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Council for Trade in Goods

MINUTES OF THE MEETING OF THE COUNCIL FOR TRADE IN GOODS 11 AND 12 APRIL 2019

The meeting of the Council for Trade in Goods (CTG, or the Council) was convened by Airgram WTO/AIR/CTG/13; the proposed agenda for the meeting was circulated in document G/C/W/763. The meeting proceeded on the basis of the following agenda:

Before the Agenda had been adopted, the delegation of Argentina requested to be added as a co-sponsor of Agenda Items 13 ("European Union – Quality Schemes for Agricultural Products and Foodstuffs – the Registration of Certain Terms of Cheese as Geographical Indications – Request from the United States and Uruguay") and 20 ("European Union – Draft Implementing Regulations Regarding Protected Designations of Origin and Geographical Indications, Traditional Terms, Labelling and Presentation of Certain Wine Sector Products – Request from the United States"). The delegation of Mexico requested to be added as a co-sponsor of Agenda Item 5 ("European Union – Proposed Modification of EU TRQ Commitments: Systemic Concerns – Request from Australia, Brazil, Canada, China, New Zealand, the Russian Federation, the United States, and Uruguay"). The delegation of Colombia requested to be included as co-sponsor of Agenda Item 30 ("European Union – Amendments to the Directive 2009/28/EC, Renewable Energy Directive – Request from Malaysia"). The delegation of Switzerland indicated that, under "Other Business", it intended to raise the issue of its negotiations under GATT Article XXVIII.

The Chairperson indicated that, under the same agenda item, he would raise the matter of the date of the Council's next meeting.

The agenda was so agreed.

1 NOTIFICATION OF REGIONAL TRADE AGREEMENTS

1.1. The Chairperson recalled that, under the working procedures agreed by the Committee on Regional Trade Agreements (CRTA) and following 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 the following three RTAs had been notified to the CRTA, as followed:

- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (WT/REG395/N/1);
- Economic Partnership Agreement Between the European Union and Japan (WT/REG396/N/1); and
- Free Trade Agreement between Hong Kong, China and Georgia (WT/REG397/N/1).

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

1.3. The Council so agreed.

2 STATUS OF NOTIFICATIONS UNDER THE PROVISIONS OF THE AGREEMENTS IN ANNEX IA OF THE WTO AGREEMENT (G/L/223/REV.26)

2.1. The Chairperson drew Members' attention to document G/L/223/Rev.26, containing the status of notifications under the provisions of the Agreements in Annex 1A of the WTO Agreement. He recalled that, at the March 2018 meeting of the CTG, it had been agreed that the Council would hold consultations with interested Members on how best to include the Agreement on Trade Facilitation (TFA) notifications in its Annual Report on the Status of Notifications, and that before the Council's first meeting of 2019, informal open-ended consultations on this issue would be convened. Those consultations had taken place on 4 March 2019, and Members had agreed, on that occasion, that the Annual Report on Notifications should only contain information relative to particular provisions of Section I of the TFA (the so-called "transparency notifications"), as these were the notification requirements that applied to all Members, including Article 1.4 (Publication and Availability of Information), Article 10.4.3 (Single Window), Article 10.6.2 (Customs Brokers), and Article 12.2.2 (Customs Cooperation). Consequently, as concerned the TFA, these were the notifications that had been included in the document currently before the Council, document G/L/223/Rev.26; a detailed

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

explanation to this effect had been provided on page 9 of the document's explanatory notes, and in its Annex 18 (English version).

2.2. The delegate of the European Union thanked the Secretariat for its report and indicated that the submission of timely and complete notifications was a key issue for the EU. Nevertheless, the EU acknowledged that the work that was necessary before a Member could submit a complete and timely notification was resource-intensive, especially for Members with fewer resources. The EU encouraged Members to undertake individual efforts to close these gaps. The EU also recalled the importance of transparency for economic operators and regretted the persistent gaps in notification compliance across the agreements listed in the different tables of the report.

2.3. The EU expressed its particular concern over notification non-compliance in the areas of subsidies, state trading enterprises, import licensing regimes, and quantitative restrictions, where a significant number of notifications remained outstanding, including in relation to major trading partners and across several notification periods. The EU urged all Members to submit their missing notifications without further delay and in the future to meet all of the relevant deadlines.

2.4. With regard to TFA notifications, the EU welcomed their inclusion in the Annual Report but noted that ideally all TFA notifications should be covered to enhance overall transparency, as was the case with the TF Committee's own matrix table of notifications. The report's TFA table was useful in that it indicated what had been notified by which Member; however, the current format also had its limitations. The information presented could be further refined to indicate, for example, what a Member had committed to notify, and if the Member in question had in fact done so by the cut-off date of 31 December 2018. For example, 17 Members, including several LDCs, had not committed to any of the transparency provisions in their Category A notifications; therefore, the transparency notifications were not yet applicable to them. The EU considered that the table should highlight such a distinction, in conformity with the approach used in the TF Committee's own matrix table, as referenced in the report itself. The EU highlighted that, among those Members that had included all of the transparency obligations in their Category A commitments, the vast majority (54 Members) had complied with their notification obligations, although notifications nevertheless did remain outstanding for 9 Members. As concerned outstanding notifications on individual transparency obligations designated under Category A, the EU noted that 30 Members had categorized Article 1.4 (publication) as a Category A commitment but had nevertheless failed to notify; and that 46 Members had committed Article 12.2.2 (contact points for customs cooperation) as Category A, but had likewise failed to notify. The EU called upon the Members concerned to submit these notifications without delay.

2.5. The delegate of China thanked the Secretariat for its report and for including the relevant TFA information. The report currently presented information on notifications in Section I of the TFA, but China considered that there needed to be further discussion regarding the incorporation of notifications also under Articles 22.1 and 22.2 of the TFA. For China, the notification obligation for donors under Article 22 was clearly defined and should not be the source of any misunderstanding. The text referred clearly to donor Members, and to developing country Members that had declared themselves to be in a position to provide assistance and support with regard to a capacity-building classification. Furthermore, a donor in the context of the TFA was defined in the same way as a donor in the context of the Official Development Assistance Programme (ODA), which was a definition clear to all. In this context, China considered that, to fully reflect TFA notification performance, TFA obligations under Articles 22.1 and 22.2 should also be included.

2.6. The delegate of Japan thanked the Secretariat for compiling the report on notifications and indicated that, although a consensus had already been reached at an earlier CTG informal meeting to include in the report only the transparency notifications, Japan nevertheless considered that further discussion was necessary on how best to include in the report also category A, B, and C notifications, as well as donor notifications. Japan requested the Chair to hold additional informal consultation meetings to discuss this issue further.

2.7. The delegate of Australia thanked the Secretariat for the report, which made Members aware of their respective levels of notification compliance. Australia also encouraged Members to use this report as a reminder of any outstanding notifications that needed still to be addressed, and also as a way of encouraging and ensuring that Members complied fully with their obligations.

2.8. The Chairperson proposed that the Council take note of the statements made and of document G/L/223/Rev.26.

2.9. The Council so agreed.

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

3.1. The Chairperson recalled that the Guidelines for the Appointment of Officers to WTO Bodies, contained in document WT/L/510, adopted by the General Council on 10 December 2002, provided that the Chairperson of the CTG would conduct consultations on the appointment of the Chairpersons of the Council's subsidiary bodies. The Chairperson recalled that, on 1 March 2019, all Members and Group Coordinators had been informed that he would be accepting proposals for candidates to Chair the subsidiary bodies of the CTG. The consultations that he had carried out on this matter since March had consisted both of individual meetings with Group Coordinators and of bilateral consultations with those delegations that had expressed their interest in the consultation process. The following meetings had been held in this regard: two initial consultations with Group Coordinators, on 7 and 18 March 2019; three rounds of bilateral consultations with all interested delegations, on 25, 26, and 27 March 2019; and two further meetings with Group Coordinators, on 4 and 8 April 2019. In accordance with the guidelines, the Chair had coordinated with the Services Council Chair throughout this process. However, despite his best efforts, he was not yet in a position to submit a slate of names to Members for their consideration. He therefore proposed to suspend this agenda item in order to hold additional consultations on this issue, and to revert to it at the appropriate time.

3.2. The Council so agreed.

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

4.1. The Chairperson informed Members that, in a communication dated 29 March 2019, the European Union had requested the Secretariat to include this issue on the meeting's agenda.

4.2. The delegate of the European Union said that her delegation had requested the inclusion of this item on the agenda in order to obtain an update from Armenia and the Kyrgyz Republic on their GATT Article XXVIII compensation negotiations following their accession to the Eurasian Economic Union (EAEU). The EU welcomed the progress that had been achieved in the tariff negotiations for non-agricultural products and looked forward to the formalization of such progress in the respective bound WTO schedules of the EAEU countries. However, concerns remained over a lack of progress in the area of agriculture, where in principle the exercise should have been simpler, since only compensation had been requested from Armenia and the Kyrgyz Republic; nevertheless, after four years of negotiations, to date neither of the two countries had tabled an offer on agricultural products. The EU called upon both countries to table their offers on agriculture without further delay.

4.3. The delegate of Ukraine said that the participation of Armenia and the Kyrgyz Republic simultaneously in the EAEU and in the free trade zones with Ukraine risked resulting in unpredictable consequences for Ukrainian exports. In this context, he reiterated Ukraine's concern regarding possible changes in access to EAEU markets.

4.4. The delegate of China welcomed the progress made on the NAMA negotiation and indicated that China had also submitted its claim of interest and had been working with Armenia and the Kyrgyz Republic on these renegotiations.

4.5. The delegate of Chinese Taipei recalled that Chinese Taipei had submitted a claim of interest to Armenia under GATT Article XXVIII more than four years ago.

4.6. The delegate of Armenia recalled that, after substantive discussions with the EAEU member States, in 2017 Armenia had prepared a new compensation package on non-agricultural products, including a comprehensive list of goods for which Armenia was ready to consider further liberalization. Armenia also recalled that bilateral meetings on this subject had taken place between

the EU delegation and the EAEU country representatives in November 2018, in Geneva. As a result, a new and updated compensation offer to the EU on NAMA had been informally made, based on a previous proposal. This formal offer was submitted in March 2019, together with the compensation package, and including the list of tariff lines that had been approved by the Eurasian Economic Commission on 29 March 2019. Therefore, it could be considered that, in principle, an agreement had already been reached with the EU. Armenia also indicated that the conclusion of the Non-Agricultural Market Access (NAMA) compensatory package was very close and that, once concluded, Armenia would concentrate more of its efforts and resources on the compensation package on agriculture. Armenia indicated that it had also prepared a draft proposal to the EU on TRQs for agricultural products, and that this proposal had since been presented to its EAEU partners. Discussions within the various EAEU institutions were currently ongoing, and a new round of consultations between EAEU member states would be held imminently. Armenia also hoped that the decision-making process within the EAEU would soon be finalized to enable Armenia to submit to the EU a comprehensive reply and compensation package on agricultural goods, as it had previously done for industrial goods.

