication dated 21 June 2018, the delegation of the Russian Federation had requested the Secretariat to include this item on the agenda.

15.2. The delegate of the Russian Federation said that, in 2013, Mongolia had established a quota regime for the importation of certain agricultural products, including wheat flour, wheat, milk, drinking water, and beef. According to Mongolia's Government Resolution No. 77 of 2 March 2013, each year the responsible authority determined the volumes of corresponding quotas. Imports beyond those quotas were prohibited. The resolution had also set out the basic criteria for determining quota volumes. The responsible authority calculated the quotas based on annual required importation and exportation of certain agricultural products. However, such a system created uncertainty for Russian exporters. Indeed, Mongolia's Ministry of Food, Agriculture, and Light Industry had established an import prohibition on wheat flour, late in 2016, which remained in force. As a result, Mongolia's wheat flour imports had dropped significantly, and Russian exporters had suffered substantial losses during the course of the past two years. The Russian Federation requested clarification from Mongolia with regard to its import restrictions, covering both quotas and import prohibitions, and including an explanation of how these measures complied with Article XI of the GATT, the general elimination of quantitative restrictions, and Article 4.2 of the Agreement on Agriculture.

15.3. The delegate of Canada said that, as a significant global exporter of wheat, Canada had a commercial interest in the use of measures that limited or restricted wheat imports. Despite the issue having been raised at the Council already in March 2018, no progress had yet been made.

15.4. The delegate of Australia expressed his country's concerns regarding Mongolia's compliance with its WTO commitments.

15.5. The delegate of Mongolia thanked the previous speakers for their interest in its measures. At the Council meeting of 23 March 2018, Mongolia had informed Members that the measures at issue had been introduced 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. Mongolia had held a bilateral meeting with the Russian Federation on 25 April 2018 at which it had informed the Russian Federation that a decision had been taken to abolish the import prohibition on wheat flour and milk. Moreover, a working group had been established to address the Russian Federation's concerns, and the Council would be informed accordingly. Mongolia stood ready to engage in further bilateral discussions with the Russian Federation and other interested Members.

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

15.7. It was so agreed.

16 EGYPT – MANUFACTURER REGISTRATION SYSTEM – REQUEST FROM THE EUROPEAN UNION

16.1. The Chairperson informed the Council that, in a communication dated 21 June 2018, the delegation of the European Union had requested the Secretariat to include this item on the agenda.

16.2. The delegate of the European Union said that, despite numerous bilateral exchanges following the TBT Committee and CTG meetings, the implementation of the two Egyptian Ministerial Decrees, No. 1991/2015, and No. 43/2016, respectively, continued to create unnecessary obstacles to trade. The EU industry, especially small and medium-sized enterprises (SMEs), continued to report serious difficulties with regard to duplication of procedures and, in particular, to 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 application of the measures, to review them in light of WTO principles, and to re-notify them under the TBT Agreement.

16.3. Without prejudice to the EU's request that Egypt suspend the application of the measures at issue, the EU wished also to encourage the Egyptian authorities to consider certain 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 companies with an opportunity to appeal in the case of a refused registration; and (d) registering without further delay all the companies that had already submitted their complete documentation and that were awaiting ministerial approval of their registration. The EU also encouraged 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 sufficient assurance of the quality and safety of its products. The EU called upon Egypt to take these comments into account and to inform Members of the steps being taken to make its manufacturer registration system less burdensome for companies.

16.4. The delegate of Switzerland reiterated her country's ongoing concern over Decree No. 43/2016. The non-transparent application of the quality certification and registration requirements, the lack of time-periods for the registration process, and the subsequent decree by the Minister of Foreign Trade resulted in a significant additional burden for the industry. Switzerland was concerned that these requirements had driven 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.

16.5. The delegate of Brazil indicated that some Brazilian exporters had also reported delays in the registration process or in the renewal of their registrations; this was a source of uncertainty with regard to their commercial relationships in Egypt. If it were not possible for Egypt to suspend these requirements entirely, Brazil encouraged Egypt at least to implement them in a less burdensome way.

16.6. The delegate of Egypt thanked previous speakers for their interventions and referred them to Egypt's replies contained in the minutes of the previous meetings of the CTG and TBT Committee.[2]

16.7. He noted that, in the first four months of 2018, Egyptian imports had increased by 22% when compared to the same period in 2017. This indicated that Egypt was not imposing restrictions on imports from its trading partners, and also showed that the registration requirements under Decree No. 43/2016 were not more trade restrictive than necessary. This registration process was administrative in nature and any credible manufacturer could easily comply with its requirements. Moreover, the Decree did not impose further burdens on producers or companies to comply with specific technical regulations but instead provided credible producers with a better competitive environment in the Egyptian market.

16.8. In order to address the issue of possible delays resulting from the verification of documents or the large number of applications, and in response to the concerns of its trading partners, the Egyptian authorities had made significant efforts to accelerate the registration process and improve its transparency. In this regard, his delegation would hold bilateral discussions with interested Members, under the scope of the TBT Committee, on any remaining obstacles to the Decree's implementation.

16.9. Egypt periodically reviewed and assessed its measures and regulations that affected imports, and its foreign trade in general, with the ultimate goal of enhancing Egypt's business environment and to facilitating trade. Egypt remained ready to engage constructively with any interested delegation and to provide assistance to foreign companies regarding any implementation obstacles they may be facing.

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

16.11. It was so agreed.

17 PAKISTAN – MEASURES RELATING TO SUGAR EXPORTS – REQUEST FROM AUSTRALIA AND THAILAND

17.1. The Chairperson informed the Council that, in communications dated 21 June 2018, the delegations of Australia and Thailand, respectively, had requested the Secretariat to include this item on the agenda.

17.2. The delegate of Australia, when referring to Pakistan's measures affecting sugar exports, sought confirmation that Pakistan's freight support had ended on 31 May 2018, as had been stated by Pakistan at the June 2018 meeting of the Committee on Agriculture (CoA). Australia would also welcome more detailed responses to its questions posed at that meeting and expected all WTO Members to take their obligations seriously. It would closely monitor developments regarding sugar measures in Pakistan.

17.3. The delegate of Thailand expressed Thailand's concern that Pakistan's cash freight support on exports of approximately 2 million tonnes of sugar could negatively impact the international sugar market and requested Pakistan's confirmation that the freight programme would not be continued. Thailand invited Pakistan to provide detailed clarification of the measure, together with an update on the status of possible amendments to its sugar subsidies programme and any relevant reforms to be undertaken.

17.4. The delegate of Guatemala expressed his country's concern over this issue, both as a sugar producer and as a sugar exporter. Guatemala would continue to follow this issue closely.

[2] Document G/C/M/131, paragraphs 15.7–15.9, and document G/TBT/M/75, paragraphs 4.134-4.135.

17.5. The delegate of Canada said that the sugar industry was concerned by the effects of Pakistan's support measures on the international sugar market. Canada encouraged Pakistan to reconsider its measures and to refrain from exporting sugar that had benefitted from subsidies.

17.6. The delegate of Brazil shared the concerns expressed by other Members regarding the trade-distorting effects, actual or potential, as well as the WTO consistency, of support measures and policies adopted by Pakistan in relation to its sugar exports. Brazil would continue to follow this issue closely.

17.7. The delegate of Pakistan recalled that Pakistan had been addressing these concerns at meetings of the CoA and had also held bilateral discussions on the issue with various Members. Members' concerns had been duly conveyed to Capital. The measure, which had been consistent with the Agreement on Agriculture, had already expired. Nevertheless, Pakistan would continue to engage constructively with Members to further clarify their concerns.

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

17.9. It was so agreed.

18 INDIA – MEASURES RELATING TO SUGAR EXPORTS – REQUEST FROM AUSTRALIA AND THAILAND

18.1. The Chairperson informed the Council that, in communications dated 21 June 2018, the delegations of Australia and Thailand, respectively, had requested the Secretariat to include this item on the agenda.

18.2. The delegate of Australia expressed Australia's concern over India's failure to respond substantively to the questions raised by Australia at numerous WTO Committees regarding India's sugar overproduction, including substantial new financial support announced on 6 June 2018. Australia remained concerned by the WTO consistency of India's sugar export arrangements.

18.3. He sought clarification from India regarding the WTO basis for India's mandatory requirement to export 2 million tonnes of sugar in 2017-2018, as announced on 28 March 2018, and new payments to the sugar industry, as announced on 9 May 2018. Furthermore, what was the WTO basis for India's duty-free import authorization scheme, which waived future import duties on sugar between 2019 and 2021 for those millers that had exported sugar before 30 September 2018? The Australian Government was committed to defending Australia's trade interests.

18.4. The delegate of Thailand said that the measures announced by India, which included a 2 million tonne export quota for all grades of sugar, a minimum indicated export quota, the removal of 20% export duty on sugar, an increase in the import tariffs on sugar from 50% to 100%, and financial assistance to sugar mills for clearing cane juice for farmers, could adversely affect the world sugar market. Thailand requested India to provide a detailed written clarification of each measure. In addition, Thailand had yet to receive any substantial response to the questions that it had addressed to India at the previous CoA meeting.

18.5. The delegate of the European Union said that her comments on this issue also applied to the previous agenda item, "Pakistan – Measures Relating to Sugar Exports". The EU fully shared the views expressed by Australia and Thailand, and recalled that her delegation had already expressed its concern, at the CoA's previous meeting, over the introduction of export subsidies following the Nairobi Ministerial Decision. The recent development showed the need for Members that could benefit from Article 9.4 of the Agreement on Agriculture to correctly report their actions. The EU was especially concerned by India's announcement, in the week of 25 June 2018, indicating that India would support the export of 60,000 tonnes of skimmed milk powder from the dairy company Amule.

18.6. The delegate of Canada said that India was currently experiencing a surge in sugar production and that it had subsequently introduced a suite of measures to support the domestic price of sugar. These measures were having a spill over effect onto international sugar markets.

18.7. Canada's sugar industry was concerned by India's use of support mechanisms to export sugar and the resulting dampening effect on the world sugar market. Canada, therefore, encouraged India to reconsider its measures and to refrain from exporting sugar using subsidies.

