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Council for Trade in Goods

MINUTES OF THE MEETING OF THE COUNCIL FOR TRADE IN GOODS 12 AND 13 NOVEMBER 2018

The meeting of the Council for Trade in Goods (CTG, or the Council) was convened by Airgram WTO/AIR/CTG/12; the proposed agenda for the meeting was circulated in document G/C/W/762. The meeting proceeded on the basis of the following agenda:

The Chairperson informed delegations that, under Agenda item "Other Business", he would raise two institutional matters, namely: (i) how to reflect Trade Facilitation Agreement (TFA) notifications in the CTG's Annual Report on Notifications (document G/L/223 and its revisions); and (ii) how to make the work of the CTG more efficient. He would also 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 the adoption by the General Council of the Transparency Mechanism, the CTG was to be kept informed of Members' notifications of new regional trade agreements (RTAs).[1] He informed the CTG that four RTAs had been notified to the CRTA, as followed:

- ASEAN – Japan Comprehensive Economic Partnership Agreement – Entry into Force for Indonesia (WT/REG277/N/3);
- Free Trade Agreement between Turkey and Singapore (WT/REG392/N/1);
- Free Trade Agreement between Peru and Honduras (WT/REG393/N/1); and
- Free Trade Agreement Between the EFTA States and the Philippines (WT/REG394/N/1).

1.2. The delegate of the United States thanked the Parties to these RTAs for their respective notifications and looked forward to learning more about these agreements in the CRTA, during their review under the RTA Transparency Mechanism.

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

1.4. The Council so agreed.

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

2 PROPOSAL BY THE COMMITTEE ON REGIONAL TRADE AGREEMENTS 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 recalled that, at the Council's meeting in July 2018, he had drawn Members' attention to the proposal set out in document WT/REG/28 and the template reproduced in its annex to be used for notifications of changes to all existing RTAs; this proposal was of a procedural nature and did not entail any change in Members' legal rights and obligations. At that meeting, he had also indicated that this proposal and document had been considered and adopted by the CRTA at its 89th Session, on 19 June 2018, and recommended for adoption also to the CTG, the Council for Trade in Services, and the Committee on Trade and Development.

2.2. At that same meeting, the delegation of Brazil had indicated that it was not yet in a position to approve the document at the CTG, but nevertheless looked forward to continuing the discussions in the context of the CTG and other fora. Therefore, the Council had agreed to revert to the matter at the current meeting.

2.3. The Chairperson had then been informed that, at the September 2018 meeting of the CRTA, Brazil had indicated that it was now in a position to adopt the format, and invited Brazil to confirm that this was indeed the case.

2.4. The delegate of Brazil confirmed that his delegation was now in a position to adopt the template.

2.5. The Chairperson thanked Brazil for its intervention and proposed that the Council adopt the template annexed to document WT/REG/28.

2.6. It was so agreed.

3 ACCESSION OF THE REPUBLIC OF ARMENIA TO THE EURASIAN ECONOMIC UNION: PROCEDURES UNDER ARTICLE XXVIII OF GATT 1994 (G/L/1110/ADD.4)

3.1. The Chairperson informed Members that, in a communication dated 18 October 2018, the delegation of Armenia had requested the Secretariat to circulate document G/L/1110/Add.4, relating to the extension of the time-period for the withdrawal of concessions in connection with Armenia's accession to the Eurasian Economic Union (EAEU), until 2 January 2020. In this document, Armenia had indicated that it would not assert that Members that had submitted a claim of interest pursuant to Article XXIV:6 of GATT 1994 were precluded from withdrawing substantially equivalent concessions under Article XXVIII:3 of GATT 1994, because such withdrawal occurred later than six months after Armenia's withdrawal of concessions, provided that the claiming WTO Member withdrew concessions no later than 60 months after Armenia's modification of concessions, or until 2 January 2020. He recalled that the Council had extended the deadline on four occasions, namely, at its meetings of 26 March and 10 November 2015, 17 November 2016, and 10 November 2017.

3.2. The delegate of Armenia informed Members that, during the period following the Council's previous meeting, Armenia had had a number of consultations and exchanges with interested Members' representatives on the concerns at issue. After substantive discussion with its EAEU partners, Armenia had prepared a new proposal on compensation requests with a comprehensive list of industrial goods for which Armenia was ready to consider the possibility of further liberalization of its bound import duties. This proposal had been approved by the board of the EAEU Commission and had been submitted to the EU in April 2018. In May 2018, meetings had been organized in Geneva between Armenia and the EU, with the participation of EAEU countries' representatives, where the parties had had a very constructive discussion and consultation on the above-mentioned proposal and had agreed on further steps. Armenia hoped that the new proposal would lay sound ground for accelerated and substantive negotiations. Regarding a proposal for TRQs on agricultural goods, Armenia informed the Council that it had already prepared and presented a proposal to its EAEU partners. Discussions within the EAEU were advancing and the next round of consultations on the issue between EAEU representatives was scheduled for the following day. He hoped that the discussion and decision-making process would soon be completed, and that Armenia would then be able to provide a comprehensive reply and proposal for compensation requests on

agricultural goods, as it had already done for industrial goods. At the same time, taking into account that more than ten WTO Members and five EAEU Members were involved in this process, and given also the scope of the technical work still to be carried out, Armenia believed that additional time would be necessary for ongoing consultations and negotiations. Therefore, in document G/L/1110, Armenia had indicated that, in connection with the Treaty of Accession of the Republic of Armenia to the EAEU, which was signed on 10 October 2014, and entry into force of the EAEU Common Customs Tariff, on 2 January 2015, and in view of ensuring that Members reserve their rights pending their communication to the WTO Secretariat of agreements reached in the context of GATT Article XXIV, Armenia believed that it was desirable to provide for an extension of 12 months, until 2 January 2020, to withdraw substantively equivalent concessions under Article XXVIII of the GATT, and requested the Council to agree to this proposed extension.

3.3. The delegate of the Russian Federation recognized the necessity for an expeditious conclusion to these compensatory adjustment negotiations and supported the extension of the negotiation deadline for the Republic of Armenia under Article XXIV:6 of the GATT, related to its accession to the EAEU.

3.4. The delegate of the European Union informed Members of the EU's consultations with Armenia and other EAEU members and looked forward to further discussions in that context.

3.5. The Chairperson proposed that the Council take note of the statements made and of Armenia's communication, and that it agrees on the extension of the deadline as set out in document G/L/1110/Add.4, until 2 January 2020.

3.6. It was so agreed.

4 ACCESSION OF THE KYRGYZ REPUBLIC TO THE EURASIAN ECONOMIC UNION: PROCEDURES UNDER ARTICLE XXVIII:3 OF GATT 1994 (G/L/1137/ADD.3)

4.1. The Chairperson informed Members that, in a communication dated 25 October 2018, the delegation of the Kyrgyz Republic had requested the Secretariat to circulate document G/L/1137/Add.3, relating to the extension of the time-period for the withdrawal of concessions, in connection with the Kyrgyz Republic's accession to the EAEU, until 12 February 2020. In this document, the Kyrgyz Republic had indicated that it would not assert that Members that had submitted a claim of interest pursuant to Article XXIV:6 of GATT 1994 were precluded from withdrawing substantially equivalent concessions under Article XXVIII:3 of GATT 1994 because such withdrawal occurred later than six months after the Kyrgyz Republic's withdrawal of concessions, provided that the claiming WTO Member withdrew concessions no later than 54 months after the Kyrgyz Republic's modification of concessions, or until 12 February 2020. He recalled that the Council had previously extended the deadline on three occasions, namely at its meetings of 10 November 2015, 14 July 2016, and 10 November 2017.

4.2. The delegate of the Kyrgyz Republic thanked the Chairperson for including the issue on the meeting's agenda. The Kyrgyz Republic continued the process of technical clarifications and other relevant data analysis based on initial claims submitted by Members and in cooperation with the interested parties. He recalled that the term for withdrawing substantially equivalent concessions had expired on 12 February 2019. Given that additional time would be required in order to move the negotiations forward, and with a view to ensuring that Members reserved their rights pending the communication to the WTO Secretariat of the agreements reached in the context of Article XXIV:6 of the GATT 1994, the Kyrgyz Republic requested a further extension of Member's rights to withdraw concessions pending the conclusion of Article XXVIII:3 negotiations after twelve months, until 12 February 2020, as set out in document G/L/1137/Add.3. Thus, the Kyrgyz Republic would not assert that WTO Members that had submitted a claim were precluded from withdrawing substantially equivalent concessions because this withdrawal occurred later than six months after the Kyrgyz Republic's withdrawal of concessions, on 12 August 2015, provided that the claiming WTO Member withdrew concessions no later than 54 months after the Kyrgyz Republic's modification of concessions. He assured the Council that the Kyrgyz Republic would be in a position to respond to interested Members as soon as internal matters based on consultations with EAEU partners had been addressed and settled. He expressed gratitude for the understanding of interested WTO Members and for their support on the issue of the extension of rights. The Kyrgyz

Republic would exchange further communications and information with relevant partners to this process in due course.

4.3. The delegate of Ukraine reiterated his delegation's interest in the renegotiation process with Armenia and the Kyrgyz Republic under Article XXVIII of the GATT 1994, in spite of the fact that trade between Ukraine and these Members was currently already governed by bilateral and multilateral free trade agreements. The participation of the Kyrgyz Republic and Armenia concurrently in the EAEU and in free trade agreements with Ukraine might cause unpredictable consequences for Ukrainian exports in view of a possible change in the EAEU's trade rules. Since Ukrainian exports could be affected by the integration process within the EAEU, Ukraine would closely follow the evolution of the renegotiation process.

4.4. The delegate of the Russian Federation recognized the necessity for an expeditious conclusion to these compensatory adjustment negotiations and supported the extension of the negotiation deadline for the Kyrgyz Republic under Article XXIV:6 of the GATT relating to its accession to the Eurasian Economic Union.

4.5. The delegate of the European Union informed Members that they had engaged in consultations with the Kyrgyz Republic and other EAEU members in this Article XXVIII process and looked forward to further discussions in that context.

4.6. The delegate of the Kyrgyz Republic thanked Ukraine and recalled that trade with Ukraine was currently carried out on a preferential treatment basis in the context of the Commonwealth of Independent States (CIS), and the CIS Free Trade Agreement signed in 2011. Consequently, and in line with the guidelines for negotiations set out under GATT Article XXVIII, the Kyrgyz Republic had no legal ground on which to recognize Ukraine's claim of interest in this negotiation.

4.7. The Chairperson thanked the Kyrgyz Republic for its statement and other delegations for their interventions. He proposed that the Council take note of the statements made and, in the absence of any objection, agree on the extension of the deadline as set out in document G/L/1137/Add.3, until 12 February 2020.

4.8. It was so agreed.

5 SWITZERLAND – LIECHTENSTEIN – NEGOTIATIONS UNDER ARTICLE XXVIII:5 OF GATT 1994 (G/L/1262)

5.1. The Chairperson informed Members that, in a communication dated 29 October 2018, the delegation of Switzerland, on behalf also of Liechtenstein, had requested the Secretariat to circulate document G/L/1262 relating to the extension, for an additional 12 months, of the time-period for the withdrawal of concessions, in connection with the modification of tariff concessions in Schedule LIX relating to "meat not further prepared than seasoned". In this document, Switzerland and Liechtenstein indicated that they would not assert that Members that had submitted a claim of interest pursuant to Article XXVIII of GATT 1994 were precluded from withdrawing substantially equivalent concessions under Article XXVIII:3 of GATT 1994 because such withdrawal occurred later than six months after Switzerland and Liechtenstein's withdrawal of concessions, provided that the claiming WTO Member withdrew concessions no later than 12 months after Switzerland and Liechtenstein's modification of concessions, or until 4 April 2019.

5.2. The delegate of Switzerland stated that, in its communication of 3 October 2018, it had requested the Secretariat to distribute document G/L/1262 concerning the extension of the period during which Members had the right to withdraw substantially equivalent concessions pursuant to the procedures under Article XXVIII of the GATT 1994 for simply seasoned meat. He informed the Council that the negotiations and consultations with those Members concerned were ongoing and that Switzerland hoped to conclude them quickly.

5.3. The delegate of Brazil thanked Switzerland for introducing this agenda item and for proposing this extension. However, his delegation had identified an apparent discrepancy between document G/L/1262, which indicated that the withdrawal of concessions had occurred on 4 April 2018, and the language found in document G/SECRET/40, in which Switzerland, also on 4 April, notified no more than "its intention to modify" tariff concessions. To Brazil's knowledge,

there had been no written notice of actual withdrawal of concessions, under the terms of paragraph 3 of Article XXVIII, since document G/SECRET/40 had been circulated. He sought clarification from Switzerland on this issue.

5.4. The delegate of Switzerland replied that he would seek clarification on this issue and inform Brazil and the Council accordingly.

5.5. The Chairperson asked Brazil to clarify if Brazil were opposed to Switzerland's request for extension, or if his delegation were comfortable to approve Switzerland's request.

5.6. The delegate of Brazil replied that his delegation did not oppose the extension, but asked Switzerland nevertheless to clarify this issue for the Membership in writing.

5.7. The Chairperson thanked Switzerland and Brazil for their interventions. He proposed that the Council take note of the statements made, and also of Switzerland and Liechtenstein's communication. He proposed that the Council agree on the extension of the deadline as set out in document G/L/1262, for an additional 12 months, until 4 April 2019.

5.8. It was so agreed.

6 EUROPEAN UNION, RENEGOTIATION OF TARIFF RATE QUOTA COMMITMENTS IN RESPONSE TO BREXIT: SYSTEMIC CONCERNS – REQUEST FROM ARGENTINA, AUSTRALIA, BRAZIL, CANADA, CHINA, JAPAN, MEXICO, NEW ZEALAND, THE UNITED STATES, AND URUGUAY, PLUS CHINESE TAIPEI AND THAILAND

6.1. The Chairperson informed Members that, in communications dated 31 October and 1 November 2018, the delegations of Argentina, Australia, Brazil, Canada, China, Japan, Mexico, New Zealand, the United States, and Uruguay had requested the Secretariat to include this issue on the agenda. After the Airgram had been issued, the delegations of Chinese Taipei and Thailand had requested to be added to the list of co-sponsors, and a number of delegations had also submitted a room document (document RD/CTG/5).

6.2. The delegate of Paraguay asked to be added as a co-sponsor to the room document.

6.3. The delegate of Brazil thanked New Zealand for its coordination of the room document, which Brazil was very pleased to co-sponsor. Brazil fully shared the concerns mentioned in the document over the manner in which the EU had sought to modify its TRQ commitments. One major concern for Brazil was the lack of any indication by the EU of proper compensatory adjustments. As New Zealand had pointed out, the EU intended to compensate Members through recourse to concessions to be taken up by a distinct Member, the United Kingdom. In Brazil's view, it was only fair to wonder what the legal basis for such a heterodox methodology might be. At first sight, it challenged the established view that the schedule of concessions of a Member did not depend on the internal structure of that Member, because a schedule could not be understood as the sum of partial concessions of a Member's constituting members. Brazil also saw worrisome developments in the conduct of the Article XXVIII negotiations initiated by the EU on 24 July 2018. Besides the lack of any proposal for compensatory adjustments, Brazil noted that the import data provided had been insufficient and inadequate. Brazil had been asked to present its claims on a TRQ basis. Nevertheless, the data had been provided by tariff line, but without TRQ usage. It had even included preferential trade. In his delegation's view, Brazil's ability to assess its negotiating rights had thus been undermined. Another problem was the presentation of an uncertified schedule as the basis for the EU's proposed modifications. He noted that the EU's own sense of urgency in tackling this issue could hardly be invoked to justify a *fait accompli* in prejudice of Brazil's legitimate commercial and systemic interests. A revised version of the EU's import statistics had been circulated three months after the original submission of document G/SECRET/42, citing unidentified "clerical errors and discrepancies", and thus making it even more difficult to assess Brazil's negotiating rights expeditiously in order to be able to engage in negotiations and consultations at the earliest possible stage. Another important source of concern for Brazil was that no clarity had been offered about the future trading relationship between the EU and the UK. This situation prevented Brazil from having a real picture of the trade impact of the modifications that had been proposed. For instance, Brazil did not know for sure whether or not they would be obliged to compete for access in MFN quotas by the EU or the United Kingdom with exporters from either Member. To engage in negotiations under

such unfavourable conditions was a challenge that few Members would be comfortable to face. Brazil urged the EU to listen to their concerns and to bring to the table for discussion a fair, transparent, and balanced renegotiation proposal, ensuring that exporting Members would not be left worse off as a result of these negotiations.

6.4. The delegate of New Zealand drew Members' attention to the fact that, in addition to a group of Members that had agreed to put this item on the agenda, there was also a group of Members that had jointly prepared the room document outlining some of their specific systemic concerns with the EU's proposed modification of its agricultural TRQs. She noted that the EU was both the world's largest agricultural importer and its largest agricultural exporter. As such, the EU was an essential player in terms of balancing global markets. The proposed changes outlined in the EU's draft regulations and the EU's Article XXVIII notification put at risk the stability of many of the commitments underpinning that balance. 196 individual concessions affecting more than 365 tariff lines had been proposed to be changed. In terms of the volume of affected trade, she said that this was probably the largest modification of commitments ever undertaken at the WTO and was a modification that could cause ripples through global markets that could affect all Members, including other net importers of the products affected. Members had fought hard to achieve minimum levels of access through WTO tariff rate quotas. New Zealand rejected the premise that the EU was entitled to simply "split" its quota commitments based on a reference period using a process intended for renegotiating tariffs. She reported that the EU had told New Zealand that a different Member was supposed to provide some access to make up for their modifications. In addressing the Market Access Committee in October, the EU had told New Zealand that it could not make any assurances about the future trade policies of that Member. Her delegation would look first to the EU to honour its obligations to Members. The flexibility currently available to Members to supply the UK or continental markets would be affected at exactly the time when uncertainty over future trading conditions would make that flexibility more valuable than ever. The balance of UK/EU trade in the same products would be affected in ways that Members could not guess, and the same applied to respective currencies. In the view of her delegation, the commercial implications of this were very real. In order to begin to assess how this might affect Members it would be vital to know more about future EU-UK trading arrangements. However, the EU's proposal offered no certainty regarding the treatment of nearly US$800 billion worth of UK-EU merchandise trade. Among other issues, she requested the EU to clarify to Members that MFN quotas on each side would not be available to the EU and the United Kingdom respectively. That notwithstanding, she noted that it was a basic principle that a Member intending to modify a concession must provide data that showed how that concession was actually being used. The EU had thus far not provided TRQ usage data to Members and professed to be unable to do so. New Zealand had instead been provided with not just one, but two different datasets, showing trade in different lines of which some corresponded to multiple quotas, or corresponded to trade that may be entering the EU under preferential or non-TRQ arrangements. The datasets did not clarify how quotas were actually being used, and yet New Zealand was nevertheless being asked to make its claims based on quota usage. The second EU dataset, tabled in document G/SECRET/42/Add.2, made some changes that appeared to correspond to Members' questions on the first dataset, but there were also other changes, including the addition of considerable volumes of new trade, which New Zealand could not readily explain. She concluded that the vast scale and scope of these proposed changes threatened the stability of markets. Producers in New Zealand were already facing decisions about whether or not they could lock themselves at this stage into contracts to supply the EU in April 2019. New Zealand urged the EU to take a step back, to listen to Members' feedback, and to reconsider their approach.

6.5. The delegate of the Russian Federation expressed its concerns over the EU's approach and methodology with regard to its TRQ renegotiations. First, the Russian Federation was concerned by the intention of the EU to hold negotiations on the basis of the draft Schedule CLXXV–European Union (document G/MA/TAR/RS/506, dated 17 October 2017). The Russian Federation underscored that the draft Schedule CLXXV–European Union had not been certified and thus could not be used as the basis for negotiations. In this context, the Russian Federation emphasized the importance of finalizing the certification of the EU's draft Schedule. Second, she noted that the data provided by the EU had been based on trade flows under TRQs, and that out-of-quota trade flows had apparently not been taken into account. The Russian Federation noted that the GATT did not provide for the exclusion of out-of-quota trade flows in the context of negotiations on the modification of concessions. The Russian Federation believed that such an approach did not reflect commercial realities and would lead to a substantial deterioration in market access for certain agricultural and manufacturing products. The Russian Federation was of the view that these negotiations should not result in a *de facto* prohibition of market access. The Russian Federation also highlighted the fact

that for the last five years it had been denied market access to the EU, taking into account high out-of-quota rates and the fact that reallocation of quotas had been made based on licences obtained, whereas out-of-quota imports of third countries were not taken into account because licences for such imports were not required. The Russian Federation insisted that its interests should be taken into account in these negotiations.

6.6. The delegate of the United States appreciated the opportunity to co-sponsor both this agenda item and room document RD/CTG/5, which outlined shared concerns over the EU's approach to the renegotiation of its TRQ commitments in response to Brexit. The US believed that the room document was self-explanatory and so would not repeat the points already made there. Nevertheless, it was with a growing sense of urgency that the US wished to emphasize that it could not accept a *fait accompli* result to these negotiations that would leave US exporters worse off. In addition, the US hoped that the EU would take all Members' concerns seriously. For its part, the US stood ready and willing to work diligently with the EU to ensure that the balance of concessions among Members went unchanged or, where changed, that Members were appropriately compensated.

6.7. The delegate of Mexico expressed systemic concern over the notification by the EU, dated 24 July 2018, of its intention to modify the TRQs included in its Schedule of Concessions. The EU, a major player in global trade in agricultural products, had proposed to modify its commitments for a significant portion of such trade, but such modifications had to be in the general interests of WTO Members. Further, this proposal represented a broad request for which there had been no precedent; it would surely have commercial consequences and at the same time impact significantly upon future processes in the multilateral system. Mexico also had a systemic concern with regard to the suggested methodology for the apportionment of the EU's TRQs, as well as with the data provided to support such apportionment and the claims of interests of Members. In addition, Mexico noted that the EU proposal did not in any way address what the future EU obligations towards the United Kingdom, with whom it had a significant bilateral trade, would be. Mexico understood that the state of negotiations between the EU and the United Kingdom did not yet allow for any result regarding the terms of the commercial relationship between the two parties after Brexit. However, according to Mexico, it was precisely under this situation of uncertainty that commercial and systemic concerns became more important and having transparent procedures and adhering to the rules likewise played key roles. Therefore, Mexico urged the EU to continue its discussions and to take into account the commercial and systemic concerns expressed by Members in order to achieve a mutually satisfactory solution.

6.8. The delegate of Uruguay shared the comments made and concerns of other delegations. As detailed in the room document, the EU's proposal to modify its TRQs affected the flexibility of economic operators with established trade flows to the European market. At the same time, the proposal generated uncertainty and would affect trade flows on a significant number of agricultural products, including supply chains. He noted that there were numerous complexities associated with the negotiation process proposed by the EU, including a lack of clarity regarding the EU's future commercial relationship with the United Kingdom, and also how the EU intended to compensate Members through concessions granted by another Member. In his view, these were only some of the many concerns that the EU's proposal generated. Uruguay urged the EU to enter into negotiations with Members in good faith and with a view to maintaining their existing levels of rights and obligations, or else to ensure fair compensatory adjustment in order to restore to Members the balance of rights and obligations that had been established during the Uruguay Round negotiations. Therefore, in addition to the aforementioned economic and commercial concerns, Uruguay wished also to set on record this systemic concern.

6.9. The delegate of China noted that China had co-sponsored both the agenda item and the room document. Like previous speakers, China was very concerned about the changes proposed by the EU in document G/SECRET/42 in the context of Brexit. Given the uncertainty over the EU's future trade relations with the United Kingdom, Brexit might significantly affect the interests of Members' exports to the EU market. As stated in the room document, the stability and predictability of Members' commitments were the foundation of the multilateral trading system (MTS), and Brexit-related changes in the EU's commitments should adhere to the principle that WTO Members should not be worse off as a result of any changes, and that the overall level of mutually advantageous concessions that Members enjoyed should be maintained. As the EU's proposed changes would directly affect the export interests of Members, including China, Chinese business leaders had raised their significant concerns over the impact on their interests in the EU market, in particular the

proposed TRQ apportionment on exports. China hoped that the proposed changes in the EU's TRQ commitments would fully reflect current trade performance, and also meet the actual trading needs of China's business communities. China hoped likewise that the concerns of WTO Members would be adequately addressed overall. To do so, the EU should provide the necessary information and data in an adequate and timely manner. China hoped to strengthen communication and coordination with the EU in order to manage the adverse impact of Brexit on China-EU trade and economic cooperation, and to ensure that China's relevant interests would not be negatively affected. Finally, China took the opportunity to request the United Kingdom to ensure that Members' trade interests would be fully taken into account in their post-Brexit Schedule.

6.10. The delegate of Argentina said that his delegation's principal concerns had been reflected in the room document. However, he emphasized Argentina's interest in the renegotiation of the EU's TRQ concessions. He also noted that Brexit was far more than simply a bilateral matter; it was a matter of systemic interest for the entire WTO Membership. The modality that would be adopted for the future relationship between the EU27 and the United Kingdom would have a very real impact upon the preservation of the currently negotiated commitments. Argentina had seen irrefutable arguments that demonstrated that both the EU's proposed methodology, as well as the statistics that it had used to support that methodology, failed by a long distance to meet the multilateral commitments that the EU had undertaken to maintain in terms both of the level and quality of market access. Argentina's wide-ranging concerns and doubts had been communicated to both the EU and the United Kingdom. In this regard, Argentina noted its specific concern over the Draft EU Regulation COM 2018–312, which proposed a unilateral apportionment of TRQs. In Argentina's view, this would lead swiftly to an unnatural result that would run contrary to the spirit of the MTS. His delegation had questioned the proposed implementation of unilateral measures on a number of occasions; nevertheless, Argentina was sure that the EU would honour its multilateral commitments and not introduce any changes to its market access commitments without having first reached mutually satisfactory agreements with interested Members. Argentina stood ready to continue to engage in constructive dialogue to ensure that the process be conducted in compliance with the mechanisms of the WTO.

6.11. The delegate of Canada thanked New Zealand and the other co-sponsors for contributing to the room document. As outlined in the room document, Canada, as well as other Members, had concerns regarding the approach the EU had taken to modify its WTO commitments on its TRQs. TRQs were intended to provide real access to markets of export interest. The EU's proposed "apportionment" of its WTO quotas reduced the quality and level of access to a significant market. In a number of cases, the proposed apportionment resulted in TRQ volumes that were not commercially viable, the commercial implications of which were clear. Canada was also concerned that the data provided by the EU to support its proposal was inadequate for a negotiation of this scale and scope. Canada argued that, given the size of the trading relationship between the EU and the United Kingdom, the lack of certainty in this process with regard to the future EU-UK bilateral trade relationship needed also to be taken into account. In addition, Canada was concerned about the publication of the draft EU regulation COM 2018-312, which proposed to implement the reductions in the EU's market access commitments without first completing the necessary negotiations with those WTO Members affected. Canada urged the EU to reflect upon the concerns outlined in the room document and to continue to engage fully with Members in this regard.

6.12. The delegate of Chinese Taipei said that her delegation was one of the co-sponsors of both this agenda item and the room document, and that Chinese Taipei shared the systemic concerns expressed by previous speakers. As the EU was Chinese Taipei's largest trading partner, China Taipei had been paying close attention to Brexit-related issues since 2016. His delegation was of the view that Brexit could significantly affect WTO Members' trade and investment relations with the EU and the United Kingdom, especially given the uncertainty still surrounding this process. Since Chinese Taipei's views had been reflected in the room document, he highlighted only the points that followed. Firstly, Chinese Taipei underscored that Members should not be left worse off as a result of changes made to individual concessions, and that any changes introduced should maintain the general level of mutually advantageous concessions for all Members. Secondly, Chinese Taipei underscored the importance of transparency in relation to the EU's process in this regard. For example, Chinese Taipei would like to see how the trade data and methodology used by the EU would sufficiently reflect Members' concerns to ensure that their market access remained stable. Lastly, Chinese Taipei would welcome further discussion with the EU on this matter, in particular to identify ways in which the EU could fully meet its obligations to continue to maintain a general level of reciprocal and mutually

advantageous commitments not less favourable to trade than those that it had provided prior to this notification.

6.13. The delegate of Switzerland thanked the co-sponsors of the room document and noted that Switzerland was among those Members holding rights as principal supplier or Member with substantial interests regarding a part of the commitments affected by the proposed TRQ apportionment. In general, Switzerland shared the concerns set out in the room document. Specifically, it was difficult for Switzerland to assess its interests on the basis of the data currently provided by the EU. Switzerland also shared the view that allocation of appropriate TRQ quantities to the EU-27 and United Kingdom was highly relevant to many Members and therefore of systemic importance to the WTO as a whole. For this reason, Switzerland hoped that the necessary process could be completed as quickly as possible and in a consensual manner with all Members.

6.14. The delegate of Australia expressed Australia's significant interest in this important issue given that Australia was an exporter of agricultural TRQ products to the EU. Australia also shared the systemic concerns raised in the room document about the EU's proposal to modify its goods market access commitments in response to Brexit. Australia expected the EU to ensure that the value of existing market access was maintained and not just the total volume of existing TRQs. The EU's proposed modifications to its TRQs would lead to year-on-year economic loss by removing flexibility for exporters in relation to destination market and by making certain TRQ allocations too small to be commercially viable. Australia welcomed the EU's addendum to its proposal in document G/SECRET/42, circulated on 19 October 2018. However, the amended import data in Annex III did not address all of the concerns previously raised over its inadequacy for the purposes of Article XXVIII negotiations. Australia echoed the strongly expressed concerns of others over the uncertainty surrounding, and the need for clarity on, the method of accounting for UK-EU trade post-Brexit. Australia remained concerned about the EU's proposed draft regulation to unilaterally implement the proposed TRQ changes in the absence of agreement at the WTO. He noted that, based on a press release of 31 October 2018, EU Ambassadors had now agreed to the draft schedule of TRQs that the EU would apply after Brexit, and that the draft regulation would now be passed to the European Parliament. His delegation looked forward to working with the EU constructively to resolve its concerns and to ensure that the current quality and level of Australia's market access was maintained.

6.15. The delegate of Japan said that his delegation attached great significance to this agenda item and for this reason had decided to co-sponsor it. Although Japan had not subscribed to the room document it did understand the systemic concerns voiced by a number of Members. Japan continued to pay attention to the Brexit negotiations and was deeply concerned by the fact that negotiations on the remaining issues at the European Council had not been concluded within the so-called "deadline". In his delegation's view, it was essential to ensure transparency, predictability, and legal stability through the transition period in order to minimize any negative impact on Japanese businesses in Europe. He stated that a no-deal Brexit must be avoided and hoped that the EU and the United Kingdom would maintain the current business environment or at least alleviate the impact of any radical changes in order for the United Kingdom and the EU to remain attractive destinations for doing business. Japan also expressed its deep concern over the current situation, which left very little time for negotiations. Japan valued the expeditious establishment of the EU and United Kingdom's tariff schedules and the implementation of MFN applied tariff rates in a manner consistent with WTO rules after Brexit. Japan urged the EU to maintain a high degree of transparency in the negotiations process and expressed its willingness to continue to participate actively in those negotiations.

6.16. The delegate of Thailand thanked New Zealand for its coordination efforts on this issue and joined previous speakers in expressing Thailand's concerns regarding the EU's proposal (in document G/SECRET/42), to modify its market access commitments in light of Brexit. Thailand believed that, in line with core WTO principles, such modification of a Member's Schedule of Commitments must ensure that Members were not left worse off as a result of changes made to individual concessions. Throughout its consultations with the EU, Thailand had reiterated its numerous concerns, including over the relevance, completeness, and complexity of the annexed information provided by the EU to support their proposal. The diminished total quality and level of access, as well as uncertainty with regard to post-Brexit trade relations between the EU and the United Kingdom, could significantly impair the existing rights and benefits of all WTO Members. In this regard, Thailand urged the EU to take Members' concerns into consideration as it proceeded with the modification of its concessions. Thailand hoped that subsequent procedures would be carried

out in good faith and clarity with a view to ensuring that Members' quality and level of access to the EU would not be in any way impaired or diminished, and that appropriate compensation would be offered where current levels of market access were not maintained.