4.7. The delegate of the Kyrgyz Republic said that his authorities continued to work on the negotiation process, including the assessment of the claims that they had received, in order to prepare an appropriate compensation package. On behalf of his authorities, he thanked the EU and other interested Members for their understanding with regard to the internal process, and for their readiness to cooperate further with the Kyrgyz Republic. With regard to Ukraine's intervention, he noted that trade with Ukraine was based on preferential treatment within the Commonwealth of Independent States (CIS), as provided for in the bilateral trade agreement and CIS Free Trade Agreement, signed in 2011.

4.8. The delegate of the Russian Federation indicated that his authorities recognized the necessity for an expeditious conclusion to these compensatory adjustment negotiations and indicated that his authorities would continue to support Armenia and the Kyrgyz Republic in their respective negotiation processes.

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

4.10. The Council so agreed.

5 EUROPEAN UNION – PROPOSED MODIFICATION OF EU TRQ COMMITMENTS: SYSTEMIC CONCERNS – REQUEST FROM AUSTRALIA, BRAZIL, CANADA, CHINA, MEXICO, NEW ZEALAND, THE RUSSIAN FEDERATION, THE UNITED STATES, AND URUGUAY

5.1. The Chairperson informed Members that, in communications dated 28 and 29 March 2019, the delegations of Australia, Brazil, Canada, China, New Zealand, the Russian Federation, the United States, and Uruguay, respectively, had requested the Secretariat to include this issue on the agenda. He also recalled that, at the start of the meeting, Mexico had requested to be added as a co-sponsor of this agenda item.

5.2. The delegate of the United States said that, while the United States was supportive of the UK establishing itself as an independent WTO Member , it would not accept an EU-UK approach to tariff rate quotas (TRQs) that was prejudicial to its WTO rights and trade interests, such as the approach chosen by the EU and the UK, which would reduce market access opportunities for US exporters into both markets. Indeed, any changes to EU TRQ commitments as a part of the UK's exit from the EU must be subject to negotiations with other WTO Members to ensure that their trade interests were maintained. Otherwise, the EU and the UK would have to compensate any Member negatively affected by the approach eventually adopted. Consequently, the United States could not accept the EU and UK plan of proposed TRQ splits without there having first been substantive negotiations with all the relevant Members concerning their respective market access commitments. Apportionment of the EU TRQ quantities would reduce access into the UK or the EU-27 for any given TRQ product. Other Members had had the opportunity to export the full TRQ quantity into either the UK or the other EU-27 Member states during the quota year. However, under the EU-UK TRQ splitting plan, Members would have the opportunity to export only a portion of that original TRQ quantity to the UK or the EU-27. For certain TRQ products, the proposed split would result in no in-quota access to either the UK or the EU-27; this would be an unjustifiable and unacceptable outcome for other

Members. In this vein, the US highlighted that a number of the TRQs in the EU schedule were unrelated to the UK and were instead the result of negotiations relative to EU enlargements; therefore, these EU trade concessions represented compensation for the loss of Members' access in the markets of the acceding EU members. Furthermore, the US submitted that the UK's decision to leave the EU should not be used as a reason to diminish the EU's market access commitments, and noted that neither the EU nor the UK had provided reliable import data to inform Members of how much of a given TRQ product had been imported into the UK relative to the EU-27. Indeed, the data that had been provided had not contained information on intra-EU trade flows after a product had entered the EU's customs territory and, as such, the basis on which the EU and the UK had proposed to split their TRQs was unreliable. Since formal discussions with the UK were less advanced than they were with the EU, the US expected to hold negotiations with the UK on any TRQ within its claim to the EU. According to the US, the fact that the UK was basing its analysis on claims on imports into the UK only was highly biased in favour of the apportionment approach that Members had declared prejudicial. The US also noted that it had little trade in certain of the TRQ products because of SPS barriers.

5.3. The delegate of New Zealand noted that the EU was both the world's largest agricultural importer and its largest agricultural exporter, and that a significant number of the EU's agricultural imports occurred through TRQs. Currently, the EU had 196 TRQ concessions, covering almost 400 tariff lines, whose average value of imports in 2018 had totalled €28 billion. New Zealand recalled that a number of Members had expressed concern over document G/SECRET/42, where the EU had proposed to reduce its TRQ concessions in response to Brexit, including in room document RD/CTG/5, circulated at the previous CTG meeting. In her delegation's view, the EU's proposal disregarded TRQ commitments that represented minimum access commitments, current access commitments, or negotiated outcomes agreed with the EU during and subsequent to the Uruguay Round, thus undermining the balance of outcomes that other Members had agreed to at that stage. Among New Zealand's specific concerns were the following: (1) the significant loss of access into the EU market, which included the complete elimination of a small number of EU TRQs, and a large-scale reduction of many more; (2) the saturation of the remaining reduced TRQs by the significant level of bilateral EU-UK trade; and (3) the loss of flexibility that would arise from the implementation or reduction of these negotiated quotas, which constrained the ability of both exporters and markets to respond appropriately to fluctuations in demand in the current uncertain environment. The proposal to reduce the EU frozen beef quota by 69% in volume from 63,703 to 19,676 metric tonnes illustrated these concerns as this would cut the quota back from 0.8% of consumption in the current EU-28 to 0.3% of consumption in the EU-27 member States and, on current prices, this lost volume would be worth several hundred million euros. This was the case for just one of the 129 quota concessions that the EU had proposed to reduce in its schedule.

5.4. New Zealand had previously indicated that there was no need for the EU to change its obligations in relation to third countries in response to Brexit, a conclusion to which the EU itself had arrived when it had indicated that there was no need to modify its GATS schedule, nor to alter its bilateral FTA commitments to third parties. Brexit was rather a change in the EU-UK relationship that should not alter the EU's relationship to the rest of the world. In this vein, the EU's proposed reduced quota of 19,676 metric tonnes was dwarfed by the EU27-UK beef trade of approximately 350,000 metric tonnes, and New Zealand had submitted that Members needed to know what arrangements were intended for EU27-UK trade to sit alongside the access originally negotiated with – and valued by – other Members. There was nothing in the current EU proposal that would address this problem. Moreover, many of the concerned Members had not been heard on this issue due to the process that the EU had followed. New Zealand had also indicated that Members stood to lose a significant degree of flexibility under the EU proposal, and that this flexibility to address fluctuations in production, demand, and currency, was helpful to both EU consumers and exporters. Therefore, New Zealand urged the EU to make full and active use of the Brexit extension period it had agreed with the UK in order to work with concerned Members to find a mutually acceptable solution that would fully honour its existing commitments.

5.5. The delegate of the Republic of Korea echoed the systemic concerns voiced by other Members over the proposed modification of EU TRQ commitments. Indeed, the uncertainty surrounding Brexit was giving rise to substantive concerns over bilateral relations between the EU and the UK, and multilateral trade relations more generally. Even if Korea had not claimed a substantial interest in the EU TRQ negotiations, it remained very keen to follow the ongoing negotiations between the EU and other Members, given that the resulting modifications would bring about significant

consequences for the WTO system. Korea believed that these negotiations should be conducted in a transparent and predictable manner.

5.6. The delegate of China shared the concerns raised by previous speakers, in particular regarding the arrangements for future trade relationships between the EU and the UK, which had not yet been formally decided upon. Without a clear understanding of this future relationship, it would be impossible for Members accurately to assess and analyse the potential trade impact of Brexit in terms of any subsequent uncertainty and unpredictability. China also reiterated its concern over the approach and data proposed by the EU and UK as these would impair Members' export interests. Members were currently entitled to use TRQs up to the full volume when exporting their goods to any EU member State, including the UK; however, the proposed TRQ apportionment would result in a significant loss to Members of market access opportunity and flexibility in future EU and UK markets. There was also a risk of Members' exports being crowded out by EU-UK trade if the quotas between the EU and the UK were not set up appropriately. In addition, the data provided by the EU and the UK had failed to reflect actual trade patterns in their entirety. China was also concerned over the EU's intention to impose a unilateral TRQ apportionment in its Regulation 2019/216, published on 30 January 2019, in the event of a no-deal Brexit. China believed that this would seriously affect other Members' interests. Therefore, the EU and UK respectively should maintain the current EU-28 TRQ schedule until the necessary agreements could be reached with other Members.

5.7. 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 and the UK. Australia recognized the EU and UK's legal right to modify their goods concessions provided that compensatory concessions were granted to the Members affected by any such modification. However, Australia could not accept the EU's assertion that no compensation was required on the grounds that there had been no loss in value of the concessions in question. The proposed TRQ modifications would lead to significant year-on-year economic loss by removing flexibility for exporters and by making some TRQ allocations too small to be commercially viable. The EU and UK must proceed with compensatory adjustments that factored in the significant resulting commercial losses and maintained the general level of reciprocal and mutually advantageous concessions. Australia expected the EU to ensure that the "value" of existing market access would be maintained, and not just the total "volume" of existing TRQs. This could only be achieved by the EU and UK considering product-by-product solutions, in light of the fact that the approach currently proposed would not address the concerns of affected Members. Australia echoed the strongly expressed concerns of others over the current uncertainty and need for clarity on the method of accounting for UK-EU trade post-Brexit. Australia welcomed the UK's publication of new autonomous quotas, which it had understood were intended to accommodate intra-EU trade. However, Australia awaited clarification from the EU on how it would account for imports from the UK post-Brexit. Australia believed that the future trading relationship between the EU and the UK needed to be clarified in order to facilitate Members' comprehension of the market access implications under the proposed TRQ splits, in particular for *erga omnes* TRQs. His delegation looked forward to working constructively with the EU to resolve its concerns and to ensure that the current quality and level of Australia's market access would be maintained post-Brexit.