18.8. The delegate of Brazil shared the concerns of other Members regarding the trade-distorting effects, actual or potential, and the WTO consistency, of support measures and policies adopted by India in relation to its sugar exports. Brazil would continue to follow this issue closely.

18.9. The delegate of Guatemala said that Guatemala, as an exporter of sugar, was concerned by the measure and its impact on the global sugar economy. Guatemala would continue to follow this issue closely.

18.10. The delegate of India said that, on 28 March 2018, India's Department of Food and Public Distribution had indicated a quota of 2 million tonnes for export by the sugar mills. Questions had been asked at the CoA meeting held in June 2018, at which partial responses had been provided to the questions posed. The measure had been introduced only recently; therefore, the responses to issues like the administrative implementation of the measure would be provided to the CoA in due course.

18.11. India had introduced a basket of measures to alleviate the suffering of small and marginal sugar farmers because of non-clearance of dues of sugarcane farmers by sugar mills, including incentives for increasing internal production capacity and for upgrading sugar plants so as to enable them to operate on an increased number of working days.

18.12. India's duty-free import authorization scheme had been available since 2007 and neutralized the duty on imports incurred in the manufacture of the finished product, which was permitted under the SCM Agreement. He asked if Australia had a specific issue with regard to the scheme.

18.13. With regard to the issue raised by the EU on dairy product support, India would discuss this further with the EU bilaterally.

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

18.15. It was so agreed.

19 CROATIA – REGULATION OF IMPORT AND SALE OF CERTAIN OIL PRODUCTS – REQUEST FROM THE RUSSIAN FEDERATION

19.1. The Chairperson informed the Council that, in a communication dated 21 June 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 reiterated the concerns of his delegation regarding Croatia's Decree of 2014 on the procedure for wholesale trade with third countries of certain types of goods. For example, paragraph 3 of Article 2 of the Decree established a minimum volume of containers for wholesale trade in certain oil products – 300m^3 for oil products and 100m^3 for biofuels. Paragraph 2 of the same article indicated that the requirements regarding minimum volume of containers for wholesale should be applicable to all imports except imports from the European Union member States, the European Economic Area, and the Republic of Turkey. Consequently, petroleum products from those countries enjoyed more favourable treatment in Croatia compared to similar products imported from the Russian Federation. Such a differentiated wholesale trade regime was in violation of Croatia's obligations under GATT Article I and other WTO provisions.

19.3. Although the Russian Federation had raised this issue bilaterally with the EU, and also during the April meeting of the Committee on Market Access, there had been no change or development on the EU side, and nor had Russia received any information from the EU with regard to a potential modification or reconsideration of the Decree. The Russian delegation requested the EU to provide further clarification of this issue.

19.4. The delegate of the European Union said that Croatia continued to revise its regulations on imports of certain oil products, and that the resulting revised measures would be fully consistent

with WTO law. Preparations for the revision were taking longer than expected due to the currently ongoing consideration of a reallocation of responsibility for those measures between different governmental ministries of Croatia. The EU would inform the Council as soon as the revised measure became available.

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

19.6. It was so agreed.

20 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

20.1. The Chairperson informed the Council that, in communications dated 21 June 2018, the delegations of Japan and the United States had requested the Secretariat to include this item on the agenda.

20.2. The delegate of Japan said that the impact on the export of automobiles to Viet Nam of Viet Nam's Decree No. 116 of 1 January 2018 had been significant, and requested Viet Nam quickly to take measures to improve the system, while considering also the comments that had been submitted by industry stakeholders. In particular, Japan noted that, in relation to the import of finished automobiles, Viet Nam's Decree No. 116 required the submission of a copy of the quality certificate of automobile types issued by foreign authorities. Japan believed that such form of regulation was without precedent.

20.3. Since domestically produced automobiles required only vehicle type approval issued by the Vietnamese authorities, Japan requested that the same treatment be applied also to imported automobiles. As for the requirement for a security/emissions inspection and test, 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 that the same treatment be granted to imported automobiles as 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.

20.4. The delegate of the United States supported Japan's comments. The US continued to have significant concerns over both the substance and the timing of Viet Nam's Decree No. 116. Decree No. 116 had imposed new restrictions on imported motor vehicles given its almost immediate and burdensome new certification and testing requirements, which had disrupted trade for US auto companies. The US requested Viet Nam immediately to suspend its implementation of Decree No. 116 and its implementing circular, and instead to develop a long-term and workable solution that did not effectively close the marketplace to foreign vehicles. The US 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.

20.5. The delegate of Thailand said that Thailand was concerned by the serious impact of Decree No. 116 on the trade in automobiles. The implementation of Decree No. 116 was inconsistent with Viet Nam's WTO obligations and had been undertaken in a non-transparent, trade restrictive, and discriminatory manner. Furthermore, Members' automotive industries had not been afforded a reasonable time-period between the publication and entry into force of the Decree, given that importers needed several months of lead-time prior to importation. The Decree also required Vehicle Type Approval (VTA) certificates and inspections for every lot of imported cars, which unreasonably increased the cost of imports, besides being also inconsistent with international practice. 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. Thailand urged Viet Nam to suspend the requirement for the inspection and testing of each shipment, and to take Members' concerns into consideration. It also urged Viet Nam to honour its obligations under the WTO and to eliminate all unnecessary obstacles to international trade.

20.6. The delegate of Canada echoed the concerns raised by other Members over Viet Nam's automobile measure in Decree No. 116. The automotive industry was an important sector in the Canadian economy, and some of its industry stakeholders had raised their concerns with regard to Decree No. 116, especially over the Vehicle Type Approval Certificate requirements and the lot-by-lot testing. Canada requested Viet Nam to confirm whether it planned to modify, delay, or suspend Decree No. 116.

20.7. The delegate of the European Union shared the concerns of other Members regarding Viet Nam's Decree No. 116. The new testing procedures and the request for a vehicle type approval certificate different from that of the UNECE would create delays at customs and impose additional costs on EU exporters, which would in turn harm their long-term competitiveness vis-à-vis locally manufactured automobiles.

20.8. The EU regretted that, while the Decree had entered into force on 1 January 2018, it had been notified to the TBT Committee only on 7 March 2018, thus not allowing Members time to comment on it. The EU recalled that, to be 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, that a reasonable time for comment should be allowed for Members' comments, and that these comments should then be taken into consideration. Since the implementation in early 2018 of Viet Nam's Decree No. 116, car imports into Viet Nam had plummeted; this clearly demonstrated that the measure created an unnecessary barrier to trade.

20.9. The EU requested Viet Nam to postpone the application of Decree No. 116 so as to allow sufficient time to receive Members' comments and to involve all stakeholders, including importers of foreign cars, in the current consultations to develop further legislation. Furthermore, Viet Nam should allow for a reasonable interval of time between the publication and the enforcement of the adopted measures in order to afford producers from exporting Members sufficient time to adapt their products or methods of production to new Vietnamese requirements. Finally, the EU emphasized 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.

20.10. Finally, the EU noted that Viet Nam's written responses to its comments, submitted through the TBT Contact Point, were not relevant to the questions actually posed by the EU; additionally, responses should in any case be substantiated with objective data and analysis. Specifically, the EU concerns on discrimination against imported vis-à-vis domestically produced vehicles, stemming from Article 6 of the Decree, had not yet been addressed. The EU therefore requested Viet Nam to reconsider its concerns.

20.11. The delegate of the Russian Federation shared Members' concerns regarding Viet Nam's Decree No. 116, and requested Viet Nam to suspend the application of the Decree and to provide sufficient time for Members to comment on it.

20.12. The delegate of Viet Nam said that the objective of Decree No. 116 was to protect customer safety and contribute to environmental protection efforts. The VTA requirement was mandatory not only for imported but also for domestically manufactured and/or assembled automobiles. Since its entry into force, Viet Nam's Register Authority of the Ministry of Transport had accepted 119 applications for imports of 56 different types of motor vehicle. It had also granted technical and environmental safety certificates for 26 types of vehicle, thus enlarging the number of automobiles allowed to circulate in the domestic market. To date, many car manufacturers and exporters from the United States, the Republic of Korea, Thailand, and the European Union had successfully cleared all the necessary import procedures such that their automobiles were now ready for sale in Viet Nam.

20.13. The lot-by-lot testing and inspection applied to imported automobiles was intended to ensure uniform quality across vehicles. Indeed, such measures were applied by many countries together with type-approval requirements. Therefore, it could not be straightforwardly concluded from such measures and requirements that automobiles imported into Viet Nam were subject to stricter and less favourable treatment than domestically manufactured automobiles in terms of frequency of inspections. His delegation would in any case convey Members' comments to Capital.

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

20.15. It was so agreed.

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

21.1. The Chairperson informed the Council that, in communications dated 21 June 2018, the delegations of Australia and the United States, respectively, had requested the Secretariat to include this item on the agenda.

21.2. The delegate of the United States reiterated 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 that 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. Most recently, China had announced an expansion of its import ban to include most plastics and all wood, automotive, appliance, electric motor, and vessel scrap. China had noted that it did not intend to notify the new measures to the TBT Committee. Furthermore, in May 2018, China had announced and then implemented on the following day, new border inspection rules requiring 100% inspection and lab testing at the border for all scrap commodities; on that same day, China had also arbitrarily halted pre-shipment inspection in the US for a period of 30 days, leading to a complete halt in US exports of recycled commodities to China. These measures outright banned or effectively banned imports of scrap materials that were destined for recycling and reuse in downstream manufacturing processes.

21.4. 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 the measures had had an immediate and significant impact on global recycling networks. Further, the abrupt implementation of the measures had created a global shortfall in recycling capacity that had undermined the value of recycled commodities, forcing recyclers that had not been able to locate alternative processing facilities to dispose of otherwise valuable recycled commodities.

21.5. The measures also concerned China's national treatment obligations. China had no mandatory commensurate domestic standard in place for a vast number of materials outlined in China's ban and import control standards. The broadly trade restrictive nature of the import control measures and apparent fundamental differences between requirements for foreign and domestic commodities also raised concerns.