6.17. The delegate of the Republic of Korea echoed the concerns raised by the co-sponsors of this agenda item and room document. Korea itself had not co-sponsored the room document; nevertheless, it shared the concerns of the co-sponsors given that the EU and the United Kingdom were major trading partners. For this reason, she wished for the compensation negotiations to be undertaken in a transparent and predictable manner, especially given that the initial stages of compensation negotiations could have a significant impact on negotiations for compensation with regard not only to goods, but also to services, in the context of bilateral and plurilateral negotiations and agreements in which the EU, the United Kingdom, and the Republic of Korea were partners.

6.18. The delegate of India thanked the sponsors and co-sponsors of this agenda item and echoed the concerns raised by other Members. India had submitted its concerns to the EU on 22 October 2018; in particular, it had cited difficulties in assessing the principle supplying interest or the substantial interest on specific tariff lines. In the meantime, India had received the EU's revised data for its TRQ re-allocation on 19 October 2018. India appreciated the EU's efforts but felt that the EU had still not adequately addressed Members' concerns, especially over the lack of clarity, as raised in India's earlier communication. India hoped for a constructive and fruitful discussion of these matters with the EU.

6.19. The delegate of Singapore wished to thank the sponsors of this agenda item and room document for raising this issue. Brexit could potentially affect all WTO Members' trade with the EU. Singapore believed that the Brexit renegotiations should not lead to substantive changes in the quality of market access that was currently available to the EU's trading partners in its Schedule of WTO commitments. Singapore registered its interest in this matter and looked forward to continuing discussions with the EU.

6.20. The delegate of El Salvador registered El Salvador's interest in the negotiations on the EU's proposed modifications of its TRQs in response to Brexit and hoped to be able to engage in constructive dialogue with the EU on this issue. She also took note of the systemic concerns set out in document RD/CTG/5, concerns which El Salvador shared. In particular, El Salvador shared concerns over the uncertainty surrounding trade relations between the EU and the United Kingdom, and the maintenance of current levels of market access through the appropriate EU apportionment of its TRQs. She indicated that El Salvador would continue to follow this issue closely.

6.21. The delegate of Guatemala thanked New Zealand and the other co-sponsors for including this issue on the agenda. Guatemala shared the systemic concerns on Brexit of other Members, particularly with regard to the apportionment of the EU's WTO-bound TRQs. Guatemala emphasized the importance of the EU not undermining its WTO commitments or impairing its concessions.

6.22. The delegate of the Dominican Republic wished to thank the sponsors of this agenda item and room document and took note of the concerns that had been raised. The Dominican Republic was currently examining the EU and UK lists and had recently communicated a statement of interest with regard to the UK list. In general terms, the Dominican Republic was concerned by the uncertainty generated by Brexit and, as stated by the Republic of Korea, was concerned, too, by the effects of the process on its bilateral and plurilateral negotiations with the United Kingdom and EU. The Dominican Republic would continue to follow this issue closely and be grateful, also, for any additional information now available.

6.23. The delegate of Costa Rica thanked those Members that had placed this issue on the Council's agenda. Costa Rica was alert to the importance of a strong and effective international trading system and of the need to maintain and promote certainty in trade relations between Members. Costa Rica emphasized the importance of ensuring that Article XXVIII negotiations were carried out in a transparent and inclusive manner so that Members could be sure that the guarantees established under the WTO Agreements would not be impaired. If there were to be changes to the EU's and the United Kingdom's Schedule, then every Member should be afforded the possibility to assess meaningfully the effects of such changes on their international trade flows. To this end, Costa Rica would remain in constructive dialogue with the EU and other interested parties at bilateral level, as well as in the context of the work of this Council and its subsidiary bodies.

6.24. The delegate of Chile thanked the co-sponsors of this agenda item and the room document for raising this issue, especially in light of its systemic and commercial implications. Chile shared the systemic concerns of other Members, especially with regard to the conduct of the process itself. Chile had already expressed many of its concerns in bilateral meetings with the EU. Nevertheless, he wished to emphasize that the EU's formula for apportionment of its TRQs was, in Chile's view, not the most appropriate methodology because it unjustifiably restricted Members' market access, including flexibility for exporters in relation to destination market. Furthermore, Chile considered that the proposed method did not respect the balance of agreements established under the Uruguay Round, especially with regard to GATT Article XXVIII reciprocal concessions. In addition, Chile agreed with other Members concerning the EU's unhelpful export statistics, as presented on 24 July 2018, which had been modified very shortly before their presentation, and which had only increased uncertainty with regard to the manner in which the process was being conducted. Chile wished cordially to invite all Members to respect the highest levels of transparency. Chile itself would maintain an open and constructive dialogue with the EU in order to reach a satisfactory solution to this issue that would maintain the balance in market access already established under the WTO Agreements.

6.25. The delegate of Honduras thanked the co-sponsors of this agenda item and noted that Honduras shared their concerns over and interest in this issue.

6.26. The delegate of Colombia shared the systemic concerns of other Members and would continue to follow this issue closely.

6.27. The delegate of Malaysia thanked the sponsors of this agenda item and emphasized the importance of ensuring that the EU's TRQ allocation continue to afford Members meaningful market access. Malaysia looked forward to engaging in a constructive dialogue on this issue both with the EU and the United Kingdom.

6.28. The delegate of the Plurinational State of Bolivia shared other Members' systemic concerns over and interest in this issue.

6.29. The delegate of the European Union stated that, on 24 July 2018, the EU's formal notification had been circulated to WTO Members (document G/SECRET/42), in accordance with Article XXVIII of the GATT 1994, with a view to apportioning the EU's entire WTO-bound TRQs. Following bilateral engagement with a number of WTO Members, as well as exchanges at the Committee on Market Access (CMA), on 9 October 2018, the EU had submitted a revised set of data on 19 October 2018. This new data, as contained in Annex 3 of the EU's communication, included only trade on an MFN basis for the tariff lines concerned, in particular for the *erga omnes* TRQs. It excluded imports from non-WTO Members and preferential bilateral arrangements in so far as these covered the specific tariff lines included in these TRQs. The revised data also corrected some clerical mistakes in Annex 1 and Annex 2. Procedurally, the EU understood that this revised dataset could result in a need for additional time for WTO Members to submit or update their claims of interest. However, the EU considered that the revisions would not a have major impact on the determination of the negotiating rights of the relevant WTO Members. As indicated in the explanatory note accompanying the new dataset, the EU was ready to engage in negotiations as soon as possible and invited Members to submit their claims or revised claims without further delay. The EU took note of the room document that had been circulated in advance of the meeting. Again, the EU had explained its approach and rationale for the apportionment and remained willing to engage further with interested WTO Members on this issue. She informed the Council that the EU had thus far received 25 claims from interested trading partners and was currently assessing these claims. The EU would engage bilaterally with the Members concerned during the course of the following week and looked forward to fruitful exchanges.

6.30. The Chairperson thanked all delegations for their interventions and the EU for its response and proposed that the Council take note of the statements made.

6.31. It was so agreed.

7 ENLARGEMENT OF THE EUROPEAN UNION TO INCLUDE CROATIA: NEGOTIATIONS UNDER ARTICLE XXIV:6 OF THE GATT 1994 – STATEMENT BY THE RUSSIAN FEDERATION (G/SECRET/35/ADD.4)

7.1. The Chairperson informed Members that, in a communication dated 31 October 2018, the delegation of the Russian Federation had requested the Secretariat to include this issue on the agenda.

7.2. The delegate of the Russian Federation expressed deep concern over the EU's negotiations under Article XXIV:6 of the GATT 1994 in the framework of its enlargement to include Croatia. She recalled that, in document G/SECRET/35/Add.2, dated 26 July 2018, the EU had notified the WTO and its Members of the conclusion of these negotiations. However, the Russian Federation could not yet consider these negotiations to have been concluded because the EU had failed to engage in negotiations with Russia, which had been recognized by the EU as holding a principal supplying interest in respect of certain products. The Russian Federation had previously addressed this issue bilaterally as well as in the CMA and in the Council for Trade in Goods. Its concerns had also been directed to the EU in writing as well as circulated among WTO Members, in document G/SECRET/35/Add.4. She stated that, unfortunately, the EU had failed to respond adequately to these concerns.

7.3. First, the EU had argued that the Russian "communication had been sent […] after the deadline set out in the applicable Procedures for negotiations under Article XXVIII of the GATT [and] in addition, [it] did not indicate any specific claim, and nor did it provide any supporting evidence". She emphasized that it was the EU itself that had determined Russia to be a WTO Member holding a principal or substantial supplying interest on the basis of its import statistics in accordance with paragraph 4 of the Ad Note to Article XXVIII:1 of the GATT. Considering that Russia had not challenged the data provided by the EU in its notification, it was his delegation's view that paragraph 4 of the Procedures for Negotiations under Article XXVIII of the GATT should not be applicable, because it spoke only of a WTO Member that considered that it had a principal or substantial supplying interest; however, neither this paragraph, nor the whole Procedures, established rules in relation to a WTO Member that was already recognized as a principal supplier by the Member modifying the concession. Furthermore, as elaborated in Russia's communication, the Procedures did not establish rigid obligations but merely represented soft law. By contrast, Article XXVIII:1 of the GATT and paragraph 4 of the Ad Note to Article XXVIII:1 of the GATT established rigid obligations requiring negotiation with a WTO Member having principal supplying interest. It remained unclear to Russia how, in the EU's view, the guidelines could supersede Members' obligations established in the provisions of the GATT, as well as how a WTO Member could be deprived of its rights under Article XXVIII of the GATT.

7.4. Second, he stated that the EU's position, according to which "the indication of a WTO Member as principal supplier in a GATT Article XXIV:6/XXVIII notification does not constitute an automatic recognition of a right for that WTO Member to obtain compensation" was far from complying with Article XXVIII of the GATT. Paragraph 4 of the Ad Note to Article XXVIII:1 of the GATT provided for the clear definition of the term "principal supplying interest". The Procedures for negotiations under Article XXVIII did not request the Member modifying the concession to provide information concerning principal supplying interest and substantial supplying interest in its notification. Article XXVIII:1 of the GATT and paragraph 4 of the Ad Note to Article XXVIII:1 of the GATT, meanwhile, obliged WTO Members modifying their concession "to ensure that a [Member] with a larger share in the trade affected by the concession … shall have an effective opportunity to protect the contractual right which it enjoys under [the GATT]".

7.5. Third, she noted that the EU's argument that "even if the Russian Federation had submitted its claims in conformity with the procedures and within the deadlines …, it would not have been entitled to compensation for the tariff lines included in those claims, as the Russian Federation did not export the products concerned to Croatia during the reference period" cannot be considered as justification of the EU's decision not to enter into negotiations with Russia. He underlined that Article XXVIII:2 of the GATT stated that, "in such negotiations and agreement, which may include provisions for compensatory adjustment with respect to other products, the [Members] concerned shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations". The Russian Federation was of the view that the compensation request was the issue to be negotiated bilaterally. However, the EU had never engaged in negotiations with Russia on this issue.

7.6. He concluded that the EU appeared to be in violation of Article XXVIII:1 of the GATT by not entering into negotiations with Russia, and that the Russian Federation objected to the conclusion of the EU's negotiations under Articles XXIV:6 and XXVIII of the GATT. Once again, the Russian Federation called upon the EU to engage in compensatory adjustment negotiations with Russia on this issue.

7.7. The delegate of the European Union replied that WTO Members had been informed about the conclusion and outcome of the negotiations following Croatia's accession to the EU in document G/SECRET/35/Add.2, dated 26 July 2018, pursuant to paragraph 5 of the Guidelines on Procedures for Negotiations under Article XXVIII. The outcome of the Article XXIV:6 process would be faithfully reflected in the EU-28 schedule, which was currently in the process of certification. She explained that, as part of this process, a list of rectifications had been circulated to Members on 17 October 2018 (G/MA/TAR/RS/506/Add.2). The EU had extensively and repeatedly explained its reasons for not having accepted the compensation claims of the Russian Federation in the context of the EU's latest enlargement. The issue had been addressed most recently at the Market Access Committee, in October 2018. She wished to put on record that, in the EU's view, the indication of a WTO Member as principal supplier in a GATT Article XXIV:6/XXVIII notification did not constitute an automatic recognition of a right for that WTO Member to obtain compensation. Some principal suppliers made a claim, others did not. The notifying Member then entered into negotiations or consultations with those Members that had submitted a claim, in conformity with the procedures and within the deadlines applicable under WTO rules, with a view to identifying if there were any entitlement for compensation.

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

7.9. It was so agreed.

8 TRINIDAD AND TOBAGO – REQUEST FOR AUTHORITY TO ENTER INTO NEGOTIATIONS UNDER ARTICLE XXVII:4 OF THE GATT 1994 (G/SECRET/43)

8.1. The Chairperson drew Members' attention to document G/SECRET/43, dated 31 October 2018, in which Trinidad and Tobago had requested the Council's authorization to enter into negotiations under Article XXVIII:4 of the GATT 1994 for the modification of the tariff concession on cement in its Schedule LXVII. He reminded delegations that, according to the Notes and Supplementary Provisions to Article XXVIII (the Ad Note), contained in Annex I to the GATT 1994, the determination for the request of authorization to enter into negotiations under paragraph 4 of Article XXVIII should be made within 30 days of the submission of the matter to Members, or in this case, not later than 12 December 2018.

8.2. The delegate of Trinidad and Tobago explained that, at present, cement products with similar end-uses carried different bound rates. Notably, "Other Hydraulic Cement" of tariff heading 2523.90 was bound at a rate of duty of 5%, while all other cement products under tariff heading 25.23 were bound at 70%. He said that this had resulted in a pricing difference of US$12.2 per tonne for similar cement products. The Government of Trinidad and Tobago had therefore taken the decision to harmonize the tariff structure for cement and its substitutable products. The objective of the Government's decision to harmonize these duties was to stabilize market variations and maintain production levels. Trinidad and Tobago presented import data on "Other Hydraulic Cement" in Annex II of its communication (document G/SECRET/43). He noted that, over the period 2015 to 2017, imports had increased by 6,532%, or from US$30,357 in 2015 to US$2,013,296 in 2017. Consequently, as at December 2016, the local industry had indicated a loss of revenue of US$25.8 million. The local cement manufacturing industry supplies building material to the energy sector and government construction projects and was a major contributor to Trinidad and Tobago's non-energy economy. The current value of investment in the industry stood at US$183 million, with US$18.8 million being invested over the last three years. He explained that, neglecting the issues faced by the cement industry could result in the decline of the domestic industry, resulting in a negative socio-economic impact. It was estimated that the decline of the industry could result in direct job loss for 478 persons and indirect job loss for 686 persons. In an effort to avert the negative conditions currently prevailing in the cement industry, the Government of Trinidad and Tobago wished to standardize all bound rates for cement products at 70%. Trinidad and Tobago stood ready to enter into negotiations and consultations with the Members primarily concerned, in accordance with the rules and procedures for renegotiations under Article XXVIII of the GATT 1994, and would

endeavour to conclude such negotiations within 60 days following the conclusion of the 90-day period for the submission of claims of interest, but reserved its right to request an extension in case it deemed it necessary.

8.3. The delegate of the Dominican Republic stated that her government was still reviewing this document and therefore could not approve Trinidad and Tobago's request at this meeting.

8.4. The delegate of Turkey thanked Trinidad and Tobago for its notification request for authorization to enter into negotiations under Article XXVIII of the GATT, for modifying its bound tariff commitments for the product "other hydraulic cements" under tariff heading 2523.90. Turkey would be the main trading partner affected by the change proposed by Trinidad and Tobago and it had a substantial commercial interest in this issue. He stated that, as the notification from Trinidad and Tobago was very recent, the relevant authorities were still evaluating the issue. Therefore, Turkey was not yet in a position to agree with Trinidad and Tobago's request. He suggested that the Council revert to the request from Trinidad and Tobago at its next meeting.

8.5. The Chairperson took note that the Council was not in a position to authorize Trinidad and Tobago to enter into negotiations under GATT Article XXVIII:4 at this meeting. He reminded delegations that the Ad Note to Article XXVIII:4 mandated that the Goods Council make a determination on the request for authorization to enter into negotiations under paragraph 4 of Article XXVIII within 30 days of the submission of the matter to Members, or in the current case, by 12 December 2018. Therefore, he suggested that, unless Members contacted him in writing, through the Secretariat, with a copy to Trinidad and Tobago, by 30 November 2018, to object to this request, it would be considered that Trinidad and Tobago had been authorized to enter into negotiations under GATT Article XXVIII:4, starting from 1 December 2018. This meant that Members would have until 1 March 2019 to submit their claims of interest to Trinidad and Tobago and that Trinidad and Tobago would endeavour to conclude negotiations by 30 April 2019. However, as indicated in its request, Trinidad and Tobago reserved its right to request an extension for this negotiation in case it deemed it necessary. Any further extension must be submitted to this Council. To the contrary, if by 30 November 2018, any Member had contacted the Chairperson in writing, through the Secretariat, with a copy to Trinidad and Tobago, to object to this request, then the Council would have to be reconvened before 12 December 2018 to consider this matter further, as mandated by the Ad Note to Article XXVIII:4. He therefore proposed that the Council suspend this agenda item until further notice.

8.6. The delegate of Brazil requested the Chairperson to circulate a letter providing Members with all of this information again so that they could take accurate note of the pertinent deadlines.

8.7. The delegate of the Dominican Republic also requested further clarification with regard to procedures and deadlines. She also wished to confirm her understanding that the Council had not reached an agreement on this issue.

8.8. The Chairperson confirmed that no authorization had been granted by the Council at the meeting but that there was nevertheless a 30-day mandate to be followed. He repeated that, if by 30 November 2018 no objection from Members had been received, then the authorization to enter into GATT Article XXVIII:4 negotiations would be considered approved, Members would then have until 1 March 2019 to submit their claims of interest, and Trinidad and Tobago would endeavour to conclude its negotiations by 30 April 2019. Nevertheless, as indicated in its request, Trinidad and Tobago reserved its right to request an extension for these negotiations if it deemed it necessary, with any further extension request being submitted to this Council. If, on the contrary, written objection were received by 30 November 2018, then the Council would need to reconvene before 12 December 2018 to consider this matter again, as mandated by Article XXVIII:4. He suggested that this item be suspended until further notice.

8.9. The delegate of Trinidad and Tobago said that his delegation would be guided by the Chairperson's proposal.

8.10. It was so agreed.

9 MARKET ACCESS ISSUES

9.1. The Chairperson informed Members that, as indicated in the Airgram, the Committee on Market Access had forwarded for the consideration of this Council four collective requests for waiver extensions concerning the introduction of Harmonized System (HS) Changes into WTO Schedules of concessions.

9.1 Introduction of Harmonized System 2002 Changes into the WTO Schedules of Tariff Concessions – Draft Waiver Decision (G/C/W/756)

9.2. The Chairperson drew Members' attention to the collective draft waiver decision circulated in document G/C/W/756, in connection with the introduction of HS2002 changes into WTO schedules of tariff concessions. The current waiver decision was contained in document WT/L/1026 and would expire on 31 December 2018. The one-year extension, as provided for in the draft waiver decision contained in document G/C/W/756, had been the subject of consultations in the Market Access Committee meeting that had taken place on 9 October 2018.

9.3. The Chairperson proposed that the Council agree to forward the draft waiver decision contained in document G/C/W/756 to the General Council for adoption.

9.4. It was so agreed.

9.2 introduction of Harmonized System 2007 Changes into the WTO Schedules of Tariff Concessions – Draft Waiver Decision (G/C/W/757)

9.5. The Chairperson drew Members' attention to the collective draft waiver decision circulated in document G/C/W/757, in connection with the introduction of HS2007 changes into WTO schedules of tariff concessions. The current waiver decision was contained in document WT/L/1027 and would expire on 31 December 2018. The one-year extension, as provided for in the draft waiver decision contained in document G/C/W/757, had been the subject of consultations in the Market Access Committee meeting that had taken place on 9 October 2018.

9.6. The Chairperson proposed that the Council agree to forward the draft waiver decision contained in document G/C/W/757 to the General Council for adoption.

9.7. It was so agreed.

9.3 Introduction of Harmonized System 2012 Changes into the WTO Schedules of Tariff Concessions – Draft Waiver Decision (G/C/W/758)

9.8. The Chairperson drew Members' attention to the collective draft waiver decision circulated in document G/C/W/758, in connection with the introduction of HS2012 changes into WTO schedules of tariff concessions. The current waiver decision was contained in document WT/L/1028 and would expire on 31 December 2018. The one-year extension, as provided for in the draft waiver decision contained in document G/C/W/758, had been the subject of consultations in the Market Access Committee meeting that had taken place on 9 October 2018.

9.9. The Chairperson proposed that the Council agree to forward the draft waiver decision contained in document G/C/W/758 to the General Council for adoption.

9.10. It was so agreed.

9.4 Introduction of Harmonized System 2017 Changes into the WTO Schedules of Tariff Concessions – Draft Waiver Decision (G/C/W/759/Rev.1)

9.11. The Chairperson drew Members' attention to the collective draft waiver decision circulated in document G/C/W/759/Rev.1 in connection with the introduction of HS2017 changes into WTO schedules of tariff concessions. The current waiver decision was contained in document WT/L/1029 and Addenda 1 and 2 and would expire on 31 December 2018. The one-year extension, as provided for in the decision annexed to document G/C/W/759/Rev.1, had been the

subject of consultations in the Market Access Committee meeting that had taken place on 9 October 2018.

9.12. The Chairperson proposed that the Council agree to forward the draft waiver decision contained in document G/C/W/759/Rev.1 to the General Council for adoption.

9.13. It was so agreed.

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

10.1. The Chairperson reminded Members that document G/C/W/705/Rev.2 contained both a waiver request and a draft waiver decision submitted by Jordan in respect of the transitional period for the elimination of its export subsidy programme. Also, at the July 2018 meeting of this Council, it had been agreed that the CTG would revert to the matter at this meeting, where Jordan would update Members on any developments in this regard.

10.2. The delegate of Jordan updated Members on progress made towards developing a WTO-consistent replacement export subsidy programme in Jordan. He indicated that, as explained at the Council's previous meeting, the new WTO-compliant programme had been agreed by the Council of Ministers and was now passing through the legislative process, with the new draft income law currently being considered by Parliament. He once again emphasized that the current subsidy programme would be terminated by end-2018, according to Regulation No. 106 of 2016. Jordan wished again to thank Members for their cooperation and understanding of the challenges faced by the Jordanian economy. He requested that this item be included in the Council's next meeting agenda so that Jordan could provide Members with a further update on progress made.

10.3. The delegate of the United States thanked Jordan for the update on its reform efforts and congratulated Jordan on its efforts to design an alternate support programme that was compliant with Jordan's international obligations. The US had been actively involved in providing technical assistance (TA) to resolve the underlying issue. In her delegation's view, this process had been an excellent example of Members working together, cooperatively and creatively. The US looked forward to the termination of the support programme at issue, and to the implementation of the new programme, in accordance with the schedule that Jordan had reviewed with them.

10.4. The delegate of New Zealand thanked Jordan for its transparency and reform efforts; their regular updates to the Council were very much appreciated.

10.5. The Chairperson thanked Jordan and other delegations for their interventions. He proposed that the Council take note of the statements made and, as requested by Jordan, agree to revert to this matter at the Council's next meeting, when Jordan would report again on the implementation of its new programme, as from 1 January 2019.

10.6. It was so agreed.

11 FACTUAL REPORT BY THE CHAIRMAN OF THE SAFEGUARDS COMMITTEE REGARDING ARTICLE 13.1(E) OF THE AGREEMENT ON SAFEGUARDS (G/L/1276 – G/SG/191 AND G/L/1276/ADD.1 – G/SG/191/ADD.1)

11.1. The Chairperson informed Members that, under this agenda item, the Council was to consider a factual report by the Chairperson of the Committee on Safeguards (SG Committee) regarding Article 13.1(e) of the Agreement on Safeguards, contained in document G/L/1276 and its Addendum. This factual report had been submitted under the Chairperson's own responsibility. As was explained in the introductory part of the report itself, the SG Committee had discussed this issue on several occasions since its regular meeting in the spring of 2018. The Chairperson of the SG Committee had informed the Committee at its regular meeting of 22 October 2018 that he would submit the factual report to the CTG under his own responsibility.

11.2. The delegate of Thailand wished to express Thailand's appreciation for the diligent work and efforts of the Chair of the Committee on Safeguards, both in leading the process and in drafting the

factual report. As Members were aware, the factual report was the result of a request made by Thailand under Article 13.1(e) of the Agreement on Safeguards on Turkey's proposed re-balancing measures. Thailand had made its request not only because of its own specific trade interests but also because of the broader systemic issues that could potentially have an impact upon all Members. Thailand thanked those Members that had expressed their views on these important issues at the SG Committee meetings. Thailand reserved its rights under the WTO Agreements and would continue to follow the development of this issue closely.

11.3. The delegate of Turkey thanked the Chairperson of the SG Committee and the Secretariat for preparing this factual report regarding Article 13.1(e) of the Agreement on Safeguards. His delegation had had the chance to make Turkey's point of view on this issue heard several times during the regular Committee meetings and the Chair's consultations. He repeated that it was Turkey's view that there was no binding rule on the methodology to calculate the level of substantially equivalent concessions either in the Agreement on Safeguards or in WTO jurisprudence more generally. Therefore, Members were free to use different periods in their calculations on how to determine their level of rebalancing measures, as indeed they did. For example, as seen in Annex 4 of the factual report, almost in all of the notifications made to the SG Committee in 2018, Members had calculated their level of suspensions based on their exports in the year preceding the year in which the original measure had been imposed, just as Turkey had done in calculating the level of suspensions against Thailand. He concluded that the methodology employed by Turkey to calculate the level of substantially equivalent concessions in this case was in full conformity with Turkey's obligations under the WTO Agreements.

11.4. The delegate of the United States thanked the SG Committee, along with the Committee's Chair, and the Secretariat, for compiling this report and for forwarding it to the CTG. The US believed that this report was important not only for the Members directly involved but also for all Members, as it informed them of approaches that Members had previously taken under Article 12.5 of the Safeguards Agreement.

11.5. The Chairperson thanked delegations for their interventions and invited the Council to take note of the factual report made by the Chairperson of the SG Committee, under his own responsibility, contained in document G/L/1276 and its Addendum, and of the statements made.

11.6. It was so agreed.

12 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)

12.1. The Chairperson reminded delegations that, at the last meeting of this Council, the delegation of the Central African Republic, on behalf of the LDC Group, had introduced this issue. At that meeting, some delegations had requested further clarification and time for reflection on this issue. Therefore, the Council had agreed to revert to the issue at the current meeting.

12.2. The delegate of the Central African Republic, on behalf of the LDC Group, reiterated that this issue was very important in relation to the harmonious transition of LDCs towards economic development and integration in world trade. As already explained at the CTG on several occasions, and also in bilateral meetings, the LDC proposal on graduation, submitted on 19 April 2018, was intended, in relation to Annex VII(b) of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), to enable LDCs that had graduated still to enjoy certain flexibilities under Article 27:2 of the SCM Agreement, as long as the Member's GDP per capita was under US$1,000, or for a limited amount of time. He repeated that his submission was very simple and very clear, and it complied with the request made by LDC Ministers in their Declaration in Buenos Aires. He urged Members to reach a positive agreement in favour of this proposal.

12.3. The delegate of Nepal associated his delegation with the statement delivered by the Central African Republic, as Coordinator of the LDC Group. He noted that graduation from LDC status to developing country status was not a one-time change but rather a continuous process of socio-economic development, following its own rhythm and momentum. Even if, to graduate, a country had to fulfil two of the three criteria indicated by the UN system and, specifically, the Committee on

Development Policy, under the UNDESA and ECOSOC, in practical terms, the socio-economic status of the general population of those countries might still need to be greatly improved. The graduation itself might be a matter of pride for the country; nevertheless, it was a very challenging situation because graduating LDCs were required to relinquish a number of international support mechanisms, preferences, and special treatments, including LDC-specific special and differential (S&D) treatment provisions, and Aid-for-Trade. The LDC proposal, as contained in documents WT/GC/W/742 and G/C/W/752, was intended to clarify the existing provisions of Annex VII(b) of the SCM Agreement. During the consultation period, some months earlier, certain Members had stated that the flexibilities under Annex VII(b) provisions in the SCM Agreement were automatic for graduating LDCs, and that subsequently there was no need to submit separate proposals given that several developing country Members had invoked these provisions while their GDP per capita was less than the US$1,000 in 1990 value. It was also clear that developing countries, including graduating LDCs, would only be using this flexibility if their GDP per capita were less than US$1,000 in 1990 value. It should be noted that the list of countries that had a GDP per capita of less than US$1,000 in 1990 value was updated by the WTO Secretariat. Set against this background, Nepal requested Members to support the LDC proposal and thanked those Members that had already indicated their support for it.

12.4. The delegate of Brazil recalled his delegation's statements at the last CTG meeting, and in the July meeting of the General Council, and reiterated Brazil's support for the LDCs' proposal.

12.5. The delegate of the United States thanked the LDC Group for its review of the proposal presented to the Council. In general terms, the US continued to question the need to change the rules in this area. It appeared to them that the UN process already provided for a rather lengthy transition process out of the LDC category, including possible extensions. The specific need for this proposal was also unclear to the US as there did not appear to be any export subsidy programmes in place for which an extension might then be needed, and while the US was willing to discuss the issue further, it would nevertheless be helpful if the relevant Members provided a subsidy notification to clarify this issue. She concluded that, if technical assistance were indeed required, the US would welcome the opportunity to share their experience and technical knowledge. The US stood ready to continue to engage in discussions with the LDC Group on this issue.

12.6. The delegate of Nigeria thanked the delegate of the Central African Republic for presenting, on behalf of the LDC Group, this proposal on measures to allow graduated LDCs with GNP below US$1,000 benefits pursuant to Annex VII(b) of the SCM Agreement. Nigeria also thanked the other delegations that had spoken on this issue. His delegation believed that the WTO should continue to support developing countries, and LDCs especially, in their efforts towards economic diversification and sustained growth. This could be achieved through review and strengthening of S&D treatment provisions to further enhance the benefits for developing countries of the MTS. Nigeria took note of this proposal from the Central African Republic, on behalf of the LDCs, which had been forwarded to Capital for its consideration, and Nigeria would communicate its position to the Council in due course.

12.7. The delegate of India welcomed the communication from the Central African Republic on behalf of the LDC Group on the subject of deeming newly graduated LDCs as Annex VII(b) Members until such time that they met the income criteria for graduation from Annex VII of the WTO Agreement on Subsidies and Countervailing Measures. As stated at previous meetings, India reiterated that it agreed with the principle that the income threshold for graduation from Annex VII should be extended to newly graduated LDC Members as well. India welcomed the opportunity to discuss these aspects of Annex VII interpretation with the LDC Group and looked forward to extending its support in the finalizing and adoption of the proposed decision.

12.8. The delegate of Canada thanked the Central African Republic, on behalf of the LDC Group, for its update. Canada was mindful of the challenges faced by LDCs and of the need for flexibilities in the rules, including in respect of the S&D provisions found in Annex VII of the SCM Agreement. At the same time, Canada sought a clearer understanding of the proposal. At the CTG's previous meeting, Canada had identified a number of questions it wished to discuss with the LDC Group. Since then, Canada had met with the LDC Group and had received certain information; however, further clarifications were still required, including on which recently-graduated LDC countries would benefit from this proposal. Canada looked forward to discussing these questions with the LDC Group.

12.9. The delegate of Japan thanked the Central African Republic and the LDC Group for the updates. Japan's position on this issue remained unchanged. As stated at the CTG's previous

meeting, Japan wished again to highlight the importance of these issues relating to graduation from the LDC category and remained open-minded about its engagement in the discussions. In order to facilitate consideration of this issue in Capital, as well as discussion among Members, Japan reiterated, in the meantime, its request that the proponents provide further detailed information on which countries would benefit from this proposal, based on the latest statistics, and what domestic policies such countries currently took in this area. Japan looked forward to further discussing this issue with the Members concerned.