5.8. The delegate of Brazil shared the concerns of other Members with regard to how the EU sought to modify its TRQs, particularly as the significant reductions to its TRQ commitments proposed by the EU also involved an equally significant upfront loss of market access opportunities for all Members exporting to the EU single market. Brazil considered that the negotiations initiated by the EU under Article XXVIII of the GATT were fundamentally flawed. Brazil also expressed its concern over the lack of compensatory adjustment, as well as the insufficient and inadequate import data provided, which disregarded the specific trade composition of each TRQ. Brazil was also concerned over the modifications sought by the EU and their unilateral implementation, which would prejudice Members' legitimate interests. Brazil urged the EU to engage constructively in these negotiations.

5.9. The delegate of the Russian Federation reiterated his delegation's concerns over the EU's approach to these negotiations under GATT Article XXVIII. First, the Russian Federation indicated that the EU had accepted its Schedule of Tariff Concessions under Article XI of the Marrakesh Agreement as a single entity, and not partially. GATT Article XXVIII permitted a concession to be modified but also established an obligation to maintain a general level of reciprocal and mutually advantageous concessions that were not less favourable to trade than those provided prior to any adjustment negotiations. However, the apportionment currently being proposed by the EU would

lead to a deterioration in market access conditions for exporters to the EU, and to trade distortions, which would have a negative effect on Members' exports to the EU. The Russian Federation believed that the EU should proceed with its compensatory adjustment but expressed its concern over the EU's intention to hold negotiations based on the draft Schedule CLXXV-European Union (document G/MA/TAR/RS/506, of 17 October 2017), which had not been certified, and which thus could not be properly used as the basis for these negotiations. Consequently, the Russian Federation emphasized the importance of finalizing the certification of the EU's draft schedule.

5.10. The delegate of Uruguay reiterated Uruguay's position, as already set out in document RD/CTG/5 and in its comments at the Council's November 2018 meeting[2], and emphasized the importance of resolving this matter through negotiations between the parties concerned, and not unilaterally. Moreover, Uruguay believed that any agreement must be based on WTO rules and be in compliance with Members' market access commitments so as to maintain and strengthen the Multilateral Trading System (MTS).

5.11. The delegate of Mexico echoed the systemic and economic concerns voiced by previous speakers over the EU's intention to modify its TRQs as part of its schedule of concessions. In Mexico's view, the proposed methodology to split the current TRQs, and the proposed apportionment, would result not only in a reduction but also in an elimination of Members' market access opportunities. Mexico considered there to be a lack of clarity over the EU's future obligations with regard to WTO rules and the UK post-Brexit.

5.12. The delegate of Canada joined other Members in expressing Canada's concern over the approach that the EU had taken on modification of its TRQ commitments, consisting in a reduction of available TRQ volumes, in preparation for Brexit. This approach deviated from the original intent of TRQs, which was to provide Members with substantive access to markets of export interest; it also neglected the fact that final bound volumes were a result of negotiations that sought to establish a balance of concessions between Members. The EU's apportionment of its quota volumes not only reduced the quality and level of access provided to Members, but also ignored the imbalance created between the EU's market access concessions and the concessions made by Canada, which were expected to remain the same. This would be particularly true if the UK were to have the same access to these tariff rate quotas as any other Member. And if this were to be the case, Members would have to compete for a reduced amount of market access. This incongruency would also result in pragmatic and commercial implications, including cases where the apportionment could result in TRQ volumes that were not commercially viable, either in the EU or the UK, or where volumes were too low to provide the flexibility for exporters to adapt to the evolution of demand and supply conditions in both the EU and the UK markets. Without defining the trade relationship between the EU and the UK, the relative value of the EU's market access concessions would be impossible to assess. Canada also expressed its concern over the EU's adoption of implementing regulations 2019/216, of 30 January 2019, and 2019/386, of 11 March 2019, which would apply the reduced volumes as from the day of the UK's withdrawal from the European Union, thus presenting Members with a *fait accompli*, without the necessary negotiations having been completed, and with little flexibility for subsequent adjustments.

5.13. The delegate of Chinese Taipei shared the concerns of other Members, in particular with regard to the uncertainty surrounding the process itself, which could result in unexpected disruption to trade. Chinese Taipei highlighted that its trade interests should be maintained.

5.14. The delegate of Paraguay said that the EU decision to split its TRQs under the apportionment methodology would significantly limit opportunities to access the EU market for the EU's trading partners. Paraguay shared New Zealand's view that the EU's proposal could potentially have a negative impact on the EU's trading partners, and therefore urged the EU to consider alternatives to the apportionment method.

5.15. The delegate of Japan also shared the concerns of other Members and highlighted the importance that Japan placed on swiftly establishing the WTO bound schedules that would be applicable to the EU and the UK following the UK's departure from the EU. Japan also considered it important to maintain legal stability under the WTO Agreement and to ensure clarity concerning the

[2] Document G/C/M/133, paragraph 6.8.

EU and the UK's application of most-favoured-nation (MFN) rates in accordance with their bound schedules.

5.16. The delegate of India echoed the concerns raised previously by other Members and thanked the EU for having provided its revised data for *erga omnes* TRQ reallocation and for the consultations initiated under GATT Article XXVIII. India had already expressed its concerns both in writing and during the formal consultations that had taken place with the EU delegation. Nevertheless, India reiterated its concern as to how the present methodology and the threshold years considered for the TRQ apportionment by the EU affected Members' rights under the EU's obligations undertaken on those specific tariff lines. India expected the EU to conduct these negotiations in full compliance with the WTO rules and to provide reasonable opportunities to all Members, including India, to exercise their rights under the WTO Agreement.

5.17. The delegate of Argentina echoed the systemic concerns on this issue voiced by other Members.

5.18. The delegate of Indonesia also shared the concerns raised by other Members over the proposed modification of the EU's TRQs, in particular with regard to Indonesia's exports of manioc. In this regard, Indonesia questioned the EU's unwillingness, after several bilateral meetings, to accept the data it had provided when asserting that Indonesia's TRQ on cassava should be maintained. Indonesia considered that this situation hindered the negotiation of the EU's proposed modification and requested the EU to resolve the matter by accepting the valid data provided to the EU by other Members.

5.19. The delegate of Costa Rica reiterated the importance of a strong and effective international trading system and 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 UK's Schedule, then every Member should be afforded the possibility to assess meaningfully the effects of such changes on their international trade flows.

5.20. The delegate of Chile shared the systemic concerns of other Members, especially about the conduct of the process itself. Chile had already expressed many of its concerns at previous CTG and bilateral meetings with the EU in the context of the EU's Article XXVIII negotiations. Chile recognized that there was no clear rule or precedent in the WTO for a case such as that of the UK leaving the EU; even so, Chile had concerns regarding the EU's methodology of splitting its current TRQs as it did not respect the balance of commitments initially agreed upon at the Uruguay Round based on effective market access relative to consumption. Chile hoped that the EU would meet this requirement by providing Members with the necessary compensation.

5.21. The delegate of Sri Lanka expressed systemic concern over the quota reallocation and the methodology used by the EU and the UK, particularly regarding the rights of small suppliers, which were enshrined under GATT Articles XXVIII and Article XII. Sri Lanka noted that, even if small suppliers might not have initial negotiating rights (INRs) and could not claim to have principal supplier rights, their specific situation should nevertheless be considered in this context when designing any formula or mechanism.

5.22. The delegate of Colombia echoed the systemic concerns voiced by other Members regarding the apportionment of TRQs by the EU, and in particular the *erga omnes* effect.

5.23. The delegate of Switzerland noted that Switzerland was among those Members holding rights as principle supplier or Members with substantial interests regarding a part of the commitments affected by the EU's proposed apportionment of its TRQs. In general, Switzerland shared the concerns raised by other Members at this meeting and indicated that, as for other Members, it was also difficult for Switzerland to assess its interests based on the data currently provided by the EU. Switzerland also shared the view that the reallocation of appropriate TRQ quantities to the EU-27 and the UK was highly relevant to many Members and therefore of systemic importance to the WTO as a whole. Switzerland hoped that the necessary processes would be completed promptly and on a consensus basis with all Members.

5.24. The delegate of Guatemala echoed the systemic concerns that had been raised by previous speakers.

5.25. The delegate of the European Union appreciated Members' concerns over the current uncertainty surrounding the UK leaving the EU and noted that this was why the EU and the UK had engaged jointly in discussions with Members, from as early as October 2017, on the approach envisaged for the apportionment of the EU's bound TRQs. She reiterated that the EU's key principle and aim was to maintain the existing level of market access between the EU-27 and the UK, and indicated that the EU was a supporter of the rules-based multilateral trading system. The EU had followed all of the relevant WTO procedures when launching its GATT Article XXVIII negotiations and would continue to do so. Moreover, the EU delegation had engaged with the relevant WTO partners on a regular basis even before launching these procedures, and would continue to do so, in good faith, as part of the procedures themselves. Negotiations were currently ongoing with EU partners that had claimed their rights and the EU maintained its willingness to continue negotiations in an open and fair manner under GATT Article XXVIII, regardless of the scenario for the UK's withdrawal. The EU was of the view that the WTO provisions, namely the Interpretative Note to Article XXVIII, provided that these negotiations were to be conducted in "the greatest possible secrecy"; therefore, it did not consider the CTG to be the appropriate forum for a discussion of the details of such negotiations.

5.26. 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.

5.27. The Council so agreed.

6 ENLARGEMENT OF THE EUROPEAN UNION TO INCLUDE CROATIA: NEGOTIATIONS UNDER ARTICLE XXIV:6 OF THE GATT 1994 – REQUEST FROM THE RUSSIAN FEDERATION

6.1. The Chairperson informed Members that, in a communication dated 29 March 2019, the delegation of the Russian Federation had requested the Secretariat to include this item on the agenda.

6.2. The delegate of the Russian Federation expressed Russia's deep concern over the EU's negotiations under Article XXIV:6 of the GATT 1994 in the framework of its enlargement to include Croatia. The EU had notified the WTO and its Members of the conclusion of these negotiations with all Members having principle supplying interest in the affected products. However, the EU had failed to engage in negotiations with Russia, which had been recognized by the EU as holding a principal or substantial supplying interest based on its import statistics, in accordance with paragraph 4 of the Ad Note to Article XXVIII:1 of the GATT. The EU was therefore ignoring its obligations under Article XXVIII:1 of the GATT 1994 and paragraph 4 of the Ad Note to Article XXVIII:1 of the GATT 1994 to negotiate with Members having a principal supplying interest. The Russian Federation had previously raised this issue both bilaterally and at 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. The Russian Federation called upon the EU to engage with Russia in compensatory adjustment negotiations.