21.6. Finally, China's recent refusal to notify new technical measures consistent with its TBT obligations, as well as its arbitrary and abrupt halt to pre-shipment inspection in the United States, had heightened US concerns over the intention of the actions and their consistency with China's WTO obligations.

21.7. The US requested China immediately to halt implementation of the measures and to revise them in a manner consistent with existing international standards for trade in scrap materials, which provided a global framework for transparent and environmentally sound trade in recycled commodities.

21.8. 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

with regard to China's measures on certain waste and scrap imports. 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.

21.9. 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 especially with regard to all the relevant customs procedures.

21.10. Furthermore, the import ban for end-of-life vessels that China intended to put in place in 2019 would in all likelihood also undermine global efforts to upgrade ship recycling standards, as set down in the 2009 Hong Kong Convention. The EU asked for China's view on the rationale behind its measure, notably its links to the Hong Kong Convention, and if exemptions to the ban would or could be considered.

21.11. The delegate of Canada shared the concerns raised by previous speakers regarding China's restrictions on the importation of solid waste and resultant disruptions in trade and uncertainty for traders. China's prohibition on imports of recyclable post-consumer plastics, even those that met the standard applicable to the same products from industrial sources, should not be unnecessarily trade restrictive. Canada encouraged China to ensure that any trade measures implemented in pursuit of its objective to limit harmful environmental impact be the least trade restrictive possible.

21.12. The delegate of the Republic of Korea encouraged China to share with Members sufficient information on its relevant decisions, and also to implement its measures in the least trade restrictive manner. The impact of China's measures on trade in Korea's relevant domestic industries had already been substantial, and Korea would be carefully following any future developments.

21.13. The delegate of China stated that, 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. Accordingly, each Member was obliged properly to dispose of their domestically generated solid wastes. As the developing country with the largest population, it was imperative that China improve its domestic solid waste treatment and disposal while also restricting and prohibiting imports of solid wastes. Given the need to protect the environment and public health it was imperative to control and regulate imports of solid waste. In the adjustment process relative to its relevant policies, the Chinese Government would take into full consideration the demands of both domestic and international communities, coordinate economic growth and environmental protection, balance trade and non-trade interests, and safeguard a smooth transition policy.

21.14. Companies from many WTO Members had exported huge quantities of solid waste to China over decades and had, in consequence, gained enormous economic benefit. China hoped that these exporting Members would now actively shoulder their international responsibilities while at the same time making their due contribution. All Members should be working hard to reduce, reprocess, and recycle the waste produced within their own territory, thereby resolving the issue of waste material

in an appropriate manner, while also contributing to the global promotion of green, low carbon, sustainable development, and the creation of a clean and beautiful world.

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

21.16. It was so agreed.

22 INDIA – QUANTITATIVE RESTRICTIONS ON IMPORTS OF CERTAIN PULSES – REQUEST FROM AUSTRALIA, CANADA, AND THE UNITED STATES

22.1. The Chairperson informed the Council that, in communications dated 21 June 2018, the delegations of Australia, Canada, and the United States, respectively, had requested the Secretariat to include this item on the agenda.

22.2. The delegate of Australia expressed his Government's serious concerns over India's restrictions on imports of pulses. Since August 2017, Australia had made repeated representations to India about its trade restrictions, including at Prime Ministerial level. When Australia had first raised its concern, at the June 2018 Committee on Agriculture, India had said that it had recently lodged a notification of its quantitative restrictions to the Committee on Market Access.

22.3. India's notification on Quantitative Restrictions (QRs), dated 21 June 2018, contained a reference to its import licensing notification but failed to clarify the WTO basis for 'its QRs on certain pulses. However, India had declined to respond to Australia's questions on this matter at the meeting of the WTO Committee on Import Licensing on 20 April 2018.

22.4. In light of India's confusing replies to the questions addressed to it, Australia sought further clarification concerning the WTO basis for India's QRs, as well as about India's 100,000 tonne QR on peas, that had been announced on 25 April 2018, and that had lapsed on 30 June 2018, and in particular whether India's latest notification granted an additional quota, such as an additional 100,000 tonnes, or whether the original 100,000 tonne quantitative restriction applied from 25 April until 30 September 2018. However, with no warning notice, India had announced that its QRs on peas had been extended until 30 September 2018.

22.5. Australia believed that India's extension of the QR period without providing additional quota access might constitute an effective prohibition on imports. India should also clarify whether or not the 7% export incentive under the Merchandise Exports from India Scheme for exports of chickpeas, active from 21 March until 20 June 2018, had indeed now lapsed. Australia expected all WTO Members to take their obligations seriously and was closely monitoring developments in India's trade regime.

22.6. The delegate of Canada said that, as the largest supplier of pulses to India, Canada had been most negatively affected by India's recent measures to limit the import of pulses, which were an important source of protein for many Indian consumers. Since November 2017, Canada's exports value of pulses to India, including dry peas, had drastically declined. Canada had exported a monthly average value of $7.6 million in pulses to India from November 2017–April 2018, as compared to a monthly average value of $120.1 million during the same period of the previous year. Canada's average monthly value of exports of dry peas had dropped from $63.8 million to $3.6 million over the same period.

22.7. The elimination of quantitative restrictions was a fundamental principle of both the GATT and the Agreement on Agriculture. It was therefore disappointing that, on 25 April 2018, India had introduced a quantitative restriction on imports of dried peas (HS0713–1000) (through Notification No. 4/2015–2020). This QR, originally announced for the period from 1 April 2018 to 30 June 2018, had been extended through Notification No. 15.2015–2020, until 30 September 2018. The date of this notification had been extended, while the total volume associated with the restriction remained the same. Canada was not only disappointed with the extension of the restriction on imports of dried peas beyond the original termination date of 30 June 2018, but was also concerned by India's lack of transparency with regard to its QR restriction. Canada sought clarification from India on the WTO basis for its QR.

22.8. At the June 2018 meeting of the CoA, India had indicated that its QR on dried peas had been included in notifications submitted to the Committee on Import Licensing Procedures (CILPs) and the CMA. However, India's quantitative restriction on dried peas had not been listed in Section 1 of India's notification, document G/MA/QR/N/IND/2. Section 2 of this notification cross-referenced India's notifications to the CILPs and indicated that the "WTO Justification and Grounds for the Restriction" included in the notification was simply "GATT 1994". Canada looked forward to further discussion of India's notification at the next CMA meeting but, in the meantime, requested India to provide further detail on a specific WTO Agreement and provision under which its QRs on dried peas could be justified.

22.9. The delegate of the United States expressed her concern that, in 2017 and 2018, India had adopted a number of trade-distorting policies in relation to various pulses. These policies had included multiple increases in tariff rates, the introduction of quantitative import restrictions, and import-limiting licensing arrangements. In addition to the quantitative restrictions on certain pulses introduced in 2017, the Indian Ministry of Commerce and Industry had also published Notification No. 4/2015–2020, on 25 April 2018.

22.10. The United States asked India to provide clarity by answering the following questions. What was the basis for the introduction of these measures, and how could they be said to comply with India's WTO commitments? Were the notified quantitative restrictions announced in 2017 still in place? Did India have plans to institute additional QRs on imports of agricultural products and, if so, on which products?

22.11. Additionally, the US had not yet received responses to the questions that it had addressed to India at the CoA's February and June 2018 meetings, seeking clarification of its QRs.

22.12. The delegate of Ukraine shared the concerns of other Members. Ukraine sought clarification from India with regard to the measures at issue, which from a systemic point of view had resulted in a negative impact on trade. Ukraine called upon India to provide transparency and predictability in its trade policies.

22.13. The delegate of the European Union expressed concern over India's management of its pulse crop markets over recent months, the implications of which for trade and traders were severe. Furthermore, the EU was not convinced that the measures taken were in the long-term interests of pulse producers, including those in India. As a consequence of the increased duties on pulses, EU exports, mostly peas, had come nearly to a standstill; and EU farmers had been directly affected, since the prices for pulses in the European market had decreased as a consequence of India's measures. The EU was also concerned by India's QRs, and their implementation.

22.14. The delegate of New Zealand was concerned over the apparent limitation of a quantitative restriction, which would be in contravention of the rules set out in the WTO Agreement, and encouraged India promptly to bring its measures into conformity with the WTO's rules and principles.

22.15. The delegate of Singapore said that her authorities were closely monitoring the situation.

22.16. The delegate of the Russian Federation expressed his authorities' concern over the policy applied by India with regard to the import of yellow peas, whose import tariffs were increased by India, in November 2017, by up to 50%. In addition, in April 2018, India had introduced a QR on imports of yellow peas restricting to 100,000 tonnes the quantity of yellow peas allowed to be imported during the period from 1 April until 30 June 2018. Russia believed that WTO Members were not permitted to apply quantitative restrictions without proper justification, and requested India to indicate the rationale behind its measure, to confirm whether or not the measure were still in force, and to repeal the extension of the restriction.

22.17. The delegate of India said that India had already notified its measures to the CILPs, and the CMA, and that it also had responded to Members' concerns at the CoA's June 2018 meeting.

22.18. With India being the world's largest producer and consumer of pulses, the decision to impose a quota was based on domestic demand and supply situation, and was intended to alleviate the distress caused to small and marginal farmers by an influx of cheap imported pulses, and its consequent impact on food and livelihood security. It had been observed that in the case of certain

pulses, a mere increase in import tariffs was insufficient. The objective of India's agricultural policy was to balance the interests of consumers and producers.

22.19. The Wholesale Price Index (WPI) for pulses in India had dropped from 205.2 in December 2016 to 134.2 in December 2017, and had further dropped, to 120.8, in April 2018, revealing a sharp decline during this period. This fact showed that current prices of pulses in domestic markets were below those from the corresponding period of the previous year, and confirmed that the measures taken were in the overall interests of both consumers and producers. Therefore, the Government's imposition of QRs on pulses was intended to protect India's small and marginal farmers. Given the circumstances, the measure had to be imposed quickly; however, it was temporary in nature. The measure had been extended on 2 July 2018, for a period of three months, on certain varieties of pulses. No additional quota had been provided during the extension period. As requested by Australia, India would provide pertinent information in the CoA, and would also revert to the Council with its justification of the measure.