12.10. The delegate of Thailand thanked the Central African Republic, on behalf of the LDC Group, for its update, and agreed in principle to this proposal provided that the GNP per capita threshold set out in the methodology in document G/SCM/38 had not been reached. However, Thailand saw the benefit of further discussion and asked if the Secretariat could provide a list of Members that would benefit from such measures.

12.11. The delegate of Turkey thanked the Central African Republic, on behalf of the LDC Group, for their proposal. Turkey saw merit in discussing this proposal and believed that it was the responsibility of the Membership to assist the LDCs in their efforts to integrate into the global economy and the MTS. Turkey also thought that graduated LDCs should be granted the same rights as the developing countries listed in Annex VII(b) of the SCM Agreement. Turkey would continue to participate actively in these discussions.

12.12. The delegate of the European Union stated that, as indicated at the CTG's previous meeting, the EU stood ready to engage constructively on development issues, and those concerning LDCs in particular, on the basis of analysis that clearly explained where the specific problems were, which justified certain specific courses of action. Developing countries, and in particular LDCs, should have access to flexibilities that genuinely helped them to achieve their development objectives; however, these flexibilities needed to be needs-driven and evidence-based. At present, the EU could not agree to any broad general automatic exemption for all developing countries from existing rules. She asked the proponents again if graduated LDCs would remain covered by the list of Annex VII(b) until their GNP per capita reached US$1,000 in constant 1990 dollars for three consecutive years. Once this condition had been met, she asked if the provision of Article 27.2(b) of the SCM Agreement would apply to such graduated LDCs, meaning that such former LDCs would therefore be allowed to grant export subsidies for eight years after they had left the list.

12.13. The delegate of the Bolivarian Republic of Venezuela expressed support for this proposal.

12.14. The delegate of the Central African Republic clarified that this was not a new submission, but rather a communication that took into account a technical error. His delegation remained available to Members wishing to discuss further the measures proposed.

12.15. The Chairperson thanked the Central African Republic for its intervention, on behalf of the LDC Group, as well as the other delegations for their interventions on this issue. Since certain delegations had indicated that they still required further clarification of this issue, he encouraged the LDC Group to continue to engage actively in discussions with Members and proposed that the Council take note of the statements made and revert to this issue at the Council's next meeting, at the request of the LDC Group.

12.16. It was so agreed.

13 PROPOSAL TO ENHANCE TRANSPARENCY AND STRENGTHEN NOTIFICATION REQUIREMENTS UNDER WTO AGREEMENTS – COMMUNICATION FROM ARGENTINA, COSTA RICA, THE EUROPEAN UNION, JAPAN, THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU, AND THE UNITED STATES (JOB/GC/204–JOB/CTG/14 AND JOB/GC/204/ADD.1–JOB/CTG/14/ADD.1)

13.1. The Chairperson drew Members' attention to document JOB/GC/204–JOB/CTG/14, dated 1 November 2018, circulated at the request of the delegations of Argentina, Costa Rica, the European Union, Japan, and the United States, and containing a Draft Decision for the General Council's consideration on procedures to enhance transparency and strengthen notification requirements under the WTO Agreements. He also informed Members that, in a communication dated 7 November 2018, circulated as document JOB/GC/204/Add.1–JOB/CTG/14/Add.1, the

delegation of Chinese Taipei had also requested to be included in the list of co-sponsors of the proposal.

13.2. The representative of the United States thanked Argentina, Costa Rica, Chinese Taipei, the European Union, and Japan, for co-sponsoring this initiative and for their contribution to the proposal and reminded delegations that the US had initially tabled the proposal at the November 2017 CTG meeting with a view to improving Members' compliance with the notification requirements of the various WTO Agreements.

13.3. The proposal circulated for this meeting was the culmination of improvements, based on the work of all the co-sponsors, Members' feedback received during the previous two CTG meetings, and countless bilateral and small group meetings. The proposal constituted an effort to address deficiencies and gaps in notifications and transparency. It was an effort to reinvigorate the 20-year-old institution, and to put the WTO on a path towards a more successful and sustainable future.

13.4. The inspiration for the proposal stemmed from the Secretariat's Annual Report on Notifications provided to the CTG in document G/L/223 and its revisions, which demonstrated Members' inadequacy to comply with the notification requirements of the various WTO Agreements. According to this report, fewer than half of the WTO's Members had provided their 2017 subsidy notifications. A similar situation existed for Agriculture, where one third of regular notifications were outstanding for the period 1995 through 2017.

13.5. A lack of transparency was problematic for traders and undermined the proper functioning and operation of the WTO Agreements. From a systemic perspective, it was also very difficult to develop, evaluate, and assess negotiating proposals to improve the operation of the various WTO Agreements without the information that would have been provided under existing WTO notification obligations. Lack of compliance with basic notification obligations also undermined confidence in the MTS. If Members could not comply with their most basic obligations, what certainty could there be that they were complying with their more substantive ones?

13.6. To encourage better compliance with notification obligations, two incentives to seek improved performance had been considered, namely the ability to request TA, and the ability to compile information through the TPR process, as well as modest administrative measures that acknowledged that sustained problems in compliance should at least have some consequences. However, this proposal did not change Members' notification obligations under the WTO Agreements; rather, it merely sought to encourage better compliance through various incentives and administrative measures. In order to explain the details and particularities of the proposal he then invited his colleague to take the floor.

13.7. The delegate of the United States said that, in order to improve Members' compliance with notification obligations, the proponents had carefully reviewed the Secretariat's reporting to the CTG and, given its comprehensive nature, which concerned all the Agreements under the aegis of this Council, the scope of the proposal had been limited to those Agreements, as outlined in its first paragraph. However, the proponents were open to consider the addition of other Agreements, such as the TFA, which could be included in a further revision of the proposal.

13.8. The proposal also recognized that some notification requirements were on an annual or biannual basis, with a fixed date for when such notifications were due. Other notifications were required when a new measure was proposed, as in the case of newly proposed regulations notified under the TBT or SPS Agreements.

13.9. This proposal to the General Council would apply to all notifications concerning the Agreements listed in its paragraph 1, as there had been delays in the submission of each type of notification. However, the Agreement on Agriculture (AoA) had been treated differently in paragraph 1(a) given that, since 1995, when the notification timeline had been established, in document G/AG/2, Members had identified significant challenges in meeting the timelines for their agricultural subsidies notifications. As noted in paragraph 4 of the proposal, the work currently taking place at the Committee on Agriculture (CoA) was intended to modify document G/AG/2. The proposal did not change Members' notification obligations under the WTO Agreements but, considering the work at the CoA, additional time had been proposed for agricultural notifications to be submitted before the application of administrative measures.

13.10. To encourage the submission of notifications, the proposal recommended elevating the issue to the General Council in order to allow Members to reaffirm their commitments to their existing notification commitments, in paragraph 1, and including more information on notifications in Members' Trade Policy Reviews (TPRs), in paragraph 6. To maintain a focus on the issue of notifications, the proposal also recommended that the Working Group on Notification Obligations and Procedures (WGNOP) review issues relating to notifications and potential improvements, in paragraphs 2 and 3. It was also recommended, in paragraph 5 of the proposal, that this Working Group update the Technical Cooperation Handbook on Notifications.

13.11. Given that some WTO Agreements encouraged the use of counter-notifications, paragraph 7 of the proposal also suggested that this option could be employed more broadly. In the case of the Agreements listed in paragraph 1, the text in paragraph 8 of the proposal encouraged greater transparency, even when a notification had not been submitted, by asking Members to provide information on the reason for the notification's delay, when the notification was likely to be submitted, and any partial notification information already available.

13.12. The proposal also provided options whereby the Secretariat could assist Members in providing the notification, as reflected in paragraphs 9 and 11. Her delegation believed that, in all probability, there were a number of notifications that were missing simply because of a lack of understanding of what had to be notified. The Secretariat could be of assistance in this regard. For example, on State Trading Enterprises (STEs), a number of Members might only need to notify that they did not maintain any STEs.

13.13. Her delegation had listened carefully to Members' concerns about the need to differentiate between those Members that were not providing notifications due to a true lack of capacity, and those Members that simply did not want to provide a notification. This had been included in paragraphs 10 and 12(c).

13.14. Indeed, paragraph 10 encouraged Members to identify those notifications that they had not submitted due to a lack of capacity. These Members were also encouraged to include information on the assistance and support for capacity-building that they might require in order then to submit their completed notifications. This wording had been borrowed from the provisions in Section 2 of the TFA. In addition, if a Member provided the information identified in paragraph 10 then such Members would not have administrative measures applied to them, as set out in paragraph 12(c).

13.15. Some Members had indicated that they might experience difficulties in identifying those notifications for which they needed assistance. Helpfully, some developing country Members had also indicated that the Secretariat provided an annual accounting to each Member of those notifications that were currently outstanding. Thus, rather than requiring each developing country Member to do an independent accounting, the Secretariat provided a list for each Member to review and subsequently determine potential assistance needs. The US hoped that Members would find this flexibility useful as its ultimate goal was to achieve timely notifications from all Members.

13.16. Turning to the administrative measures, she noted that flexibility alone would not be sufficient to encourage notifications from Members that, for whatever reason, did not want to provide a notification. Therefore, according to paragraph 12 of the proposal, if after two years a notification had still not been provided, administrative measures would then be applied to the Member concerned.

13.17. The Secretariat's annual reporting on outstanding notifications and the specific efforts of the standing Committees to discuss the challenge of these missing notifications had done little to resolve the problem. Thus, the proposal looked to administrative measures currently used by the WTO Budget Committee. However, the US had considered Members' comments that some of the administrative measures employed by the Budget Committee might not be suitable for the current proposal on notifications. For example, access to the WTO Members' website, and access to WTO TA, could be important tools in facilitating the submission of notifications. Thus, the proposal had not included these types of administrative measures; instead, two new proposed administrative measures had been added, one outlining that Members that did not fulfil their notification requirements by the deadlines established in the proposal might not have the questions they asked of other Members answered during TPRs, and the other providing for an additional monetary contribution to the WTO Budget of a specific percentage, to be decided.

13.18. The US appreciated the opportunity to provide additional information on this notification proposal, newly co-sponsored by Argentina, Costa Rica, the EU, Japan, and Chinese Taipei, and believed that improving transparency through existing WTO notification requirements was the kind of institutional reform necessary to facilitate future negotiations across negotiating topics and would be a worthy and desirable outcome in the near future. To advance this work, her delegation and the other proponents planned to begin proponent-based discussions with all interested Members on further improving the current proposed General Council Decision on notifications.

13.19. The representative of the European Union thanked the co-sponsors of the proposal for making it possible to continue the discussion that had begun with the original US proposal in November 2018, and for the good cooperation overall. In addition to the remarks made by the US Ambassador and the US delegate, the EU wished to place this proposal, which appeared to be very technical, into the current and broader context of WTO modernization.

13.20. Indeed, in September 2018, the EU had published a concept paper on WTO modernization in response to the serious challenges being faced by the MTS. In that paper, the EU had outlined its ideas for modernizing the three main functions of the WTO, which were rule-making, dispute settlement, and monitoring. With regard to the WTO's monitoring function, improving transparency and compliance with notification obligations was an essential part of the EU's approach. This proposal therefore formed part of the EU's efforts and was a first step towards reinforcing the WTO as an institution.

13.21. Ambassador Shea had eloquently summarized the lack of transparency resulting from the serious backlog in notifications throughout various important areas of the WTO's work. This created problems for economic operators, undermined their confidence in the MTS, and hampered the functioning of the Organization, including its negotiating pillar. Consequently, reinforcing transparency was in the interests of all Members, regardless of their level of development. In fact, the more capacity constraints a Member faced, the more important it was to have access to up-to-date information.

13.22. For this reason, when the US had tabled its original proposal a year ago, the EU had welcomed it for triggering a long overdue conversation about an issue that had been of serious concern to a large number of Members for many years. The EU was pleased to develop these ideas further and to co-sponsor the proposal in its current form.

13.23. The EU was of the view that one of the main improvements of the proposal was the differentiation it introduced, in paragraphs 10 and 12(c), between cases where notifications were not provided on time because of capacity constraints, on the one hand, and cases where capacity was not the issue, on the other. Where capacity constraints were the issue, various forms of assistance were available to developing countries to help them to meet their notification requirements.

13.24. Paragraph 9 of the proposal encouraged developing countries to make use of these means and to choose, with the help of the Secretariat, between technical assistance and training activities provided through the WTO Institute for Training and Technical Cooperation, and more *ad hoc* support from the respective divisions of the Secretariat in preparing individual notifications.

13.25. The proposal also tasked the WGNOP to assess where the WTO Trade-Related Technical Assistance (TRTA) notifications were effectively contributing to improving beneficiaries' notification performance, and where adjustments were still needed. The co-proponents were ready to address this issue.

13.26. Beyond capacity-building, the proposal contemplated various incentives for improving notification compliance; these included updating the Handbook on Notifications and increasing the focus on notifications in TPRs, in full conformity with the neutrality of the Secretariat, and the key features of the Trade Policy Review Mechanism (TPRM).

13.27. As already stated in previous discussions, the EU believed that, in cases where a lack of transparency was not due to capacity constraints, there needed to be consequences. In this vein, the EU supported the idea of the original proposal to apply disciplinary measures for such cases, but also saw the need to adapt the administrative measures used in the specific context of the Budget

Committee. The current proposal had kept those administrative measures that could usefully be transposed to the notification context and had also added some new concepts.

13.28. The measure that was designed to allow Members to withhold their replies to questions posed by a Member not fulfilling its notification obligations during TPRs was aimed at recalling the value of transparency, which should not be taken for granted. The co-proponents were encouraged by the support and constructive feedback that they had received from Members during informal conversations that had been taking place since December 2017.

13.29. The EU looked forward to further improving the proposal with Members during the informal discussion process mentioned by the US and considered it important to reflect also upon the experience with different notification realities in the respective Committees.

13.30. The delegate of Chinese Taipei thanked previous speakers for having introduced the proposal and expressed satisfaction for having tabled it together with the other co-sponsors. Chinese Taipei believed that transparency was a critically important element of the MTS, had for this reason always advocated for enhanced transparency in the WTO, and supported proposals seeking to improve notification compliance. Indeed, her delegation regretted to see persistently low levels of notification compliance. The poor record on notifications was worrying as this made the work of the Committees ineffective, thus negatively affecting Members' ability to monitor implementation of the WTO Agreements and commitments.

13.31. For Chinese Taipei, the key element and the essence of this proposal was to provide adequate support to assist Members to complete their notifications when such support was necessary, but not to create new obligations.

13.32. The delegate of Argentina thanked the Ambassadors of the United States and the European Union for having introduced this proposal on transparency on behalf of the group of co-sponsors. He noted that it was widely recognized that the stability of the multilateral regulatory framework, as well as its predictability regarding changes introduced to trade rules, were key issues for international trade operators. Predictability, which in essence consisted in looking forward to the future, was a central element for trade facilitation; however, with predictability should also come transparency. Transparency allowed Members to obtain information concerning not only current and future requirements, but also information about past regulations.

13.33. Members' concerns over the low levels in fulfilment of requirements with regard to transparency were not an issue of systemic puritanism. Members' concerns on this issue referred to the great and real impact caused by a lack of transparency on the subtle balance of rights and obligations to which all Members had voluntarily adhered.

13.34. Argentina believed that the *status quo* was not a means in itself; nor did it provide the necessary tools to dissuade Members from ignoring their transparency obligations. Indeed, such *status quo* resulted in other situations, which were not comparable: negligence and passivity in fulfilling transparency commitments *vis-a-vis* real cases where Members lacked the capacity to do so.

13.35. Therefore, and without prejudice to any future developments, Argentina believed that this proposal represented a step forward when compared with the document initially submitted to the CTG in early 2018, and considered that it now adequately addressed the three basic questions, what, why, and how, as followed: (i) what was the concern over the lack of transparency; (ii) why a lack of transparency had a negative impact upon the functioning of the system and Members' rights; and (iii) how the introduction of incentive and administrative measures could resolve the issue. For these three reasons, Argentina had decided to co-sponsor the proposal; in particular, Argentina believed that repeatedly expressing a concern was not enough to resolve it. Of course, certain adjustments could be introduced, and Argentina hoped to contribute to the further development of the proposal.

13.36. The delegate of Costa Rica expressed deep satisfaction with the proposal, of which Costa Rica was now a co-sponsor. The proposal's intention was to enhance transparency and strengthen notification requirements in the WTO and it contained significant elements that would contribute towards improvements in the fulfilment of commitments by the Membership overall.

13.37. Transparency was both a principle and a public good of the MTS that all Members must protect because the complete fulfilment of notification obligations and requirements guaranteed its correct functioning. Without timely access to accurate information the WTO functions of surveillance and negotiation would be weakened, and the risk of trade friction would increase.

13.38. Access to up-to-date information on Members' trade policies was vital to Members' work, particularly in the case of developing countries and small economies, which often lacked the means to maintain their own trade intelligence structures in the majority of their markets. In this regard, fulfilling transparency commitments in a timely manner was of great value. What would happen if each one of the Members were obliged to compile information from all other Members? It would be an impossible task, beyond the capacity of almost all Members. Therefore, Costa Rica valued the mechanisms proposed and believed that the result could be a strengthened WTO.

13.39. Costa Rica recognized that preparing notifications could be a burdensome task, which often involved gathering information from many different institutions that dealt with a range of different policies. The efforts that some Members had made to meet their notification obligations, particularly in the case of developing countries like Costa Rica, might usefully be compensated by other Members likewise meeting their obligations on time, to the benefit of all Members and the MTS in general.

13.40. Among the various elements in the proposal, he highlighted the following: the reinvigoration of the WGNOP, as well as the discussion on recommendations to improve Members' fulfilment of their notification requirements. These would improve Members' understanding of those situations where notifications had not been filed, and above all contribute towards trying to find solutions to the problem, given that not all Members faced the same conditions when it came to fulfilling these requirements. In this regard, technical assistance and capacity-building received from the Secretariat would help to build capacity at national level. Moreover, Members could go one step further, depending on their will and interest, by exploring the options within the Working Group with a view to improving the role and effectiveness of TA activities, as set out in the proposal.

13.41. Costa Rica believed that it was important for Members to commit to active policies when seeking solutions to their lack of notifications; perhaps on an exceptional basis, these could include regular reports explaining the reasons for delays, the anticipated timeline for notification, as well as information on any technical assistance and support that had already been requested.

13.42. Costa Rica encouraged other Members to join the proposal and thanked them for their comments and constructive feedback. He looked forward to further developing this proposal so as to tackle the challenges facing the WTO and to ensure the proper functioning of the MTS.

13.43. The delegate of Japan thanked the US and the EU for their statements introducing this proposal. Japan had been pleased to join them, together with other co-sponsors, in strengthening the implementation of the current notification obligations of the WTO Agreements.

13.44. Members were aware of certain deficiencies in the functioning of the WTO, which prevented it from fulfilling its intended role. The rules-based MTS was founded upon the principles of transparency and predictability, and Japan considered that it was crucial to make further efforts to ensure that transparency obligations were consistently fulfilled because the strength of the MTS depended on it.

13.45. As already stated by the US and the EU, the intention of the proposal was not to impose new requirements on Members but rather to encourage them to fulfil their existing notification obligations as laid out in the Agreements. This proposal aimed to ensure that Members having the capacity to meet their notification commitments fulfilled their obligations within the WTO to do so.

13.46. Japan sought Members' support for the proposal and expressed its readiness to respond to any questions that Members might have.

13.47. The representative of Australia indicated that Australia also wanted to co-sponsor the joint proposal on Procedures to Enhance Transparency and Strengthen Notification Requirements. Referring to transparency, she noted that many WTO bodies had ceased to operate as originally intended given that many Members had reduced their level of engagement, ignored deadlines for submitting notifications, and failed to respond to the market access concerns raised by other

Members. She emphasized that not only transparency but also the monitoring of other Members' trade policies played a central role in ensuring that WTO Members understood the policy actions taken by their trading partners. In this vein, effective notifications were essential to facilitating the identification of trade barriers and the smooth operation of the MTS.

13.48. In contrast, non-compliance or delayed compliance with notification obligations allowed Members to avoid unwanted investigation of their trade measures and made it difficult to compare trade measures between Members in a fair and timely manner. Australia believed that systematic and deliberate non-compliance should not be allowed to continue without consequences, particularly given that, for business, transparency was critical.

13.49. The above-mentioned processes, when functioning properly, ensured equitable access to information among Members, and lowered transaction costs between traders. Nevertheless, Australia recognized that there might be a need to establish the extent to which capacity and capability had an impact upon a Member's level of non-compliance. Therefore, it was important to consider how to encourage, assist, and support Members in their efforts to improve their levels of compliance. In this vein, Australia found value in encouraging Members that were struggling to comply with their notification obligations to seek assistance from the WTO Secretariat to help them do so.

13.50. She clarified that the financial penalties set out in the proposal would not apply to Members that had sought the Secretariat's assistance, and that the co-proponents were open to working further on how to minimize any adverse impact on Members that were trying to meet their obligations.

13.51. In order to reinforce Members' commitment to transparency, the proposal suggested that any funds received from the budget penalty could go towards assisting LDC Members to meet their notification obligations.

13.52. Australia did have strong reservations regarding the differentiation in notification obligations between agricultural and non-agricultural notifications because its strong preference was for all of these notification obligations to be treated in the same way. Australia also favoured a sunset clause arrangement whereby this special leeway would cease to apply after a number of years.

13.53. The proposal provided both for an opportunity to review how Committees might improve compliance and how Members themselves might improve the completeness of their notifications.

13.54. Incomplete notifications raised transaction costs and the costs of doing business. A reform regarding transparency and notification practices in the WTO was critical to the continued effectiveness of the MTS. Therefore, Australia urged Members to co-sponsor, or simply lend their support to this proposal as a way of beginning a focussed dialogue on a way forward on this important issue.

13.55. The delegate of China thanked the proponents for tabling the proposal. China had always believed that transparency was one of the most important WTO principles, and that Members should abide by and make every effort to enhance transparency and notifications.

13.56. In the past, China had made various efforts to improve its notifications, both in terms of quantity and quality, and had submitted many new notifications. China would continue to do so.

13.57. As the proponents had indicated, notification compliance was far from being perfect. When talking about notification performance, some Members often cited developing Members as examples of a low level of compliance, and in different configurations more or less blamed them for such. However, what was really important to note was that not a single Member had fully fulfilled all of its notification obligations as required by the WTO Agreements. Therefore, China also echoed the importance of the work being done in this area and supported the intention to find effective solutions that would help to address these issues.

13.58. However, China did not consider a punitive approach to be a good option. Punishment was commonly used in British-style schools in the past, and in China's schools even in China's recent past, but nowadays schools seldom resorted to such an approach. Indeed, punitive approaches led

to more negative than positive effects and would do so also at the WTO, and that despite the fact that these measures had been inspired by existing WTO measures that were currently used in the budgetary and financial context. However, Members' financial obligations were of a different nature to notifications or other Members' obligations.

13.59. Even though performance in the area of notifications required comparable capacity, capacity was precisely what developing Members lacked, and it was this lack of capacity that had led to late or incomplete notifications. In addition, the unreliable content of the notifications of other Members also placed an extra burden on developing Members with limited capacity. This point needed to be placed at the centre of any discussion on improvements in the area of notifications, and if incentives were going to be developed, these should be positive rather than negative.

13.60. China asked the proponents if a similar proposal would be tabled under the Council for Trade in Services.

13.61. The delegate of Senegal thanked the proponents for their submission, as well as for the bilateral exchange of views on this issue. As indicated at the last CTG and Trade Negotiations Committee (TNC) meetings, Senegal considered transparency and the implementation of current notification obligations to be fundamental pillars of the MTS, as well as fundamental elements in the WTO's negotiating role. Senegal supported all positive proposals aimed at improving Members' respect of existing notification obligations, and particularly those for Members that faced real constraints.

13.62. Senegal also considered it useful to instruct the WTO Committees, Working Groups, and other relevant bodies, such as a reanimated WGNOP, to assess the difficulties faced by Members in respect of their notification obligations under the Agreements set out in paragraph 1 of the proposal, in order to formulate, as appropriate, recommendations on how best to encourage and to improve Members' compliance with their notification obligations. In this vein, his delegation stood ready to look in particular at the ideas mentioned in paragraphs 4, 5, 8, 9, 10, and 11 of the proposal.

13.63. However, Senegal was concerned that paragraph 12 of the proposal set out punitive measures as a solution to the failure to notify when that failure could in fact be because of the actual constraints being faced by certain WTO Members. The proponents should instead wait for the results and recommendations of the review process by the relevant bodies proposed. In this regard, Senegal believed that certain elements of the proposal pre-judged the results of the exercise that had been tabled.

13.64. Senegal noted that LDCs and certain developing countries were faced by deep institutional and structural limitations when it came to meeting their notification obligations. These constraints could not be overcome by simple capacity-building seminars and instead required, beyond political will and technical capacity-building, the implementation of coordination mechanisms and processes at the domestic level, as well as action plans, so that Members could collect, process, and elaborate the necessary notifications.

13.65. Senegal did not support the proposals set out in paragraphs 6, 7, 12, 13, and 14 of the proposal, particularly with regard to LDCs, as these created obligations for Members and infringed upon their sovereignty. With regard to the proposal in paragraph 14, Senegal believed that it could circumvent current negotiations in the Negotiating Group on Rules (NGR), where the notification obligations being negotiated went beyond those set forth in Article 25.3 of the SCM Agreement.

13.66. Senegal stood ready to continue its engagement in a constructive dialogue within the Committees and the WGNOP to find solutions to the issue of WTO notification compliance. Senegal also associated itself with the statement to be delivered by South Africa on behalf of the African Group.

13.67. The delegate of Peru thanked the co-sponsors for their proposal, which Peru welcomed and considered to be an important effort towards encouraging Members to comply with their notification obligations. In this regard, Peru noted that the current proposal contained provisions on S&D, which were intended to enable developing countries to build the necessary capacity to prepare their notifications. However, Peru continued to assess the issue of sanctions that could be applied to non-notifying Members, and asked proponents for further clarification of the following points: what was

to be understood by "full or complete notifications", and who would determine whether or not a notification was full and complete? When referring to the "Working Group", were the proponents referring specifically to the "Working Group on Notifications", or also to the committees in general, as well as other working groups and competent bodies? Would the Working Group be proposing a schedule of meetings with other Committees or other relevant bodies in order to become better acquainted with the current status quo in Members' notifications? Peru also noted that currently there were certain discrepancies among Members as to under which of two Agreements a certain measure should be notified, and it had been understood that it was up to the notifying Member itself to take such a decision. Did this proposal intend to address such discrepancies? With regard to imposing a percentage increase on WTO Members' contributions when they failed to notify beyond a certain time, would the application of a one-off fine distinguish between a Member that had only one notification pending, and a Member with several pending notifications, and was there not a risk here of creating a disincentive to notify? How would such further contributions be used? Given that the draft Decision encouraged developing Members to request technical assistance linked to their outstanding notifications, would the WTO Secretariat be able to increase its TA capacity in this regard?

13.68. Peru indicated that it remained committed to contributing to discussions intended to strengthen the MTS, and that, in this regard, it supported the idea of seeking a more adequate means of incentivizing Members to comply with their notification commitments.

13.69. The representative of Mexico said that his country attached great importance to fully complying with its commitments under the covered WTO Agreements. Thanks to the WTO's notification process and transparency provisions, all Members could notify the ways in which they honoured and respected their WTO commitments; this contributed to building confidence among Members and to facilitating future trade negotiations.

13.70. For these reasons, Mexico thanked the proponents for their submission, which would not only encourage the necessary debate but also lead Members to establish an appropriate means by which to encourage transparency and notification compliance. In Mexico's view, the document went in the right direction and proposed elements that Mexico considered positive, including the reactivation of the WGNOP. At the same time, it set out in detail the work that would be required by Members in order to develop recommendations for an improved fulfilment of notification commitments, including by evaluating the contribution of technical assistance in this regard, and to update the Handbook on Notifications.

13.71. However, in Mexico's view, there remained two elements of concern that required further reflection and adjustment. One was the different treatment given to notifications in Agriculture compared to notifications under other Agreements. Mexico could not understand the rationale for such a distinction and why in the future it should be permanent. Mexico itself had made a special effort, involving all of its domestic agencies, to ensure that its agricultural notifications were fully up to date, and it was sure that other countries, and particularly developed countries, were likewise in a position to do the same. In this regard, Mexico believed that there were alternatives that should also be considered in the context of this proposal in order to allow those Members that were not up to date with their notifications a means by which to develop the capacity to become so.

13.72. Mexico had understood that the purpose of this exercise was to strengthen current notification requirements, but not to agree on new future commitments. In this regard, Mexico was concerned by the element in the proposal that mandated the NGR to establish further notification requirements on fisheries subsidies. Mexico reiterated its understanding that the purpose of this proposal was to discuss how to improve Members' fulfilment of the current notification commitments, and which incentives were necessary to do so. Mexico was not opposed to having a discussion on new notification requirements in fisheries, but on the basis of their own merits, without prejudice to the outcome, and in the appropriate forum, which was the NGR.

13.73. There were other elements in the proposal that Mexico considered important, and where strengthening efforts could be valuable; at the same time, Members had to be careful not to contradict current notification provisions. One such element was the proposal on counter-notifications, which encouraged Members to present this type of notification even in relation to agreements that made no reference to this concept. On TPRs, Mexico noted that the proponents were proposing that the TPRs include a specific section on fulfilment of notification obligations. In Mexico's view, this language needed to be strengthened so as to leave in no doubt that the objective

of the current TPR mechanism was not to serve as the basis for fulfilling specific obligations in the WTO Agreements.

13.74. Mexico stood ready to work with the proponents on these issues.

13.75. The delegate of Brazil thanked the proponents for the revised version of the US proposal. The current proposal had evolved in a positive direction when compared to previous versions, and consideration was given to the capacity constraints that for some Members were an important reason for their non-compliance. In this regard, the need for capacity-building and technical assistance for developing Members had been emphasized in the current proposal.

13.76. Brazil was also supportive of proposals to encourage cooperative work at Committee level, such as improved reporting and assessment of compliance, as well as technical workshops. Members should also work together to simplify their notification requirements and procedures. In this vein, Brazil wished to encourage Members to continue with the work already initiated in some areas, such as in the Market Access and Import Licensing Committees.

13.77. Brazil was concerned by the systemic consequences of a possible adoption of the administrative measures proposed in the draft and remained convinced that a more gradual approach would yield better results. Some of the new administrative measures being proposed, notably the supplementary financial assessment in paragraph 12.3(c), could weigh heavily on developing Members. Brazil held similar systemic concerns over the incentive to make counter-notifications contained in paragraph 7.

13.78. Brazil noted the efforts made in this proposal to distinguish between a lack of compliance resulting from capacity constraints, and what the proponents called "wilful non-compliance". Nevertheless, certain aspects of the decision-making process on the basis of which such a distinction would be drawn remained unclear.

13.79. Brazil was also of the view that the differential treatment extended to agriculture, as put forward in paragraph 8 of the proposal, without comparable flexibility extended also to other areas, was an element in the proposal that deserved Members' further attention, especially as the outcome and balance of commitments in the fisheries subsidies in the NGR should not be prejudged.

13.80. Despite the divergent views on several aspects of the proposal, Brazil believed this to be an important subject, and it was one where Brazil stood ready to engage constructively with Members in a discussion of the various issues raised by the proposal's proponents.

13.81. The delegate of Canada thanked the proponents for their transparency proposal, this being an issue considered important by the whole Membership. Improving the rate of compliance was one of the objectives identified by Canada and twelve other WTO Members in Ottawa last month to strengthen and modernize the WTO. This proposal moved in that direction, given that a poor notifications record hindered the work of the Committees and Members' monitoring ability.

13.82. The previous agenda item provided a good example: a number of LDCs were requesting an extension of special considerations under the SCM Agreement, but when looking at their SCM notifications from the previous six or seven years, 12 of the 36 Members had not notified anything; therefore, it was difficult for Members to administer or understand the needs of these countries.