6.3. The delegate of the European Union recalled that Members had been informed of the conclusion and outcome of the negotiations following Croatia's accession to the EU on 26 July 2018 (in document G/SECRET/35/Add.2), and at the meeting of the Council held in November 2018 (document G/C/M/133). The outcome of the Article XXIV:6 process would be faithfully reflected in the EU-28 schedule, which was currently in the process of being certified. 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. 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 negotiation did not constitute an automatic recognition of a right for that WTO Member to obtain compensation. Some principal suppliers made a claim while 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.

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

6.5. It was so agreed.

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

7.1. The Chairperson recalled that document G/C/W/705/Rev.2 contained both the waiver request and a draft waiver decision submitted by Jordan in request of the transitional period for the elimination of the export subsidy program for Jordan. At the November 2018 meeting of this Council, it had been agreed that the CTG would revert to the matter at its next meeting, when Jordan would update Members on further developments in this regard.

7.2. The delegate of Jordan updated Members on the work accomplished regarding the development of a new WTO-compliant programme. Jordan had requested, in document G/C/W/705/Rev.2, a 3-year transitional period, until end-2018, for the elimination of its export subsidy programme. It had also provided a timetable for the implementation of a new subsidy programme, which would take effect as of 1 January 2019. Jordan had fully complied with its commitments. Jordan had terminated the export subsidy programme as of 31 December 2018, in accordance with Regulation No. 106 of 2016. The new Income Tax Law No. 38 of 2018 had included a WTO-compliant replacement programme, which would reduce income tax for industrial activities for a 5-year period. The reduction was to support industrial activities and was not contingent on exports. Jordan wished again to thank Members for their cooperation and understanding of the challenges faced by the Jordanian economy. Jordan further wished to thank the US for its support in designing a new WTO-compliant and compatible programme. Since the export subsidy had been terminated, Jordan requested that this item not reappear on the agenda of subsequent Council meetings.

7.3. The delegate of the United States thanked Jordan for its comprehensive report on its reform efforts, and congratulated Jordan on the termination of the export subsidy programme at issue and the approval of the alternate support programme. The US wished to thank Jordan for coming into compliance in this regard, and for the fully transparent manner in which it had taken action. 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.

7.4. The delegate of New Zealand thanked Jordan for its transparency and reform efforts. Their regular updates to the Council and their commitment to bringing their policies into conformity with WTO rules had been very much appreciated.

7.5. The delegate of Australia welcomed Jordan's confirmation of the implementation of a new WTO-compliant programme, as of 1 January 2019. Jordan's open and constructive approach to this important issue had been much appreciated.

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

7.7. It was so agreed.

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

8.1. The Chairperson informed Members that, in a communication dated 27 March 2019, the delegation of Chad, on behalf of the LDC Group, had requested the Secretariat again to include this item on the agenda, following discussions at the November 2018 meeting of this Council.

8.2. The delegate of Chad, on behalf of the LDC Group, reiterated that the proposal had been submitted to the CTG in April 2018, and that ongoing consultations were taking place to reach consensus. However, LDCs were still being asked by some Members to notify their subsidies, even though the LDC proposal had not yet been fully considered.

8.3. The LDC proposal, as contained in documents WT/GC/W/742 and G/C/W/752, submitted on 19 April 2018, had been 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 USD 1,000, or for a limited period of time. The LDC Group proposed that graduating LDCs should be entitled to be reclassified under Annex VII(b) if their GDP were to fall below USD 1,000 per capita for a period of three consecutive years.

8.4. The Group also proposed that LDCs that had graduated to developing country status but had a per capita GDP of less than USD 1000 should enjoy the same benefits as developing countries listed in Annex VII(b). It was also the view of the LDC Group that this proposal complied with the outcome of the 3rd UN Conference on LDCs, held in 2001, in relation to implementation issues.

8.5. The LDC Group wished to thank Members that had expressed their flexibility and interest in this proposal and urged all Members to approve the draft decision proposed by the LDCs.

8.6. The delegate of Nepal associated his delegation with the statement delivered by Chad as LDC Group Coordinator. He noted that there existed some momentum for the graduation of LDCs to developing country status. Some had already graduated, some were in the process of doing so, and some were in the pipeline to do so. Even if it were the case that, to graduate, a country had to fulfil two of three criteria, the socio-economic status of the general population of those countries might still need to be greatly improved through continuous socio-economic advancement. It could be 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 aimed to correct the missing information and technical errors in the existing provisions of Annex VII(b) of the SCM Agreement. Members would be doing an injustice to graduating LDC Members if they did not correct the pertinent missing information or technical oversights, since several developing countries were regularly invoking Annex VII.

8.7. The concept of LDC graduation had begun to gain momentum after the 3rd UN Conference on LDCs, held in Brussels in 2001. The 4th UN Conference on LDCs, held in Istanbul, Turkey, in 2011, had set the target of graduating half of LDCs by 2020. Similarly, the 2030 agenda for sustainable development had also endorsed these targets regarding LDC graduation; that is, that only graduating LDCs with GDP per capita of less than USD 1,000 in 1990 values would be entitled to the flexibilities established under Annex 7(b) of the SCM Agreement. Nepal noted that the list of countries with a GDP per capita of less than USD 1,000 in 1990 value was updated by the WTO Secretariat. Nepal invited Members to submit any queries and concerns they may have with regard to the LDC proposal in written form. To conclude, Nepal thanked those Members that had already indicated their support for the proposal.

8.8. The delegate of Senegal echoed the statements made by previous speakers. The adoption of this draft decision could support a soft graduation process for LDCs towards developing country status. In Senegal's view, Members should be able to reach consensus to adopt the draft decision. The main concern previously expressed by Senegal, and LDCs in previous meetings, was that no Member had notified the implementation nor requested the implementation of the provisions under Annex VII. However, the provision was still applicable.

8.9. The delegate of Bangladesh stated that Bangladesh associated itself with the statements made by previous speakers. The LDC Coordinator had clearly elaborated the context in which the proposal had been made. Bangladesh requested the Council to recall that LDC graduation had gained momentum since the adoption of the UN's Istanbul Plan of Action for LDCs, which had set a target of 50% of LDCs fulfilling the graduation criteria by 2020. UNCTAD had projected that 16 LDCs were likely to graduate from LDC status by 2024. The process of graduation was not easy and graduated LDCs would face multiple challenges, including in the area of trade. Therefore, international support was essential to retain the current momentum.

8.10. Under Article 27.2(a) of the SCM Agreement, read alongside paragraph 10.1 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns, LDCs and countries with per Capita GDP of USD 1,000 in constant 1990 dollars value listed in Annex VII could benefit from flexibilities in providing export subsidies. However, it was not clear to Bangladesh if a graduated LDC with per capita GNI of below USD 1,000 in constant 1990 dollars value could also enjoy the same flexibilities as developing country Members with GNI per capita below USD 1,000 in 1990 US dollar terms under Annex VII. LDC graduation had not been envisaged at the time that the SCM Agreement had been concluded. However, it was now appropriate to have a General Council Decision to address this omission in Annex VII. The proposal called for the continuation of the same flexibility afforded under Annex VII to graduated LDCs, which fell within the criteria agreed at the time of their graduation. LDCs that were eligible for the flexibility under Article VII would not be automatically entitled to the exemption and could only resort to it at a time of serious need. A General Council Decision would allow the Secretariat to calculate GNI per capita for graduated LDCs for the year following graduation while annually updating the Annex VII list. The GNI per capita could only be calculated after graduation. At previous meetings of the CTG, many Members had seen the logic and merit of the proposal and had unequivocally supported it. A few other Members had sought for clarification on the impact of the proposal. Bangladesh requested Members to reflect upon whether or not there had been agreement on the following three points: (i) that the proposed decision intended to address an element that had not been anticipated at the conclusion of the SCM Agreement; (ii) that the proposed decision would not create any new flexibility for any Member; and (iii) that a graduated LDC deserved the same flexibility available to other developing countries with the same level of development. If Members answered these questions in the affirmative, then Bangladesh urged them to accept the proposal and to continue to engage in constructive discussions.

8.11. The delegate of Côte d'Ivoire shared the views of previous speakers. The test used during the Uruguay Round negotiations had not provided for LDC graduation; but now that LDCs could graduate, Members needed to ensure that the graduation process was properly supported. Accordingly, Côte d'Ivoire considered that the LDC proposal was relevant and useful.

8.12. The delegate of Chad thanked Members for their comments and invited them to review the answers and explanations provided by the previous speakers. The LDC proposal, in the spirit of shared responsibility and mutual impartiality, provided the necessary concrete and substantive measures. LDC graduation should be a means structurally to address the challenge of the elimination of poverty and to accelerate the achievement of the UN development objectives. For these reasons, it was necessary gently to facilitate the graduation process. Members should help LDCs to eliminate the obstacles preventing them from developing sufficiently in the way that they should. The LDC Group would continue to include their proposal on the CTG agenda until Members agreed to adopt the draft decision.

8.13. The delegate of the United States questioned the need to change the rules in this area. The UN process had already provided for a lengthy transition process out of the LDC category, including possible extensions. Since there were no subsidy programmes in place for which an extension might be needed, the specific need for the LDC proposal remained unclear. The US was willing to discuss the issue further and noted that it would be helpful if the relevant Members would provide a subsidy notification to clarify the issue. If technical assistance was the issue, the US would welcome the opportunity to share its experience and technical knowledge with the LDCs.

8.14. The delegate of India reiterated its agreement that the income threshold for graduation from Annex VII should also be extended to newly graduated LDC Members. 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 finalization and adoption of the proposed decision.

8.15. The delegate of the European Union stated that the EU was mindful of the challenges faced by graduating LDCs and was supportive of constructive initiatives to better integrate them into the multilateral trading system (MTS). The EU's general approach to new special and differential treatment provisions was that developing countries, and in particular LDCs, should have access to flexibilities that would genuinely help them to achieve their development objectives on a case-by-case basis, and that these flexibilities should be needs-driven and evidence-based. The EU encouraged Members to discuss the proposal and, as with any special and differential treatment proposal, to do so on the basis of analysis that indicated where there were specific problems, and what the basis of proposals was for well-justified solutions to those problems. With regard to the proposal under consideration, the conversation should start by assessing the actual use of export

subsidies by LDCs in order to establish the potential need for a transition period to allow continued use of export subsidies once an LDC had graduated. Unfortunately, at present, the EU had little knowledge of whether, and to what extent, LDCs used export subsidies (or any other subsidies), because LDCs had barely submitted any notifications under Article 25 of the SCM Agreement. The EU encouraged the LDC Group to work with the Secretariat to improve the situation on notifications and to tap into the possibilities of accessing available technical assistance. Realizing that preparing first-time notifications could take time, the EU suggested that the LDC Group move the debate forward by presenting anecdotal evidence of if and how LDCs made use of export subsidies, and how these contributed to their economic development. The EU also suggested that the countries concerned should seek assistance for reshaping any export subsidies in place in order to make them WTO-compatible.