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

22.21. The Council so agreed.

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

23.1. The Chairperson informed the Council that, in communications dated 21 June 2018, the delegations of the European Union and Japan, respectively, had requested the Secretariat to include this issue on the agenda.

23.2. The delegate of Japan thanked China for the detailed explanation of its classification of Insulated Gate Bipolar Transistors (IGBT), and for having provided the relevant documents during the bilateral consultations. However, Japan still had a number of concerns and asked China to explain the HS transposition methodology it had used, based on document WT/L/995, and its reason, in particular, for China having chosen the fourth methodology, or the arithmetic average of the previous rates of duty, but not the other three methodologies recommended in the document. Japan also asked China to clarify its classification of IGBT-Intelligent Power Modules (IGBT-IPM) given that, in accordance with the WCO's classification opinions, these should have been classified as power modules under tariff line HS854239. However, China treated the IGBT-IPM differently, classifying it as IGBT-IPM, under HS854044, and imposing on it a 5% customs duty rate.

23.3. The delegate of the European Union recalled that this issue had been on the agenda of the Goods Council, and other WTO Committees, for a very long time. Nevertheless, she thanked China for its engagement on this issue, both bilaterally and in other contexts, such as the GAMS.

23.4. Following exchanges on this matter at the CTG, the ITA, and the MA Committees, China had finally provided its calculation method for the transposition of tariffs on MCOs, towards tariff heading 8542, under HS2017, for which the EU was grateful. Although the method that China had used was now clearer to the EU, a number of questions that had been raised at the last CTG meeting remained open. For example, why did China not make an ex-out for those lines that it had 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; and 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 outstanding questions: Why had China applied two separate averages to MCOs? Could China explain the criteria that it had used to allocate the 3.2% and 3.4% to the different products? In addition, one specific line – IBGT tariff line HS 8504.40.91 – had been treated differently. Assuming that IGBT had been considered as an MCO, could China explain why neither the 3.4% nor the 3.2% average duty rate had been applied, but why a duty rate of 5% had been applied instead?

23.5. The delegate of the United States echoed Members' previous statements, and reiterated US concerns over a change in China's applied duty rates for semiconductor products, an issue previously raised by her delegation in this Council, the ITA Committee, and the CMA.

23.6. The delegate of Switzerland registered Switzerland's ongoing concern over this issue.

23.7. In its ITA II schedule in HS2007, China had made a clear commitment to bind duties at zero for all electronic integrated circuits classified under HS heading 8542. Switzerland therefore invited China to preserve the compatibility of its methodology with the WTO's rules, and to provide additional explanations in this regard.

23.8. The delegate of the Republic of Korea shared the concerns of other Members. Korea believed that HS transposition was inevitable whenever new HS nomenclature was introduced; however, this process should fully respect the spirit and principle of the ITA by maintaining the existing balance of commitments among Members. It was regrettable that China had not yet provided sufficient information on this issue. Korea hoped that China would soon clarify all of the concerns that had been raised by Members.

23.9. The delegate of Chinese Taipei indicated that her delegation continued to be concerned over this issue, which had been repeatedly raised at the ITA and MA Committees. Chinese Taipei continued to question if China's measure was in conformity with WTO rules and China's commitment under the Agreement on ITA Expansion. She asked China to provide justification for its measure, and also to provide the necessary recent import data for the MCO products at issue. She urged China immediately to remove the tariff rates applied to imports of the MCO products at issue.

23.10. The delegate of Singapore again registered its interest in this issue.

23.11. The delegate of China said that his delegation had taken note of Members' concerns and questions. China had responded on this issue at previous meetings of the CMA, the ITA, and this Council, and had also conducted bilateral consultations with several Members in order to respond to and clarify their technical questions.

23.12. He reiterated that China was a major trading partner in IT products, that it had fully participated in the ITA Expansion negotiations, and that it had been seriously implementing its commitments. In accordance with the results of the ITA Expansion negotiation, MCO products covered 17 ex-out tariff lines in China's tariff nomenclature of 2007. These ex-out tariff lines had been changed to five national tariff lines in the HS 2017 transposition, in accordance with the WCO HS amendment. As such, specific parts of several subheadings had been regrouped into new subheadings.

23.13. Given that it had been impractical to establish reasonably accurate trade allocations and, pursuant to document WT/L/995, China had adopted to use the fourth methodology, which consisted in the application of the simple average of previous rates of duty. Such a methodology was fully consistent with WTO rules on HS2017 transposition. Technically, it was unavoidable to increase duty rates on some products using the simple average method, while duty rates on other products were reduced. In this case, even the duty rates on 10 MCO products were relatively higher compared to those in HS2012, and the duty rates on 7 MCO products had been substantially reduced.

23.14. China had undertaken seriously, and would continue to fulfil, as scheduled, its tariff reduction commitments undertaken in the ITA expansion. In this context, the linear reduction of duties on MCO products would be implemented through a five-year period. According to China's tariff reduction commitments undertaken in the ITA expansion, all duties on the MCO products would be eliminated by July 2021.

23.15. The questions raised by Members would be conveyed to Capital, and clarifications would be provided in due course.

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

23.17. The Council so agreed.

24 CHINA – NEW EXPORT CONTROL LAW IN DRAFT – REQUEST FROM THE EUROPEAN UNION AND JAPAN

24.1. The Chairperson informed Members that, in a communication dated 21 June 2018, the delegations of the European Union and Japan, respectively, had requested the Secretariat to include this issue on the agenda.

24.2. The delegate of Japan referred again to China's draft new Export Control Law, released by the Chinese Government in June 2017. The draft law, currently being considered by the National Congress, raised several concerns, including that it could establish a wider scope of covered products subject to restriction, including the protection of important strategic raw materials, that the requirement for disclosure of technological information at export could be more stringent than necessary, and that the draft law also provided for response measures that could be taken against discriminatory export control measures introduced by other countries. Such measures would not be consistent with international export control regimes.

24.3. At the CTG's meeting of March 2018, China had indicated that it would comply with the ruling in the DS case concerning rare materials, including rare earths, and that it would also abide by international regimes in terms of requirements for disclosure of technological information. Japan welcomed these explanations. Nevertheless, Japan asked China to clarify the scope of the products subject to control, the types of documents required for export permission, and when and how the relevant authority would implement these requirements.

24.4. With regard to response measures, Japan believed that these should be eliminated as they could be considered to be unilateral measures not subject to national security. Japan therefore requested the Chinese authorities to take into account its concerns with regard to this draft law, and to provide an update on how China would reflect the public comments, and the comments made at this Council, in its draft law. Japan asked China to confirm that the draft law would be reviewed before being submitted to Parliament, and encouraged China to submit its implementation schedule in a transparent manner, including its detailed enforcement declarations. Japan also urged China to ensure a sufficient transition period for the law's implementation.

24.5. The delegate of the European Union noted that the EU had submitted its comments to China in July 2017, during the consultation period. 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 nevertheless contained certain provisions that required further clarification in terms of their alignment with international security standards, and their conformity with the WTO's multilateral trade rules.

24.6. 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 being an objective of Chinese export controls, and a basis for export control decisions and, in particular, of its compatibility with international law and China's WTO commitments. 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, the EU would appreciate receiving further information from China about the reference to their use as retaliatory measures against "discriminatory export control measures", including whether such a principle were compatible with China's WTO commitments and international law.

24.7. The EU noted that the scope of the draft law included military and dual-use items, but also potentially other items, and asked if the scope of controlled goods might be set too broadly, especially in light of the reference, in the draft explanation, to the "protection of important strategic rare materials". The EU was concerned about such scope, and also that unnecessarily excessive technology disclosure might be required as part of the licence application process set out in Article 33

of the draft, and hoped that the written comments that the EU had provided would be taken into consideration when developing this particular aspect of the draft legislation.

24.8. At the CTG's previous meeting, China had explained that it had introduced changes to the draft based on the stakeholder input that had been received in 2017. The EU had been among those that had submitted their comments, raising some of the above-mentioned issues, and would appreciate to receive further information from China in this regard and, in particular, concerning any changes that may have been introduced, and what China's timeline was for finalizing this draft law. The EU looked forward to further discussions with China with a view to achieving a mutually beneficial convergence of export controls in line with international rules and standards.

24.9. The delegate of the Republic of Korea indicated that his country had systemic concerns over the potential impact of China's draft law. When introducing the law, China should ensure its consistency with relevant international law, including WTO rules.

24.10. The delegate of China said that his delegation had taken note of the statements made, and of the systemic or specific concerns and questions that had been raised. As already explained at the CTG's previous meeting, the draft Export Control Law had been published on the internet, for public comment, in June 2017. Based on the comments received from the general public and the relevant authorities, China's Ministry of Commerce had introduced further modifications and improvements into the draft law. In February 2018, the draft had been submitted to the State Council, while the Ministry of Justice had conducted its legislative review of the draft.

24.11. For China, it was clear that opening up its nation to the world was a fundamental national policy. This open policy would not change because China attached great importance to creating a non-discriminatory and transparent business environment, and to adhering to WTO principles, including national treatment, while treating all market entities, including foreign companies, in a fair and equitable manner. The purpose of this draft Export Control Law was to safeguard the rights and interests of all parties; therefore, it did not discriminate against foreign companies. As a matter of fact, in the legislative development of this Export Control Law, China had followed an open and democratic process, drawing on international experience and best practice. Therefore, China had welcomed suggestions on how to improve this legislation, which would be submitted to the relevant Chinese legislative authorities in the follow-up to the legislative process.

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

24.13. The Council so agreed.

25 THE RUSSIAN FEDERATION – TRADE RESTRICTING PRACTICES – REQUEST FROM THE EUROPEAN UNION

25.1. The Chairperson informed the Council that, in a communication dated 21 June 2018, the delegation of the European Union had requested the Secretariat to include this issue on the agenda.

25.2. The delegate of the European Union said that the EU had no other option but to raise most of the same issues that it had raised already at the CTG's previous meeting, since there had been little change since that time.