13.83. Notifications were a fundamental element in meeting the WTO's transparency obligations, and they played a central role in ensuring that WTO Members understood in a timely manner the policy actions taken by each of our Governments.

13.84. Canada recognized that capacity issues could impede the ability of some Members to meet their notification obligations and that the Secretariat could indeed help in this regard. This proposal provided a process through which Members could meet their obligations, and consequences if they did not. In this regard, Canada considered it appropriate to instruct regular bodies to take the steps appropriate to reinforce Members' compliance with their transparency obligations, for instance, by conducting notification workshops. This could be a useful way to support the efforts of Committees to increase notification compliance.

13.85. The proposal to instruct the TPRB to include in TPRs a focus on Members' compliance with their transparency obligations was a constructive way of improving overall performance.

13.86. Canada also supported involving the Secretariat more in assisting Members to fulfil their notification obligations. Indeed, this was already being done in certain specific instances: for example, the HS transposition exercise, which allowed for the Secretariat to fill out and conduct the transposition of Members' Schedules, and then for these to be verified by that Member before submission to the Market Access Committee. Similarly, the Integrated Database Decision from 1996 included the possibility of assistance from the Secretariat in helping Members to ensure that their obligations for supplying tariff and trade data were actually being met.

13.87. Canada also appreciated the improvement in the approach to potential administrative measures if a Member had not sought Secretariat assistance but nevertheless had concerns that they wished to discuss.

13.88. The proposal allowed for a period of two years during which Members were required to submit their agriculture notifications. This might be an appropriate timeline in some cases, but this additional time might not be required for regular agriculture notifications. Canada looked forward to discussions with the proponents on ways to improve the timelines of agriculture notifications, and looked forward, too, to its continuing engagement with the co-sponsors, and indeed all Members, to identify improvements that would strengthen the WTO's monitoring function.

13.89. The delegate of Paraguay thanked the proponents for their submission, which was being assessed in Capital. Her delegation was of the view that enhanced transparency was necessary to help Members to face their challenges, which had systemic consequences for the Organization. Indeed, a lack of notifications and transparency could cause difficulties when monitoring compliance and in relation to the analysis of any proposals from Members.

13.90. The delegate of Nigeria thanked the proponents for their submission and associated his delegation with the statement to be made by the African Group. Nigeria believed that transparency was an issue of critical and fundamental importance to the work of the WTO. Nevertheless, Nigeria was also conscious of the fact that a number of developing countries and LDCs lacked institutional capacity to comply with their respective notification requirements. Given this apparent implementation challenge, Nigeria considered it unlikely that the proposal's S&D provisions would effectively address such challenges, but by seeking to sanction Members for not complying with their transparency obligations it would rather place undue burden on developing countries and LDCs.

13.91. Nigeria was open to further consultations on how to enhance notifications and believed that Members should be able to discuss this issue freely and to engage in the discussion constructively, without prejudice to their respective positions. A careful and balanced approach was necessary in order to ensure that all Members, especially developing country Members, were not punished unduly as a consequence of non-compliance with onerous notification obligations.

13.92. Nigeria would continue to engage actively in discussions with the proposal's co-sponsors, and considered the proposal significant in its ambition to enhance the MTS.

13.93. The delegate of Switzerland welcomed this initiative, which was intended to enhance transparency and, overall, the whole effectiveness of the WTO's surveillance policies. Proper monitoring of Members' trade policies was a pillar of the MTS and enhancing transparency and ensuring that notification obligations were scrupulously respected was fundamental to the smooth operation of the WTO Agreements. Monitoring the agreements was the responsibility of the WTO bodies, such as the CTG. To ensure the proper and effective functioning of the Committees was a matter of collective responsibility. Therefore, Committees needed to receive quality notifications from all WTO Members.

13.94. Currently, there were several gaps regarding Members' compliance with their notification obligations, and the whole Membership needed to make up for this shortfall. To that end, Switzerland supported this proposal, especially now that its proponents had given additional consideration to the complexity inherent in some of its elements, as well as the additional burden that may be placed on those Members without the necessary resources. In general terms, Switzerland saw this as a positive sign.

13.95. The delegate of Norway welcomed the proposal and the draft decision. Norway fully endorsed the aim of improving transparency and strengthening Members' compliance with their notification requirements under the WTO Agreements. The proposal addressed the current lack of updated notifications, which was a major problem in various WTO Committees.

13.96. To date, some Members had an outstanding notification backlog of ten or more years, without consequences, which reduced transparency and the possibility of establishing a sound basis on which to negotiate new commitments. To this end, Norway supported several of the ideas mentioned in the proposal, including, for example, those mentioned in paragraphs 2 to 6 regarding the WGNOP, updating of the notification requirements in the Committee on Agriculture, updating of the Technical Handbook on Notifications, and focusing more on lacking notifications in TPRs. In the previous two meetings of the Informal Committee on Agriculture, Norway had already proposed to update document G/AG/2 and welcomed the increased support for this approach.

13.97. Despite these positive assessments, Norway had some reservations with regard to the proposal's present draft. On the issue of incentives, for example, Norway was more in favour of carrots than sticks. However, it was important that Members that did not notify were named and required to provide their reasons; such Members could then be supported through technical assistance. Norway was sceptical of using any form of stick that went beyond this.

13.98. Members should also be careful not to design incentives in a way that weakened transparency by, for example, accepting more than three years and three months' delay for domestic support notifications in Agriculture. Monitoring and transparency were Member-driven processes.

13.99. In addition, if the Secretariat were tasked to compile Members' notifications, the Secretariat's reputation for neutrality might be jeopardized. The Secretariat should assist Members rather than notifying for them.

13.100. Norway did not support the creation of one group of Members that submitted their own notifications, possibly with the assistance of the Secretariat, and another group of Members that let the Secretariat simply notify on their behalf.

13.101. However, Norway did fully support all efforts to help all Members to comply with their obligations to provide timely notifications, while bearing in mind that generally it was most challenging to prepare the very first notification in a specific field, and that the Member could then draw on lessons learned when preparing subsequent notifications.

13.102. Norway had also noted the existence of some legal uncertainty in the proposal. Who would judge if a Member had not cooperated with the Secretariat? And what was the relationship between existing penalties in the WTO and the proposed new penalties?

13.103. Norway considered the proposal to be a constructive contribution to the common effort to improve transparency, but nevertheless believed that the draft would benefit from further discussion and clarification.

13.104. Norway also believed that it was necessary to improve transparency and to strengthen compliance with notification obligations not only in the area of trade in goods, but also in other areas, such as trade in services.

13.105. The delegate of Egypt would support the statement that South Africa would make on behalf of the African Group and thanked the proponents for their efforts in preparing and presenting the revised proposal, and for having invited his delegation to discuss its main elements with them.

13.106. Egypt had some general comments to make on this proposal. First, Egypt agreed that improving Members' compliance with their notification obligations and enhancing transparency in the WTO were important objectives. Moreover, the discussion on this issue was vital for the effectiveness of the MTS. Second, Egypt continued to be concerned about the proposed administrative measures in this revised proposal. In its view, these measures would not encourage Members to comply with their WTO notification commitments. Egypt believed that the right approach to enhance notification compliance in the WTO Agreements was to focus on the needs of the

developing countries and LDCs in the areas of capacity-building and technical assistance in order to help these Members to fulfil their current WTO commitments. Third, Egypt believed that it would be more beneficial for the whole Membership to focus on the elements in the revised proposals, such as paragraphs 2 to 5, concerning a positive role for the WGNOP, in cooperation with the respective Committees, and while monitoring implementation of the different WTO Agreements, in order to enhance notification compliance in the WTO overall. Fourth, it was crucial to understand that many developing and least-developed Members failed to fulfil their notification obligations not necessarily because they did not respect transparency in their trade policies or trade-related measures but because of other factors. For instance, some notifications required detailed data, the collection of which exceeded the capabilities of some Members, which lacked central databases containing all the relevant legislation, statistics, and data, for the different government agencies, and where there was also a basic lack of sufficient, qualified, human resources trained to study and analyse any available data according to the requirements of each specific notification.

13.107. With regard to the proposal's substance and language, Egypt commented that TPR reports already included a reference to the extent to which Members complied with their notification obligations. Therefore, Egypt sought clarification about what the proponents meant in paragraph 6 by a specific and standardized focus on Members' compliance with their notification obligations in the TPR exercise.

13.108. Egypt considered that counter-notifications, to which paragraph 7 referred, could not be applied to all the Agreements listed in paragraph 1 of the proposal, and that such an approach would result in a major change in Members' rights with regard to those Agreements where counter-notifications were not applicable.

13.109. With regard to the proposal's paragraph 12, Egypt believed that the proposed administrative measures could not be successfully implemented in the WTO, where developing and least developed countries comprised the majority of the Membership, and where most of these Members had already been falling behind in their notification obligations as a consequence of the various factors mentioned earlier. These proposed measures would only widen the gap between Members, resulting in a further marginalization of developing and least developed country Members, which in turn would then have a negative impact on the credibility and effectiveness of the MTS overall.

13.110. Egypt also did not support paragraph 14 of the proposal, which would change and expand upon the MC11 mandate on fisheries subsidies negotiations regarding transparency and notification procedures. Nevertheless, Egypt stood ready to engage constructively with other Members in discussions to explore different gradual approaches to the issue of enhancing Members' compliance with their notification obligations.

13.111. The delegate of Cuba thanked the co-sponsors for the proposal and made only some preliminary comments given that the proposal was currently being examined in Capital. Cuba believed that no Member could call into question its notification commitments and obligations, although Members might disagree with regard to the increase in the number of notifications to be made. Therefore, Cuba asked if the proponents had considered the extra burden that their proposal would represent, particularly for developing countries, which comprised the majority in the WTO, and which already experienced difficulty in meeting their notification obligations. Cuba did not favour an approach that increased the burden of notification obligations on those Members that were already experiencing difficulty in meeting their current commitments.

13.112. According to the proposal, a Member would be considered inactive for failing to meet its notification obligations, making it difficult to access technical assistance. This would set up a chicken and egg situation. For this reason, Cuba did not feel that this proposal offered a solution to the question of notification capacity.

13.113. With regard to the WGNOP, she quoted a recommendation made in 1996, in the Working Group's Report, for WTO bodies to pay special attention to the assistance provided to developing countries, particularly in the case of LDC Members, which would require more intensive technical assistance in order to ensure that they would have in place the systems necessary to allow them to meet their notification obligations. She asked what had happened since that date and indicated that the developing and LDC Members might still be facing the same difficulties, which was an issue not

addressed in the proposal. In short, the whole question of S&D for LDCs had not been considered, and Cuba could not support the proposal.

13.114. Cuba also indicated that, in line with the Nairobi Declaration, there was a need to establish a road map that would allow Members to understand what was to be done with regard to the Development Round negotiations, which as yet had not been completed.

13.115. Cuba also shared the concerns of previous speakers and felt that the proposal required careful consideration because of its implications for the governments of developing and LDC countries.

13.116. The delegate of New Zealand thanked the co-sponsors for this proposal, which New Zealand considered an important initiative. New Zealand had long been supportive of improving compliance with the notification requirements, which it considered essential for transparency and for the effective functioning of the WTO system. New Zealand welcomed the fact that this proposal now acknowledged where some Members might be facing capacity constraints in notifying and that it provided options for dealing with such situations while continuing to examine the specific implications for agricultural notifications, which were treated differently from non-agricultural notifications. New Zealand looked forward to engaging with the proponents in further work in order to take this initiative forward.

13.117. The delegate of South Africa, on behalf of the African Group, said that the African Group acknowledged the revised proposal and agreed that transparency and compliance with notification obligations in the WTO were important. Nevertheless, this negotiating proposal contained numerous and serious difficulties for African countries.

13.118. First, it proposed a series of punitive measures and sanctions without having offered a proper assessment of the valid reasons why Members did not or were unable to comply with their notification obligations. For many African countries, the heart of the problem was a lack of institutional capacity to comply with notification requirements on technically complex matters. This should be evident from the WTO Notification Compliance Reports, which set out the reasons for why some developing and least developed countries were unable to meet their notification requirements.

13.119. Second, this proposal placed the burden of implementation disproportionately on developing and least developed countries; in other words, those countries that were least able to comply with the existing commitments. In short, it would penalize the very Members that most required support. Additionally, some of the Members in arrears had already lost access to WTO resources and support.

13.120. Third, the S&D treatment provisions were woefully inadequate as they did not provide any solutions to the real reasons why many countries were unable to comply with their notification obligations. The idea of a limited time extension for notification, and vague offers of technical support, did not in themselves provide comfort. The idea to enhance the role of the Secretariat regarding notifications would open the way for actions that could both compromise the Secretariat's impartiality and pressure Members to comply with notification requirements in ways that impinged upon national sovereignty. Further, the idea of introducing counter-notifications in certain WTO Agreements would simply create a new source of division and conflict between Members.

13.121. Fourth, this was clearly a negotiating proposal that would introduce significant changes to the current Agreements. However, any substantive negotiating proposal must obtain an agreed negotiating mandate from all Members. And a negotiating mandate would also need to establish a negotiating body in which to hold the negotiations. Clearly, there was no negotiating mandate on this matter, and nor was the CTG a venue for negotiations. According to the Marrakesh Agreement, the function of this Council was to oversee the functioning of the multilateral trade agreements in Annex IA.

13.122. In principle, the role of the CTG was to oversee implementation of the existing Agreements, and not to engage in discussions that would change or add to those existing obligations. For this reason, the African Group was not in a position to support this proposal.

13.123. Nevertheless, the Group might be able to agree that the CTG engage in an assessment of compliance with existing notification obligations, and on the real reasons for non-compliance. This, in the view of the African Group, would be a far more valuable and constructive exercise.

13.124. A reference had been made in the preamble to this proposal on the need for a properly functioning WTO system. However, it was difficult to see this proposal getting the support it needed so long as there was no clarity on the more fundamental and urgent question of the future of the Appellate Body and the Dispute Settlement Mechanism, which the African Group, for its part, viewed as an indispensable element in a properly functioning WTO system.

13.125. The delegate of Pakistan thanked the proponents for their submission. Pakistan believed that Members' notification obligations and compliances were important to the smooth functioning of the WTO, but at the same time, developing Members in particular faced genuine capacity constraints that were sometimes preventing them from fulfilling the transparency requirement. Thus, it was more appropriate to provide adequate support to developing Members to build their capacity in order to complete their notifications rather than resorting to administrative measures. In this regard, Pakistan noted with interest the proposals in paragraphs 2 and 3 recommending additional notification workshops, as well as the reactivation of the Working Group to recommend specific measures for improvement.

13.126. The proponents had also attempted to address Members' capacity constraints by proposing additional Secretariat support. However, Pakistan was not in favour of notifications being compiled by the Secretariat on behalf of a Member. In this context, Pakistan also asked the proponents which parameters for determination of non-cooperation with the Secretariat would be mentioned in paragraph 12 of the proposal.

13.127. Regarding enhanced transparency on fisheries subsidies, Pakistan believed that this issue should be addressed in the NGR as part of a wider possible deliverable, which responded to all elements of SDG target 14.6.

13.128. Pakistan was convinced that improvements in Members' implementation of their notification obligations was imperative but did not consider punitive actions to be a good approach; nor did it think that administrative measures would achieve the desired results. Members had to make efforts to work on simplifying the notification requirements and, at the same time, to enhance Members' capacity. Pakistan looked forward to discussing this proposal further with the proponents.

13.129. The delegate of the Bolivarian Republic of Venezuela thanked the co-sponsors for their proposal and highlighted the importance of transparency for her country, both for systemic reasons and from national interest.

13.130. Undoubtedly, those Members whose trade policy information was up to date were best placed to understand and to defend their trade interests. Her delegation believed that it was in Members' own best interests to ensure that they had met their notification obligations. However, developing countries faced technical difficulties with regard to meeting their notification obligations. From her own country's experience, she could affirm that developing countries were doing the best they could in difficult circumstances, including with regard to the technical detail and complexity involved in these notifications.

13.131. She recalled that, between 1995 and 1996, when the WGNOP had concluded its report, there had been 175 notification obligations or procedures notified in Annex I of the Agreement. Clearly it was very difficult to meet such a number of commitments. She acknowledged the Secretariat's work in this regard and thanked the Secretariat, in particular, for preparing document G/L/223/Rev.25, which gave an update in respect of the notifications subject to the Council's oversight. This document indicated that both developed and developing countries were falling behind in respect of their notification commitments.

13.132. Venezuela considered that there was a need to tackle this issue but that it needed to be addressed in a positive spirit rather than by introducing more obligations, along with sanctions and punitive measures, against those countries that were falling behind. In Venezuela's view, it would be better to find a way of tackling this challenge while recognizing the capacities and difficulties faced by Members and the type of support that they actually required. Different S&D measures could

be considered, for example, a streamlining of notifications for LDCs, or else less frequent notifications for LDCs or those countries having a smaller proportion of world trade. Venezuela was prepared to contribute to this debate but could not accept anything beyond the already existing obligations.

13.133. The delegate of Ukraine said that Ukraine recognized the crucial role of transparency in the implementation of the WTO Agreements, particularly in respect of the notification requirements contained therein. He thanked the co-sponsors for their initiative to enhance transparency and to strengthen the notification requirements under the WTO Agreements.

13.134. The WTO Committees were constantly making efforts to improve Members' compliance with the transparency procedures under their respective agreements, providing guidance, technical assistance, thematic workshops, and so on. However, Members had also understood that additional steps were necessary in order to further enhance transparency and to avoid delays in submitting notifications. The proposal was therefore a good basis for further discussion and for a consideration by Members of possible ways to enhance transparency in the WTO.

13.135. Ukraine wished to comment on three aspects of the proposal. First, with regard to the need to review and update notification requirements and formats, Ukraine noted that the current practice of submitting notifications, in particular under the AoA, demonstrated that some Members failed to adhere to certain deadlines established in document G/AG/2 of 1995. Constant non-compliance with regard to deadlines undermined the value of transparency as a pillar of the MTS. To secure timely notifications, Members should discuss whether revised deadlines and notification requirements and formats would help to increase transparency and improve notification compliance. Second, concerning the text "[T]o instruct appropriate Committees to report annually about Members' compliance with notification obligations", Ukraine observed that some Members had limited resources and capacity to ensure compliance with transparency procedures. The WTO Committees could organize specific workshops addressed to such Members in order to focus on ways to strengthen capacity, to achieve the practical benefits of transparency, and to share the relevant success stories. The reasons for non-compliance should be reviewed and included in the annual reports for further consideration of those actions considered most effective. Third, regarding the issue of "counter-notification on behalf of another Member, Ukraine argued that encouraging counter-notifications was a good first step, and that the WTO committees should introduce appropriate amendments to their notification procedures and formats, as necessary, and in particular as only some notification procedures included provisions or formats for counter-notifications (namely, non-tariff measures in document G/L/60, Balance-of-Payment (BOP) measures, Article 5.5 of the Import Licensing Agreement, and Article 25.10 of the SCM Agreement).

13.136. The delegate of Ecuador thanked the co-sponsors for their proposal and wished to make some preliminary comments on it. Ecuador agreed with other Members that it was important to improve Members' fulfilment of their notification obligations. The proposal contained several interesting and important ideas in this regard. However, Ecuador could not support the proposal's administrative measures intended to put pressure on those Members that failed to meet their obligations. This punitive approach would not impact upon all Members in the same way and would therefore be counter-productive. Instead, Ecuador believed that Members should be working together to design more reasonable and positive incentives.

13.137. The delegate of Panama thanked the proponents for their submission, which was being assessed in Capital. Panama had already submitted two comments to the proponents during bilateral meetings and would continue to hold discussions with them.

13.138. The delegate of Singapore thanked the proponents for their submission addressing an important area that was in urgent need of improvement. Singapore shared the proponents' concerns over the continuing poor record of many Members in terms of meeting their notification obligations. For example, fewer than 40 WTO Members had submitted notifications on quantitative restrictions (QRs) since 2012.

13.139. Compliance with notification obligations was essential to the effective functioning of the WTO's rules-based system because it provided transparency and predictability to Members' trade policies and measures. The proposal contained concrete recommendations that were intended to improve all Members' notification records within the scope of the coverage indicated in paragraph 1. Singapore could support many of these recommendations, including for the reactivation of the

WGNOP, which last met in 1996, and the suggestion for this Working Group to work with the Secretariat to update the Technical Cooperation Handbook on Notifications. The suggestion to have a specific standardized focus on a Members' compliance with its notification obligations in its TPRs was also welcome. Indeed, Singapore had been regularly highlighting the importance of compliance with notification obligations in its interventions at TPRs. Singapore also supported the possibility of voluntary counter-notifications by Members, provided that the Secretariat would work with the Members concerned in the preparation of these notifications, and that the respective Member review would accept these notifications prior to their submission to the WTO.

13.140. However, there were other areas of the proposal that required further discussion, such as the proposed administrative penalties. An issue of particular concern to Singapore was the proposal that a Member with more than a year of delay in fulfilling a notification would have to pay a financial supplement on its normal assessed contribution to the WTO budget. Singapore appreciated that the proposal did acknowledge that there could be Members that were experiencing genuine difficulty in meeting their notification obligations due to capacity constraints, and that the proposal had included concrete suggestions as to how to address such a situation, such as by involving the Secretariat in the preparation of notifications, and in the provision of technical assistance. However, Singapore believed that, rather than imposing punitive measures on them, further dialogue and discussion was needed on how best to improve notification compliance in respect of Members facing genuine capacity constraints. There needed to be further discussion of when the proposed administrative measures might kick in, and to whom they should apply.

13.141. Singapore looked forward to further discussion with the proponents and all WTO Members on this and any other proposals that could help Members make real and tangible improvements to the functioning of the WTO.

13.142. The delegate of Hong Kong, China thanked the proponents for the revised proposal and for their efforts in addressing Members' concerns raised prior to this meeting. The WTO Membership acknowledged the importance of transparency for the MTS and all Members were committed to preserving the rules-based system. Her delegation was deeply concerned over the unsatisfactory and, in some cases, worsening notification performance.

13.143. The proposal, while having made adjustments with regard to the consequences of non-compliance, on the one hand, also proposed technical assistance as an integral part of the mechanism, on the other. Hong Kong, China believed that such an approach was both positive and practical.

13.144. Regarding the administrative measures proposed as a means to enhance the notification performance of a Member concerned, her delegation was of the view that some of these measures could have a spillover effect and subsequently affect other Members. For example, in TPRs, not to answer the questions posed by a Member might, in the long run, deplete the objective of transparency for which the TPRs were in part created.

13.145. Hong Kong, China, looked forward to continuing discussions with Members on these measures with a view to finding the right balance to them and to exploring an effective means by which to achieve the common goal of strengthening notification compliance.

13.146. The delegate of the Russian Federation thanked the proponents for their joint communication on the procedures to enhance transparency and strengthen notification requirements under the WTO Agreements. Strengthening and enhancing the WTO rules, including its transparency mechanism, was urgently required. The Russian Federation understood the concerns in respect of the implementation of the proposal's provisions. However, there was scope for flexibility concerning the regulatory aspects of the proposed procedures, including the time-period provided to Members to comply with their notification commitments under the WTO Agreements. In Russia's view, this was a timely document, and one which could serve as a useful starting point for further consideration by the Membership. His delegation stood ready to engage constructively in further discussions.

13.147. The delegate of El Salvador thanked the co-sponsors for having presented their revised document, which was currently being reviewed in Capital. El Salvador considered transparency to be a fundamental WTO principle and welcomed any initiative intended to enhance it. Her delegation

stood ready to continue its engagement in ongoing exploratory work on some of the constructive ideas that had been set out in this proposal, notably those found in paragraphs 2 to 6.

13.148. Nevertheless, El Salvador had several doubts and preliminary questions regarding the revised proposal. First, it had a doubt concerning the special treatment set forth for transparency commitments in agriculture. El Salvador considered that any discussion should be based on equal treatment with regard to the notifications under all of the Agreements included in the proposal. The proposal might also have specific implications for certain Members, particularly as regards the increased administrative burdens, not only in terms of the administrative work itself, but also as concerned a possible reduction in a Member's participation in WTO activities and, furthermore, the financial implications in respect of increased contributions. This last measure would upset the current balance for Members, which was based on their participation in global trade. It would also set a further burden on those countries that were already facing constraints. El Salvador looked forward to continuing discussions with Members in this regard.

13.149. The delegate of the Republic of Korea appreciated the work of the proponents towards suggesting constructive and specific measures to enhance transparency and strengthen notifications, such as revitalizing working groups and updating the Notification Handbook. Korea considered that it had some ideas that could also help Members in this respect. First, regarding administrative measures on notification failure, and as many Members had previously pointed out, various considerations were to be kept in mind, such as how often a Member had failed to notify, and how significant was that failure. Second, the counter-notification proposal had merit but required a mechanism for consultation and verification.

13.150. Korea would continue to engage actively in these discussions regarding enhancing transparency and strengthening notification compliance, including in working groups, and hoped that the discussions would create an environment where all Members would effectively adhere to WTO rules and principles.

13.151. The delegate of India also thanked the proponents for their efforts in bringing out a detailed proposal on procedures to enhance transparency and strengthen notification requirements. This revision added value to the earlier proposal by including also capacity-building aspects for developing countries.

13.152. India strongly believed that transparency was one of the main pillars of the rules-based MTS, and that it provided to Members the information and clarity on laws and regulations, facts and figures, and measures being taken by other Members that impacted upon international trade, which Members needed.

13.153. India had significantly improved upon its notification compliance despite its difficulties in collecting and collating information, as per the notification requirements. However, India acknowledged that there was room still for improvement, both in terms of coverage and quality of content.

13.154. His delegation had the following preliminary questions on the joint paper on transparency. First, the CTG's mandate, as mentioned in Article IV.5 of the Marrakesh Agreement, and Rule 33 of the Rules of Procedure of the CTG, was to oversee the functioning and implementation of the existing multilateral trade agreements, as set out in Annex IA. However, the present proposal went beyond the implementation of the existing Agreements and would impact also on the existing rights and obligations of Members. Therefore, India's first and foremost question was whether the CTG was in fact the appropriate forum for deliberating on such a proposal. The proposal sought to address the issue of notification compliance by bringing in two different aspects: one aspect with regard to compliance with existing notification obligations for goods, and the administrative actions for non-compliance thereof; and a second aspect relative to the need for extension of the existing notification obligations. As concerned the existing notification obligations under the WTO Agreements, clarification was required from the proponents as to whether or not they intended to advance similar proposals in relation also to other WTO Agreements, such as GATS, and TRIPS.

13.155. Second, the proposal provided for several penalties and administrative actions in case of default. However, India found it difficult to agree to such an approach. The proponents must surely realize that such administrative actions should not be made burdensome or they would become

impossible to implement. What was required was rather to encourage and assist those Members that had not been able to update their notifications because of difficulties that they faced, including capacity constraints in terms of collecting, collating, and preparing a notification, with regard to interpretational issues, and so on. Hence, India considered that, rather than administrative actions, what Members should receive is appropriate support and encouragement to help them to improve upon their internal capacity to notify on time. Furthermore, for effective compliance to be achieved, any process of improving notification compliance should be restricted to present and future notifications and should not be linked to notification obligations dating back to the inception of the WTO itself.

13.156. Another issue for India was the reference in the proposal to a complete notification within a deadline without defining what constituted a complete or an incomplete notification. Did an incomplete notification refer to a failure to notify documents pertaining to various WTO Agreements, or to only one Agreement, or to only a part of a notification, and so on. Moreover, which authority, and under what process, would a decision be made as to a Member being "non-compliant"?

13.157. The proposal further sought to instruct the NGR with regard to enhanced fisheries subsidies notifications based on a discipline that was still in the process of being negotiated. India questioned the CTG's competence regarding the MC11 mandate to implement the existing notification obligations on fisheries subsidies. In addition, unless there were convergence on the contours of the discipline, it was not advisable to direct the NGR for enhanced notification requirements. Such issues should be left to the Members to negotiate and to agree accordingly.

13.158. The proposal was being examined in Capital and India would revert back to the proponents with any further questions and comments at the appropriate time.

13.159. The delegate of Thailand thanked the co-sponsors for their proposal and agreed with other Members that enhancing transparency was important to the work of the WTO and was a joint responsibility of all the Membership. Thus, Thailand supported efforts to enhance notification compliance. However, Thailand believed that a positive reinforcement approach, with strong incentives, as well as focused and specific technical assistance and capacity-building relating to a given Members' specific needs, would be more suitable than a punitive approach. Thailand stood ready to continue its engagement on this issue in discussions with all WTO Members.

13.160. The delegate of Turkey thanked the co-sponsors for the proposal, which his delegation considered to be a constructive attempt to reinforce Members' compliance with the existing Agreements. Turkey believed that transparency and notification requirements were fundamental parts of the WTO Agreements, and was aware that compliance with notification requirements under the various Agreements remained inadequate and that there subsequently existed an information gap among Members.

13.161. Indeed, the current rules already addressed transparency. Nevertheless, further action was required to improve the functioning of the system through a concerted effort by all the Membership. In this regard, Turkey shared the concerns and the main idea introduced in the proposal and welcomed the suggestion to review the WGNOP and to update the Technical Cooperation Handbook on Notifications with a view to improving existing procedures.

13.162. However, Turkey also believed that the proposal required further clarification concerning certain aspects of it, such as how the roles attributed to the Secretariat and the Working Group would be carried out in practice. How would the accuracy of any data provided by a Member be proven other than by the Member itself?

13.163. Turkey also had a number of concerns with regard to the proposed administrative or punitive measures. As suggested by the proponents themselves, Turkey was of the view that the proposed actions and disciplines should contribute towards solidifying Members' notification compliance, but not that those actions should push Members further out of the system by discouraging them from honouring their obligations.

13.164. At this stage, Turkey had some remarks and specific questions on the measures proposed under paragraph 12. First, further clarification was needed as to whether or not the treatment on partial non-compliance and full non-compliance would be the same. Would the proposed response

be the same for a Member that did not submit any notifications, and another that missed only one notification under a specific Agreement?

13.165. Regarding TPRs, Turkey considered that the answers provided in TPRs had benefits for the system overall and served to clarify the trade policies of the responding parties. In this regard, preventing a Member's questions from being answered during TPRs, as suggested in Article 12(a), would be disadvantageous to the whole Membership and not only to the Member itself that raised the question. In this way, such an approach might also diminish the benefits accruing to the entire Membership.

13.166. The proposed budgetary measures to ensure notification compliance also required further clarification; similarly, on capacity-building, Turkey agreed with others that efforts in this area were key to addressing the challenges faced by some Members in preparing their notifications. As stated earlier, and even when technical assistance was already provided, submitting timely and complete notifications was not an easy task for developing countries because of their capacity constraints. In this regard, and by way of positive input, Turkey considered that the updated proposal now incorporated special clauses for Members in need of capacity-building in order to assist and encourage them to submit their completed notifications. However, further elaboration was required also here, and in particular with regard to the roles defined for the Secretariat, and especially for the criteria set out for a Member to fulfil the cooperation requirement, as mentioned in Article 12. Who would decide when there was non-cooperation and based on what information?

13.167. Given the cross-cutting character of the issue of notification non-compliance, and its broad context, Turkey was of the view that sufficient time should be given for further discussion of this topic, and Turkey stood ready to contribute constructively in that regard.

13.168. The delegate of Saint Lucia thanked the proponents for their hard work. Undoubtedly, transparency was necessary for the good functioning of any rules-based system, and the MTS was no exception. Nevertheless, the WTO Membership should not lose sight of the realities facing some of its Members.

13.169. The rights and responsibilities assumed by Members did not emerge from an arbitrary exercise but resulted rather from a deliberate and delicate process that had allowed Members to calibrate the balance of their rights vis-à-vis their responsibilities. Therefore, any changes in the responsibilities or penalties assessed would upset the delicate balance already achieved by Members.