8.16. The delegate of Senegal clarified that the proposal did not request to change the rules of Annex VII(b). The current matter was not about notifications but about the existence of a provision that could be utilized even if it were not currently being applied. It was important to separate the strength of the provision from its use and the notifications that could be made on the basis of it. Nevertheless, if Members wished to link the notifications and the provision they could do so. However, the proposal amended the list of beneficiaries under Annex VII to include LDCs graduating to developing country status.

8.17. The delegate of Turkey reiterated Turkey's support for the proposal. Turkey believed that trade was the most effective tool for development and that it was the responsibility of WTO Members to help LDCs in their efforts to integrate into the global economy. Members should continue to assist these countries to overcome their remaining challenges in order to ensure their full integration into the rules-based multilateral trading system. Graduated LDCs with a GNP of below USD 1,000 should be granted the same rights as the developing countries listed in Annex VII(b) of the SCM Agreement.

8.18. The delegate of Canada said that Canada was mindful of the challenges faced by LDCs, and of the need for flexibilities in the rules, such as with regard to the SDT provisions found in Annex VII of the SCM Agreement. The EU's intervention had been helpful in outlining certain questions and thoughts concerning possible ways forward, including the suggestion that the Secretariat assist LDCs with the preparation of their notifications under Article 25 of the SCM Agreement. According to the WTO list, eight LDCs had graduated since 1995; five of the eight were not WTO Members; only one had provided a subsidy notification that had indicated that they did not provide any subsidies. Accordingly, Canada believed that the first step should be to understand where the interest was in this proposal and to clarify the provisions in order to develop a clearer understanding of the facts on the ground. Senegal had said that, even though it had not used export subsidies it would still like to have access to them, although Article 3 of the SCM Agreement prohibited the use of export subsidies by Members because of their detrimental effect on international trade. Members had agreed to eliminate agricultural subsidies in Nairobi for the same reason.

8.19. The delegate of Côte d'Ivoire said that, as a member of a customs union that included seven LDCs, it had concerns regarding the situation under discussion. Côte d'Ivoire believed that the proposed amendment to Annex VII, as requested by LDCs, should be understood in the context of a trend towards greater predictability and transparency. LDCs in graduation should be appropriately supported and accompanied; in this regard, Côte d'Ivoire considered the proposal to be relevant and useful, and that it should be approved by Members.

8.20. The delegate of Chad thanked delegations for their comments, especially those Members that had expressed their support for the LDC proposal. The LDC Group remained open to bilateral discussions that would allow for further improvement and clarification of the proposal. He said that the LDC Group remained open to dialogue with Members in this regard and reiterated the LDCs' goal to have the decision adopted.

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

8.22. It was so agreed.

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

9.1. The Chairperson drew Members' attention to document JOB/GC/204/Rev.1–JOB/CTG/14/Rev.1, dated 19 March 2019, circulated at the request of the delegations of Argentina, Australia, Canada, Costa Rica, the European Union, Japan, New Zealand, Chinese Taipei, and the United States, containing a revised 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 communications dated 28 and 29 March 2019, the co-sponsors of the proposal had requested the Secretariat to include this issue on the agenda.

9.2. The representative of the United States reminded delegations that the US had initially tabled this proposal at the November 2017 CTG meeting with a view to improving Members' compliance with the notification requirements of the various WTO Agreements.

9.3. The proposal that had been circulated for the current meeting was a culmination of improvements based on the work of its co-sponsors, extremely helpful Member feedback received during three CTG meetings, and countless bilateral and small group meetings and discussions. The US considered this proposal to be an effort to address deficiencies and gaps in notifications and transparency and to put the WTO on a path towards a more successful and sustainable future.

9.4. The Secretariat's annual report on notifications provided to the CTG in document G/L/223/– and its revisions, highlighted that compliance with the notification requirements of the various WTO Agreements remained inadequate.

9.5. 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, to evaluate, and to assess negotiating proposals to improve the operation of the various WTO Agreements without the information that should in any case have been provided under the existing WTO notification obligations. A 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 obligations?

9.6. To encourage better compliance with notification obligations, two incentives to seek improved performance had been considered, namely the ability to request technical assistance, 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 a colleague from the US delegation to take the floor.

9.7. The delegate of the United States highlighted the various revisions that had been made to the proposal. Throughout the document, references to "complete" notifications had been changed to "required" notifications, to better clarify that the proposal was seeking to capture those notifications that were required under the WTO Agreements and Understandings under the remit of the CTG. The change had also clarified that the proposal was not seeking to address the quality of specific notifications, which was beyond the scope of this proposal. The quality or completeness of notifications could be something the Working Group on Notification Obligations and Procedures could consider in the future.

9.8. In response to Members' expressed interest, the proposal now included the TFA, Section I, in paragraph 1. However, the proposal had not included Section II notifications given that such notifications had been provided as a flexibility, and that Members were not required to submit them. The US reminded Members wishing to avail themselves of the flexibilities provided therein that the last deadline for TFA Section II notifications for Developing Country Members was August 2019. Beyond that time, the US considered that any developing country Members that had not submitted

the required notifications would no longer be eligible to receive the flexibility provided under Section II.

9.9. The proposal had consolidated the projected work of the Working Group on Notification Obligations and Procedures into a single paragraph, reflected in paragraph 2.

9.10. The proposal also recognized that some notification requirements were on an annual or biannual basis, with a certain date by when such notifications were due. Other notifications were required on an ad hoc basis, when a new measure was proposed, as was the case for newly proposed regulations notified under the TBT or SPS Agreements. This proposal to the General Council would apply to all notifications concerning the Agreements listed in paragraph 1, as there had been delays in the submission of each type of notification. However, the issue of developing a means to have the Decision cover such ad hoc notifications for the TBT and SPS Agreements had been delegated to the respective Committees addressing those Agreements in footnote 1 to paragraph 6.

9.11. In the previous version of the proposed Decision, the Agriculture Agreement notifications had been treated differently from other notifications, but the proposal had now limited the differentiated treatment to only the Domestic Support Table 1 notification, referred to as DS:1, in paragraph 7. In reviewing the missing notifications covered by document G/AG/2, it was discovered that there were over 800 missing DS:1 notifications. There had been fewer than 100 missing notifications for each of the other required agriculture notifications. Thus, until an update of document G/AG/2 could be achieved, the proposal had limited the flexibility in this case to an additional two years, until administrative measures could apply to DS:1 only.

9.12. Also, in the previous version of the proposal, Members had been encouraged to submit an explanation for any delay, together with information on the anticipated time-frame for submitting the notification and any elements of a partial notification. Paragraph 8 of the updated version had clarified that the explanation for the delay should be submitted to the relevant committee by six months after the relevant deadline – and two years and six months after the notification deadline for DS:1 – and subsequently every six months thereafter. This clarified the "x dates" that had been included in paragraph 8 of the previous version.

9.13. The updated proposed Decision had further streamlined the special and differential treatment available to Members that had not submitted a notification due to a lack of capacity, as outlined in paragraph 10. Those Members had been encouraged to request assistance and support for capacity-building from the Secretariat. Those Members had also been encouraged to submit to the relevant committee and to the Working Group, six months after any relevant deadline, and every subsequent six months, any available information on these notifications that it had not yet submitted because of a lack of capacity. This information should include the assistance and support for capacity-building that they required in order to submit complete notifications. This text had been modelled on provisions in Section II of the TFA.

9.14. Paragraph 11(c) of the revised proposal stated that, if a Member had provided the information identified in paragraph 10, such Members would be eligible to have any administrative measures deferred by a year. 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 to 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.

9.15. 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 11 of the revised proposal, if after one year a notification had still not been provided, administrative measures would then be applied to the Member concerned. 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. The administrative measures in the proposal would not go into effect until one year after the deadlines established in the proposal. The deadlines established in the proposal were for the purposes of applying administrative measures, and for all Agreements and

Understandings under the remit of the CTG, the relevant deadline would be the notification deadline established in the Agreements (as set out in paragraph 6).

9.16. Paragraph 11(a) clarified that, after one year from the deadlines in paragraphs 6 and 7, specific administrative measures would apply. The key substantive change to the specific administrative measures was contained in paragraph 11(a)(iii), which clarified that any monetary assessment "may be used for the purpose of providing Members with technical assistance to fulfil notification obligations, including through the ITTC". Paragraph 11(b) clarified that a year after the administrative measures in paragraph 11(a) had been applied, additional administrative measures would also apply. The key substantive change to these administrative measures was to replace the references to "Inactive Member", which was a term used by the Budget Committee (from where many of these administrative measures had originally derived), to "Member with notification delay".

9.17. Paragraph 11(c) had also been revised to close a loophole through which a Member might never be subjected to any administrative measures if it had simply requested technical assistance but had never followed through with a notification. Paragraph 11(c) of the revised proposal now deferred the application of administrative measures to allow time to submit a notification with the end goal to ensure that the technical assistance resulted in the submission of a notification.

9.18. Finally, Members had expressed concern over the inclusion of the paragraph encouraging the development of enhanced fisheries subsidies notifications as part of the ongoing negotiations and, as a result, this paragraph had been removed. Nonetheless, the co-sponsors continued to support a strong outcome in the fisheries subsidies negotiations, including in the area of transparency and notifications.

9.19. The United States believed that improving transparency through existing WTO notification requirements was the kind of institutional reform required to facilitate future negotiations across negotiating topics, and that it was a worthy and desirable outcome in the short term. Accordingly, the US and other proponents planned to continue proponent-based discussions with all interested Members with a view to improving the proposal further.

9.20. The delegate of the European Union said that the co-sponsors had worked hard to take into account Members' feedback on the proposal and expressed the hope that Members would see their respective input adequately reflected in the revisions, as summarized by the US.