25.3. The cement certification requirement, introduced in March 2016, had continued to block EU exports to Russia; importing companies still faced difficulties in obtaining certificates; and systematic border controls amounted to clear discrimination. This issue had been raised at least six times by the EU in both the TBT Committee and the CTG. 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; however, the technical regulation had still not been adjusted. EU cement exports (with the exception of white cement, which was required by Russian industry) had been blocked since the introduction of the requirement. The EU had requested Russia to correct this discriminatory dimension and, in doing so, to respect all of the WTO's rules, including in terms of notification to other WTO Members, and 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 currently under preparation at EAEU level.

25.4. The requirement of "good manufacturing practice" (GMP) certificates for pharmaceuticals, which had still not yet been notified to the WTO, also remained an important obstacle to imports into the Russian Federation of pharmaceutical products. The procedure to obtain GMP certificates was more complicated for importing companies than for domestic producers because there were too few inspectors. Moreover, obtaining GMP certificates was necessary before a request could be made for a marketing authorization, and this was not the case for domestic producers. Since the Duma had approved amendments to Federal Law No. 61, the EU requested the Russian Federation to update Members on its schedule for the entry into force of such amendments, and also to ensure that there would be a smooth transition period for the industry and stakeholders concerned.

25.5. Concerns still remained over the Russian Federation's embargo on fishery products from Estonia and Latvia that had been in place since June 2015, allegedly for SPS reasons. The EU had raised this specific trade concern in the SPS Committee on several occasions, but without having ever obtained a proper explanation and reply from the Russian Federation.

25.6. The Russian Federation's wine taxation regime, as modified in 2017, had also not evolved positively. Indeed, in mid-2017, Russia had passed a law establishing an excise duty taxation regime that was heavier on imported than on domestic wines; only GI wines could benefit from lower taxation rates, but only domestic Russian wines would qualify as GI wines.

25.7. An additional concern was the increasing difficulty that importing companies (for goods), and foreign companies (for services), faced in terms of participation in Russian SOEs' purchases. A series of measures had been introduced since 2015, to restrict the access of importing and foreign companies to these purchases, with the most recent dating to December 2017, which had introduced 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.

25.8. Last but not least, another issue of concern was 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 had allowed the Russian Federation to import car parts free of duty on condition of local content requirements, an exemption that was due to end by 30 June 2018. The EU urged Russia to inform WTO Members, firstly, of its decision effectively to put an end to the current WTO-incompatible regime and, secondly, to give information on the measures planned for the post-30 June period, including adjustment to the EAEU customs codes. The EU was of the view that the whole regime needed to be removed because selective amendments would not be sufficient to make it WTO-compatible.

25.9. The delegate of the United States echoed the EU's concerns and reminded delegations that the US had itself raised similar concerns, and on the same range of issues, at previous meetings of the CTG; however, those concerns had remained unaddressed. The US would continue to monitor this situation, and requested the Russian Federation to address the concerns that had been raised on these issues.

25.10. The delegate of the Russian Federation 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 had ended on 1 March 2018, and the final text was being finalized, taking into consideration all of the comments that had been received during the public consultation process. The draft provided, *inter alia*, for elimination of additional inspection controls. Russia expected that this draft would be adopted by end-summer 2018.

25.11. On GMP certification, she assured interested Members that the GMP certification system was fully compatible with international standards and recommendations in this area. The State Institute of Pharmaceutical Products and Good Practice was the body authorized to conduct GMP inspections. She noted that, during the period 1 January 2016 to 30 October 2017, the Institute had conducted 738 inspections for compliance with GMP rules, including 626 inspections of foreign manufacturers,

and 112 of domestic manufacturers. The number of inspections of foreign manufacturers in 2016 had been 188, and 438 during the first ten months of 2017. Statistics therefore demonstrated that the number of inspections of foreign manufacturers was almost six times the number of inspections of domestic manufacturers.

25.12. In addition, the number of foreign manufacturers' inspections in 2017 had increased and stood 2.5 times higher compared to 2016.

25.13. The schedule for GMP inspections was published on the website of the Ministry of Industry and Trade, and as from February to August 2018 it had included more than 300 inspections.

25.14. On the step-by-step registration procedures raised by the EU, she indicated that such procedures had been streamlined. The draft amendments to the Federal Law on the circulation of medicines had been adopted by Federal Law No. 140-FZ, which had entered into force on 15 June 2018. To initiate the medicine registration process, the amendments allowed for the provision of either a copy of the GMP certificate, or else a copy of the decision of the Ministry of Industry and Trade.

25.15. In addition, the amendments allow for a GMP certificate not to be provided, and for repeat inspection in the case of changes in the quality of the medicine, and/or its methods of control. These changes had been designed to simplify and accelerate the registration of new medicines on the Russian market.

25.16. Turning to the regime for fish imports from Estonia and Latvia, she indicated that good progress had recently been made. On 15 December 2017, following inspections carried out in 2016, Russia's veterinary service lifted its restrictions on one Estonian and one Latvian establishment. Results of the above-mentioned inspections would be sent to the EU competent authorities in due course.

25.17. On state-owned enterprises and industrial assembly issues, the Russian delegation had already provided WTO Members with the necessary clarifications at the TRIMs Committee meeting of1 June 2018. She referred interested Members to Russia's interventions at that meeting.

25.18. With regard to wine taxation, the Russian Government was aware of EU concerns, and continued its elaboration of a transparent and sustainable way to develop the use of geographical indications protection by national producers of high-quality wine.

25.19. The Russian delegation stood ready to discuss with interested Members and to address all of the issues that had been raised.

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

25.21. The Council so agreed.

26 UNITED STATES – PROHIBITIVE PROPOSAL ON COMMUNICATION EQUIPMENT OR SERVICES RELEASED BY THE FCC – REQUEST FROM CHINA

26.1. The Chairperson informed Members that, in a communication dated 21 June 2018, the delegation of China had requested the Secretariat to include this issue on the agenda.

26.2. The delegate of China observed that China had noticed, in May 2018, that the US Federal Communications Commission (FCC) had issued an announcement on the Federal Register that intended to prohibit the use of the Universal Service Fund to purchase equipment or services from any communications equipment or service providers identified as posing a national security risk to the communications networks or the communications supply chain.

26.3. The FCC proposal would restrict the commercial purchases of telephone, broadband services, and healthcare providers. China called upon the United States to adhere to WTO rules during the proposal's legislation process, especially by ensuring the transparency of the measure and its compliance with the MFN principle. China also noted that the proposal would violate the

MFN principle if the measures provided a nationality-based discriminatory treatment in law or in practice.

26.4. China also noted that the US had recently launched a series of so-called National Security measures, including Section 232 measures on imported steel and aluminium. China was seriously concerned over this policy trend and was opposed to protectionism under the guise of National Security.

26.5. During the 2016 G20 Summit, the Chinese and US leaders had reached consensus on and committed to the following declaration, quoted in relevant part: " … consistent with WTO agreements, [to] commit that their respective generally-applicable information and communication technology (ICT) security-related measures in commercial sector (1) should treat technology in a non-discriminatory manner, (2) are not to unnecessarily limit or prevent commercial sales opportunities for foreign suppliers of ICT products or services, and (3) should be narrowly tailored, taking into account international norms, and be non-discriminatory, and not imposing nationality-based conditions or restrictions, on the purchases, sales, or use of ICT products by commercial enterprises unnecessarily".

26.6. China therefore urged the US to honour this commitment, and to ensure the compliance of its FCC measures with WTO rules.

26.7. The delegate of the United States noted that the proposed rule raised by China, issued by the US Federal Communications Commission (FCC), dealt exclusively with matters of national security. In particular, the proposed rule was intended to ensure that universal service funds were not spent on telecommunications equipment or services from suppliers that posed a national security threat to the integrity of communications networks or the communications supply chain. Such a rule would fall squarely within the WTO exception for essential security interests. Indeed, this Council would not expect any Member to procure goods or services the use of which it determined would pose a national security threat.

26.8. The proposed rule-making had been conducted through a transparent and open process. The FCC had released a lengthy description of the proposed rule on its website, including an extensive discussion of its rationale, and had welcomed comments from the public up until the close of the comment period just a few days before.

26.9. Since the FCC was an independent regulator, she referred interested Members to the fcc.gov website, where further updates on this matter would be posted as they became available.

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

26.11. The Council so agreed.

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

27.1. The Chairperson informed the Council that, in a communication dated 21 June 2018, the delegation of the United States had requested the Secretariat to again include this issue on the agenda.

27.2. The delegate of the United States said that the US considered it necessary to continue raising its concerns over the trade-related aspects of the African Union's (AU) Decision, unanimously adopted by Heads of State in July 2016 in Kigali, for AU members to finance 100% of the AU's operational budget, 75% of its programme budget, and 25% of the AU Peace Fund by 2020. The US had repeatedly expressed its support for the AU's self-financing initiative, including efforts to fund 25% of the AU Peace Fund. However, it did not support the use of trade measures to fund the Decision. And it seemed that, in order to generate funds to implement the Kigali Decision, some AU members were already implementing new country-specific import levies, while others were contemplating doing so. In all likelihood, these levies contravened the AU's WTO obligations.

27.3. As stated at the CTG meeting of March 2018, the US had understood that the following countries, at a minimum, were already collecting a 0.2% levy on imports onto the Continent: Cameroon, Chad, Côte d'Ivoire, Djibouti, Ethiopia, Gabon, the Gambia, Guinea, Kenya, Morocco, the Democratic Republic of the Congo, Rwanda, Sierra Leone, and Sudan. Additionally, as of earlier this year, at least, Benin, Ghana, Malawi, and Senegal had initiated internal legal and administrative processes to allow for the implementation of such a levy.

27.4. The more than 40 AU members that also belonged to the WTO, and the nine that were in the process of accession, needed to apply any funding mechanism, including an import levy, in a transparent manner and in line with their WTO commitments. The lack of transparency over the actions that these countries were taking in this area was a cause for concern. Was each country applying the levy to all goods, or were there exclusions? Was it correct that intra-African trade was excluded from the levy? Were exporters from African FTA partners, including, for instance, the European Union, excluded from the levy? Were exporters from countries with significant new investments on the continent, like China, excluded from the levy? Where were levy-generated funds directed – to the Peace Fund or to the African Union operational and programme budgets?