13.170. Saint Lucia acknowledged that some Members had expressed genuine concern over the functioning of the WTO's transparency mechanisms; however, any change would require all Members to have an equal opportunity to weigh up and balance new obligations, including penalties, against existing and new benefits. For many small states, with limited administrative capacity, an inability to comply with notification obligations should not be interpreted as a flouting or absconding from obligations, but rather as a situation that arose from genuine internal administrative limitations. Therefore, it must be clear that reassessing penalties for breaches of notification-related obligations would fundamentally redefine or undermine the balance of rights and obligations currently enjoyed by Members, particularly for smaller countries. In this vein, it must be made clear that any change in penalties assessed would represent a change in Members' obligations.

13.171. Several developing countries were already subject to administrative measures; hence, new sanctions would only lead to further questions about the efficacy of the MTS. Moreover, technical assistance activities would not redress the continuing capacity limitations suffered by developing countries, particularly smaller developing countries.

13.172. The capacity-building elements in the proposals were welcomed but needed nevertheless to be evaluated on the basis of specific situations and the needs of specific Members. His delegation was committed to working constructively to find solutions to this issue while preserving Members' agreed balance of rights and obligations.

13.173. The delegate of Nepal thanked the proponents for submitting their proposal and for clarifying its main elements. Transparency was a fundamental principle of the WTO system. Therefore, Members' notifications and adherence to their WTO commitments were important pillars of transparency.

13.174. Most LDCs, including Nepal, were strong supporters of the rules and transparency-based MTS; however, the low level and lack of capacity relative to institutional, human, financial, and technical constraints, meant that some LDC Members were unable to comply with their notification requirements in a full and timely manner, even if they were doing their best to do so.

13.175. The proposal was being considered in Capital; nevertheless, Nepal wished to share some preliminary comments on it. Nepal thought it significant that the proposal included technical assistance provisions. However, the provision on administrative and punitive measures might result in a Member developing a negative attitude towards the WTO system. For this reason, innovative incentive mechanisms had rather to be developed in such a way as to encourage Members to be self-motivated to submit their notifications.

13.176. LDCs lacked the basic capacity to fully implement the WTO Agreements and to submit their notifications in a timely manner. Thus, training and capacity-building programmes on the substance and notification processes and requirements should be conducted by the WTO Secretariat, addressed mainly to those Members not able to fulfil their notification requirements. Besides capacity-building, the WTO Secretariat could also play a vital role in facilitating, coordinating, and information sharing between Members, which could itself then become a motivating factor that encouraged Members to notify. For example, the Secretariat could develop and disseminate subject-specific notification-related brochures and information-related documents explaining the substance and the process of notifications.

13.177. The S&D provisions were of capital importance for LDCs in the area of notifications. Nepal considered that a longer time-period, or reduced frequency to notify, could be extended to LDCs; for example, where developed countries notified annually, LDCs might be required to notify only at an interval of every three years.

13.178. The delegate of Ghana thanked the co-sponsors for their revised proposal. Like many other delegations, Ghana also acknowledged that transparency and notification obligations were an essential part of the monitoring function of the WTO. Ghana therefore supported the preamble to the proposal. However, there remained a number of issues of concern, as followed: (i) several issues raised in the proposal were being considered under various Committees as part of their monitoring function and should be allowed to be discussed as such; (ii) the proposal acknowledged the low level of compliance with existing notifications but could not provide a detailed diagnosis of what were the causes for this. This was possibly the reason why the proposal had not addressed itself to issues regarding the Council for Trade in Services. How had the various technical assistance and capacity-building provisions worked, or not worked, in the past? (iii) WTO Members were aware of the challenges being faced by developing countries and LDCs, and for which they had support to build and improve their institutional capacities, including strengthened S&D treatment, which had received very little support from developed partners; (iv) instituting punitive measures against Members as a way of enforcement for measures those Members lacked the capacity to implement was something that Members generally acknowledged would be unfair, and onerous; (v) the proponents called upon Members to begin negotiations on the various proposals. However, Ghana wished to know if the proposal had a negotiating mandate from Members, or if it was still seeking one; (vi) more effort should be given to simplifying notification procedures to encourage greater compliance. As Ghana had indicated a year ago when the proposal was first introduced by the US, Ghana could only support the recommendation for granting incentives to compliant Members rather than punitive measures for non-compliance. With some developing and LDC Members already owing their basic subscriptions, suggesting a supplementary assessment for non-compliance would be additionally burdensome and therefore unacceptable; and (vii) Ghana supported the view of the African Group that the proposal on technical assistance was vague and, as in the past, it would fail to lift any developing countries or LDCs out of their current situation.

13.179. Ghana also supported the statement by South Africa on behalf of the African Group and remained committed to further engagement on this issue in the CTG's respective Committees.

13.180. The delegate of Jamaica said that his country acknowledged the important role of transparency in the WTO and joined other delegations in calling for appropriate steps to be taken in the WTO to assist Members to improve upon their notification compliance. Jamaica fully respected Members' rights to present proposals on any issue under the various WTO bodies and Committees in the context of a discussion on how to further strengthen the WTO's *modus operandi* and working methods. He therefore thanked the proponents for their submission and hard work. However, while

the proposal was well intentioned in seeking to advance and enhance Members' compliance with their transparency obligations under the various WTO Agreements, there were elements contained therein which required further clarification as they appeared to advocate for an unorthodox approach whose legality seemed questionable. From the proposal itself, Jamaica had understood that Members could find themselves subject to *de facto* sanctions based on their limited capacity to submit timely notifications. In Jamaica's view, this approach might produce undesirable results; it deserved further reflection, and also caution.

13.181. While Jamaica reconfirmed its commitment to initiatives aimed at improving notification compliance in the WTO, it was not in a position to endorse the punitive approaches outlined in the proposal. Jamaica was encouraged by the proponent's intention to conduct further consultations with other Members in a more inclusive manner; this would add value to the current draft and would also provide a better balance in the proposal with regard to the heterogeneity of the WTO's Membership.

13.182. In Jamaica's view, there was also room for a better understanding of the capacity constraints faced by developing countries and LDCs, which varied from country to country, and from issue to issue. Therefore, Jamaica recommended that the Council, in order to begin its reflection on these issues, ask the Secretariat to produce a special factual and comprehensive report on how best to address the notification challenges faced by WTO Members, including, *inter alia*, the extent to which the Secretariat's technical assistance and capacity-building facilities required further calibration, and whether existing notification requirements, such as coverage, details, and frequency, were unnecessarily onerous for developing countries and LDCs. This report should then be presented to the CTG in a dedicated session for Members' analysis and discussion with a view to generating recommendations appropriate to and based upon its findings.

13.183. The WTO belonged to all its Members. However, this sense of ownership in respect of the work of the Organization risked being adulterated if some Members were excluded on the basis of their limited capacity.

13.184. In order to ensure its success, Jamaica therefore urged Members to frame in a sustainable manner any attempt by the Organization to address notification non-compliance caused by capacity constraints.

13.185. The delegate of Israel thanked the co-sponsors for their proposal, which built on a previous document submitted by the US. Israel welcomed a number of the constructive ideas in this revised proposal and recognized that transparency was a main WTO function, particularly with regard to the rules and procedures used by WTO Members in handling their international trade flows. Israel also recognized the importance of the notification system as one of the fundamental tools that enabled transparency. In its own case, Israel's recent TPR exercise had provided it with momentum in its ongoing efforts to address the gaps in its notification obligations.

13.186. It was also evident that developed and developing Members were not alike in terms of lack of resources and capacity. Therefore, Israel welcomed the efforts in the updated proposal to differentiate between cases in which notifications were not submitted because of a lack of capacity or resources, and cases in which notifications were not submitted because of other reasons.

13.187. Israel was of the view that strengthening technical assistance for Members that were experiencing difficulties with regard to their notification obligations, as well as counter-notifications, could be a useful tool in enhancing transparency and information-sharing while not breaking the delicate balance between rights and obligations.

13.188. Israel considered this proposal to be an important step in the right direction and stood ready to participate in further consultations on this matter.

13.189. The delegate of the Plurinational State of Bolivia thanked the proponents for this proposal, recognized the importance of transparency in the WTO, and reiterated Bolivia's commitment to predictability and transparency in line with the WTO's policies and trade practice.

13.190. However, Bolivia did not believe that Members should take a punitive approach to dealing with the issue of transparency; rather, they should try to work together using persuasive measures

instead of threats. The transparency gap did not necessarily result from a lack of political will; there were often structural reasons that had also to be taken into account. Bolivia considered that technical assistance should not be linked to a threat of sanctions and that Members were required to ensure that all matters were dealt with in a cross-cutting manner while recognizing the sovereignty of every Member.

13.191. The delegate of Uruguay thanked the other co-sponsors for their efforts in preparing this revised proposal. It was an initiative whose objective was to improve a fundamental area in terms of the effectiveness and viability of the WTO's activities. Uruguay also believed that notifications and transparency in general was of great importance to the smooth functioning of trade negotiations.

13.192. This proposal was currently under consideration in Capital and any further comments would be shared with the proponents in due course.

13.193. The delegate of Guatemala thanked the proponents for their submission on transparency, even if Guatemala shared the concerns of other Members with regard to sanctions. Since the proposal was currently being considered in Capital, Guatemala reserved its right to revert to the Council with further comments in due course.

13.194. For Guatemala, technical assistance, and Secretariat support in particular, was vital to supporting Members wishing to improve their notification compliance. After a ten-year backlog of notifications, Guatemala had requested the Secretariat to organize a national workshop to address the issue of its notification backlog. Thanks to that workshop and support, Guatemala had both addressed this backlog and also trained a team specifically to deal with its notification obligations. There was still a lot of work to be done in this area and different elements to be considered before reaching any agreement, but Guatemala stood ready to contribute to the ongoing discussion.

13.195. The delegate of Chile thanked the proponents for having submitted this proposal, which contained various improvements compared to the earlier submission. Chile reiterated the importance of the WTO to a rules-based MTS, as well as its commitment to ensuring that the WTO could function in an efficient and modern way, including by enabling Members to meet their notification and transparency obligations.

13.196. The current proposal addressed problems being faced by Members in respect of notifications and delays in their submission. However, the WTO Membership should recognize that not all Members were in a position to notify and meet their obligations in this regard. This proposal was an attempt to take this problem into account, particularly with regard to Members facing technical difficulties when it came to preparing and submitting their notifications.

13.197. Chile was of the view that there were means other than sanctions available to address the issues of notification non-compliance, delayed notifications, and lack of transparency. Technical assistance and capacity-building were indeed such adequate means, and Chile would like to obtain more clarity on the procedures and conditions that would govern a more effective implementation of technical assistance.

13.198. Thanks to the current proposal, Members were now moving away from criticism and assessment of the problems at issue towards proposing solutions and problem-solving. Chile welcomed this approach and would revert to the proposal itself once inputs had been received from Capital. In summary, Chile was committed to the strengthening and modernization of the WTO and believed that this proposal, with the inclusion of the pertinent improvements, constituted a substantial contribution to the discussion, and was of systemic value.

13.199. The delegate of Colombia thanked the proponents for their submission on transparency. Colombia was of the view that Members needed to address the current challenges of the MTS through constructive and open dialogue to ensure the ongoing improvement of the WTO as a global good. Colombia would continue to contribute to the debate on how to improve and strengthen the WTO, including on the enhancement of transparency, which was a fundamental pillar of the MTS.

13.200. The representative of the United States said that he had followed and listened to delegations and appreciated their engagement on the proposal. He then addressed the following issues: (i) the proposal did not add to current notification obligations; (ii) if a Member sought

technical assistance, the modest administrative measures in the proposal would not apply to that Member; and (iii) with regard to comments about upsetting the balance of obligations, transparency, and notifications were a fundamental obligation, and a lack of fulfilment was already currently upsetting the balance of obligations in this institution.

13.201. The delegate of the European Union thanked all delegations for their interventions; this had been a refreshing and substantive discussion that did not take place very often in the WTO. Together with the other co-sponsors, the EU would try to react to as many questions as possible, but this was just the beginning of a process in which the EU looked forward to all Members being further engaged in the discussions.

13.202. From the present discussion it was clear that the whole Membership should collectively do better on notifications. In medical terms, delegations had agreed on the diagnosis, the main remaining differences concerned the cure, as some believed that introducing what they called a punitive dimension might not be helpful.

13.203. He highlighted the following three issues: (i) nobody wished to punish anyone. Whatever would be agreed would be agreed by consensus; (ii) a lack of notifications should have consequences; and (iii) in the WTO, Members were requested to contribute with money in the budget and with information. If a Member did not provide money there were consequences, but if a Member did not provide information there were currently no consequences. The fact that there were no consequences made it difficult for trade officials to extract the relevant information from their own administrations.

13.204. This was not a proposal addressed particularly to developed or developing Members. Not all developed countries faced the same challenges, and not all developing countries faced challenges in notifying. The proponents did not agree that the proposal was biased against developing countries and LDCs. It was intended to be a collective effort at improving the record on transparency. The proponents were open to discuss with every Member how best to do this. As pointed out by the US Ambassador, notification obligations were in force, with or without the proposal under review. Nobody was proposing to create a new obligation, but the proponents believed that technical assistance could be helpful. The proponents disagreed with the assertion that the proposals were vague and woefully inadequate; however, the proposals might be further improved and it was equally important to know what would be adequate. Guatemala brought to the Council's attention a case in which technical assistance had worked. When discussing and preparing the proposal, the proponents had observed that technical assistance did provide good and positive repercussions in the compliance records of a Member.

13.205. On the specific questions that were asked, some Members reflected the fact that the GATS and TRIPS Agreements were not covered. The notification requirements in the GATS were quite limited and also self-judging in terms of what should be notified. Therefore, the proponents had concluded that reporting under the CTG was a better starting point.

13.206. Another point that was made referred to compliance in the Trade Policy Review Body (TPRB); the proponents were truly mindful of preserving the neutrality of the Secretariat and the key features of the Trade Policy Review Mechanism (TPRM). They were fully aware of Annex III of the WTO Agreement and that the TPRM was not intended to serve as a basis for enforcement. The proposal referred to the part in TPRs where the Secretariat referred to Members' notification performance.

13.207. The proposal did not contain any judgment of required technical assistance and capacity-building, nor was it intended to prejudge what kind of technical assistance would be needed because only the requesting Member could judge its own needs. The proponents were open to clarifying the language of the proposal as appropriate in this aspect.

13.208. With regard to comments on the TPRs and not responding to questions from Members not having fulfilled their notifications, he clarified that this proposal was not intended to cure a lack of transparency with less transparency but was rather a continuous effort to ensure that the transparency of some Members should not be taken for granted, particularly not by those that had not made such efforts.

13.209. Finally, the administrative measures were not punitive and did not kick-in if there was a simple delay; rather, they would only apply after a serious delay without progress. It was not the case that the day immediately after a delay a budget official would request Members to pay extra budgetary money.

13.210. The delegate of the United States, in response to some of the questions posed by delegations, said that, regarding the different treatment of notifications in the AoA, the proposal did not change the notification obligations required of any Member under the WTO Agreements but rather, acknowledging the work that was currently being done in the CoA, the proposal referred only to some additional time for the submission of agricultural notifications before the application of the administrative measures proposed.

13.211. With regard to counter-notifications, she said that these provided important transparency. While some Agreements specifically encouraged this practice, others did not include such a possibility. However, Members were aware that, where the agreements were silent on this issue, nothing prevented the submission of a counter-notification; and the proponents did not want to preclude this opportunity for greater transparency.

13.212. With regard to the questions about partial and complete notifications, it was clear that those notifications that used a specific template would be considered a complete notification if they provided information for all of the required fields in the notification template. To the contrary, a partial notification would only provide information in some of the required fields, but not all.

13.213. The intention in paragraph 11 of the proposal concerning the Secretariat's involvement in notifications was not to over-extend the Secretariat's role. Currently, any Member could consult the Secretariat on the challenges it was facing with a notification requirements and could seek technical assistance from the Secretariat in that regard. Any Member could also prioritize the full implementation of its WTO commitments to include notifications in its development assistance plans. For a number of developing countries, it might be that the Secretariat's assistance would be a one-time assistance. But the proposal was not giving the Secretariat any interpretative power. To the contrary, this proposal clearly stated that there must be full consultation with the relevant Member, and only with the approval of that Member would the Secretariat provide a notification on its behalf. This type of formulation was already used under the WTO RTA Transparency Mechanism, and like other Members had said, the proponents would also not agree to give the Secretariat interpretive powers; however, they did consider that there was already a precedent for asking the Secretariat to undertake such work although, in all instances, Members' consent was and would be required.

13.214. Regarding the proposal in paragraph 14 on fisheries subsidies, she recalled that in Buenos Aires Ministers had recommitted to implementing the existing notification obligations under Article 25.3 of the SCM with the aim to strengthen transparency on these subsidies. There was work ongoing in the NGR to further enhance such transparency and the proponents believed that there was a general recognition and acceptance of the need for such enhanced transparency. Their intention was not to prejudge those negotiations but rather to recognize that this was a critical element in the NGR's work.

13.215. Concerning the queries about the mandate, she indicated that the proposal aimed at facilitating Members' compliance with existing obligations under the WTO Agreements and was not intended to amend those Agreements; therefore, there was no need to tie the proposal to a specific mandate. As in the case of recent changes introduced by the TPRB to facilitate and improve the functioning of TPRs, this proposal was a means by which to improve the functioning of the system through the full implementation of the notification obligations under the WTO Agreements.

13.216. The delegate of Japan thanked delegations for their comments and referred to certain of the questions that had been posed by Members. On the WGNOP, he recalled that it was established by the 1995 Ministerial Decision on Notification Procedures and that its mandate was to review all existing notifications and to assist developing countries to meet their notification obligations. Paragraph 2 of the proposal referred to the general role of the Working Group, whereas paragraph 3 addressed its detailed function. The Working Group was expected to play a central role, with the collaboration of other related bodies, in improving the domestic operations and notification systems of Members, for example by sharing best practices in the Committees, by designing workshops for

Members to share information on their practices, and by coordinating between intergovernmental agencies.

13.217. With regard to the wording of the proposal, he indicated that an inactive Member in the proposal had a different meaning from the "inactive Member" defined by the Budgetary Committee. As mentioned in paragraph 12(b), an inactive Member would be called upon in WTO formal meetings after all other Members had taken the floor; and when an inactive Member would take the floor in the General Council it would be identified as such. However, the proponents were considering whether it was necessary to define inactive Member more clearly in the proposal.

13.218. The Chairperson thanked all delegations for their interventions and for the interesting discussion that had taken place on how to enhance transparency and improve the number and quality of notifications under the Agreements in Annex IA of the WTO Agreement.

13.219. Considering what had been said under this agenda item, he believed that all Members were agreed on at least one point, namely that transparency was indeed of great importance to the work of the WTO. However, differing views existed as to how best to address the issue of enhancing transparency and improving Members' performance with their notification obligations under the Annex IA Agreements. He therefore proposed that the Council take note of the statements made on this issue and encouraged the co-proponents and all interested delegations to continue to discuss this proposal and to explore how the different ideas and views expressed at this meeting could be incorporated into it.

13.220. The Council so agreed.

14 BRAZIL – MEASURES RESTRICTING SHRIMP IMPORTS – REQUEST FROM ECUADOR

14.1. The Chairperson informed the Council that, in a communication dated 26 September 2018, the delegation of Ecuador had requested the Secretariat to include this item on the agenda.

14.2. The delegate of Ecuador said that Ecuador was again compelled to draw the Council's attention to the barriers that were stopping its shrimp exports to Brazil. This concern had already been raised on several occasions, both in this Council and at the SPS Committee.

14.3. Since 1999, and for almost 20 years, various changes in Brazil's relevant regulations had led to the suspension of shrimp imports from Ecuador. Throughout this period, Ecuador had provided Brazil with all the information necessary to address its phytosanitary concerns to ensure that Ecuador's shrimp could again access one of the world's most important emerging markets.

14.4. In 2016, following a lengthy import risk assessment analysis, Brazil had recognized that the relevant SPS requirements were indeed being met by Ecuadorian shrimp. Brazil had also officially acknowledged the equivalence of the Ecuadorian inspection processes. However, a few months later, and before trade could be resumed, a judicial decision from a Federal Tribunal, which had set up new SPS equivalence requirements in response to calls from Brazilian producers, had again resulted in the suspension of imports of Ecuadorian shrimp to Brazil. Furthermore, in May 2018, Brazil's General Prosecutor had requested that the Federal Supreme Court restore the import restriction. Therefore, the SPS requirements and the equivalence that had been accepted by Brazil in 2016 to date remain suspended, and the Brazilian market remained closed to Ecuadorian shrimp.

14.5. The impossibility of accessing the Brazilian market was therefore a matter of deep concern to Ecuador, particularly as Brazil was one of the world's main shrimp importers and this was a sector of importance for Ecuador's socio-economic development, accounting for hundreds of jobs in the country and with considerable potential for growth.

14.6. Brazil's measures had not been supported by any scientific evidence; Ecuador therefore considered them to be a hidden trade restriction, which was having a negative impact upon Ecuador's national production, and which was inconsistent with the SPS Agreement and the GATT 1994.

14.7. Ecuador's commitment to meet all the requirements laid out by Brazil and its willingness to maintain an open dialogue with Brazil had to date produced no positive results; despite a number of high-level meetings between government representatives, no official solution to this question had

been reached, and Ecuador wondered how long this import ban would remain in place. Nevertheless, Ecuador still looked forward to this matter being promptly resolved.

14.8. The delegate of Brazil thanked Ecuador for its intervention and referred to Brazil's statement made at the SPS Committee on 1 and 2 November 2018, where it had provided its detailed clarification of this issue. The Brazilian Government was sensitive to Ecuador's concerns and, since May 2017, had recognized the equivalence of Ecuador's fisheries inspections system, when Brazilian restrictions on shrimp imports originating in Ecuador had been lifted. Actual imports from Ecuador had reached a value of US$400,000 in the first quarter of 2018.

14.9. However, Brazil could not precisely indicate the time-frame or duration of the current suspension of shrimp imports from Ecuador, which was the result of a judicial decision. Nevertheless, Brazil would keep Ecuador informed of any developments in these judicial proceedings.

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

14.11. The Council so agreed.

15 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

15.1. The Chairperson informed Members that, in a communication dated 29 October 2018, the delegations of the European Union, Switzerland, and the United States, respectively, had requested the Secretariat to include this issue on the agenda.

15.2. The delegate of Switzerland regretted to be compelled once again to raise at the CTG the issue of this selective tax applied on energy drinks and carbonated soft drinks. To date, three GCC members, namely, the Kingdom of Saudi Arabia, the Kingdom of Bahrain, and the United Arab Emirates (UAE), had implemented an excise duty selective tax on certain products. Based on the information currently available, two additional GCC members would implement the tax in the following year.

15.3. The current selective tax was an *ad valorem* excise tax levied on the retail sales price of energy drinks and carbonated soft drinks. The selective tax on energy drinks was twice as high as that levied on carbonated soft drinks, and there was no scientific justification for such a difference.

15.4. At the end of September 2018, Switzerland had addressed additional questions to Saudi Arabia, Bahrain, and the UAE, regarding the scientific basis justifying the imposition of different tax rates on energy drinks and carbonated soft drinks, and Switzerland was still looking forward to receiving answers to these questions.

15.5. Since July 2018, the impact of the tax on the ground had again worsened. The consumption of imported energy drinks had been substantially reduced, but consumers had shifted to cheaper sugar-containing drinks instead, without reducing their consumption. This was a clear indication of the discriminatory effects of the *ad valorem* selective tax.

15.6. Switzerland had attempted to meet with the three Ministers of Finance before the GCC Finance Meeting but unfortunately this had not been possible; however, Switzerland had recently met the UAE and had explained its concerns on this issue and presented its proposal for solving the problem.

15.7. Switzerland appreciated the legitimate health objectives of the tax but had concerns as to how the tax had been designed and was being implemented. From its discussions with the UAE Ministry of Finance, Switzerland had understood that a study on the discrimination issue had been mandated and that a GCC Committee was studying the possible extension of additional products to those already listed.

15.8. Switzerland considered that an appropriate solution would be an immediate reduction of the level of tax on energy drinks and the application of the same tax levels to energy drinks and carbonated soft drinks. Switzerland proposed that enlarging the base of the tax so that all beverages

subject to the tax face the same percentage should also be considered, as should the introduction of a specific tax based on the volume or sugar content to replace the current *ad valorem* selective tax. Switzerland believed that, once implemented, these changes would bring an appropriate resolution to the matter, while still ensuring that the health objective be achieved of reducing the consumption of products deemed harmful for human health, as the price of the products subject to the tax would likewise increase. This in turn would bring additional budget revenues that could then be used for information and prevention public health campaigns.

15.9. Switzerland looked forward regularly to receiving information on the developments foreseen relating to the selective tax, especially given that the Under-Secretaries of the Ministries of Finance would probably meet in January 2019 to discuss next steps.

15.10. The delegate of the European Union recalled that her delegation had also raised this issue at the CTG's previous meeting, as well as at the most recent meeting of the CMA. The EU remained concerned about the scientific basis for taxing carbonated drinks and echoed Switzerland's questions and concerns.

15.11. The EU also remained concerned over the conformity of these tax measures with the non-discrimination principle under GATT Article III:2. The EU urged the GCC countries to repeal the current measures and to review the basis for the imposition of this tax, recalling also that a Note Verbale had been sent to each GCC country even if no formal responses to these had as yet been received.

15.12. The delegate of the United States reiterated its concerns raised previously in this Council about the excise tax on carbonated soft drinks, malt beverages, and energy and sports drinks, which was currently being implemented by the Kingdom of Saudi Arabia, the Kingdom of Bahrain, and the United Arab Emirates, and that was also under consideration by other GCC member States for future implementation.

15.13. The current implementation of the excise tax on these products had a discriminatory effect by singling out the particular types of beverages produced by multinational companies, while excluding non-carbonated sweetened beverages produced by domestic countries in the GCC.

15.14. The US supported all efforts to prevent and control non-communicable diseases; however, the report of the High-Level Commission of the WHO on such diseases did not recommend the use of beverage taxes to advance public health outcomes. Indeed, the WHO had not recommended taxes on carbonated beverages because other sweetened beverages could easily be substituted for carbonated beverages.

15.15. Given that the multinational producers of such beverages had publicly committed to working with GCC member States through public/private partnerships in a voluntary effort to address health concerns, the US strongly encouraged GCC member States to engage private industry stakeholders on how to ensure that the excise tax were applied in a transparent and non-discriminatory manner.

15.16. In coordination with other WTO Members, the US had also raised these concerns in the Capitals of the GCC member States and looked forward to working with GCC member States to address these important issues.

15.17. The delegate of Japan repeated Japan's call to GCC member States made at the most recent meeting of the Market Access Committee to provide an explanation of their tariff classifications for carbonated drinks and energy drinks.

15.18. The delegate of the Kingdom of Bahrain, on behalf of the Kingdom of Saudi Arabia, the United Arab Emirates, and the Kingdom of Bahrain, thanked the previous speakers for their interest in the GCC Common Agreement on Excise Tax and assured them that their comments were being considered by officials in the respective GCC Capitals. GCC countries would revert to Members once this issue had been fully considered in Capitals.

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

15.20. The Council so agreed.

16 INDONESIA'S IMPORT AND EXPORT RESTRICTING POLICIES AND PRACTICES – REQUEST FROM THE EUROPEAN UNION, JAPAN, AND NORWAY

16.1. The Chairperson informed the Council that, in communications dated 31 October and 1 November 2018, the delegations of the European Union, Japan, and Norway, respectively, had requested the Secretariat to include this item on the agenda.

16.2. The delegate of the European Union said that Indonesia was well aware of the concerns that the EU had now regrettably to reiterate again; she also thanked Indonesia for its efforts to address its cumbersome measures. Nevertheless, there remained in place in Indonesia a high number of trade-restrictive measures, and also an issue with regard to Indonesia's legal framework, which had created significant legal uncertainty.

16.3. Among the measures of particular concern to the EU were the following: the use of local content requirements in a number of sectors; complex and burdensome import requirements for a number of products; QRs for meat, steel, and tyres; export restrictions for certain raw materials (on which the EU would especially appreciate receiving further information); burdensome and discriminatory conformity assessment procedures; and a growing proliferation of mandatory technical standards.

16.4. In particular, the date of implementation of Halal Law 33/2014 was approaching, although as yet there was no clarity as to its implementing regulations and procedures. She urged Indonesia to provide precise information on the scope, object, and timing of the measures under preparation, and to notify them in accordance with WTO rules. She also called upon Indonesia to keep Halal certification and labelling voluntary so as to render the measure less trade restrictive.

16.5. The EU also requested an update from Indonesia regarding the rules and standards regulating the production of processed milk and relevant investments.

16.6. As to Ministerial Decrees 82/2017 and 80/2018 on Maritime Transport and Insurance, these appeared to mandate that the export and import of key commodities be carried out and insured by domestic companies only. She sought clarification from Indonesia with regard to these laws and urged Indonesia to eliminate its high number of trade barriers and to refrain from issuing new trade barriers, in line with its G20 commitments.

16.7. The delegate of Japan again registered Japan's concerns over various Indonesian measures, including export restrictions imposed by the Mining Law, the Law on Trade, the Law on Industry, restrictions in the retail sector, and local content requirements for 4G mobile phones.

16.8. Japan believed that these measures were or could be inconsistent with the WTO Agreement, and again urged Indonesia fully to update Members on the concrete actions being taken by Indonesia to ensure that these measures were brought into WTO-compliance, with a view to creating a transparent and stable environment for trade and investment.

16.9. The delegate of Norway brought to the Council's attention a concern in relation to Indonesia's new regulation on imports of fisheries products, adopted in June 2018 by Trade Ministry Regulation No. 66/2018. The Norwegian seafood exporters' initial experience was that the new requirements had proven to be complicated, time-consuming, and costly, especially the requirements for third party verifications of consignments to Indonesia. Norway had understood that the new regulation might form part of an overhaul of the Indonesian import regime for fishery products and would welcome information from Indonesia in this regard.

16.10. The delegate of the Republic of Korea echoed the concerns raised by previous speakers and noted that these concerns had been raised by many Members and had appeared on the Council's agenda over the course of many years. Korea was concerned about the negative impact of Indonesia's policies and practices on international trade and urged Indonesia to improve its trade restrictive policies and practices, including its prepaid corporate income tax on importers, its local content requirements, its export law, and its industry law, and to bring these into compliance with the WTO's rules and principles.

16.11. The delegate of China shared the concerns expressed by other Members with regard to Indonesia's import and export restrictions. China was also concerned about the pre-paid income tax on imported products under Article 22 of Indonesia's Income Tax Law and considered that this mechanism had placed a heavy and discriminatory tax burden on imported products, as it required importers to pay 2.5 to 10% pre-paid income tax.

16.12. China had also noted that, on 30 September 2018, Indonesia had further raised the pre-paid income tax rate for 1,174 products, thus making imports still less competitive. China urged Indonesia to bring its measures into conformity with the WTO's rules.

16.13. The delegate of New Zealand echoed the concerns raised by previous speakers. As noted at previous Council meetings, New Zealand believed that Indonesia's restrictions on agricultural imports undermined core WTO principles and were inconsistent with key obligations in the WTO Agreements. New Zealand welcomed Indonesia's commitment to implementing the recommendations of the Dispute Settlement Body in *Indonesia – Import Licensing Regimes* (DS477/478), and was hopeful that this implementation process would result in a meaningful long-term reform of Indonesia's restrictive import regime.

16.14. However, New Zealand continued to have significant concerns over several of Indonesia's import restrictions affecting trade across a range of agricultural products, notably Indonesia's recent introduction of measures restricting dairy imports. Restrictions also continued to be applied to New Zealand's horticultural products.

16.15. As previously indicated, Indonesia's restrictions not only hurt exporters; Indonesian consumers, processors, and producers had also been affected, as Indonesia's measures had contributed to rises in food prices in Indonesia, including for basic foodstuffs and ingredients for the domestic manufacturing sector.

16.16. Like other delegations, New Zealand hoped that Indonesia would implement its reform plans through policies that were consistent with its WTO obligations. New Zealand looked forward to working with Indonesia during this implementation process.