9.21. The revised proposal had been streamlined and had greater clarity and objectivity, in particular regarding the proposed timelines. Revisions had been made in response to requests from numerous Members to level the playing field between agricultural and non-agricultural notifications. The revised proposal contained a clearer description of the SDT element as well as a conceptual improvement to two of the proposed administrative measures.

9.22. The Secretariat's annual report on compliance with notification obligations, falling under the remit of the CTG, illustrated Members' persistent shortcomings in notification compliance. These were serious shortcomings given that notifications were basic obligations undertaken by all WTO Members, which were key to the WTO's deliberative and negotiating functions. The EU believed that Members agreed both with this diagnosis and with the need to take action. The proposal would contribute to making the WTO more useful to its stakeholders. The proposal aimed at providing the means to remedy the problem of non-compliance, while taking into account the underlying reasons for it, hence the two pillars: technical assistance, and eventual administrative measures in case of intentional and persistent lack of compliance. The EU urged Members to support the overall architecture of the draft decision and stood ready to discuss and refine its components as necessary.

9.23. The representative of Japan said that the revised proposal would play a critical role in strengthening transparency and notification compliance in the WTO in ways that would benefit the entire Membership. Significant modifications had been made to the substantial aspects of the proposal in response to Members' requests. In particular, a conceptual modification had been made regarding the financial assessment, in order to accommodate Members' concerns in that regard. Japan wished to emphasize that the purpose of the proposed measures was not to impose a penalty on Members that had failed to submit their notifications. Rather, it was to charge a modest fee to unwilful and non-compliant Members that would then be used to provide technical assistance to Members that lacked the capacity to fulfil their notification obligations. This element was clearly set

out in the proposal. The proposal did not create any new obligations but instead aimed to ensure the implementation of Members' existing WTO obligations, thereby contributing to the enhancement of the WTO's functions.

9.24. Japan referred to the room document entitled "Timeframe of the Administrative Measures" to facilitate Members' understanding. The administrative measures stipulated in paragraph 11(a) of the revised proposal would be applied after one year had passed from the notification deadline. In like manner, paragraph (b) would be applied two years after the deadline. In the case of developing Members that had submitted information on the assistance needs or made a request for technical assistance, the application of paragraphs 11(a) and (b) would be deferred by one year, respectively. Members would enjoy two years of flexibility with regard to DS:1 notification. Japan considered that this initiative was an important agenda item in terms of WTO reform, which would be reviewed at the next G20 summit. As the holder of the 2019 G20 presidency, Japan was doing its utmost to ensure that the proposed decision would be an early outcome of the G20 summit. If nothing were done in this regard, Members' stakeholders would lose trust in the WTO. Japan encouraged Members to work on this issue with a sense of urgency, in a collaborative and constructive manner, and expressed its hope that all Members would support the proposal.

9.25. The representative of Australia, as co-sponsor of the proposal, welcomed New Zealand and Canada as recent co-sponsors. Australia viewed Members' compliance with notifications as vital for the good functioning of the WTO, and the aim of this proposal was to encourage better compliance. As noted by previous speakers, the proposal was the culmination of various improvements on the earlier version. Australia wished to highlight one change that was of great importance to Australia – the treatment of agriculture notifications. Australia recalled that the earlier version of this proposal, presented in November 2018, had treated all agriculture notifications differently to other notifications in terms of longer time-frames. At that meeting, while Australia had been pleased to announce its co-sponsorship of the proposal in light of the importance that Australia attributed to the issue of notifications, Australia had noted its strong concern regarding the differentiation between agriculture and non-agriculture notifications – a concern that was clearly shared by a number of other Members.

9.26. Australia was pleased to note that, following the November 2018 meeting and further consultations on the issue, significant changes had subsequently been incorporated into the current proposal. Agriculture notifications were now treated on the same basis as other notifications. In the earlier version, paragraph 1 had divided the relevant agreements and understandings into the Agreements on Agriculture in subparagraph 1, and all other agreements and understandings in subparagraph (b), with different time-frames allotted to each set. In this new version, this division had been removed and the Agreement on Agriculture was now included with all other Agreements and Understandings.

9.27. Australia noted, as outlined by previous delegations, that there was one exception to this equal treatment to agriculture, and that was known as DS:1, on domestic support, where an additional two years had been allowed (paragraph 7 of the proposal). This allowance reflected a known and common difficulty that Members faced when submitting their DS:1 notifications within the current timelines provided for in document G/AG/2. The need to review that time-frame as part of a review of document G/AG/2 had been raised within the Committee on Agriculture. As provided for in paragraph 7 of the proposal, the exception for DS:1 notifications would cease once updates to document G/AG/2 had been adopted; this update was encouraged to take place within two years.

9.28. Australia emphasized that nothing in the proposal changed Members' existing notification obligations under the WTO Agreements, including for agriculture. Indeed, the whole purpose of the proposal was to encourage and to assist Members to meet their existing notification obligations. Compliance with the WTO's notification obligations was essential to ensuring transparency in trade policies and it assisted in the identification of trade barriers, the effective implementation of the WTO Agreements, and the predictable and smooth operation of the multilateral trading system. Australia urged Members to support improved compliance with notification obligations and to support this proposal as a way forward on this important issue.

9.29. The delegate of Argentina welcomed Canada and New Zealand as co-sponsors of the proposal. The changes in the revised proposal had been explained by the US, but Argentina wished to highlight that many meetings and a great deal of effort had gone into reflecting Members' comments in it. Argentina was convinced that the best way to safeguard the relevance of the WTO, particularly in

this difficult time for the multilateral system, was by Members faithfully adhering to their obligations. Argentina submitted that improving notifications presented an excellent opportunity for improving the internal functioning and image of the WTO. Argentina noted that the co-sponsors of the proposal were looking forward to working closely with all interested Members to improving the proposal still further. To ensure a successful and mutually beneficial proposal, Argentina called upon Members to put forward drafting recommendations, with concrete proposals and suggestions, in order to help the co-sponsors to better understand Members' concerns and observations.

9.30. The delegate of Chinese Taipei said that her delegation associated itself fully with the US statement and welcomed the recent addition of both Canada and New Zealand as co-sponsors of the proposal. Transparency was one of the essential pillars of the WTO and it was critical to the sustainability of the Organization. Chinese Taipei believed that all stakeholders benefited from a transparent system, and that all Members had to make the same efforts towards ensuring that the system worked. Members had highlighted the need for WTO reforms and it was important that such reforms were achieved in the current year. The Secretariat's annual report on notifications showed that there was still great room for improvement. Accordingly, the co-proponents were trying to propose an effective way of strengthening the relevant notification requirements in order to improve on this situation. The main emphasis was on how to strengthen and reaffirm existing notification requirements, which was reflected in the modest approach of the revised proposal, which was focused on enforcing and streamlining existing requirements rather than on any radical reform. While some Members had concerns regarding the proposal's adoption of the so-called "carrot and stick" approach, this was not the intention of the draft decision. If and when a Member failed to make a notification, that Member could choose to seek assistance from the Secretariat by resorting to paragraph 10. The "stick" could be easily avoided if the Member took action under paragraph 10, which would then result in a notification being submitted within the required time-frame. Chinese Taipei noted that the proposal simply incorporated a few incentives and consequences that might encourage more Members to notify, as this was its objective. Chinese Taipei submitted that Members did not have to agree completely with the proposal in order to support it, but needed only to agree with its general direction.

9.31. The representative of Costa Rica said that Costa Rica was delighted to be part of this proposal and welcomed New Zealand and Canada as co-sponsors of it. Costa Rica considered that transparency was a fundamental principal for meeting the obligations of the international trading system and the only way effectively to protect that principle was for every Member to meet its notification commitments. Notification was an individual responsibility and a collective commitment. Without timely access to accurate information the WTO functions of surveillance and negotiation were weakened, and the risk of trade friction increased.

9.32. 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.

9.33. Costa Rica recognized the challenge of having to coordinate between many different institutions when preparing notifications. However, the proposal would provide additional incentives for Members to prioritize their notification obligations and to make available the necessary resources. The revised proposal also offered incentives for those Members that were experiencing difficulties in meeting their notification obligations. The active engagement of Members within the Working Group would allow for a greater understanding of the nature and scope of the difficulties being faced by Members, and thereby to identify solutions. Technical assistance from the Secretariat would help to improve Members' notification capacities and would put all Members on an equal footing with regard to their ability to make the required notifications. In this regard, the proposal offered opportunities for the Secretariat to enhance its role in providing efficient support assistance and capacity-building support to Members that required it. Every Member that received such assistance would have to ensure that the TA was result-oriented and offered solutions to deal with their particular notification problems, especially the most complex among them.

9.34. Costa Rica encouraged all Members to support the proposal and to contribute to its improvement so that it would become an effective means of strengthening transparency at the WTO.

9.35. The representative of New Zealand said that New Zealand had long been an advocate for improving compliance and transparency, which the Secretariat's earlier report had shown was an

area where there was a need still for significant improvement. Transparency was fundamental to knowing that Members were implementing their commitments, to understanding the potential impact of measures on the rights of others, and to informing Members' continuing negotiations. New Zealand had offered extensive feedback on the first version of the proposal, particularly on including measures to assist those facing genuine technical difficulties in preparing their notifications, and also on removing differentiation with regard to the Agreement on Agriculture. The redrafted proposal responded to a number of the concerns that had been raised and, considering the importance it attached to better notification performance, New Zealand was pleased to join as a co-sponsor of the proposal. Members benefitted from a transparent and rules-based system, and oversight committees such as the CTG would be better able to perform their monitoring function if information about Members' policies were available in a timely manner. New Zealand encouraged other Members to provide constructive feedback on the proposal.

9.36. The representative of Canada said that, importantly, the updated proposal had taken into account many of the concerns expressed by Members in November 2018; prior to its revision, it had also been the subject of substantive discussions. While the list of modest administrative measures still included a financial penalty, the updated proposal pointed to technical assistance as a possible use of funds collected from financial penalties. This was an important addition and further underlined that the main objective of the proposal was to signal that help was available to submit the notifications that were required, and that Members were encouraged to seek that assistance.

9.37. Supporting the proposal and providing added momentum for its adoption was consistent with Canada's WTO reform efforts. As Canada had noted in its discussion paper, circulated to WTO Members in September 2018, action had to be taken to improve the notification record of Members as an essential element to strengthening and modernizing the WTO. In providing notifications, Members were demonstrating their willingness and interest in fully participating in the multilateral trading system.