27.5. The United States had repeatedly requested transparency from AU members in this Council but to date had received none, and this despite the fact that some countries had for months been applying non-transparent levies against US exports and, presumably, against the exports of others outside of Africa, too. When would AU WTO Members applying a levy provide details of it to this Council? The US would continue to raise this issue, as appropriate, at multiple venues, including at the General Council, at country TPRs, and in WTO accession negotiations, until it was assured that AU members were abiding by their WTO obligations. The US also encouraged any AU member country applying the levy to begin by providing to all WTO Members a basic level of transparency, and to do so as soon as possible. The US would welcome and encourage discussions between Capitals on non-trade measures that could be used to accomplish the same policy objectives.

27.6. The delegate of the European Union recalled that on previous occasions her delegation had strongly supported the purpose and cause of the 0.2 % levy, intended to enable the AU to finance its activities in support of African countries. However, AU Members should provide more information about this process, and on the measures that they had already adopted or envisaged adopting. The EU attached utmost importance to transparency and had encouraged AU WTO Members to notify the measures in question, which should be WTO-compatible.

27.7. The delegate of Canada reiterated Canada's support for AU efforts to increase African resource mobilization to fund the AU's operations and programmes, and to Africa's regional integration and free trade efforts in general. In this regard, Canada also welcomed the signature of the AU Free Trade Area. At the same time, Canada encouraged AU members to engage in discussions with other WTO Members to ensure that any current or future funding mechanism or implemented levy would be transparent and WTO consistent.

27.8. The delegate of Japan also supported the objectives of the AU's peace support operation. However, the implementation status of its Decision on the 0.2% levy was not clear, and generated concern over its WTO consistency. Japan requested the AU's WTO Members to provide detailed information on its status.

27.9. The delegate of South Africa, on behalf of the African Group, indicated that South Africa had taken note of the statements made and questions posed regarding the AU's import levy. The message would be duly conveyed to the African Union.

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

27.11. The Council so agreed.

28 UNITED STATES – MEASURES ON AVIATION SECURITY EQUIPMENT – REQUEST FROM CHINA

28.1. The Chairperson informed the Council that, in a communication dated 21 June 2018, the delegation of China had requested the Secretariat to include this issue on the agenda.

28.2. The delegate of China said that the US Transportation Security Administration (TSA) was the US authority responsible for certifying civil aviation security equipment (TSA certification) and for obtaining airport security equipment. One of the conditions on the procurement of certain security equipment was to obtain TSA certification. However, in the case of applications for TSA certification submitted by Chinese enterprises but refused by the US authority, the US authority had not explained the specific reasons for its refusal, nor responded to any further enquiries; instead, it had simply informed applicants by e-mail that their applications had not been accepted.

28.3. Consequently, Chinese exports of aviation security equipment to the US and other countries with which there existed transportation cooperation with the US were blocked. Furthermore, as TSA certification was to be adopted by more countries in future, manufacturers of Chinese aviation security equipment were facing difficulties in exporting to the global market.

28.4. China believed that the US TSA certification was inconsistent with the TBT Agreement on the grounds that it was inconsistent with the conformity assessment procedures of central government agencies. In addition, the TSA certification body communicated only by e-mail, and no longer accepted certification applications, including for aviation security equipment from Chinese companies. The TSA had also failed to respond to China's further enquiries. The TSA certification also lacked transparency given that it had never been notified to the TBT Committee. In short, the TSA certification was inconsistent with the principles of the TBT Agreement, which required Members not to impose unnecessary obstacles to trade.

28.5. The United States had stated that TSA certification was closely related to TSA procurement and should be seen as a part of government procurement; however, China believed that TSA certification and TSA procurement constituted two different practices. As TSA certification had a significant influence on markets outside the US, many applications for TSA certification were not applications for TSA procurement. Therefore, TSA certification was independent from TSA procurement and should not be treated as a government procurement exception.

28.6. China called upon the United States to follow and abide by the relevant provisions and principles of the TBT Agreement and to treat Chinese companies and products in an equal manner, including by providing national and MFN treatment, and by eliminating these technical barriers to trade.

28.7. In addition to US explanations provided in bilateral consultations, and at previous TBT meetings, China looked forward to receiving further information from the US on these issues.

28.8. The delegate of the United States said that the aviation security measures raised by China at this meeting, and at the previous TBT Committee meeting, dealt with national security matters, and airplane security, in particular. China's concerns should therefore be addressed to the US Transportation Security Administration, the competent authority on these issues. Being security-specific, the issue should not be addressed at this Council.

28.9. The delegate of China expressed China's disagreement with the US view that this was a national security issue. The US was not the only Member to face security issues – China faced them too, although did not, on these grounds, prevent certification or procurement of US aviation security. Furthermore, Chinese aviation security equipment was present worldwide, including in the European Union. Chinese aviation security equipment met all of the most stringent safety technical standards and requirements and had been recognized on the EU and other global markets on that basis. Therefore, China believed that the security issue should not be used as an excuse to restrict normal bilateral trade relations in this area.

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

28.11. The Council so agreed.

29 WORK PROGRAMME ON ELECTRONIC COMMERCE

29.1. The Chairperson recalled that, in the Ministerial Decision adopted at MC11 in Buenos Aires, Ministers had agreed to maintain the existing Work Programme on E-Commerce (Work Programme

or WPEC), and to endeavour to reinvigorate the WTO's work on E-Commerce. The Ministerial Decision had also instructed the General Council to hold periodic reviews in its sessions of July and December 2018 and 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. Since the CTG had again been tasked to discuss the E-Commerce aspects relating to trade in goods, in order to fulfil this mandate, the E-Commerce issue was a standalone agenda item. He therefore invited delegations to continue to express their opinions and to make suggestions as to how to work on the preparation of the periodic review to be held in the General Council at its session of July 2018. In order to fulfil this mandate, it was also his intention to submit to the General Council a factual report under his own responsibility. He informed delegations that he would also report to the Council on the informal consultations that he had held on a possible workshop on "Cross Border E-Commerce and Trade in Goods".

29.2. The delegate of China briefed delegations about the Workshop on E-Commerce for Development under the Multilateral Trading System that had taken place in China from 8 to 21 May 2018, and which had been sponsored by the Chinese Government. Twenty-five participants, including Vice-Ministers and DGs from Capitals, as well as Ambassadors and senior diplomats from Geneva Missions of 15 developing Members, had attended the event.

29.3. Over the two-week workshop, seven thematic discussions and 11 field trips had been organized in Beijing, Shanghai, and Hangzhou. The participants had interacted with relevant stakeholders in China's E-Commerce ecosystem, including government departments, E-Commerce platforms, logistics companies, and e-payment service providers. A snapshot-type although comprehensive review of E-Commerce developments in China had enabled participants to develop a clearer understanding of E-Commerce as a development enabler. Specifically, at government level, seminars had been arranged on the drafting of E-Commerce Law, Customs' experiences in Cross-border E-Commerce (or CBEC) regulation and facilitation, and the overall development of E-Commerce in China. The speakers from the Standing Committee of the National People's Congress (NPC), General Administration of Customs and Ministry of Commerce, had shared the legislative institutional design and regulatory concept as well as innovative practices to enable E-Commerce to promote development in China. Visits had also been made to the Shanghai Pilot Free Trade Zone and Hangzhou Comprehensive Pilot Zone for CBEC, where the "single window" CBEC approach to trade facilitation and streamlined import and export procedures were demonstrated.

29.4. At the business level, visits had taken place to E-Commerce platform companies of various scale, including Alibaba, Netease, JD.com, and Jolly Information Technology. By exploring their operational models and business development, participants had gained further understanding of how Chinese companies integrated into Global Value Chains through Cross-border E-Commerce (CBEC), and how the large platforms had been helping MSMEs, women, and young entrepreneurs to sell and buy globally and benefit from inclusive trade. Alipay and WeChat Pay had elaborated on their e-payment services and had also given a demonstration in supermarkets of how to use payment apps for daily consumption. YTO and JD had arranged tours to their logistics facilities and command centres, while sharing their business philosophy and development prospects. Participants had also visited the Infrastructure Company Huawei, learning about the latest communication technologies and their development orientation, as well as about how Huawei was helping African countries in the construction of their telecommunications infrastructures. A clearer picture had also been presented of the important supporting role played by business in E-Commerce development.

29.5. At the level of International Organizations, WCO Deputy Secretary General Chapa had introduced the WCO's work on promoting CBEC, and an expert from the ITC had shared the latest research and reaffirmed the inevitable links between E-Commerce and development. Visits had also been made to the Operation Centre of the Asia-Pacific Model E-port Network (APMEN), which had displayed how APEC promoted the interconnection of e-ports in the region and thereby improved the level of trade facilitation. The valuable practices of these international organizations had provided valuable input for the Workshop discussions.

29.6. He indicated that China's position remained consistent in terms of valuing and supporting multilateral discussions on E-Commerce that were centred upon development. China had reiterated in the CTG and other relevant WTO bodies that E-Commerce had the potential not only to help the WTO to remain relevant by responding to business needs, but also to assist MSMEs, women, and young people in developing Members to participate in international trade and board the high-speed train of economic development.

29.7. In order to share the insights of the Workshop with the broader Membership, the Friends of E-Commerce for Development (FED) had held a seminar in Geneva on 28 June 2018. Three experts from Alibaba, Huawei, and YTO had been invited to make presentations on platforms enabling SMEs, E-Commerce infrastructure, and E-Commerce logistics, and many Workshop participants had also shared their thoughts in this regard.

29.8. As a developing country and a member of the FEDs, China indicated that it would continue to contribute to capacity building, within its capabilities, and to share its national experiences with other WTO developing Members. With 30 million people yet to be lifted from poverty, China faced a huge development divide between its urban and rural regions, and between east and west; therefore, development remained at the top of China's agenda. However, China had not waited until everything had been ready before embracing the opportunities provided by E-Commerce and, since 1998, had witnessed the transformation of E-Commerce from a little-known concept to a way of life in China today. China would be happy to continue to share with fellow Members insights into how it had benefited and what it had learned in the course of its development of E-Commerce.