16.17. The delegate of Canada appreciated Indonesia's stated commitment to improve its business investment climate; however, much needed still to be done. Canada continued to share the concerns outlined by other Members regarding Indonesia's persistent import-restricting policies and practices, and was particularly concerned by 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. Concerns also remained regarding the import licensing requirements for horticultural products. He encouraged Indonesia to respect its WTO obligations.

16.18. The delegate of Brazil shared the concerns of other Members. Indonesia's trade restrictive measures had been particularly harmful to Brazilian exports of poultry and beef. There had been unjustified delays in inspection and approval procedures for meat product exporting establishments that had amounted to *de facto* phytosanitary barriers preventing access to the Indonesian market.

16.19. As delegations recalled, Brazil had initiated two dispute settlement proceedings over these issues, one of which, DS484, had resulted in a panel report favourable to Brazil's main requests. Brazil attached great importance to the full and urgent implementation by Indonesia of the panel's recommendations and findings and hoped to continue working with Indonesia to that end.

16.20. The delegate of Chinese Taipei shared the concerns raised by previous speakers. Her delegation continued to be concerned by Indonesia's trade and investment and import and export restrictive policies in general, although nevertheless commended Indonesia on its efforts to improve its business environment. However, concerns remained over Indonesia's restrictive policy on 4G mobile devices. Indonesia's measure in this regard would adversely affect trade and investment, and Indonesia should rather ensure that its measures were in full compliance with its WTO obligations.

16.21. The delegate of Thailand also shared the concerns raised by previous speakers over Indonesia's import restrictive measures, particularly its import licensing and QRs on horticultural products, which had substantially impacted upon Thailand's agriculture exports. Thailand

encouraged Indonesia to bring all of its measures into compliance with the WTO's rules and obligations and looked forward to working closely with Indonesia in this regard.

16.22. The delegate of Indonesia thanked the previous speakers for their interest in the Indonesian market. Indonesia reiterated its statements made previously in this Council, indicating that Indonesia had carefully considered Members' concerns regarding several of its policy measures. Indonesia's trade policies were always adopted in line with its WTO commitments favouring the smooth flow of trade across and within Indonesia's borders. Indonesia had also updated Members on these measures in the relevant bodies and stood ready to discuss any of these concerns bilaterally.

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

16.24. The Council so agreed.

17 UNITED STATES – MEASURES RELATED TO IMPORTS OF FISH AND SEAFOOD PRODUCTS – REQUEST FROM CHINA

17.1. The Chairperson informed the Council that, in a communication dated 1 November 2018, the delegation of China had requested the Secretariat to include this issue on the agenda.

17.2. The delegate of China reiterated China's concerns expressed at previous meetings over the United States Seafood Import Monitoring Programme (SIMP). In those earlier meetings, the US had explained that the main goal of the programme was to avoid illegal, unregulated, and unreported (IUU) products from entering into US commerce. However, the programme covered all imports of seafood, without distinction between aquaculture or fishing products.

17.3. China considered that the programme lacked any scientific basis and that it had overlapped with other existing regulatory measures, causing increased financial costs for Chinese enterprises; it also created unnecessary restrictions on international trade. China hoped to be informed of the SIMP updates regarding the exclusion of aquaculture products from the proposed disciplines on fisheries subsidies currently under negotiation and urged the US to exclude aquaculture products from the SIMP programme, to ensure that it would not be extended, and to ensure that it would be WTO-consistent, without creating new trade barriers.

17.4. The delegate of the Russian Federation recalled that his delegation had also raised the issue of the SIMP at previous CTG meetings, and had discussed the issue bilaterally with the US, receiving from the US in this context certain clarifications concerning the programme. Nevertheless, the Russian Federation remained concerned about the data verification process in place to ensure that fish and seafood had not originated in IUU fishing.

17.5. The Russian Federation considered that the verification of whether or not fish had been caught in IUU fishing could not be performed without close cooperation with the competent authorities of third countries competent to prove that the fish had been legally caught. In Russia's view, in the absence of such verification, new requirements could be considered excessively burdensome for business entities, especially for small and medium-sized enterprises (SMEs).

17.6. The Russian Federation would continue to monitor the implementation of the SIMP carefully so as to verify its compliance with WTO rules.

17.7. The delegate of the United States thanked delegations for their continued interest in the SIMP, whose 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 retain other information that allowed the shipment to be traced back to the point of catch or harvest in order to prevent the US market from being used as a place to sell fraudulently marketed seafood or seafood products produced from IUU fishing.

17.8. The final rule was developed through a transparent process of public notice and comment, involving all interested stakeholders, as well as through direct outreach to exporting nations. Compliance with SIMP requirements for 11 priority species became effective on 1 January 2018.

17.9. The US National Oceanic and Atmospheric Administration (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. NOAA was committed to advising shrimp and abalone importers and their exporter partners on what was required by SIMP and about how importers could comply with the regulation.

17.10. The US looked forward to continuing its engagement on implementation of these rules and on combatting IUU fishing and protecting its oceans more broadly.

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

17.12. The Council so agreed.

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

18.1. The Chairperson informed the Council that, in a communication dated 1 November 2018, the delegations of Canada, China, the European Union, Japan, Norway, and the United States, respectively, had requested the Secretariat to include this issue on the agenda, and that, in a communication dated 2 November 2018, the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu, had requested to be included in the list of co-sponsors.

18.2. The delegate of the European Union said that, unfortunately, this issue was well known, as it had been raised in various WTO bodies over several years now. The EU reiterated its significant concerns over India's various increases of customs duties on ICT products, the latest dating back to October 2018.

18.3. As mentioned at the Council's previous meeting, for the EU these import duties constituted *prima facie* violations of India's WTO commitments, to the extent that the tariff lines in question were subject to duty-free commitments in India's GATT Schedule of Concessions. The EU therefore called upon India to reconsider its duty impositions and increases.

18.4. ICT products were also the subject of India's draft rectification of its Schedule of Concessions communicated to WTO Members on 25 September 2018. After careful assessment, the EU considered that this draft rectification did not constitute a change of a purely formal character, but rather that it altered the scope of India's GATT 1994 commitments. The EU had already objected in writing, since it considered that the changes were not within the terms of paragraph 2 of the 1980 Decision on the Procedures for Modification and Rectification of Schedules of Tariff Concessions.

18.5. The delegate of the United States said that it was unfortunate to have to raise again in this Council the issue of India's tariff increases on telecommunications and ICT products; however, rather than responding to the concerns raised by the US and numerous other Members, India had undertaken additional concerning actions. Indeed, by the end of October 2018, India had announced another round of tariff increases on telecommunications equipment.

18.6. The US understood that tariffs had increased on base stations in tariff line 8517.61, and telecommunications equipment in tariff line 8517.69, from 10% to 20%. These increases further raised import tariffs, including on products for which India had a WTO binding commitment to provide duty-free access. This came on top of India's submission for a rectification and modification of its WTO Schedule XII, which proposed to unbind several concessions relating to subheadings in Chapters 84 and 85.

18.7. After careful review, the US believed that the proposed modifications would adversely affect the scope of India's concessions with regard to the goods concerned and, as such, could not be considered a rectification. In the view of the US, the result of the proposed modifications was not within the terms of paragraph 2 of the 1980 Procedures.

18.8. The US had formally registered its systemic concerns over and objection to India's proposed rectification in October 2018. Indeed, through the CMA, with strong support from the Secretariat,

the US undertook the necessary technical work and multilateral review to ensure that each Member's tariff concessions remained unchanged with each tariff nomenclature update. However, India's proposed rectification suggested otherwise, and it could thus have a significant impact on the very nature and meaning of WTO binding tariff commitments.

18.9. India's proposed rectification included many of the products for which India had a WTO binding commitment per Schedule XII to provide duty-free access, as discussed in previous CTG meetings, as well as in the CMA and the ITA Committee. An example of this was the telecommunications equipment classified under tariff line 8517.62, for which India's commitment was at the HS-six-digit level, so any national tariff line or ex-out that India might propose would need to be bound at zero as well. However, when looking in detail at India's proposal, it suggested that a new ex-out, for tariff line 8517.62, would now be unbound.

18.10. The US and numerous Members had discussed this matter many times in the relevant Committees and in this Council. There were obvious discrepancies between India's WTO bound commitments to provide duty-free access to certain products and the non-zero import duties that India was actually charging on imported products at the border. The US found it deeply troubling that India would suggest that these discrepancies could somehow be justified through a proposed rectification.

18.11. The delegate of Japan said that his delegation also remained concerned over India's customs duties on ICT products. Japan had understood that, in India's WTO bound schedule, mobile phones and their parts, classified at six-digit level, were bound at zero duties. However, mobile phones were currently subjected to 20% customs duties, and mobile phone parts to 15% customs duties. Moreover, on 12 October 2018, India had raised its tariff rates for base stations and certain telecommunication products, from 10% to 20%, and had also brought certain types of printed circuit board assembly to a 10% tariff duty.

18.12. Japan had commercial and systemic concerns in this regard and believed that these duties violated India's binding commitments. Japan again urged India to withdraw the tariffs on the ICT products at issue, and without any further delay. Despite the various bilateral meetings that had been held with Indian experts, India had still not responded to the questions addressed to India by Japan in April 2018.

18.13. On 25 September 2018, India had also circulated a rectification and modification proposal of its Schedule. As this proposal would alter the scope of India's concessions, these modifications could not be considered to be purely formal in nature. Consequently, Japan had submitted an objection to India's proposed schedule, in accordance with paragraph 3 of the 1980 Procedures, and continued to discuss this issue with India bilaterally.

18.14. The delegate of China recalled that her delegation had raised this issue several times in the CTG and in the CMA and the ITA Committee, but the situation had not improved.

18.15. As already mentioned by other delegations, on 25 September 2018, India had circulated a communication requesting rectification of its HS2007 Schedule on some ITA products. China believed that this request did not constitute a merely formal rectification as it would alter the scope of India's commitments in the ITA and the GATT 1994 and would adversely affect the existing concessions on the products concerned. Therefore, paragraph 2 of the 1980 Procedures could not be applied.

18.16. China believed that India's measures, especially the increase in applied rates on mobile phones and related parts, were inconsistent with its commitments in the ITA and its WTO Schedule, and therefore violated WTO rules; China called upon India promptly to redress the duty rates on these products and to bring them back into conformity with India's WTO bound rates.

18.17. The delegate of Canada recalled that Canada had raised this issue a number of times, at the CTG and, most recently, in the CMA, and the ITA Committee meetings, but that there had been no developments on the issue. Canada remained concerned that India had not only maintained its tariffs on ICT products above its bound commitments, but also that it had continued to announce additional tariff increases on these products above its bound rates.

18.18. Canada had both systemic and commercial concerns with regard to India's decision to introduce tariffs on these products above its bound commitments, as well as with India's unwillingness to respond meaningfully to Members' concerns in this area. India's attempt to address this situation by unbinding its commitments through a notification of rectification and modification of schedules of tariff concessions had only exacerbated Canada's concerns. This was not a change of a purely formal nature; therefore, Canada once again called upon India immediately to rescind these tariff increases and to refrain from pursuing any further tariff increases above its WTO commitments.

18.19. The delegate of Norway commented that this agenda item had not been resolved but had rather moved in a negative direction since the last CTG meeting. As previously mentioned, on 25 September 2018, the Secretariat had circulated a notification from India based on the 1980 Procedures for Modification and Rectification of Schedules. Norway did not consider that changing tariffs from bound to unbound itself necessarily went against the conditions of Article 2 of the 1980 Procedures. However, India clearly was changing the scope of its concessions and, in doing so, affecting other Members. Norway was considering submitting a formal objection to India's proposed rectifications.

18.20. The delegate of Thailand shared the concerns of other Members regarding India's application of tariffs above its bound rates for various ICT products and reiterated its commercial interest in the products in question. Thailand also had systemic concerns regarding the implication of the ICT tariffs applied by India and urged India to bring its tariffs into line with its WTO commitments. Thailand indicated that India's notification on rectification and modification of schedules, dated 25 September 2018, was still under examination in Capital.

18.21. The delegate of Chinese Taipei shared the concerns expressed by other Members. Chinese Taipei had also raised these concerns in the ITA and Market Access Committees on many occasions. However, the situation had worsened, particularly regarding India's intention to further increase import duties on telecommunications equipment, such as base stations and certain telecommunication equipment, as indicated by the US and Japan. This violated India's binding commitment for these products at zero duties. Such an increase in customs duties was totally inconsistent with GATT Article II.

18.22. Her delegation had strong reservations over India's recent proposed rectification relating to sub-headings in Chapters 84 and 85 of the HS, which included many of the products covered by ITA-1, to which India was a party. The proposed rectification was not within the mandate of the "reduplication". Rather, India should ensure duty-free access to the tariff lines in question, as indeed it was committed to do.

18.23. The delegate of Singapore shared the concerns expressed by other Members and urged India to make the amendments necessary to bring its tariffs into line with its WTO commitments.

18.24. The delegate of Switzerland also recalled Switzerland's concerns raised at previous CTG meetings. Since 2014, India had progressively increased customs duties on ICT products, the latest increase dating from some two weeks before.

18.25. These import duties applied by India constituted *prima facie* violations of India's WTO commitments, given that the tariff lines in question were subject to duty-free duties in India's Schedule of Concessions. The recent notification submitted by India, in September 2018, did not alleviate Swiss concerns; to the contrary, the 15 tariff positions mentioned in India's document were IT products for which India's Schedule indicated a bound duty rate of zero, which India now intended to change to unbound.

18.26. Switzerland considered that such a change altered India's balance of concessions and could therefore not be of purely formal character. Switzerland had no other choice but to object to the proposed rectification as it was not within the terms of paragraph 2 of the 1980 Decision on the Procedures for Modification and Rectification of Schedules of Tariff Concessions.

18.27. The delegate of the Republic of Korea said that Korea also had systematic concerns regarding India's imposition of higher tariffs on ICT products. Korea believed that India should give duty-free access to any goods belonging to HS lines to which India had committed to provide duty-free access.

Korea requested India to reinstate a zero duty rate on the IT products in question, in accordance with its WTO commitments.

18.28. The delegate of Australia echoed the concerns of other Members regarding India's modification of its tariffs beyond its bound rates. Australia had a systemic interest in ensuring that WTO Members upheld their tariff commitments and the basic principles of the WTO Agreement.

18.29. The delegate of New Zealand echoed the concerns raised by previous delegations, including those that pertained to India's more recent modifications. New Zealand would continue to register its systemic concerns at the CTG and other WTO bodies.

18.30. The delegate of India thanked the previous speakers for their continued interest in India's customs duty raising on certain telecommunication equipment and other products.

18.31. On the duty imposed on certain products since October 2018, which were considered by some Members as part of ITA-1, India had provided its responses in various WTO bodies, including the CMA, the ITA Committee, and at the CTG.

18.32. However, in search of clarity, India considered it necessary to address some of these issues again.

18.33. 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. 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.

18.34. Regarding the general concerns raised by Members over India's measure in respect of its ITA-1 commitments, he said that India had already provided written responses, including responses in various meetings of the CMA, the CTG, and the ITA Committee. Members had the right to revisit any areas or mistakes when these had occurred in assigning bound tariffs while transposing their HS Schedule, and to place the necessary rectification request before the relevant Committee. In fact, in document G/MA/TAR/RS/24, dated 2 April 1997, India had made it very clear that it reserved the right to make technical changes to its Schedule and to correct any errors, omissions, or inaccuracies it contained.

18.35. Therefore, India has filed its rectification request for correcting certain errors in its HS2007 Schedule in accordance with the Procedures for Modification and Rectification of Schedules of Tariff Concessions contained in the Decision of 26 March 1980, under the category "Other rectifications".

18.36. In the explanatory note to the rectification request, India had indicated that, while transposing the tariff lines and the description of the products recommended by the WCO for HS2002-2007 transposition, India had inadvertently included the tariff subheading given in the appendix table under the zero bound duty commitments. He therefore encouraged Members to look at India's rectification request; if any Member had any other views on the technical aspects of the products in question, as well as regarding their classification, India was ready to discuss such views with the Member concerned. He also requested those Members that had raised new issues at this meeting to send their statements to his delegation so that these could be forwarded to Capital for further examination and consideration.

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

18.38. The Council so agreed.

19 PAKISTAN – MEASURES RELATING TO SUGAR SUBSIDIES – REQUEST FROM AUSTRALIA AND THE EUROPEAN UNION

19.1. The Chairperson informed the Council that, in communications dated 30 October and 1 November 2018, the delegations of Australia and the European Union, respectively, had requested the Secretariat to include this issue on the agenda.

19.2. The representative of Australia said that his authorities were seriously concerned about the global sugar glut that was hurting its sugar industry. Australia had previously raised its concerns over Pakistan's domestic support and export subsidies over the previous 12 months, which Australia considered were contributing to the global glut. Australia had therefore welcomed the information that Pakistan's freight support to export surplus sugar in 2017-2018 had ceased. Nevertheless, Pakistan's Economic Coordination Committee of Cabinet had approved, on 2 October 2018, the proposal from the Commerce Division to export one million tonnes of surplus sugar. While no freight or financial support appeared to have been announced to date, Australia was concerned that Pakistan might reinstitute cash freight support on a sliding scale, as had occurred in 2017-2018, to clear the stockpile of surplus sugar.

19.3. Australia renewed its request that Pakistan reconsider its market price support at the provincial level and undertake reforms to ensure market price signals reached sugarcane producers in Pakistan and to notify its domestic support to the Committee on Agriculture.

19.4. Australia was committed to defending the interests of its sugar producers and was closely examining the WTO consistency of the support measures provided by Pakistan to its sugar producers.

19.5. The representative of the European Union echoed Australia's concerns. The EU looked forward to Pakistan's explanation of how its measures had respected the letter and the spirit of the Nairobi Decision on Export Competition.

19.6. The representative of the Russian Federation said that Pakistan had been applying export subsidies on sugar for the previous four years. In late 2017, the Government of Pakistan had announced an increase in export subsidies and quota and the volume of export quota for sugar had grown significantly, from 500,000 tonnes to 2 million tonnes. Pakistani exporters enjoyed sugar subsidies of US$97 per tonne and the total amount of subsidies equalled US$194 million.

19.7. Russian enterprises were suffering from a decrease in exports to Central Asia due to Pakistan's increased exports of subsidized sugar. Pakistan's measures had created unnecessary barriers to trade and had undermined the level playing field on the global market.

19.8. The representative of Thailand expressed her authorities' similar concerns and they would continue to monitor the situation.

19.9. The representative of Brazil echoed the concerns raised by previous speakers. Pakistan's measures were impacting heavily upon an already fragile market, which was suffering from excess capacity and declining prices.

19.10. Brazil had taken note of Pakistan's announcement, on 2 October 2018, of the discontinuation of its export subsidies for the 2018-2019 harvest, and they were reviewing the details of the newly adopted policy directives.

19.11. The representative of El Salvador said that El Salvador shared the concerns expressed by other Members.

19.12. The representative of Canada said that Canada's sugar industry had concerns regarding the potential dampening effect on sugar prices of Pakistan's measures, which was detrimental to all sugar exporters. Canada encouraged Pakistan to move to more market-based policies and to bring its domestic support and export subsidy notifications up to date so that Members could better understand the programmes being implemented.

19.13. The representative of Pakistan said that the freight and marketing support measure was consistent with Article 9.4, read with Article 9.1(d) and (e) of the Agreement on Agriculture.

19.14. Pakistan had already responded to Members' concerns, both bilaterally and at previous meetings of the Committee on Agriculture, and it would continue to engage constructively with all interested delegations.

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

19.16. The Council so agreed.

20 INDIA – MEASURES RELATING TO SUGAR SUBSIDIES – REQUEST FROM AUSTRALIA AND THE EUROPEAN UNION

20.1. The Chairperson informed the Council that, in communications dated 30 October and 1 November 2018, the delegations of Australia and the European Union, respectively, had requested the Secretariat to include this issue on the agenda.

20.2. The representative of Australia reiterated Australia's serious concerns over the global sugar glut that had negatively impacted global sugar prices and to which India's domestic support and export subsidies had contributed.

20.3. Australia was disappointed by the additional sugar subsidies, in particular the freight support, to facilitate sugar exports, which had been announced by the Indian Government on 26 September 2018, and which were worth approximately US$750 million.

20.4. The financial assistance of 138.8 Indian Rupees per tonne in 2018-2019, worth approximately US$565 million of the announced package, appeared to be contingent upon export performance under the minimum indicative export quota of 5 million tonnes of sugar. Previously, India had said that its domestic support arrangements did not affect global markets and the export interests of others, including developing countries. But this did not appear to be the case for sugar.

20.5. Global sugar prices had hit a decade low immediately following the Indian Government's announcement. India's sugar production forecasts and policy announcements had sent signals to the global market that had affected prices. India's current 10 million tonne surplus was overshadowing the world markets, as were predictions of sugar production being a further 32 million tonnes that season, underwritten by the additional subsidies and the market price support provided through the fair and remunerative price.

20.6. India had tried to reassure WTO Members that it had minimal sugar exports, yet the Indian Government announced on 8 November 2018 that it planned to export 2 million tonnes of raw sugar to China beginning in 2019, and that India was in a position to become a regular and dependable exporter of high-quality sugar in significant volumes to China.

20.7. Australia was committed to defending the interests of its sugar producers and was closely examining the WTO consistency of the myriad support measures provided to India's sugar industry.

20.8. The representative of Thailand expressed Thailand's concerns regarding India's measure to support sugar prices linked to minimum indicative export quotas and freight support. The support did not allow domestic producers to make commercial decisions based on global market signals, and could encourage over-production, stockpiling, and exports of surplus stocks with potential adverse impact on international markets. Thailand called upon India to provide detailed clarifications of all the measures cited by Members in this regard. India should also encourage domestic producers to take decisions based on market signals rather than trade-distorting support.

20.9. The representative of the European Union said that it wished to reiterate its statement under the previous item with regard to India's measures in support of its sugar sector.

20.10. The representative of the Russian Federation said that the Indian Government supported its national sugar industry through the provision of direct and indirect subsidies to sugar producers for the modernization and diversification of sugar production. The government not only guaranteed

minimum purchase prices to be paid to farmers by manufacturers, but also provided subsidies on sugar cane, plus export subsidies to the sugar industry. In these ways, India was erecting unnecessary barriers to trade and destabilizing the global sugar market.

20.11. Sugar export duties had decreased from 20% to zero in March 2018, while at the same time, sugar export quotas had increased by up to two million tonnes. In September 2018, the Indian Government had announced an increase in sugar export subsidies to US$1 billion for 5 million tonnes, including subsidies per tonne of sugar of US$150. It had also announced an increase in transport subsidies, from US$13.8 to US$41.3 per tonne. These measures were having a negative impact on Russian companies; in particular, there had been a decrease in exports of sugar to Central Asia as a result of increased subsidized sugar exports from India that were being dumped at low prices. Russia called upon India to withdraw its measures to avoid them creating yet further trade distortions.

20.12. The representative of Brazil said that Brazil shared the concerns of other Members regarding the expansion of India's support policies and the WTO consistency of its measures. Nevertheless, the Indian Government's proposal to foster ethanol production could be a step in the right direction, including and possibly through cooperation with Brazil itself.

20.13. The representative of New Zealand said that New Zealand recognized the need for the condition-bound additional time-frame that was available to developing country and least developed country Members to allow them extra flexibility when bringing necessary regulatory changes into effect. However, one of the conditions required developing country Members to have notified their use of export subsidies in one of their previous three export subsidy notifications, whereas India had neither scheduled any commitments to use export subsidies for any product, nor submitted an export subsidy notification since 2012, which had been for the marketing year 2009-2010.

20.14. India's response to its use of export subsidies for skimmed milk powder at the Committee on Agriculture in September 2018 gave cause for concern. Certain Members, including India, were using export subsidies for new markets or new products, when (a) they had no scheduled commitment to do so; and (b) the rest of the Membership was making real progress towards total elimination of this highest form of trade-distorting support, by 2023 at the latest. Therefore, New Zealand urged India to rethink its use of export subsidies for any agricultural product, and to do so immediately as concerned sugar and skimmed milk powder.

20.15. The representative of El Salvador said that El Salvador shared the concerns expressed by previous speakers regarding the effects of India's measures on the international sugar market.

20.16. The representative of Guatemala observed that Guatemala was the fourth largest sugar exporter in the world and was therefore closely examining the WTO consistency of India's subsidies and other assistance provided to the Indian sugar industry. If Guatemala considered the measures to be inconsistent with India's WTO commitments, it would use the mechanisms at its disposal to ensure that India abided by its obligations. Guatemala stood ready to hold consultations with India and other interested Members in order to find a rapid and mutually agreed solution to this issue.

20.17. The representative of Canada said that its industry was concerned by India's use of support mechanisms to export sugar and the resulting dampening effect on the world's sugar market. Canada called upon India to reconsider its measures and to move instead towards more market-based policies.

20.18. The representative of India stated that cane producers in India were mostly small and marginal farmers with very small land holdings. The Government had taken a series of measures in order to get their arrears repaid and to improve their condition.

20.19. In this context, the Government was allowing diversion of B-Heavy molasses for production of ethanol for blending with petrol. It had also announced incentives for increasing ethanol production capacity and for upgrading the plant stock to increase the number of working days of production. It was estimated that about one million tonnes of sugarcane stock would be utilized for production of ethanol, and that this figure was expected to further increase.

20.20. To avoid distress sales, the Government had fixed the Fair and Remunerative Price (FRP) of cane, which was an indicative price to be paid by sugar mills against purchase of their cane for sugar production. Accordingly, the Government had announced changes in the FRP relative to various cost parameters.

20.21. Sugarcane had not been included in India's domestic subsidy notifications because the Government was not procuring sugarcane from farmers.

20.22. Although India was a major sugar producer and consumer, he observed that India was in fact only a marginal player in terms of the global sugar trade. He observed, for example, that India's exports of sugar in 2018 had been insignificant, at only 0.62 million tonnes compared to a total global export sugar trade of 63 million tonnes. As such, India's policies did not affect international prices and India's sugar purchases was thus a domestic issue.

20.23. India stood ready to discuss this issue bilaterally with any Members that still had specific concerns relative to India's present policy.

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

20.25. The Council so agreed.

21 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

21.1. The Chairperson informed the Council that, in communications dated 30 and 31 October 2018, the delegations of Uruguay and the United States, respectively, had requested the Secretariat to include this issue on the agenda.

21.2. The representative of the United States said that the US remained concerned about the registration of the term "Danbo" as a protected geographical indication (PGI), with a complete disregard for the international standard in Codex.

21.3. The consultation process with the EU had been unsatisfactory, as had been the EU's responses to US requests for clarity raised at the TBT Committee. The registration of Danbo had lacked sufficient transparency, such as an explanation of how the Commission had considered the existing Codex standards.

21.4. The application under consideration for "Havarti" also lacked transparency and the EU should provide a status update for it. The US opposed the EU's granting of a GI protection to Havarti, since there was an international Codex Alimentarius standard for Havarti, which Codex Members – including the EU – had reconfirmed in 2007, 2008, and 2010.

21.5. The Council's own decision on the EU's accession to the Codex Alimentarius Commission had 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."

21.6. The EU and its member States had also agreed to the Codex Committee for Milk and Milk Product Individual Cheese standards, which contained labelling provisions under section 7 that preserved the generic nature and use of the names of those cheeses.

21.7. Both Danbo and Havarti had undergone a rigorous review to prove their use in the public domain and in international trade. Had the EU's view of the legal relevance of Codex standards changed since the publication of the Council's Decision?

21.8. Many of the EU's proposed amendments to the underlying regulation that had been notified to the TBT Committee in August 2018 were also cause for concern. The amendments appeared to exacerbate rather than to alleviate the existing concerns, such as by shifting authority from the Commission to member States, and by providing member States with greater flexibilities and control

over GI applications. This would have an impact not only on existing applications but also in the context of ensuring that member States abided by their WTO commitments.

21.9. The US requested an update from the EU on the status of the proposed amendments; it also requested the EU to consider withdrawing the most problematic of these and to provide confirmation that it would do so.

21.10. The representative of Uruguay regretted that this issue remained on the Council's agenda, and lamented not yet having received any responses from the EU. Uruguay was one of the main global producers and exporters of Danbo cheese and therefore very concerned at the unnecessary obstacles and barriers put in the way of the trade in this type of cheese, including from constraints on the free use in the EU of the term "Danbo". Uruguay was also concerned by a possible extension of such protection to third markets through free trade agreements or the use of international registration systems. Uruguay also had concerns regarding additional generic terms that were being used freely with regard to cheeses or other products.

21.11. In conclusion, Uruguay requested that the record of the meeting take into account its detailed statement given at the Council's meeting of 3 June 2018[2], and urged the EU to review its measure and to consider replacing it with other measures that would enable the EU to reach their goals without creating unnecessary barriers to trade.

21.12. The representative of Argentina shared the concerns of other Members, noting that the registration of "Danbo" as a protected geographical indication was not in keeping with Codex standards, and that the EU had not conducted the consultation and registration process in a transparent fashion.

21.13. According to Codex standard 264, specifically drafted for Danbo cheese, the "country of origin" was the country where the cheese was made and not where the appellation originated. Danbo was therefore recognized as a type of cheese that could be made in any country; for this reason, Argentina considered that, as Danbo was a generic term, it was not possible to register it as a geographical indication in any restrictive way.

21.14. In *European Communities – Trade Description of Sardines* (DS231), Argentina recalled that the panel had decided that the Codex Standard was a relevant international standard, in keeping with Article 2.4 of the TBT Agreement, and that it should therefore be used as the basis for the drafting of regulations. Accordingly, the term "Danbo" as a geographical indication itself indicated that the EU had not used Codex Standard 264 as the basis for its Regulation (EU) 2017/1901. Argentina urged the EU to review the measure.

21.15. The representative of New Zealand said that his authorities were concerned that the European Commission had chosen to register the term "Danbo" despite having previously agreed to a Codex standard in which the European Commission and Denmark had both acknowledged that the country of origin statement preserved its generic nature. Such actions would negatively affect producers outside Denmark that had invested in their cheese production with the legitimate expectation that they could use the standard. The EU's actions showed disregard for the integrity of the standards-setting system that existed to promote reliability and consistency in international trade rules.

21.16. The representative of the European Union said that the procedure for granting protection to the term "Danbo" as a geographical indication in the EU had been finalized, and that the Commission Implementing Regulation (EU) 2017/1901, of 18 October 2017, had been made publicly available.

21.17. As stated in the TBT Committee, the EU considered that any issue strictly concerning intellectual property rights should be discussed in the TRIPS Council.

21.18. The United States intervened to disagree, asserting again that for the US this was not a TBT issue. She noted that the EU had in fact correctly notified its quality schemes regulation under the TBT Agreement because of its TBT implications, including the labelling issue in relation to the

[2] Document G/C/M/132, paragraphs 6.2-6.8.

relevant international standards. She noted, too, that the Goods Council was the oversight body for the TBT Committee.

21.19. The representative of the European Union then reiterated her understanding that the matter at issue concerned the varied registration of the geographical indication and not the labelling provisions that went with it; for this reason, the EU's view remained that the right forum to discuss this issue was the TRIPS Council.

21.20. The representative of Uruguay also intervened for a second time, in support of the US interpretation on this matter; Uruguay considered the issue to be relevant to the TBT Agreement and was opposed to it being discussed in the TRIPS Council. Furthermore, Uruguay had had no choice but to raise this issue at the CTG given that to date they had received no replies from the EU to their questions.

21.21. The Chairperson proposed that the Council take note of all the statements made on this issue.

21.22. The Council so agreed.

22 UNITED STATES – EXPORT RESTRICTIONS ON CERTAIN ENTERPRISE OF CHINA – REQUEST FROM CHINA

22.1. The Chairperson informed the Council that, in a communication dated 1 November 2018, the delegation of China had requested the Secretariat to include this issue on the agenda.

22.2. The representative of China noted that the US Department of Commerce had issued an announcement, on 29 October 2018, adding a Chinese company, the "Fujian Jinhua Integrated Circuit Company", to the Entity List of export controls, thereby prohibiting US companies from exporting the products, software, and technology necessary for the Jinhua Company's operations. The announcement had clearly stated that the export control measure had been taken based on national security considerations. However, in light of the products, the timing, and the reasons given for implementing the measure, China believed that there was no basis for adopting the measure on national security grounds.