9.38. It was important to recall that the commitments being discussed in the proposal were not new, and that notifications served an essential role in the context of policy dialogues in WTO Councils and Committees. Without this information being available, it was difficult to learn how Members were actually implementing their WTO obligations, and Members would only be hurting themselves by not sharing the information that they had committed to provide to the Membership. At the CTG's previous formal meeting, a number of developing country Members had said that capacity and institutional constraints had been preventing them from fulfilling their notification obligations, which was a fair comment. One of the key result targets of the WTO's 2018-2019 Biennial Technical Assistance and Training Plan was a decrease in the number of outstanding notifications. This was why the proposal encouraged Members to request help.

9.39. The representative of China said that transparency was one of the WTO's basic values and tenets. China appreciated the proponents' efforts to enhance transparency and to strengthen notification requirements in the WTO. China fully agreed, as stated in the proposal, that transparency and notification requirements were fundamental elements in many WTO Agreements, and that compliance with existing notification requirements was chronically low at present.

9.40. Therefore, China believed that enhancing transparency and notification compliance was relevant not only in the area of goods, but also services, TRIPs, and other areas under the WTO framework. A General Council Decision on transparency and notification compliance should therefore cover all of the relevant areas, given that transparency was an obligation for all WTO Members.

9.41. As China had mentioned at the CTG's previous formal meeting, no Member had fully fulfilled all of its required notification obligations. In particular, regarding trade in services, developed Members had set a very bad example by using the GATS' vague notification requirements as an excuse. China submitted that all Members should make their own individual contribution to improving the fulfilment of notification requirements. Developed Members, for their part, possessing adequate technical capacity and administrative resources, should demonstrate responsibility and leadership by fulfilling their own transparency obligations. Developing Members should also fulfil their obligations when their capabilities made it possible.

9.42. China had made significant efforts to improve both the quantity and the quality of its notifications and would continue to do so. The Secretariat should also play a vital role in the process of improving transparency. A lack of capacity had always been a challenge for developing Members when it came to fulfilling their notification obligations, and especially for those Members that faced practical limitations in terms of administrative resources and technical conditions. For this reason, China supported the proponents' suggestion on technical assistance. To ensure that such technical assistance achieved its objectives, the Secretariat's technical assistance and capacity-building should be tailor-made and demand-driven.

9.43. China had never believed in punishment as an effective approach at the WTO and the proposed administrative measures would not be China's preference. Even if such measures were adopted, they should be limited to reminding and warning Members, with only minor reprimands. China did not support any measure that would deprive Members of their legitimate rights as WTO Members. It also strongly objected to the financial punitive approach, which could result in negative incentives and lead Members that were facing practical difficulties to give up in despair. China expressed its hope that the proponents would take Members' comments into account in order to allow for early agreement on the proposal.

9.44. The representative of Brazil said that Brazil shared with co-sponsors the objective of enhancing transparency and strengthening notifications; and Brazil believed that timely notifications were an obligation, not an option. There was no reason for major economies to delay their notifications. Brazil believed that the current lack of transparency posed a systemic threat to the WTO.

9.45. Brazil also shared the proponents' belief that there was a need to develop mechanisms to ensure the effective presentation of timely and complete notifications. While positive incentives and technical assistance should be an essential part of any such mechanism, Brazil was open to thinking creatively and to exploring all necessary means via which to ensure that Members fulfilled their obligations. Brazil recognized that the revised proposal contained positive improvements on the previous version. Although Brazil still expressed certain doubts over the overall structure of the proposal, and also had some questions regarding specific paragraphs, it did recognize the value of an idea that it considered timely. Brazil stood ready to continue to engage in bilateral technical discussions with the US and other Members to improve the ideas contained in the document and to explore alternative ways of addressing the common objective of developing a mechanism to encourage better notification compliance.

9.46. The representative of El Salvador noted that it had held bilateral meetings with some of the proponents, and that these meetings had been important to clarify certain details and dispel certain of El Salvador's doubts and concerns regarding the proposal. While El Salvador was committed to the efforts being made to promote transparency, it still had concerns over certain parts of the document, and especially over the administrative sanctions and other measures designed, in certain circumstances, to limit the participation of Members in the activities of the Organization. El Salvador believed that it was important to pursue dialogue on the important implications that the sanctions could have for smaller countries in particular.

9.47. The representative of Ecuador supported the efforts of the proponents to find a solution to the real problems that many Members, including Ecuador, faced when attempting to meet their commitments on notifications. Ecuador thanked the proponents for their efforts and for the meetings that they had held to hear Members' points of view. However, Ecuador believed that the proposal still had two very problematical elements that had already been signalled to the proponents at previous CTG and consultation meetings.

9.48. Ecuador's two main concerns were as followed: (1) the absence of adequate special and differential treatment accompanied by provisions that could be considered as an inverse special and differential treatment in favour of developed Members (as in the case of DS:1 notifications); and (2) the inclusion of the possibility of counter-notifications, in particular for those cases not covered under the Agreements, and cases where there was no time-frame prescribed. Ecuador considered that special and differential treatment had been weakened in the new version compared to the original proposal, and that the sanctions were greater, affecting the rights and obligations of Members without considering the institutional difficulties facing developing countries. For these reasons, Ecuador could not support the proposal in its current form. Nevertheless, Ecuador remained

open to dialogue in order to reach a more constructive solution to the problem of transparency within the WTO.

9.49. The delegate of Chad stated that the LDC Group understood the proponents' concerns and that it would continue to examine the implications of the proposal. A preliminary review of the proposal showed that it had not taken into consideration the constraints faced by LDCs in notifying their current obligations. The LDC constraints went beyond technical assistance, and therefore, to ask them to undertake new notification obligations in order to fulfil existing obligations would only place an additional burden on them. There was also a high turnover of Capital-based LDC staff who had received WTO training. Chad asked the proponents to explain in more detail how their proposal would increase the allocation of both human and financial resources to the Secretariat and to LDC Capitals. It was very important for LDCs to receive more relevant and efficient assistance, rather than having a system of advanced sanctions in place. The proposal included certain sanctions, such as administrative measures and, in this regard, Chad noted that many LDCs already suffered from administrative measures as a result of their economies' sometimes difficult financial situation, even as they tried to be as active as possible within the MTS and the WTO. Chad called upon Members not to take administrative measures against LDCs but instead to propose a positive initiative that would include the LDCs. In this way, they would help LDCs to participate in the creation of a system that would make it easier for them to meet their obligations and that would comply with measures aimed at helping graduating LDCs.

9.50. The delegate of Colombia welcomed the positive revision of this proposal, which now reflected a balanced approach to address the need to strengthen the WTO's transparency mechanisms. Colombia was convinced that it was necessary to address the challenges through an honest and constructive dialogue that enabled Members to improve the WTO as a public global good. Colombia was actively participating in the discussions on initiatives and proposals to strengthen the Organization, including transparency, and expressed its hope that the proposal would continue to evolve in a positive manner.

9.51. The delegate of India thanked the proponents for the revised proposal, which took into account a few of the concerns raised by Members at the CTG's previous formal meeting and in subsequent bilateral discussions. The amendments, which replaced the words "complete notification", with "required notification", and which dropped the proposal on enhanced notification obligations under the ongoing fisheries subsidies negotiations went in the right direction and broadly clarified the proposal's intention.

9.52. However, India expressed its surprise that there had been no substantial changes introduced with regard to India's major concerns, such as the proposed administrative measures and the scope and the process of surveillance as envisaged in the revised proposal. India reiterated its strong belief in transparency as one of the pillars of the rules-based MTS, which provided Members with information and clarity on the laws and regulations and facts and figures of other Members. It also provided information on the measures taken by Members that impacted on international trade.

9.53. Many Members, including India, had significantly improved their notification compliance despite the difficulties they faced in collecting and collating information as per the notification requirements. There was room for further improvement, both in terms of coverage and quality of notifications. India believed that the proposal did not consider the difficulties faced by Members when trying to comply with the notification requirements. A number of developing countries were facing constraints in terms of human resources, institutional arrangements, infrastructure requirements, and financial requirements. These could all result in difficulties as well as delays in terms of collecting, collating, and preparing notifications. In addition, a number of notification requirements involved interpretational issues. Therefore, technical assistance provided by the Secretariat for a certain period of time would not suffice. Moreover, given the Secretariat's limited resources vis-à-vis the Members' requirements, the Secretariat would not be in a position to facilitate adherence to the strict notification timelines.

9.54. With regard to the revised proposal, India considered that it sought to address the issue of notification compliance by introducing two different aspects: one for compliance with the existing notification obligations for goods and administrative actions for non-compliance thereof; and one relating to the need for expansion of the existing notification obligations. With regard to existing notification obligations, it was not at all clear whether or not the proponents also intended to make similar proposals for improving compliance of the notification requirements under other

WTO Agreements, such as GATS and TRIPS. If this was not the intention, India requested the proponents to provide their specific reasons why not. India also noted that the proposal sought to cover the notification requirements for the whole time-period since the WTO's inception. Given the capacity constraints being faced by developing country Members, and the fact that past notifications would be of little relevance to trade today, any process of improving notification compliance should be restricted to present and future notifications.

9.55. India believed that the proposal was trying to bring in compliance for "required notifications" under the specified Agreements and Understandings. However, it was not clear why the proposal singled out only two specific ad hoc notification requirements, those under the SPS and TBT Agreements, and left out a number of other Agreements where such ad hoc notifications also existed. Moreover, footnote 1 mandated framing required guidelines by the SPS and TBT Committees, without any discussion and consensus on the issue in the respective Committees themselves.

9.56. India opposed the proposed administrative measures as they went beyond what had been agreed under the WTO commitments; therefore, the question of accepting such onerous conditions did not even arise. India further noted that, although it was committed to improving its notification compliance, it could not take on any fresh obligations. India considered that it was difficult to agree to a proposal that provided for penalties and administrative actions in case of default, rather than making an effort to understand the capacity constraints and difficulties faced by a large number of developing country Members in relation to the breadth and length of notification requirements under the various WTO Agreements. Members that had succeeded in updating their notifications, despite facing great difficulties in doing so, should be recognized for their success; and Members that had not been able to notify because of various reasons, including capacity constraints, should be assisted in doing so. India strongly believed that, instead of administrative actions, appropriate support for making notifications should be provided, which would encourage Members to improve upon their internal capacity to notify on time.