29.9. During the course of the Workshop and the follow-up seminar, many participants had also shared information concerning the status of E-Commerce development in the context of their own economies, and their success stories and constraints, which had thereby made the discussion a fully interactive exercise that had contributed to exploring, under the MTS, how best to improve and benefit from E-Commerce to promote development, while bearing in mind China's specific conditions. China was looking forward to more of such in-depth information-sharing opportunities and was likewise hoping to see more Members seize the development opportunities presented by E-Commerce with a view to achieving the objective of inclusive development.

29.10. China considered it worthwhile to maintain and reinforce the momentum of multilateral discussion on trade-related aspects of E-Commerce in this and other relevant WTO bodies. Regarding the CTG, he asked the following questions. What could be done to improve the efficiency of internet-enabled cross-border trade in goods? What were Members' best practices to further facilitate cross-border E-Commerce? China welcomed constructive input from Members in order for Members to deepen their common understanding of these issues from various perspectives.

29.11. The representative of Pakistan thanked China for the opportunity provided to Pakistan to benefit from the two-week workshop referenced above; this had been an enriching experience that had allowed the participants to witness first-hand how E-Commerce and development had truly come together in the wake of Chinese efforts.

29.12. As coordinator of the FEDs, Pakistan had considered that this enabling feature of E-Commerce for Development had been striking. One lesson learned among many, was that E-Commerce thrived when all segments of the economy came together to make it effective; in particular, this meant the coming together not only of the enabling services of E-Commerce, such as financial payment systems, but also the logistics, technology, the communication networks, and first and foremost, the production channels for cross-border delivery of products through E-Commerce. The collective impact of these elements became more pronounced when micro, small, and medium-sized enterprises gained global connectivity and thereby helped to lift scores of people out of poverty by creating new jobs.

29.13. On the request of many delegations that could not attend the workshop in May, the FED had hosted, along with China, a seminar for sharing with Members the various experiences; this seminar was well attended.

29.14. The delegate of Australia thanked China for its presentation and for its willingness to share its experiences under this agenda item. Australia welcomed the discussions in the CTG under the 1998 Work Programme and would continue to engage with Members on the relevant issues as they were raised.

29.15. The Chairperson, in the absence of further interventions, and as he had indicated in his introductory remarks that he would, then reported to the Council on the internal consultations that he had held in May and June 2018 on a possible workshop on cross-border E-Commerce and Trade in Goods. In this regard, he recalled that at the last CTG meeting, on 23 and 26 March 2018, under the agenda item on E-Commerce, it had been proposed that a "Workshop on Cross-Border

E-Commerce and Trade in Goods" be organized this year, under the aegis of the CTG. Various Members had supported this initiative and, since there had been no opposition signalled to it, his predecessor had indicated that he, as incoming Chair of the CTG, should hold consultations in this regard.

29.16. Consequently, in a fax dated 8 May 2018, he had invited delegations, acting in some cases also as group coordinators, to an initial consultation meeting to share their preliminary views on this proposal, including on certain elements of the proposed workshop, in particular with regard to possible themes and speakers to be included in an initial agenda; and a possible date for the workshop and, in particular, whether the workshop should be held back-to-back with the CTG's autumn meeting.

29.17. A first round of informal consultations had taken place on 16 May 2018 and, having heard Members' views on various aspects, he concluded those consultations by noting that there had appeared to be general support for such a Workshop, even if many delegations were clearly of the view that it would have been helpful to have first received a draft programme in order to have facilitated discussions on possible themes and speakers.

29.18. China, as the Member that had originally proposed this Workshop, had requested the Secretariat's assistance in elaborating a first version of a draft programme. A draft programme had subsequently been elaborated that had attempted to take into account the various points that had been raised during the consultations. These had included the fact that the Workshop should be a WTO event but nevertheless afford Members an opportunity to get a sense of the work being done by other International Organizations, such as the WCO, the UPU, the OECD, UNCTAD, etc.; that it should also afford Members an opportunity to share information, experiences, and practices; that it should cover the development component and related aspects; and that it should also consider the implications for MSMEs for both developing and developed Members.

29.19. The idea had been to revise the initial draft programme on the basis of comments provided by delegations during a second round of informal consultations. In this vein, the same delegations, including again the Group Coordinators, had been invited to attend a second round of consultations on 20 June 2018.

29.20. Comments that had been received from Members during the second round of consultations included the following: the workshop should not duplicate other E-Commerce events; the draft programme should be streamlined and reduced to a one-day event; an information session dedicated to E-Commerce discussions at the WTO, initially intended for Capital-based officials from developing and LDC countries, whose participation would be funded by the ITTC, should instead be open to all participants, and should also include information on the Joint Statement Initiative on E-Commerce. At the same time, concerns were voiced over the process and substance of the workshop. The point was made that the purpose of the workshop was unclear, and that the draft programme seemed to be based on a flawed premise that goods purchased online should enjoy a special status at the border for customs purposes. Also, an additional concern was that, contrary to what may have been understood, the process seemed to suggest that Members had already agreed to the idea of a workshop, when this was in fact not so.

29.21. In light of these comments, he had considered it prudent not to circulate any draft programme for discussion by the Council, but rather to limit himself only to reporting, at this meeting, on the discussions that had taken place during these preliminary consultations.

29.22. The delegate of China thanked the Chairperson for his report and for organizing these rounds of consultations for the CTG–E-Commerce Workshop. China also thanked the Secretariat, for having prepared the draft agenda, and Members, for sharing their various comments and perspectives. China believed that E-Commerce was essential to achieving the development objectives in the WTO, and also for E-Commerce-enabled trade in goods to contribute to the participation and integration of developing countries into global markets and the digital age. Therefore, China considered that such workshops were necessary in the context of the CTG, and suggested that a future workshop focus on cross-border E-Commerce in Goods, taking into consideration the valuable work undertaken not only at the CTG, and in other WTO Committees, but also the work being carried out in such international organizations as the WCO and the ITC, for example.

29.23. The delegate of Chinese Taipei thanked the Chair for his report, and indicated that her delegation had already made various comments on this subject during the informal consultations. Her delegation believed that the internet had changed the landscape for doing business, and that it was now necessary to analyse the fundamental differences between E-Commerce and traditional trade.

29.24. The various forms of barriers to traditional trade, like customs duties, non-tariff barriers, or others, usually took effect at or just after a border. However, the barriers to digital trade and E-Commerce via the internet were very different. They were usually apparent during the early stages in the transaction, in the areas of price comparison and deciding where to place an order. On process, she noted that the issue had apparently attracted the attention of the broad Membership; therefore, informal consultations on this issue, and any other matter concerning the workshop, should advance in a spirit of transparency and be open to all Members.

29.25. The delegate of the United States thanked the Chair for his report and indicated that it might be of interest to Members to know that the US was one of the delegations that had expressed concerns with regard to process; the US likewise had questions regarding the specific objective of this proposed workshop.

29.26. The US believed that many previous events had effectively covered similar topics and, at this point, they were unconvinced that this workshop was in fact additive. However, if there were to be a consensus among Members to organize a workshop addressing the interests of all Members, the US believed that discussions should begin on the basis of a Member-driven consensus process, and that a new programme should be developed in an inclusive and bottom-up manner. If the Chair intended to continue holding consultations on such a workshop she would suggest that these be carried out in an open-ended format so that all Members could participate and so that the development of such a workshop would then indeed be a Member-driven process.

29.27. The delegate of the European Union thanked China for its report on the workshop that had taken place in Beijing, and also for its proposal for a workshop on cross-border E-Commerce and trade in goods. As indicated in earlier consultations, the EU was willing to work with others to make the workshop relevant and interesting, and had put forward various suggestions on how to streamline the programme while at the same time broadening the scope of the discussion. The EU looked forward to continuing to exchange ideas on the workshop with other Members on the basis of a revised draft programme.

29.28. The delegate of Japan indicated that all WTO Members had agreed in Buenos Aires to reinvigorate the work being carried out under the 1998 Work Programme. Thus, Japan supported any suggestions that were in line with that decision. On the workshop suggested by China, Japan positively evaluated the suggestion, considering it a concrete suggestion in line with the Work Programme of 1998. Once the workshop had been agreed, the agenda should be formally or informally discussed among Members in a transparent manner. Japan was committed to actively participating in that discussion.

29.29. The delegate of the Republic of Korea thanked China for sharing information on the E-Commerce Workshop that had been held in Beijing, and thanked the Chair for holding informal consultations on a possible workshop under the WPEC. Korea was generally supportive of the idea of holding an E-Commerce Workshop, and hoped that the current proposal would be developed in line with the Work Programme adopted in MC11. Korea remained engaged to develop the CTG Workshop programme with other Members.

29.30. The Chairperson thanked delegations for their interventions and, in light of Members' comments, concluded that he should continue to hold consultations, in open-ended mode, with interested delegations on this issue. He also proposed that the Council take note of the statements made.

29.31. The Council so agreed.

29.32. As indicated earlier, and in order to fulfil the Buenos Aires mandate, he also proposed that he, under his own responsibility, would submit a factual report to the General Council in July 2018, based on the discussions held in this Council meeting, and that which had taken place in April 2018.

29.33. The Council so agreed.

30 OTHER BUSINESS

30.1 European Union – Amendments to the Directive 2009/28/EC, Renewable Energy Directive – Request from Malaysia

30.1. The Chairperson reminded delegations that, at the start of the meeting, the delegation of Malaysia had requested to include, under "Other Business", an issue regarding the Amendments to the EU Directive 2009/28/EC, Renewable Energy Directive.

30.2. The representative of Malaysia referred to Malaysia's statement delivered at the last CTG Meeting, on 23 March 2018, on the amendments to the European Union Renewable Energy Directive (EU RED, or RED) and indicated that Malaysia commended the political agreement on the ambitious binding renewable energy target for the EU of at least 32%, and a target of at least 14% for renewable energy in transport, by 2030, reached at the trialogue negotiations in Brussels, on 14 June 2018.