22.3. The announcement had mentioned "in light of the likely US-origin technology", and it was clear that the US had been thinking about the IPR disputes between Jinhua and Micron, the US's biggest "Dynamic Random-Access Memory" (DRAM) chip manufacturer. That lawsuit had lasted over a year amidst mutual accusations. China understood that it was usual practice in the business community, regarding IPR cases, to elevate such issues to the level of national security and to subject them to US export controls. China considered this to be an abuse of the national security exception.

22.4. First, regarding product coverage, the measure had been targeted at DRAM integrated circuits, which did not fall into any of the product categories set out in GATT Article XXI, namely fissionable materials, arms, and ammunition. Second, regarding the timing of the measure's implementation, the announcement had stated that Jinhua was "nearing completion of substantial production capacity for DRAM integrated circuits" when the measure had been taken. In other words, the US had deemed Jinhua a threat to its national security before the company had acquired production capacity. China considered this to be an unwarranted charge and firmly opposed the presumption of guilt toward Chinese companies. Third, regarding the reasons for its implementation, namely that "the additional production threatens the long-term economic viability of US suppliers of these essential components of US military systems", it was very clear that, in the vague, borderless sense of "long term", the measure was being adopted for the purpose of protecting US domestic industry.

22.5. China asserted that the global DRAM market was in fact an oligopolistic market. Register, a British IT website, reported that DRAM prices had risen by 30% in a quarter, while Micron, the largest DRAM producer in the US, had increased its sales revenue by 22.3%. Therefore, Jinhua, which had not yet even begun production, was far from threatening the long-term economic viability of DRAM manufacturers in the US. Rather, the real purpose of the US measures was to maintain the monopoly interests of the US DRAM industry.

22.6. China believed that the relevant trade protectionist measures of the US violated the non-discrimination principle of the WTO, as well as provisions on the removal of quantity restrictions, thus seriously damaging China's interests under the WTO Agreements. Therefore, China urged the US to lift its export ban on the Chinese companies concerned immediately, in accordance with WTO rules.

22.7. China added that one of the objectives of the TRIPS Agreement was to ensure that IPR measures and procedures did not themselves become barriers to legitimate trade, and that questions of trade secrets or intellectual property infringements should be decided by the courts. Therefore, in China's view, it was not appropriate for the US to use export controls in their court rulings in this regard, let alone as an exception to a quantitative restriction.

22.8. The representative of the United States stated that the Department of Commerce's actions had been taken on the basis of a certain entity in China posing a significant risk of becoming involved in activities that could negatively impact upon the national security and foreign policy interests of the US.

22.9. The measure was a law enforcement action intended to protect US national security and intellectual property. China and any other interested Members should refer any further enquiries to the US Department of Commerce.

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

22.11. The Council so agreed.

23 EGYPT – MANUFACTURE REGISTRATION SYSTEM – REQUEST FROM THE EUROPEAN UNION

23.1. The Chairperson informed the Council that, in a communication dated 1 November 2018, the delegation of the European Union had requested the Secretariat to include this issue on the agenda.

23.2. The representative of the European Union reiterated the EU's concerns already expressed in bilateral meetings, at the TBT Committee, and here in this Council, over the implementation of two Egyptian Ministerial Decrees (No. 991/2015, document G/TBT/N/EGY/115), and No. 43/2016, document G/TBT/N/EGY/114), and asked if the Egyptian authorities had considered the improvements to the implementation of the decrees that the EU had suggested in previous exchanges. EU industry continued to report serious difficulties regarding the duplication of procedures, long delays, and lack of transparency in the registration process of foreign manufacturing plants and companies.

23.3. The EU called upon Egypt to confirm that the need for repeated registrations by the same companies, and for the same products in various registries, would be repealed. A company listed as a 'trusted importer' under Decree No. 991 should be considered as having already given enough assurances of the quality and safety of its products.

23.4. The EU therefore urged Egypt to suspend the application of the measures at issue and to review them in light of WTO principles and obligations and then to re-notify them under the TBT Agreement. Members should be informed about the steps that Egypt intended to take to remove these unnecessary obstacles to trade.

23.5. The representative of Switzerland supported the EU's intervention and reiterated its concerns already expressed at previous meetings of the TBT Committee. Egypt's requirements created unnecessary obstacles to trade, and the non-transparent application of these measures also remained a concern. Switzerland encouraged Egypt to set time-limits for decisions on registration requests and to improve the registration process in general, since the renewal of registrations was contributing to the challenges faced by industry. Switzerland was concerned that the registration requirements had driven Swiss companies out of the Egyptian market. At the same time, Switzerland thanked Egypt for the constructive bilateral exchanges that had taken place and looked forward to further cooperation with Egypt in this regard.

23.6. The representative of the Russian Federation shared the concerns raised by other Members and called upon Egypt to bring its measures into conformity with the relevant WTO provisions. The manufacturer registration system created unnecessary barriers to trade and Russian enterprises had suffered from its negative effects. The measure had been introduced in a non-transparent way and was more trade-restrictive than necessary to fulfil its legitimate objectives.

23.7. The representative of Egypt referred Members to Egypt's replies in reports from previous meetings of the Council and TBT Committee meetings.[3] He argued that Ministerial Decree No. 43/2016 did not impose further burdens on producers or companies to comply with specific technical regulations. Instead, it provided credible producers with a better competitive environment since it allowed for greater control of counterfeited products being imported into Egypt. At the same time, the Egyptian authorities were doing their best to accelerate the process of registration of foreign companies in order to avoid any unnecessary delays. In addition, Egypt periodically reviewed and assessed measures and regulations that affected its imports, and foreign trade in general, with the ultimate goal of enhancing the business environment and facilitating trade.

23.8. Egypt stood ready to engage constructively with interested delegations and to provide assistance with regard to any implementation obstacles that their companies may be facing.

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

23.10. The Council so agreed.

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

24.1. The Chairperson informed the Council that, in a communication dated 31 October 2018, the delegation of the Russian Federation had requested the Secretariat to include this issue on the agenda.

24.2. The representative of the Russian Federation said that, in 2013, Mongolia had established a quota regime for importation of certain agricultural products, including wheat flour, wheat, milk, drinking water, and beef. According to Government Resolution No. 77, of 2 March 2013, each year the responsible authority determined the volumes of corresponding quotas. Importation outside of those quotas was prohibited.

24.3. Resolution No. 77 also set out basic criteria for determining quota volumes. The responsible authority calculated such volumes on the basis of the annual necessity for importation and exportation of certain agricultural products. However, such a system of determining annual quota volumes resulted in uncertainty for Russian exporters. Moreover, in late 2016, the Ministry of Food, Agriculture, and Light Industry of Mongolia had also established an import prohibition on wheat flour.

24.4. In May 2018, Mongolia had established a quota on the import of wheat flour for the remainder of the year. However, the Ministry of Food, Agriculture, and Light Industry of Mongolia had still not, even then, in November, allocated the quota volume among importers of wheat flour; at any rate, Mongolia had not made the decision publicly available. As a result, importers could not import within the quota volume and the import ban on wheat flour remained in force. As a result, Mongolia's imports of wheat flour had dropped significantly.

24.5. The Russian Federation considered the general elimination of QRs to be one of the core principles of the GATT and WTO legal systems. Therefore, the Russian Federation wished in this context to receive clarification from Mongolia regarding its import restrictions, both quotas and import prohibitions and, in particular, how its measures complied with Article XI of the GATT 1994 and Article 4.2 of the Agreement on Agriculture. Mongolia should also follow the transparency requirements set out in Article X of the GATT 1994 and promptly publish its regulations and decisions in such a manner as to enable governments and traders to become acquainted with them.

[3] Document G/C/M/132, paragraphs 16.6–16.9, and document G/TBT/M/76, paragraph 3.125.

24.6. The representative of Kazakhstan said that his authorities shared the concerns raised by the Russian Federation. They requested Mongolia to clarify how its established import prohibition on wheat flour and milk were in accord with the relevant WTO Agreements.

24.7. The representative of Canada reiterated Canada's systemic concerns over Mongolia's use of import prohibitions and QRs. As a significant global exporter of wheat, Canada also had a commercial interest in the use of these measures to limit or restrict wheat imports. Canada encouraged Mongolia to reconsider the measures and to update its notifications, including its quantitative restriction notifications.

24.8. The representative of Australia said that Australia supported the concerns raised by the Russian Federation. It urged Mongolia to fully address these concerns and to ensure that its related trade policies were WTO-consistent and implemented in a transparent and predictable manner.

24.9. The representative of Mongolia said that his authorities were taking step-by-step measures to ease market access for milk and flour imports. The call for bids for quotas had been published on the relevant websites, and the Ministry of Food and Agriculture had started to allocate quotas for milk, with its decision having also been posted on the Ministry's website. Mongolia was continuing with its internal consultations with a view to ensuring its measures' full compliance with the WTO Agreements, as well as finding a mutually beneficial solution for the Members concerned.

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

24.11. The Council so agreed.

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

25.1. The Chairperson informed the Council that, in communications dated 1 November 2018, the delegations of Japan and the United States had requested the Secretariat to include this issue on the agenda.

25.2. The representative of Japan acknowledged that Viet Nam's recent acceptance of the vehicle type approvals issued by certain Members was a positive development. Nevertheless, Decree 116 continued to have a significant impact on the export of automobiles to Viet Nam. Japan asked Viet Nam to take measures to swiftly improve the system, while taking into consideration the comments submitted by industry stakeholders.

25.3. Regarding the import of finished automobiles, there was no international recognition of Viet Nam's requirement to submit a copy of a quality certificate for automobile types issued by foreign authorities.

25.4. Japan also insisted that imported automobiles receive the same treatment as that applied to domestically produced automobiles regarding security emissions inspections and lot-by-lot testing requirements.

25.5. Japan urged Viet Nam to review the design and implementation of its measures with a view to ensuring that they were consistent with WTO principles, including non-discrimination and avoiding measures that were overly trade-restrictive.

25.6. The representative of the United States said that they continued to have serious concerns over market access for motor vehicles resulting from Viet Nam's Decree No. 116 and Circular No. 3. The measures at issue imposed burdensome certification and testing requirements, which continued to disrupt auto trade with Viet Nam. The Prime Minister's announcement in October that he was directing the Ministry of Transport to revise the onerous lot-by-lot testing requirements of Decree No. 116 and revert instead to testing only a representative sample of each imported vehicle type was welcome. The new regulations would enter into effect in late 2018, but it did not appear that the Ministry of Transport had in fact begun yet to draft revisions to the lot-by-lot testing requirements. Therefore, the US requested Viet Nam to provide any available updates regarding the

development of the new regulations, including a timeline and opportunities for consultations with stakeholders.

25.7. The representative of Mexico shared the concerns of other Members.

25.8. The representative of Thailand said that the Decree's requirement for lot-by-lot inspection and BTA Certificates for imported cars unreasonably increased both time and costs and was inconsistent with international practices, while cars produced in Viet Nam were treated more favourably and results and certificates from a single inspection remained valid for three years. Thailand urged Viet Nam to remove the requirements for each shipment to undergo lot-by-lot inspection and testing.

25.9. The representative of the European Union said that the EU shared the concerns of other Members. Car imports into Viet Nam had plummeted since the implementation of the Decree in early 2018. Procedural requirements under the TBT Agreement should be observed and all stakeholders, including importers of foreign cars, should be included in current consultations on developing further legislation. Producers in exporting Members should also be allowed a reasonable time-period to adapt their products or production methods to Vietnamese requirements.

25.10. Viet Nam's written response in May 2018 to questions raised by the EU had not addressed the question, in particular, of the EU's concerns over the discrimination of imported vehicles vis-à-vis domestically produced ones. The EU had since received a further reply from Viet Nam, which was currently being studied.

25.11. The representative of Canada echoed the concerns of other Members. The automotive industry was an important segment of the Canadian economy and some of its stakeholders continued to raise concerns over Decree No. 116.

25.12. The representative of the Russian Federation joined other Members in expressing concern over Decree No. 116 of 2017 and requested Viet Nam to suspend application of the Decree and to provide sufficient time for WTO Members to comment upon it.

25.13. The representative of Viet Nam said that Decree No. 116/ND-CP had been developed and promulgated in accordance with the Law on the promulgation of legal normative documents; furthermore, the Decree's formulation strictly followed transparency procedures, and Viet Nam had consulted with stakeholders on numerous occasions during its implementation. While there had continued to be some critical comments, the import situation had shown progress, as anticipated, as importers had become better acquainted with the necessary requirements and procedures. The Government had worked very hard to assist them in doing so.

25.14. Imports of automobiles into Viet Nam had decreased for the first few months of 2018 because importers had intentionally delayed orders to prepare for the revised documentation requirements and import clearance procedures. Imports had subsequently recovered, eventually reaching 11,507 units (all types of automobiles), which had surpassed the 2017 average monthly import volume of 8,000 units/month. Major automobile manufacturers and exporters from the United States, the Republic of Korea, Thailand, and Europe, had successfully cleared import procedures in order to sell their vehicles in Viet Nam.

25.15. A key objective of Decree No. 116 was to protect consumer safety. The Vehicle Type Approval was an important and necessary basis for the inspection authority to check a vehicle against quality, technical safety, and environmental protection standards. Technically, each type of automobile had to undergo assessments of the design, samples, quality of components, emission, and production conditions to ensure conformity of production; these assessments were then followed by verification and independent testing by a competent agency of all of the above steps before final issuance of the vehicle type approval certificate. The Vehicle Type Approval was mandatory for both imported automobiles and automobiles manufactured and assembled domestically. For legal and technical reasons, it was not feasible for Viet Nam to issue the Vehicle Type Approval for imported automobiles from the relevant Vietnamese authority. Regarding the identification of any acceptable documentation equivalent to the Vehicle Type Approval, Viet Nam noted that not all exporting countries issued Vehicle Type Approval for exported automobiles; nevertheless, Circular No. 3 and

subsequent guiding documents were sufficiently flexible to take these different circumstances into account and successfully to address them.

25.16. Viet Nam considered that lot-by-lot testing and inspection for imported automobiles was an appropriate measure to ensure quality uniformity and noted that the same requirement was applied to locally manufactured and assembled automobiles. Therefore, it was not correct to assert that imported automobiles were subject to less favourable treatment in terms of the frequency of inspections. The Prime Minister's Decision No. 1254, dated 26 September 2018, mandated the Ministry of Transportation to review the existing lot-by-lot testing requirements with the intention to achieve further trade facilitation, based on risk management, by the fourth quarter of 2018.

25.17. In conclusion, Viet Nam asserted that the requirements under the Decree were not more trade-restrictive than necessary, and that they were in full compliance with WTO rules. Viet Nam stood ready to engage constructively with any interested delegation.

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

25.19. The Council so agreed.

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

26.1. The Chairperson informed the Council that, in a communication dated 1 November 2018, the delegation of the United States had requested the Secretariat to include this issue on the agenda.

26.2. The representative of the United States expressed the United States' heightened concern over the measures that China had notified to the TBT Committee, and subsequently implemented, which banned or severely limited the import of scrap materials.

26.3. On 18 July 2017, China had notified CHN 1211 and CHN 1212 to the TBT Committee, banning the import of scrap post-consumer plastics, mixed paper, and textiles, as well as setting new border inspection and identification rules for materials qualified by China as waste; China had implemented these measures on 31 December 2017. On 15 November 2017, China had notified CHN 1224 through CHN 1234, restricting the import of a variety of scrap materials through revised quality parameters. The commodities affected 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 appeared to be excessively trade-restrictive as they were technically infeasible and acted as a *de facto* ban on the import of many scrap materials.

26.4. In April 2018, 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 these new measures to the TBT Committee. Furthermore, in May 2018, the day after they had been announced, China had implemented new border inspection rules requiring 100% inspection and lab testing at the border for all scrap commodities. That same day, China had arbitrarily halted its 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. On 27 June 2018, China had issued a notice indicating that all scrap material imports would be restricted to a list of specified ports, effective January 2019. On 18 July 2018, China had issued the revised draft Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Wastes, which defined "solid waste" to include all recyclable materials, and which had expressly banned such imports. In totality, these measures outright banned or effectively banned imports of scrap materials that were destined for recycling and reuse in downstream manufacturing processes.

26.5. 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; however, China's approach appeared in fact to be having the opposite effect. The new barriers had entered into force without any reasonable interval for industry and recyclers to make necessary adjustments to their supply chains or to develop new processing capacity. As the world's largest processor of scrap materials, China's implementation of these measures had had an immediate, damaging, and potentially lasting impact upon global recycling networks. Indeed, 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 could not locate alternative processing facilities simply to dispose of otherwise valuable recycled commodities.

26.6. In the context of China's national treatment obligations, for a vast number of the materials outlined in China's ban and import control standards, China had no mandatory commensurate domestic standard in place. The broadly trade-restrictive nature of the import control measures and the apparently fundamental differences between requirements for foreign and domestic commodities were also causes for concern.

26.7. China persisted in its refusal to notify its new technical measures in a manner consistent with its obligations under the TBT Agreement and had also arbitrarily and abruptly halted pre-shipment inspection in the US; these developments had heightened US concerns over the purpose of these actions and their consistency with China's WTO obligations. The US requested China immediately to halt implementation of these measures and to revise them, for public comment, in a manner consistent with existing international standards for trade in scrap materials, which provided a global framework for a transparent and environmentally sound trade in recycled commodities.

26.8. The representative of the European Union said that, while the EU agreed with the environmental objectives set forth, China needed to ensure that any measure in this area was implemented efficiently, transparently, and in the least trade distorting way possible. The EU requested China to notify its measures on waste under the TBT Agreement.

26.9. In the bilateral framework of the regular EU-China Dialogues, the EU had submitted written questions to China, in a letter dated 25 July 2018, including questions on the recent Chinese measures on waste. The EU had encouraged China to respond to these questions as quickly as possible, to address the issue of trade in waste in the most environmentally and economically efficient way, and to do so in a fully transparent manner.

26.10. The representative of Australia said that his authorities still had several concerns over China's measures on waste and scrap imports, which appeared to be more trade restrictive than necessary to achieve China's desired objectives. A range of materials negatively affected by China's measures, rather than being 'rubbish', in fact comprised valuable inputs to recycling supply chains. Trade in these products allowed for the recovery of materials that might otherwise end in landfill.

26.11. Australia was concerned by the broad scope and lack of clarity around a definition of 'solid waste', and urged China, in this context, to reconsider its measures in such a way as to facilitate global environmental outcomes by allowing for commercially meaningful trade in quality recyclable inputs. Australia also urged China to engage with its trading partners to develop measures that met its policy objectives while also allowing for an ongoing trade in recyclable materials to promote the recovery of resources and global environmental outcomes.

26.12. The representative of Canada aligned Canada with the concerns voiced by previous speakers. Canada encouraged China to consider different and less trade-restrictive mechanisms to address this issue, while at the same time ensuring that the mutually beneficial trade in recycled products could continue in a predictable manner.

26.13. The representative of New Zealand reiterated his authorities' view that all WTO Members enjoyed the right to regulate to protect their environments. However, New Zealand had a concern specifically with respect to vanadium slag, which was a purposefully produced co-product of the manufacture of iron and steel rather than a waste product. They questioned whether all vanadium slag, domestic and imported, was receiving equal treatment, and whether the measure banning imports of vanadium slag was more trade restrictive than necessary to meet China's stated environmental objectives. China was the largest global producer of vanadium slag and hopefully it was now in the process of considering alternative, less trade-restrictive measures, which would apply equally to domestic and imported products, in order more effectively to achieve its intended environmental outcomes.

26.14. The representative of China said that each Member had an obligation properly to handle and dispose of its domestically produced solid wastes. For China, as a developing country, and as the country with the world's largest population, and given the need to protect environmental safety and

public health, it was imperative to improve domestic solid waste treatment and disposal while restricting and prohibiting imports of solid waste.

26.15. China had fully taken into consideration the opinions and views of domestic and international stakeholders and had already adjusted its Import Waste Catalogue, allowing a sufficient transition period so that the relevant industries could fulfil their notification obligations. Over the past decades, enterprises from many other WTO Members had exported huge amounts of solid waste to China, to their enormous economic benefit, and China hoped that these exporting Members would now actively shoulder their international responsibilities by making their due contribution. Relevant adjustments of the catalogue would be reflected in China's notifications, which would be submitted at the earliest possible time through either the Committee on Import Licensing or the Committee on Market Access.

26.16. China was also unsure if the national treatment obligation really applied in this situation, since the Basel Convention on the Control of Trans-Boundary Movements of Hazardous Waste and Their Disposal fully recognized that any State had the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory. Similarly, it was not necessary to notify the draft of China's Law on the Prevention and Control of Environmental Pollution by Solid Waste to the TBT Committee because the law was not subject to the technical regulations, standards, and conformity assessment procedures provided for under the TBT Agreement.

26.17. The draft of the Environmental Control Centres for Imports of Solid Wates as Raw Materials had been made available to the general public for comment on 10 August 2017. China had subsequently made adjustments to it, including the deferral of entry into force of the new standard, following comments from the US, Australia, and other WTO Members, and consequently the time interval between the implementation of the new standard and the solicitation of public opinion had been more than six months.

26.18. The questions raised regarding the mechanism of the China-European Union catalogue would be discussed further in Capital.

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

26.20. The Council so agreed.

27 INDIA – QUANTITATIVE RESTRICTIONS ON IMPORTS OF CERTAIN PULSES – REQUEST FROM AUSTRALIA, CANADA, THE EUROPEAN UNION, THE RUSSIAN FEDERATION, AND THE UNITED STATES

27.1. The Chairperson informed the Council that, in communications dated 30 and 31 October, and 1 November 2018, the delegations of Australia, Canada, the European Union, the Russian Federation, and the United States, had requested the Secretariat to include this issue on the agenda.

27.2. The representative of Australia said that the Australian Government remained concerned by the QRs that India had placed on a range of different pulse varieties, and which appeared to be inconsistent with India's WTO obligations. India's import licensing notification stated that these import restrictions were 'maintained only on grounds of protection of human health or safety; animal or plant life or health; security and the environment', but without providing an explanation as to either their relevance or legal basis. India had continued to extend the measures and their application for well over 12 months, despite having stated on multiple occasions that its QRs were only temporary measures. In September 2018, India had again extended its QR on peas, without additional volume, which meant that an effective import ban was in place for six months, from July to December 2018.

27.3. India's measures had been implemented without warning, applied retrospectively, and were having a significant impact on the global pulses market. India had been Australia's largest market for pulses in 2016-2017, with exports valued at $1.4 billion; however, Australia's exports since then had virtually ceased. In conclusion, Australia requested India to respond to its questions raised at the various WTO Committees, and to explain to Members the WTO basis of its QRs on pulses.

27.4. The representative of the European Union expressed the EU's concerns over India's management of its pulse crop markets in recent months, specifically with regard to India's QRs on

pulses, and their conformity or otherwise with WTO rules. As a consequence of India's increased duties on pulses, EU exports (mostly of peas) had come nearly to a standstill, and prices for pulses in the EU market had also dropped. The EU called upon India to address these concerns.

27.5. The representative of the United States said that her authorities were significantly concerned by India's trade-distorting policies in relation to various pulses introduced in 2017 and 2018. These policies included, but were not limited to, multiple increases in tariff rates, the introduction of QR restrictions, and import-limiting licensing arrangements.

27.6. In addition to the QRs on certain pulses introduced in 2017, the Indian Ministry of Commerce and Industry had published Notification No. 04/2015-2020, on 25 April 2018, which had introduced a QR on the import of peas to no more than 100,000 metric tonnes between 1 April 2018 and 30 June 2018. This QR had since been extended on two occasions and was currently scheduled to last through 30 December 2019.

27.7. The US requested to receive from India an explanation for its introduction of these measures in 2017 and 2018, including an explanation of their compliance with India's WTO commitments. The US asked if India planned to extend again its QR on peas, beyond 30 December 2018, and if it had additional plans to institute more QRs on imports of specific agricultural products; if so, which?

27.8. The representative of Canada said that, as the world's largest supplier of pulses to India, Canada had been the Member most negatively affected by India's recent measures. During the June meeting of the Committee on Agriculture, India had indicated that the notification of its QR on dried peas had recently been submitted to the Committee for Import Licensing and the Committee on Market Access; nevertheless, India had to date provided no information on the GATT or WTO basis of its QR.

27.9. India's notification G/MA/QR/N/IND/2 had been circulated on 21 June 2018 by the Committee on Market Access and was a "notification of all quantitative restrictions in force". However, the WTO basis for the QR on dried peas remained unclear.

27.10. Canada was concerned by India's lack of transparency over its QR, and questioned the basis of India's justification of it, commenting that further detail was required as to which specific WTO provision India intended to invoke in justification of its QR on peas.

27.11. The representative of the Russian Federation expressed Russia's concerns over India's policy on imports of yellow peas, and particularly the increase in import tariffs on yellow peas of up to 50%. Between April and September 2018, India had introduced a QR on the import of yellow peas (100,000 tonnes), from 1 April until 30 December 2018. The Russian Federation believed that the extension of the QR until December 2018 made it in effect an import prohibition because the quota for yellow peas appeared to have been filled already in the summer.

27.12. At the most recent CoA meeting, India had stated that the purpose of QRs was to alleviate the distress caused to small and marginal farmers by an influx of cheap imported pulses and the resulting negative impact on their food and livelihood security. However, India had admitted that, from December 2017 to August 2018, the wholesale prices of pulses had in fact continued to decrease. Therefore, the import of yellow peas could not be considered the cause of the difficulties faced by small farmers, and a QR measure was not justified. Russia reminded India that QRs and import prohibitions could not be applied by WTO Members without a proper justification. Russia therefore urged India to bring its measures into conformity with WTO rules.

27.13. The representative of New Zealand said that her authorities remained concerned by the apparent implementation of a QR in clear contravention of WTO rules, and encouraged India to bring its measures into conformity with its WTO commitments.

27.14. The representative of Ukraine said that Ukraine remained concerned over the disruptive nature of India's policy on pulses and wished to understand the policy objective and the conditions under which the policy was actually being implemented. Ukraine called on India to be more transparent and predictable in its trade policy.

27.15. The representative of India said that India had notified its measures to the Committee on Import Licensing and the Committee on Market Access (document G/LIC/N/1/IND/14/Add.1, dated 20 June 2018, and document G/MA/QR/N/IND/2, dated 21 June 2018), and that it had addressed the questions raised by Members in the September meeting of the Committee on Agriculture. Members that had not received responses were requested to forward their questions in writing so that a response could be prepared.

27.16. As the largest producer and consumer of pulses, the decision to impose a quota had been based on domestic demand and supply and was intended to alleviate the distress caused to small and marginal farmers by an influx of cheap imported pulses and the consequent impact on their food and livelihood security.

27.17. The objective of India's agricultural policy was to balance the interests of consumers and producers. The wholesale price index (WPI) for pulses in India had dropped significantly and reflected the fact that the current prices of pulses in domestic markets were lower than in the corresponding period of the previous year, indicating that the measures taken had been in the overall interests of both consumers and producers, as intended. Therefore, the Government had imposed QRs on different varieties of pulses and dried peas in order to protect its small and marginal farmers. Based on the prevailing domestic situation, the relevant authority in India had extended India's QRs on imports of peas until 31 December 2018, as per the DGFT Notification No. 37, dated 28 September 2018.

27.18. The measures were temporary and the extension or removal of the QRs was based on domestic demand and supply. India was constantly reviewing the measures in question.

27.19. India would revert to Members at the Council and in the relevant Committees regarding the matter of under which WTO provision India had imposed its temporary measures, as well as India's notifications to the Committees on Market Access and Import Licensing. India would address any further query on the issue in the appropriate committee.

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

27.21. The Council so agreed.

28 CHINA – CUSTOMS DUTIES ON CERTAIN INTEGRATED CIRCUITS – REQUEST FROM THE EUROPEAN UNION AND JAPAN, PLUS CHINESE TAIPEI

28.1. The Chairperson informed the Council that, in communications dated 1 November 2018, the delegations of the European Union and Japan had requested the Secretariat to include this issue on the agenda. In a communication dated 2 November 2018, Chinese Taipei had requested to be included in the list of co-sponsors.

28.2. The representative of the European Union thanked China for its engagement both bilaterally and in other contexts. However, the EU would like to receive further clarification on how duties on certain MCO semiconductors had increased in China relative to changes to the HS nomenclature. EU experts considered that WCO guidance had not been followed, notably in relation to Insulated Gate Bipolar Transistors (IGBT) (classified by China under 8504.4091). The EU would continue to engage with China on this issue in all appropriate fora. It would also be useful if the WTO Secretariat were to prepare guidance on how the transposition should have taken place; such guidance would go beyond the case in question and be to the benefit of all ITA Members.

28.3. The representative of Japan said that Japan still had concerns following its bilateral consultations with China. In accordance with the WCO's Classification Opinions, the IGBT-IPM (Intelligent Power Module) was classified as a Power Module. However, China treated the IGBT-IPM differently at import clearance and imposed on it a customs duty rate of 5% further to the transposition to HS2017. Japan called upon China to provide a detailed explanation of its practice. Nevertheless, Japan had taken note of China's remark at the last CTG that all of the MCO products in question would be at zero duty by July 2021, and Japan would continue to monitor the issue accordingly.

28.4. The representative of Chinese Taipei said that Chinese Taipei remained deeply concerned over the impact on trade of the transposition methodology chosen by China. All Members should implement their commitments seriously and in good faith to ensure the stability and predictability of the multilateral system.

28.5. China had imposed tariffs on MCO products at a rate that was higher than its current WTO bound rate, effectively, of duty-free tariffs, thereby undermining the benefits to its industry, and with serious implications for the system. He called upon China to justify its chosen methodology and to provide the necessary additional data to ensure that its chosen methodology did not have any undesirable negative impact upon trade. He also urged China immediately to delete the tariff rates applied to imports of the MCO products at issue.

28.6. Chinese Taipei sought Secretariat guidance on how the transposition had been undertaken.

28.7. The representative of the United States supported the statements and questions raised by previous speakers and reiterated US concerns over changes in China's applied duty rates for semiconductor products, as they had previously done not only at the Council, but also at the CMA and the ITA Committee. The US continued to assert, in line with the General Council's Decision on HS transpositions, that the scope of China's concessions had changed substantially, and that their value had been impaired, in that semiconductor products that had been duty-free for over a decade were now again facing duties.

28.8. The representative of Switzerland said that her authorities shared the concerns expressed by previous speakers. There was a clear commitment in the ITA-II schedule in HS2007 to bind duties at zero for all electronic integrated circuits classified under HS heading 8542. The HS transposition was a technical process, which should not modify those concessions already granted. Switzerland invited China to remedy the current situation as soon as possible.

28.9. The representative of the Republic of Korea said that Korea shared previous speakers' concerns. When introducing a new nomenclature, HS transposition should be neutral and fully respect the spirit and principles of the ITA. Korea hoped that China would provide Members with additional information to clarify and address their concerns.

28.10. The representative of China said that they had used the fourth methodology set out in the WTO rules on HS2017 transposition, which was to apply the simple average of the previous rates of duty.

28.11. She stated that her delegation had already provided comprehensive responses to the issues raised at the meetings of the CMA and the ITA Committee; that they had addressed the technical issues raised by certain Members; and that they would clarify related technical questions through bilateral consultations with the Members concerned. China had seriously undertaken to fulfil its tariff reduction commitments in the ITA Expansion, as scheduled, and would continue to do so.

28.12. Furthermore, the linear reduction of the duties on MCO products would be implemented over a five-year period and, in accordance with China's tariff reduction commitments in the ITA Expansion, all duties on MCO products would be eliminated by July 2021.

28.13. She concluded by noting that her delegation supported the EU's suggestion regarding guidance to be provided by the WTO Secretariat in respect of HS transposition.

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

28.15. The Council so agreed.

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

29.1. The Chairperson informed the Council that, in communications dated 31 October and 1 November 2018, the delegations of Argentina and the United States had requested the Secretariat to include this issue on the agenda.