30.3. However, Malaysia remained concerned over the compromise text of the EU RED. For example, the compromise text agreed on the phasing-out of food-crop biofuels with high indirect land-use change (ILUC) by 2030, through a certification process for low ILUC biofuels, which was to be set up by the EU Commission. Through a delegated act to be adopted in 2019, the Commission would set out detailed criteria for identifying both ILUC risk biofuels and high ILUC risk biofuels, to be reviewed in 2023. The European Union claims that this delegated act would be based on the latest and best available scientific data.

30.4. The press release of the European Parliament on 14 June 2018 read, in relevant part, as followed: "Food-crop biofuels like palm oil, which have a high 'indirect land use change' (that is, changing how land from non-crop cultivation, such as grasslands and forests, with a negative impact on carbon dioxide emissions is used), will be phased out through a certification process for low indirect land use change (ILUC) biofuels, which is to be set up'. This press release was a source of great concern for Malaysia, since the calculations of emissions from ILUC in the proposed certification process for ILUC biofuels were still questionable, and had not yet been fully endorsed by a majority of experts.

30.5. Indeed, various ILUC models produced highly inconsistent results, as indicated by studies ordered and carried out by the European Commission itself. For this reason, the European Commission had until now refrained from including the ILUC in its computations of greenhouse gas (GHG) emissions.

30.6. There were also many uncertainties with regard to the assumptions being made, including, among others, with regard to the methodologies and inputs relative to oil palm plantations, and when estimating the GHG emissions in the production of palm oil and projections of oil palm expansion on types of land that would be used.

30.7. Therefore, Malaysia urged the EU to ensure that its certification process for ILUC biofuels, proposed to be set up by the EU Commission, be supported by scientific evidence, and that any measures relating to the imposition of technical regulations be in compliance with Articles 2 to 4, and other relevant articles and annexes, of the TBT Agreement.

30.8. Malaysia also highlighted that the data used for the calculations of the typical and default GHG emission savings in the proposed EU RED was not clearly specified. Malaysia had undertaken research on GHG emission savings on biofuels and bioliquids from palm oil, and the results indicated higher GHG emission savings compared to the typical and default values in Annex V of the new proposed Directive. Malaysia therefore requested the EU's cooperation in sharing the data used for the calculation so as to ensure its fairness, impartiality, and transparency.

30.9. Malaysia reiterated its readiness to extend its collaboration and to work together with the EU through an evidence-based approach to provide scientific data for the calculation of the typical and default GHG emission savings for the production of biofuels and bioliquids from palm oil. Malaysia had also submitted technical data to both the Joint Research Centre of the European Commission

(JRCEC), and the European Commission itself, and requested that serious consideration be given to that data.

30.10. Malaysia, as one of the major producers and exporters of palm oil, was concerned about the proposed Directive, which, in its view, was unfair and imposed unnecessary barriers on the trade in biofuels and bioliquids produced from palm oil.

30.11. As indicated in the past, Malaysia, among several other Members that were most likely to be affected by the proposed measures on palm oil, called again upon the European Union to notify its draft measures to the relevant WTO Committee. Receiving more detailed information on the draft measures at an early stage, and before they were finalized and adopted, would provide an opportunity not only for Malaysia but also for other Members to provide their comments. Malaysia would continue to monitor developments in the intended amendments to the EU RED, and looked forward to the EU's response.

30.12. The delegate of Indonesia thanked Malaysia for raising this issue, and wished also to register its own concerns. Indonesia looked forward to receiving further clarification of the EU policy regarding the amendment of the EU RED, which had been agreed jointly by the European Parliament, the Council of Europe, and the European Commission, in trialogue, on 14 June 2018.

30.13. Despite the agreement reached at the above-mentioned trialogue meeting, and also the clarifications that the EU had made and provided to Indonesia on 16 June 2018, her authorities wished nevertheless to receive further information from the EU regarding the initial compromise relative to a palm oil ban and phase-out of palm oil within the biofuel mix by 2030. For example, could the EU confirm that this would no longer be applicable, and that there would in fact be no ban on palm oil, or phasing out of palm oil, within the EU biofuel targets by 2030? EU clarification had also emphasized that the agreement that had been reached had included a gradual reduction of the amount of certain categories of biofuels being counted towards the EU renewable energy target. Could the EU clarify the categories concerned? Indonesia looked forward to further discussion of this matter with the EU.

30.14. The delegate of Colombia also thanked Malaysia for having included this item on the agenda, and reiterated the comments that it had made two weeks earlier, at the TBT Committee meeting. Colombia appreciated and valued the EU's intention in adopting a policy aimed at protecting the environment focusing on renewable energy sources. However, Colombia also shared the concerns voiced by Malaysia and Indonesia, in that this policy must be implemented in a manner not more trade restrictive than necessary so that it would not constitute an unnecessary barrier to trade.

30.15. Colombia considered that, if the current measure were to be adopted, it would be incompatible with the MFN and National Treatment obligations set out under the TBT Agreement and Articles I and III of the GATT 1994. In Colombia's view, the agreement reached in the trialogue could not be understood to be the final version of the EU RED, given that the legislative process in the European Union contemplated the possibility of suggesting new amendments to the proposed directive. Therefore, Colombia wished to register its concern regarding whether or not these amendments would be WTO-compatible, particularly in terms of biofuels based on palm oil.

30.16. He quoted information stating that, "[t]he contribution of biofuels and bioliquids from palm oil would be zero per cent as of 2030", which thus explicitly indicated that biofuels from palm oil would not contribute to the target in terms of land and railway transport by 2030. This would constitute a clear disincentive for transportation to resort to biofuel made from palm oil, and would make it difficult for EU member States to achieve the required minimum levels of energy consumption on the basis of renewable sources.

30.17. For Colombia, the provision was discriminatory towards palm oil because it would not affect like products such as biofuels made from other kinds of vegetable oils, such as soya and sunflower oil, and therefore the provision clearly favoured vegetable oils that were being produced in the European Union. This was not an incentive to use biofuels based on palm oil, and would negatively impact upon Colombia, since palm oil was a significant and important product in its economy. He therefore sought clarification from the EU with regard to its process, and urged the EU to avoid discriminatory treatment of palm oil producers, and instead to ensure coherence with the EU's obligations in terms of National and MFN treatment.

30.18. Colombia also requested to receive additional information concerning the trialogue negotiations so as to be promptly and officially informed about what had been agreed upon on 14 June 2018 between the Council and the European Parliament.

30.19. The delegate of Guatemala thanked Malaysia for having raised this agenda item, which was one of great importance to Guatemala, in particular because of its impact on bilateral trade and on palm oil production, employment, and the overall situation in her country. If, as indicated in the media, palm oil would not be included in calculating biofuels for 2030, Guatemala considered that the trialogue negotiations may have reached a result but not a text. Therefore, the EU should confirm the timelines for its legislative process internally in the European Union, and when this issue would be included on the agenda of the European Parliament.

30.20. She also seconded Malaysia's questions, and requested more clarity on the data used to determine the respective GHG. Guatemala would follow up on this issue and was ready to work on it jointly, both in Geneva and in Brussels.

30.21. The delegate of Ecuador also registered her country's concerns regarding the outcome of the trialogue negotiations on the EU RED. The gradual reduction of the use of palm oil leading to a possible total ban by 2030 would result in a huge trade impact on palm oil producing countries.

30.22. She also sought further clarification from the EU as to if and how the ways in which palm oil was produced in each country would be taken into account, and whether or not, at this stage of the debate, it was still possible to make comments on the EU RED with a view to avoiding the negative impact it would have on oil palm producing countries in its current form. Ecuador was ready to participate in the drafting process of any regulation that would set down criteria for the certification of biofuels, which would not incur, or at least had a low risk of incurring, ILUC.

30.23. The delegate of Thailand echoed the concerns of other Members and noted that Thailand would continue to monitor this issue closely.

30.24. The delegate of Honduras said that her country had already addressed this issue in other WTO bodies. Honduras respected WTO Members' legitimate right to adopt public policies intended to protect the environment. However, such measures were required to be WTO compliant, and must not restrict trade more than necessary. Palm oil was a huge industry for Honduras, which generated many jobs and opportunities for small-scale farmers. Honduras controlled and supervised the entire process of palm oil production so as to protect its tropical forests. Honduras had observed a significant increase in the generation of palm oil with a minimum environmental impact; therefore, it would appreciate further clarification from the EU regarding the questions addressed to it by Malaysia, including in relation to the outcome of the trialogue negotiations on the EU RED.

30.25. The delegate of Costa Rica expressed Costa Rica's interest in the revision process of the EU RED; his authorities were carefully looking at the EU's methodology and would be shortly sending additional questions to the EU on this issue. Costa Rica looked forward to receiving the EU's replies to the questions addressed to it in the context both of the various WTO bodies here in Geneva, and in Brussels.

30.26. The delegate of the European Union indicated that the revision of the EU RED had been discussed at a number of recent bilateral meetings among experts. She also confirmed that an agreement had been reached among the co-legislators, the Council, and the European Parliament. This agreement included a gradual reduction of the amount of certain types of biofuel towards the EU renewable energy targets. This was not a ban or an import restriction on palm oil or palm oil-based biofuels in the EU, but instead concerned the extent to which certain biofuels could be counted towards the EU renewable energy targets. The text did not single out palm oil or any other specific biofuel or feedstock.

30.27. She noted that there was still further work at a technical level to be finalized, and that the agreement also foresaw that the Commission would develop rules to implement this provision on the basis of the latest, best available, and most solid, scientific information. The EU remained available for discussions on this issue via the appropriate bilateral channels.

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

30.29. The Council so agreed.

30.2 Date of the next meeting

30.30. The Chairperson informed the Council that the next meeting of the Goods Council would be held on Monday, 12 November, and Tuesday, 13 November 2018. The agenda would close at 4.30pm on Thursday, 1 November 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. Therefore, the agenda itself 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.

30.31. The meeting was closed.