29.2. The representative of Argentina considered the EU's legal regime to be inconsistent with the TBT Agreement and expressed concern regarding the unjustified EU delay in approving the use of the traditional terms "Reserva" and "Gran Reserva" on Argentine wine exported to and traded on the EU market. The substantive procedure for the approval of these terms had been concluded in March 2012, and there was no legal justification for any delay in approval.

29.3. Argentina had been raising for more than ten years its concerns regarding certain EU regulations, namely Regulations CE No. 607-2009 and No. 479-2008, but was still waiting for final approval of the terms "Reserva" and "Gran Reserva".

29.4. In 2018, the EU had notified its draft regulation, including for the registration of traditional terms. However, the draft regulation had not addressed Argentina's concern, which was not only about the trade impact, but also about the EU's basic unwillingness to solve a routine trade concern, such that it was subsequently turning into a trade and legal problem. In conclusion, Argentina urged the EU to complete the formal proceedings for the registration of the terms "Reserva" and "Gran Reserva" as soon as possible.

29.5. The representative of the United States reiterated her authorities' concerns over the EU's lack of transparency and action concerning applications made by US producers to use certain traditional terms on their wine labels in the EU market. Despite having raised this issue repeatedly in the WTO TBT Committee, the EU had neither provided any satisfactory explanation for its eight-year delay, nor any information about when the applications would at last be processed.

29.6. The EU had recently issued draft revised regulations relating to traditional terms, yet they appeared to contain no timelines or transparency that could explain or justify the egregious delays. Nor did they indicate any timelines or transparency in the revised draft regulations to ensure that such delays would not recur. The US called upon the EU to process the US applications expeditiously and to provide full transparency on both their status and the rules that applied to them.

29.7. The representative of Australia requested clarity on how the proposed EU regulation amendments would affect the existing quality and coverage of objections processes in relation to prior rights or the common names of goods or vine variety names, recognizing that some of these matters would now be determined by member States. He also enquired if, during consultations on the amendments, any concerns had been raised on the effect of the changes on the quality or coverage of the objections process.

29.8. The representative of the European Union said that the EU had undertaken an internal assessment of traditional terms with stakeholders and experts from EU member States, in accordance with Article 114(3) of EU Regulation No. 1308/2013 establishing a common organization of markets in agricultural products. This now formed part of the EU Draft Commission Implementing Regulation laying down rules for the application of that Regulation. The Draft Implementing Regulation had recently been notified to the TBT Committee (document G/TBT/N/EU/571). The EU had received TBT comments on the notification from the US and Argentina, the EU's replies to which were currently being prepared.

29.9. The pending applications for traditional terms were still under consideration in the EU and it was not yet possible to provide any precise timeline for them.

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

29.11. The Council so agreed.

30 CHINA – NEW EXPORT CONTROL LAW IN DRAFT – REQUEST FROM JAPAN

30.1. The Chairperson informed the Council that, in a communication dated 1 November 2018, the delegation of Japan had requested the Secretariat to include this issue on the agenda.

30.2. The representative of Japan said that his authorities were concerned that the scope of the products subject to restrictions under the new law could be widened, including to the protection of important strategic raw materials. They had additional concerns over the requirement for disclosure of technological information at export being unnecessarily stringent. Finally, they were also concerned over the way in which the draft law provided for responsive measures against discriminatory control measures taken by other countries, which would be regarded as unilateral measures that were not subject to national security.

30.3. Japan called upon China to give due consideration to its concerns and to keep them fully updated on how China intended to reflect the public comments and the comments made at this Council in its draft law. The draft law would be passed in China's Parliament before end-2018 and Japan sought information on the future timeline for the draft law's review. China was encouraged to provide the draft law's implementation schedule in a transparent manner, including its detailed enforcement regulations. Japan also requested China to provide a sufficiently long transitional period before implementation.

30.4. The representative of the European Union said that it had submitted the EU's comments in writing during the consultation period in July 2017. The EU welcomed China's efforts to consolidate various existing export control provisions into a single draft export control law, given that strategic export controls derived from international obligations and commitments and pursued related objectives in terms of international security and non-proliferation of weapons of mass destruction. Therefore, the EU called for additional clarity on a number of elements of the draft law, including: development interests; discriminatory export control measures; protection of important strategic raw material; and its testing report.

30.5. The EU also asked for further information from China about any changes that may have been introduced to the draft, and what was its timetable for finalization. The EU looked forward to further discussions with China with a view to ensuring a mutually beneficial convergence of export controls in line with international rules and standards.

30.6. The representative of the Republic of Korea stated that China's new Export Control Law's objective and implementation must follow international rules regarding export restrictions. Korea questioned whether development interests could be considered a reasonable objective and was concerned that the Law's coverage was too wide and vague. Export restrictions on security grounds should only be taken based on strict requirements to prevent any possibility of their misuse. Korea hoped that China would reflect Members' concerns in the ongoing and future drafting process so that they could make improvements to the draft law in compliance with international rules.

30.7. The representative of China said that 252 comments had been received from government agencies, companies, associations, and law firms, both at home and from abroad, following the online publication of the Draft Export Control Law by the Ministry of Commerce and, as a result, the Ministry of Commerce had made further modifications and improvements to it. China would address the issue of providing more details on the provisions during the process of amending its supporting regulations and rules.

30.8. The draft law had been submitted to the State Council in February 2018, while the Ministry of Justice had been conducting its legislative review; this would be followed by the legislative work of the State Council and the National People's Congress. However, China could not provide a precise timeline for this process. At the same time, China commented that the scope of the covered products was very narrow and less than half of that provided for international practice, while the requirements for disclosure of technological information at export were lower than the requirements set by other Members.

30.9. While some Members were currently inclined to use national security in an abusive way, China resolutely defended the MTS while at the same time ensuring China's ability to safeguard its legitimate rights and interests, in accordance with the law.

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

30.11. The Council so agreed.

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

31.1. The Chairperson informed the Council that, in a communication dated 1 November 2018, the delegation of China had requested the Secretariat to include this issue on the agenda.

31.2. The representative of China referred to the US Federal Communications Commission's (FCC) announcement on the Federal Register of 2 May 2018, which was intended to prohibit the use of Universal Service Funds to purchase equipment or services from any communications equipment or service providers identified as posing a national security risk to the communications network or the communications supply chain. The FCC proposal would restrict the commercial purchases of telephones, broadband services, and healthcare providers.

31.3. The comment period for the proposed rule had closed on 2 July 2018 and some Chinese companies had submitted their comments proving, in China's view, that the proposed national security benefits were speculative. Moreover, a number of organizations, including but not limited to the American Cable Association, the Rural Wireless Broadband Coalition, and the Voice of America's Broadband Providers, had all also strongly objected to the proposed rule. The US was urged seriously to reconsider its comments. China hoped that the US would adhere to WTO rules during the legislation process for these measures because any measures that caused nationality-based discrimination treatment in law or in practice would violate the WTO's MFN principle

31.4. The representative of the United States said that the proposed rule dealt exclusively with matters of national security. It would ensure that Universal Service Funds would not be 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 fell squarely within the WTO exception for essential security interests. No Member would be expected to procure goods or services that they determined would pose a national security threat to that Member.

31.5. The proposed rule-making had been conducted through a typically transparent and open process. The FCC had released a lengthy description of the proposed rule on its website and had welcomed comments from the public at any point up until the close of the comment period. Interested Members should visit the FCC website at FCC.gov which would contain any further updates on the matter.

31.6. The representative of China urged the US to honour the commitment reached by the Chinese and US leaders on generally applicable information and communication technology (ICT) security-related measures in the commercial sector, during the 2016 G20 summit, which would ensure the compliance of FCC measures with relevant WTO rules, and that national security would not be used in abusive ways.

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

31.8. The Council so agreed.

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

32.1. The Chairperson informed the Council that, in a communication dated 1 November 2018, the delegation of China had requested the Secretariat to include this issue on the agenda.

32.2. The representative of China said that the Secretary of the Department of Communication and Arts of Australia had notified Huawei, ZTE, and Australian local telecommunication operators by telephone, on 22 August 2018, that Huawei and ZTE would be banned from participating in 5G projects in Australia. That meant that local carriers would be prohibited from purchasing 5G products from those Chinese companies. The relevant prohibitions had not been found in

Australian official documents and China was seriously concerned about the legal status of the decisions since these had been relayed by telephone.

32.3. The prohibition was not consistent with the MFN principle because of its discrimination against Chinese communication products. Moreover, it did not comply with the provisions on the "Publication and Administration of Trade Regulations" set out in Article X of the GATT 1994, which states that laws, regulations, or administrative rulings affecting the sales of imported products shall be published promptly.

32.4. Australia's written response to questions previously raised by China had covered only Australia's legal framework and had not provided any essential information on the prohibition. Australia was requested to provide the content of the prohibition as well as its legal basis in writing.

32.5. Australia should not interfere with and restrict the normal business activities of Chinese enterprises on the grounds of national security, bearing in mind their bilateral economic and trade cooperation. Instead, it should cultivate a sound business environment for Chinese companies in a fair, impartial, and transparent manner. Above all, China opposed protectionism under the guise of national security.

32.6. The representative of Australia said that additional information had been provided to China in response to the questions it had raised in the CMA. 5G networks would enable a new wave of innovation across the economy. Like other countries, the Australian Government was committed to safeguarding its critical national infrastructure, including in the telecommunications sector.

32.7. In 2016, following extensive public consultations, the Government had introduced in Parliament a Bill called the Telecommunications and Other Legislation Amendment Bill 2016, which introduced a regulatory framework to strengthen the security of Australia's telecommunications networks.

32.8. The explanatory memorandum accompanying the Bill had highlighted that the security and resilience of the telecommunications infrastructure significantly affected the social and economic well-being of the nation. The key element in Australia's telecommunications security framework was a new security obligation for carriers, carriage service providers, and carriage service intermediaries, to do their utmost to protect networks and facilities from unauthorized access and interference.

32.9. To ensure predictability and stability for investors and suppliers, and before the new laws came into effect, the Australian Government had provided security guidance regarding 5G technology and the requirements of the legislative framework to the companies that would build the next generation of networks. The security guidance had been provided based on careful, objective, and extensive review. The guidance related exclusively to public 5G networks; other networks and uses were unaffected. Nor had Australia proposed any restriction on the importation of equipment.

32.10. The Government's statement on security guidance had provided clear information to affected mobile network operators about how their new legal obligations under the telecommunications security legislation could be expected to apply as 5G networks were developed. Australia's approach was non-discriminatory as the obligations were not targeted at a particular country or at suppliers from any particular country; they applied equally to domestic-owned and foreign-owned carriers. Australia continued to welcome foreign business involvement in this market, which was essential for the efficient and effective operation of Australia's telecommunications sector. Australia would also continue to engage bilaterally with China on this issue.

32.11. The representative of China said that it was groundless to believe that 5G technology posed greater risks than previous generations of communication technology; to the contrary, 5G technology had been developed to solve the problems of previous generation communication technologies, including with regard to security issues.

32.12. The 5G standards had been jointly formulated by all parties in the communication industry, including equipment providers like Nokia and Eriksson, chipmakers like Inter, and companies like Apple and Samsung, with a view to ensuring the security of 5G. China had consulted technical experts and had learned that, in the 5G solution, a security interface was already incorporated into

the core network, which in fact made it more secure than previous generation technology. Besides, the 5G solution offered by the relevant Chinese companies fully met the security standards for next generation communications as certified by the international standards organizations for 5G.

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

32.14. The Council so agreed.

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

33.1. The Chairperson informed the Council that, in a communication dated 1 November 2018, the delegation of China had requested the Secretariat to include this issue on the agenda.

33.2. The representative of China said that the US Transportation Security Administration (TSA) was the authority for the US certification of civil aviation security equipment (TSA certification), as well as for the procurement of airport security equipment. One of the conditions for procurement of certain security equipment was that it must pass the TSA certification. However, Chinese enterprises that had applied for TSA certification had been informed by e-mail that their applications had not been accepted, but without having been provided with any explanation or specific reasons as to why; and nor would the TSA respond to further enquiries.

33.3. As a result, exports of aviation security equipment from Chinese companies to the US, and to other countries that had transportation cooperation with the US, were blocked. Furthermore, as the TSA certification would be adopted by most countries, the Chinese aviation security equipment would face difficulties in exporting to the global market. China considered that the TSA certification was inconsistent with the relevant rules of the TBT Agreement, such as its rules relating to the conformity assessment procedures of central government agencies, and its transparency principles; in addition, it erected unnecessary obstacles to trade. In conclusion, China called upon the US to respect the relevant provisions and principles of the TBT Agreement and to treat Chinese companies and products in an equal manner, including by granting them national and MFN treatment, and by eliminating these technical barriers to trade.

33.4. The representative of the United States said that the measures that had been raised by China at the most recent TBT Committee meeting, and here at this Council, dealt with matters of national security, and specifically aviation security. The US TSA had competency over the measures and, because it was a security-specific issue, it was not one that would be productively addressed in this Council. China and any other Members should discuss their concerns directly with the TSA.

33.5. The representative of China reiterated that this was not a security issue. Indeed, other Members, including China, faced similar security concerns; nevertheless, China did not prevent the certification or procurement of US aviation security equipment on security grounds. Furthermore, Chinese aviation security equipment reached worldwide markets and was used by many countries, including the EU. All Chinese aviation security equipment met the strictest and most stringent safety technical standards and requirements and was acknowledged as such in the market. China asserted again that security issues should not be used as an excuse to restrict normal bilateral trade.

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

33.7. The Council so agreed.

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

34.1. The Chairperson informed the Council that, in a communication dated 1 November 2018, the delegation of the European Union had requested the Secretariat to include this issue on the agenda.

34.2. The representative of the European Union said that they had requested Russia to modify the GOST standard on cement certification, namely GOST R 56836-2016, to correct its discriminatory dimension while also respecting WTO rules on notification. They also called upon Russia and the

other four EEU members not to replicate the discriminatory character of the measure in the Technical Regulation that was currently under preparation at EEU level.

34.3. The requirement of "good manufacturing practice" (GMP) certificates for pharmaceuticals had not yet been notified to the WTO and had a discriminatory dimension. Amendments to Federal Law 61 had been approved at the Duma on 17 May 2018. The EU sought an update on the schedule for the entry into force of these amendments. The EU also requested Russia to provide sufficient and timely information to allow for a smooth transition.

34.4. The EU also remained concerned by the embargo on fishery products from Estonia that had been in place since June 2015, allegedly for SPS reasons.

34.5. Regarding the Russian Federation's wine taxation regime, which was heavier on imported than on domestic wines, the EU welcomed the proposals from the Ministry of Finance on the modification of excise taxes on wine, as submitted to the Duma for discussion. The EU requested an update on the state of play of this discussion, including when the new rules would enter into force.

34.6. Turning to the issue of the increasing difficulty faced by importing companies (for goods) and foreign companies (for services) to participate in Russian SOEs' purchases, the EU noted that it had already raised this issue several times in the TRIMS Committee; Law 44/2013-FZ on Government Procurement had since been amended, but apparently in a way that had further limited national treatment for foreign products. The EU sought an explanation of whether or not the amendment implied that Law 44, which did not provide for the application of national treatment, now covered investments made by SOEs where fixed capital investments using state subsidies had been made.

34.7. The regime to be applied to the automotive sector as of 1 July 2018 was also cause for concern. Russia's exemption from several WTO measures as part of its WTO accession, in 2012, was due to end on 30 June 2018. The EU asked Russia if it could confirm that a decision of the EAEU from 14 September 2018 removed preferential duties for Russia, but not for other members of the EAEU. The EU also requested to receive information on planned subsidies (if any) for car manufacturers, which had previously benefited from preferential duties, to offset their "lost incentive". The EU also requested an update on the policy of Special Investment Contracts and of any other measures under consideration to promote localization of car production in Russia.

34.8. Regarding Russia's renewal in July 2018 of the 2014 so-called temporary export ban on raw hides and skins, until December 2018, and with end-2018 fast approaching, the EU asked if Russia intended once again to extend this ban.

34.9. Decree No. 836 of 17 July 2018 introduced a temporary quota on the export of birch logs from Russia outside of the EEU for the period from 1 January 2019 to 30 June 2019. In view of the precedent of the four-year ban on exports of raw hides and skins, the EU wished also to receive Russia's confirmation that the measure would not be extended beyond June 2019.

34.10. The representative of Ukraine said that Ukraine shared the EU's concerns and urged Russia to comply fully with its WTO commitments.

34.11. The representative of the Russian Federation stated that exports of processed fishery products from Estonian and Latvian plants had resumed their export to the Russian Federation and had supplied 500 tonnes of fishery products in total in 2018, despite mutually imposed economic sanctions. Russia continually monitored these supplies to facilitate the process of export resumption.

34.12. Based on the agreements reached between the two countries, Russian inspectors would visit the Estonian fish processing establishments, as proposed by the Estonian competent authorities, in compliance with Russian and EAEU requirements. Both sides still needed to agree on certain technical details about the forthcoming visit, but Russia nevertheless confirmed its readiness to settle the issue.

34.13. Regarding the rules for cement certification, the application practice of the relevant GOST-R 56836-2016 had revealed the need to introduce changes to it. Draft amendments No. 2 to the GOST-R had been developed and published on the website of the Federal Agency for Technical Regulation and Metrology. Public discussion of the draft had ended on 1 March 2018 and the draft

was currently being finalized, taking into account the comments received. The draft provided for the elimination of additional inspection controls, among other issues.

34.14. The Russian Federation's procedures to obtain a GMP certificate for pharmaceutical products fully complied with international standards and recommendations. In addition, the procedures were similar for domestic and foreign manufacturers. The number of inspections of foreign manufacturers was growing annually, with statistics showing that the number of inspections of foreign manufacturers were almost six times those of domestic manufacturers. The amendments to the Federal Law "On the Circulation of Medicines", that had come into force on 15 June 2018, allowed for the submission of a copy of the GMP certificate or a copy of the Decision of the Ministry of Industry and Trade of the Russian Federation in order to initiate the medicine registration process. The changes were designed to simplify and speed up the registration of new medicines on the Russian market.

34.15. The temporary export ban on tanned leather, which was required to assure the implementation of state defence procurement, would end on 10 December 2018. The Government of the Russian Federation was not considering reintroducing the measure at this time.

34.16. Regarding excise taxes on wine, and in consideration of Members' concerns, the Ministry of Finance had been tasked with developing amendments to the Tax Code in order to align excise rates for domestic and imported wines and champagne with protected geographical indications and appellations of origin. Members would be provided with the relevant information once the legislation had been passed.

34.17. Addressing the issue of temporary QRs on exports of birch, he informed the Council that Resolution No. 836, of 17 July 2018, would apply from 1 January 2019 to 30 June 2019, to prevent any critical shortages of a product that was essential to the Russian Federation.

34.18. Finally, concerning preferential duties for car manufacturers, the preferential duties had been removed for Russia but Russia could not comment on other Members of the EEU in this regard.

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

34.20. The Council so agreed.

35 WORK PROGRAMME ON ELECTRONIC COMMERCE

35.1. The Chairperson recalled that a Ministerial Decision was adopted at MC11 in Buenos Aires in which Ministers had agreed to maintain the existing Work Programme on E-Commerce, 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 July 2019, based on the reports submitted by the relevant bodies, among them the Goods Council; and to maintain the current practice of not imposing customs duties on electronic transmissions. Therefore, this Council was again tasked to discuss the E-Commerce aspects relating to trade in goods. In order to fulfil its mandate, the E-Commerce issue was a standalone agenda item.

35.2. For this reason, he invited delegations 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 December 2018. He also informed delegations that, once again, to fulfil this mandate, and as his predecessors had done, it was his intention to submit to the General Council a factual report under his own responsibility.

35.3. However, before opening the floor, he wished first to report on the informal consultations that he had held on 2 November 2018 on a possible workshop on "Cross-Border E-Commerce and Trade in Goods".

35.4. He recalled that, at the CTG's previous meeting, on 3 and 4 July 2018, under this agenda item, regarding the possible organization of a "Workshop on Cross-Border E-Commerce and Trade in Goods", the Council had agreed that he should hold informal open-ended consultations with delegations to explore Members' interests and suggestions with regard to such a workshop. To this

end, in communications dated 6 July and 14 September 2018, he had invited delegations to submit in advance, and in writing, their views, ideas, and suggestions concerning their interest in this matter, and the possible themes, speakers, and International Organizations that could participate if the workshop were to take place. In a communication dated 25 October 2018, he had sent to all delegations a compilation prepared by the Secretariat of all the comments and ideas received from Members to facilitate discussions at an open-ended informal session of the Council that took place on 2 November 2018.

35.5. In light of the limited number of interventions made at that meeting, he had concluded that, at present, there was no consensus to hold such a workshop, and that, consequently, he would cease holding consultations on this issue. He had also indicated that, even if there were currently no consensus to continue consultations, Members were at liberty to propose their own concrete ideas in this regard.

35.6. Finally, he informed delegations that, following this general discussion on E-Commerce, he would submit a factual report to the General Council on the informal open-ended consultations, and on that day's session.

35.7. The delegate of China registered his delegation's appreciation for the Chairperson's endeavours and efforts in respect of the proposed joint workshop on E-Commerce under the CTG. First, he wished to emphasize the importance of the proposed workshop in enhancing experience-sharing among Members, and in maintaining the momentum of multilateral E-Commerce discussions. Second, he believed that discussions held under the CTG should be conducted within the Council's terms of reference, with a focus on internet-enabled trade in goods. In this regard, he called upon Members to be flexible in respect of the workshop's organization. Third, his delegation would continue to communicate with the Secretariat and reach out to Members to seek appropriate solutions regarding the workshop. China valued and supported the discussions on E-Commerce under the 1998 Work Programme on E-Commerce.

35.8. At this meeting, his delegation wished to shed light on the Electronic Commerce Law passed by China's National People's Congress on 31 August 2018, to enable a better understanding of China's latest legislative achievements and regulatory concepts in the field of electronic commerce.

35.9. The legislative work on the E-Commerce Law had been ongoing for five years since it was formally launched at end-2013. Throughout the process, a very cautious attitude had been taken regarding legislation on this emerging industry. Extensive consultations had been conducted with various stakeholders and multiple workshops had been held to solicit opinions from both home and abroad. The drafting process had proven to be scientific, democratic, and normative, aiming at protecting the legitimate rights and interests of all parties to E-Commerce, regulating E-Commerce activities, maintaining market order, and promoting the healthy development of the industry.

35.10. Specifically, the Electronic Commerce Law was composed of 7 chapters or 89 articles, dealing with the adjusted object by the law, the parties to E-Commerce (including E-Commerce operators and platform operators), E-Commerce activities (including E-contract, E-payment, express logistics, and delivery), data and information, the protection of consumer rights and interests, a dispute resolution mechanism, market order and fair competition, cross-border electronic commerce, supervision and administration, and legal liability.

35.11. At this meeting, China would focus on the clauses relating to internet-enabled cross-border trade in goods, as well as related services.

35.12. First, the Law highlighted the importance of integrated regulatory systems for cross-border E-Commerce. It stipulated that the State shall support and promote the development of cross-border E-Commerce, and establish integrated service and regulatory systems for customs declaration, tax payment, inspection and quarantine, payment settlements, and other phases in cross-border E-Commerce transactions, which corresponded to the characteristics of cross-border E-Commerce. The State shall support cross-border E-Commerce platform operators and other operators to provide warehouse and logistics, Customs declaration, and inspection declaration services for cross-border E-Commerce transactions.

35.13. Second, the Law emphasized the importance of international regulatory cooperation on cross-border E-Commerce. It required that the State shall promote information-sharing, mutual regulatory recognition, and international law enforcement cooperation, to improve regulatory efficiency for cross-border E-Commerce transactions. The law also allowed cross-border E-Commerce business operators to use electronic documents during customs procedures.

35.14. Third, the Law also touched upon the issue of international rule-making on E-Commerce. It required the State to participate in international rule-making on E-Commerce and promoted international mutual recognition of electronic signatures and electronic IDs. It also required the State to promote the establishment of dispute resolution mechanisms for cross-border E-Commerce with other countries and regions.

35.15. The Electronic Commerce Law was a basic and comprehensive law in the field of E-Commerce in China. As China had learnt from the discussions under various WTO bodies, as a cross-cutting issue, E-Commerce involved trade in goods, trade in services, and many other aspects. China was ready and willing to share more information on the law in greater detail at the coming sessions of the relevant WTO bodies, and looked forward to in-depth exchanges and discussions with other Members on these occasions.

35.16. The delegate of Nigeria thanked the Chairperson for his factual report, and for his frank assessment of the state of play. Nigeria had taken note of the report and, in particular, of the current stalemate in relation to the organization of the workshop. Nevertheless, his delegation still wished to reiterate the importance of this subject in light of the MC11 Decision and the CTG's responsibility for it. He was also mindful of the parameters and scope of any discussion, and the fact that E-Commerce was a cross-cutting issue that affected both goods and services.

35.17. His delegation wished to highlight the following: first, Nigeria was a strong supporter of multilateral discussions on E-Commerce and would share its perspective in the context both of the Joint Initiatives and the Work Programme. Members also needed to ensure the continuing relevance of the WTO for all its Members. In other words, Members should be able freely to discuss issues of importance to them. Second, it was also clear that E-Commerce had the potential to bring significant development benefits to Members, even if not necessarily automatically. Nevertheless, Nigeria was mindful of the significant gaps in capacity and skills that could affect the equitable distribution of E-Commerce in terms of its potential benefits. Third, Nigeria would favour the organization of a workshop, subject to consensus, that would examine the relationship between E-Commerce and development, including addressing questions around the nature of S&D treatment. Finally, in terms of next steps, Nigeria believed that the objective now should be to improve and deepen an understanding of the current state of play, to identify concerns and challenges and how to address them, and to take advantage of the opportunity of such a workshop.

35.18. In this regard, Nigeria thought that the workshop would be very important to facilitate substantive engagement; nevertheless, in the absence of a workshop, information-sharing could also be a way to deepen discussions on this important topic. While it was difficult to affirm that the Chairperson should continue with consultations given a lack of appetite for them, Nigeria wished to encourage Members to be flexible in their approach and to take advantage of this window of opportunity to raise specific concerns in the context of the Work Programme and the scope and responsibility of discussions under the CTG.

35.19. The delegate of Brazil wished to express Brazil's support for the Work Programme and for the multilateral discussions on E-Commerce. At the same time, he wished to convey an initial assessment that the lack of consensus concerning the workshop probably reflected the convenience of having a more horizontal process in this area, which could encompass the interests of various Members. Brazil also wished to highlight the Joint Initiative on E-Commerce resulting from MC11, and the fact that a debate had taken place in that context about legal texts and disciplines that could improve regulations of various aspects of E-Commerce. In Brazil's view, the discussions there would be more fruitful if Members that had not yet engaged in that process could follow or participate in that context as well.

35.20. The Chairperson concluded by confirming that there was some interest among Members in E-Commerce issues. He proposed that the Council take note of the statements made.

35.21. The Council so agreed.

35.22. In addition, he further proposed that, to fulfil the Buenos Aires mandate, he would make, under his own responsibility, a purely factual report to the General Council, in December 2018, on the discussions held in this Council at this meeting.

35.23. The Council so agreed.

36 CONSIDERATION OF ANNUAL REPORTS OF THE SUBSIDIARY BODIES OF THE COUNCIL FOR TRADE IN GOODS

36.1. The Chairperson noted that, pursuant to the "Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO" (WT/L/105), which were adopted by the General Council on 15 November 1995, all bodies constituted under Agreements in Annex 1A of the WTO Agreement were required to submit a factual report to the Council for Trade in Goods annually, and the Council was to take note of these reports.

36.2. Such factual reports were adopted at the last meeting of each subsidiary body and submitted to the CTG for its consideration. In the case of the Committees on Agriculture, Technical Barriers to Trade, and Customs Valuation, the corresponding factual reports would be submitted directly to the General Council.

36.3. The Chairperson proposed that the Council take note of the following factual annual reports: TRIMs (G/L/1273 and G/TRIMS/8); Subsidies and Countervailing Measures (G/L/1272 and G/SCM/152); Anti-dumping (G/L/1270 and G/ADP/25); Safeguards (G/L/1275 and G/SG/190); Market Access (G/L/1271); Import Licensing (G/L/1269); Sanitary and Phytosanitary Measures (G/L/1280); ITA (G/L/1278); Pre-shipment Inspection and Independent Entity (G/L/1274); Rules of Origin (G/L/1266); Trade Facilitation (G/L/1267); and Working Party on State Trading Enterprises (G/L/1268 and G/STR/21).

36.4. The Council so agreed.

37 ADOPTION OF THE ANNUAL REPORT OF THE COUNCIL FOR TRADE IN GOODS TO THE GENERAL COUNCIL (G/C/W/761)

37.1. The Chairperson drew Members' attention to the Draft Report of this Council to the General Council, circulated in document G/C/W/761. In accordance with the "Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO" (WT/L/105), which was adopted by the General Council on 15 November 1995, it was agreed that "[T]he respective sectoral Councils should report in November each year to the General Council on the activities in the Council as well as in the subsidiary bodies" and that the reports of the sectoral Councils should be "factual in nature, containing an indication of actions and decisions taken, with cross-references to reports of subordinate bodies and could follow the model of the GATT 1947 Council reports to the CONTRACTING PARTIES".

37.2. The draft report before Members would be updated in light of today's meeting.

37.3. The delegate of Norway noted that, at the CTG's meeting of 3 July, Norway had made a statement that still needed to be reflected in paragraph 20.2 of the draft report.

37.4. The delegate of Hong Kong, China noted that, on page 8, paragraph 13, references to Article 13.1(b) should be Article 13.1(e). Corresponding changes needed to be made to the heading and table of contents.

37.5. The delegate of Colombia noted that, in footnote 20, the reference should be to document G/L/1269 and not to document G/LIC/W/1269.

37.6. The Chairperson noted that the United States would need to be added to the list of Members that had intervened under the agenda item in Section 31 of the draft report (page 14, paragraph 31.2 of the draft report).

37.7. He proposed that the Council take note of the statements made, and that the Council adopt the report subject to its update and revision to take into account the work of the Council at this meeting and the interventions that had just been made.

37.8. The Council so agreed.

38 OTHER BUSINESS

38.1 Annual Report on Notification Obligations and the Trade Facilitation Agreement

38.1. The Chairperson recalled that, at the March 2018 meeting of the CTG, it was agreed that this Council would hold consultations with interested Members on how best to include the TFA notifications in the Annual Report on the Status of Notifications. It was his intention to convene, if possible before the end of the current year, or in February 2019, informal open-ended consultations on this issue. He therefore invited delegations to be prepared to discuss how best to reflect the TFA notifications in the Annual Report, particularly in light of the TFA's series of notification requirements of different kinds, and with different ranges of coverage.

38.2 The work of the Goods Council

38.2. The Chairperson noted that, since he had taken over the Chairpersonship of this Council, he had had the opportunity closely to observe the number and diversity of issues that were being brought to the Council's attention at each meeting. He had been surprised by the increasing number of specific trade concerns (STCs) that were brought to the Council's attention. During these two days of intensive work, Members had considered 38 agenda items. He found this to be positive in that it demonstrated Members' confidence in the MTS and the functioning of the WTO bodies in general. However, he had also noticed that many of these issues had already been considered at previous meetings. In fact, some issues were such regular fixtures on the CTG's agenda that they seemed almost to be standalone agenda items. He had been reflecting on this and wished to invite delegations to consider how best to deal with the CTG's STCs, how to improve the functioning of the CTG in general, and above all how to make its work more efficient.

38.3 Date of the next meeting

38.3. The Chairperson noted that the next meeting of the Council was scheduled to take place on Thursday, 11 April, and Friday, 12 April 2019. The agenda would close at 16:30 on Friday, 29 March 2019.

38.4. Regarding the closing of the agenda, he reminded delegations that, according to the Rules of Procedure, meetings of WTO bodies were convened by a meeting notice issued not less than ten calendar days prior to the date set for the meeting. The agenda itself therefore closed one WTO working day prior to the circulation of the meeting notice; that is, 11 calendar days before the date set for the meeting (or, if the date fell on a weekend, the previous Friday).

38.5. The meeting was closed.