9.57. The delegate of Chile thanked the proponents for the revised proposal and for incorporating Members' comments, which had resulted in two new co-sponsors. Chile noted the value of this initiative and reiterated its view that transparency played a central role at the WTO, as well as noting the importance of notification obligations. Complying with the notification obligations of the Marrakesh Agreement was part of the *pacta sunt servanda* that allowed Members to belong to the WTO. The obligation to notify derived from the commitments that Members had assumed voluntarily when they joined the WTO and there was no room to ignore these commitments.

9.58. The proposal had evolved in a positive manner and Chile appreciated proponents' openness to dialogue. The proposal had allowed Members to react to and to explore different ways to face the lack of compliance in notifications. Chile wished to raise a number of points while the proposal was being analysed in Capital. Chile, like other Members, favoured an incentive-based approach rather than a punitive approach, especially if the latter were linked to monetary sanctions. Additionally, some further clarification was needed with regard to "due process" in the case of violation of the WTO obligations, particularly considering the effects of administrative sanctions. Chile believed that, while a lack of notifications should result in certain negative consequences, the proposed framework for sanctions could still be improved. Chile also held the view that technical assistance played a central role in improving compliance with notification commitments.

9.59. The delegate of Singapore said that his delegation supported the goal of improving transparency and strengthening compliance with notification requirements. Members' timely and complete notifications were crucial to the WTO's monitoring function and contributed to the predictability of the international trading system. Singapore welcomed the revisions that had improved the proposal; in particular, the amendments aimed at facilitating access to technical assistance and assistance from the Secretariat would provide greater clarity to the process. Singapore also welcomed the inclusion of the TFA in the scope of the proposal. Singapore further supported the general direction of the proposal and noted that it had been actively engaging with the proponents to broaden its appeal to the widest possible range of Members. In particular, Singapore had highlighted that there were Members experiencing genuine difficulties in meeting their notification obligations due to capacity constraints, as Singapore itself had noticed from its own technical assistance, including notification workshops in the region. Singapore was ready to work with the co-sponsors to get a Working Group on Notification Obligation Procedures up and running. The working group could then instruct for work to be carried out on how technical assistance could

be improved in order to facilitate efforts by Members to meet their notification obligations and to update the technical cooperation handbook on notifications.

9.60. The delegate of Panama stated that Panama supported transparency and attached great importance to its notification commitments and obligations. Since 2018, Panama had been discussing with the proponents the various possible ways to improve this proposal and, in general, to improve Members' work in this area. Panama was concerned by the fact that this proposal allowed, in paragraph 7, for special treatment to be given to Agricultural Domestic Support Notifications. The two-year time-period was a source of concern, especially in light of Japan's comment that paragraph 11(b) could be extended to five years. The majority of WTO Members saw agriculture as a high priority, and as a catalyst area where progress could lead to positive developments also in other areas. Therefore, Panama saw no need to extend the notification period in case this had a knock-on effect. Instead, Members should rather be placing their attention on the issue of compliance with DS:1 commitments. Panama, as a small developing country, sought improvements in this area from all Members. In conclusion, Panama remained actively interested in this initiative but wished to discuss how to improve it on the basis not of penalties and punishments but of incentives, perhaps linked to technical assistance.

9.61. The delegate of the Republic of Korea said that Korea recognized that transparency and notification requirements constituted fundamental elements both in many WTO Agreements and in a properly functioning WTO system. In spite of the importance attached to notifications, the WTO experienced an imbalance in terms of the level of notifications submitted among its Members. At the same time, Korea acknowledged that some Members lacked the capacity fully to implement their obligations. Korea expressed its hope that these aspects would be considered in a balanced way. She noted that there were some improvements in the proposal compared to the previous version although certain elements still required further consideration. First, Korea noted the proposed expansion in the Secretariat's role. The revised version required the Secretariat to assume various additional roles, such as in relation to proposed consultations with the Working Group on Notifications, and in terms of additional technical assistance provided to Members. However, in terms of the eventual implementation of this proposed new role, the budget and capacity constraints of the Secretariat would clearly need also to be considered. Second, with respect to the administrative measures in paragraph 11, Korea stated that there should be an in-depth evaluation of the effectiveness and feasibility of the proposed measures. In this regard, Korea posed two questions: what concrete situation would trigger the measures and how could Members deal with the difference between a Member missing one notification and a Member missing dozens of notifications.

9.62. The delegate of Djibouti aligned her delegation with the statements made by the LDC Group and the ACP Group. Djibouti emphasized the importance it attached to Members' respecting their WTO notification obligations. Djibouti noted that it was necessary to find a way to facilitate notification procedures, particularly through the proposals in this area for technical assistance and capacity-building. However, Djibouti stated that at this stage it neither shared nor supported an approach based on administrative punitive measures against those countries that struggled due to real technical capacity constraints, and LDCs in particular. Djibouti stated that Members must avoid introducing punitive measures that would do nothing but broaden the divide that already separated Members. Djibouti submitted that the focus should rather be on addressing the failures in submitting notifications, and the late submission of notifications, and to try in that context to understand what the difficulties were that were causing these delays, which affected a number of countries, including LDCs. Therefore, she invited the proponents to focus their efforts on the elements in their proposal that addressed the reasons why a number of delegations either failed to submit their notifications or else were late in doing so. For certain countries, it was not because of a lack of will or commitment. What needed to be considered were rather the domestic constraints on the compilation and processing of data, which often required a technical expertise that was simply not available. Djibouti concluded that these were the real questions that needed to be addressed in order to remedy the issue of notification non-compliance.

9.63. The delegate of Pakistan stated that, while Pakistan appreciated the efforts made towards improving this proposal, it was still apprehensive about its likely impact. Pakistan said that it would like to explore how the proposal aligned with the WTO principle of special and differential treatment. With regard to the notification timelines newly proposed, Pakistan noted the extended timelines for all Members, including developed Members, which marginally extended those advanced to developing countries. Pakistan submitted that its evaluation of the empirical evidence suggested that the status of compliance with notification obligations did not offer a true reflection of the

Member, entirely, but rather provided only evidence that the notification process and requirements were too stringent and cumbersome, not only for developing countries, but also for many developed countries, too.

9.64. The problems for developing countries were compounded by severe capacity constraints in the form of a lack of technical training of staff, a lack of institutional capacity, and insufficient human resources. Pakistan considered that the fact that even developed countries were demanding flexibility with regard to their notification obligations, and that no Member state had ever been fully compliant with its notification obligations at any given time, should make Members re-evaluate the process logistically with a view to developing a more sustainable solution to the problem of notification non-compliance. Pakistan reiterated its view that administrative measures would not lead to an optimal resolution and risked rather to be counter-productive because such an approach failed to address the root causes of notification non-compliance. A better approach might consist of reforming the notification process itself. Under this approach, Members would benefit from less stringent and less frequent notification obligations, simplified procedures, and forms with less detailed information required, in addition to guaranteed assistance for Members lacking the necessary capacity. Such an approach would also recognize the sheer lack of human and technical resources, institutional capacity, and overall capabilities of developing Members to meet their notification obligations and to address their notification needs.

9.65. The delegate of Thailand supported efforts to enhance transparency and notification performance and believed that improvement in this area was crucial to the WTO's work in general, as well as in general to its credibility and relevance in the area of international trade. Thailand stated its belief that all Members would in principle be willing to reaffirm their commitments and obligations with regard to transparency and notifications. Nevertheless, while Thailand understood the proponents' logic behind punitive measures, it considered that this approach could prove counterproductive as it risked to create divisions among Members and also a negative impression and sentiment that a vast number of developing Members with legitimate capacity constraints were being unfairly and inappropriately targeted. Thailand stated that Members needed to find a way to assess and to address these constraints. In addition, Thailand believed that developing strong incentives that encouraged timely and complete notifications would represent a better way forward since such strong incentives would reinforce trust among Members and enhance a positive attitude towards commitments undertaken in this area.

9.66. The delegate of Indonesia reiterated Indonesia's support for strengthening the multilateral trading system but considered that this proposal would alter the rights and obligations of Members as set out in Annex 1A of the Marrakesh Agreement. Given that other covered Agreements were not included, Indonesia also questioned the proposal's intention. Indonesia noted, for example, that the proposal did not include any intention to strengthen or establish transparency procedures in areas where Members' obligations had always been questioned, such as in relation to Article 66.2 of the TRIPS Agreement. She stated that Members must also realize the fragile state that the WTO was currently in, and that gentle care rather than hasty moves were necessary to build bridges of understanding between Members. Indonesia believed that resolving the crisis in the dispute settlement mechanism should be Members' primary objective.

9.67. The delegate of Paraguay reiterated her delegation's concern with regard to the different elements proposed to enhance transparency notification compliance, and stated that the revised document was currently being reviewed in Capital. By way of preliminary response, Paraguay expressed concern with regard to the punitive measures that had been put forward by the proponents. She stated that the differential treatment given to agricultural notifications was also being carefully reviewed in Capital.

9.68. The delegate of South Africa, on behalf of the African Group, reiterated that the concerns expressed at the CTG meeting of November 2018 remained relevant in the context of the revised communication. The African Group continued to have difficulty in accepting this kind of approach in the name of improving transparency in the WTO. If this proposal provided any indication of what some Members wanted the WTO to look like in the future, then the proponents needed to demonstrate the following: the problem the co-proponents were seeking to address; the evidence and criteria used to choose the Agreements referenced in paragraph 1; and through a case-by-case approach, to substantiate the reason why every developing country should fall under arbitrary and strengthened oversight. Without this context and evidence, the proposal would not advance any further. The extremity of the proposal, which sought to regularize counter-notifications in

paragraph 5, and introduced administrative measures in paragraph 11, was reminiscent of an era best left in the past. There could be no support for a submission that would negatively impact upon all Members in the African Group. The obligations proposed exceeded existing commitments and were extreme in terms of the severity of punishment and by relegating non-complying Members to a humiliating exercise of naming and shaming. This was not the WTO that the African Group had signed up to, and nor was it the WTO that they wanted to see in the future.

9.69. Members should take careful note that the inability of many developing countries and LDCs to fulfil their notification obligations should not be translated into a wilful neglect and non-compliance, but rather that non-compliance was in these cases caused by other factors. For example, some notifications required detailed data, which exceeded the capabilities of Members due to the lack of central databases containing all the legislation, statistics, and data for different government agencies. The lack of proper institutional coordination was the primary reason why Members continued to struggle with non-compliance. This reality needed to be appreciated and understood. Another reason was the lack of institutional memory in Ministries. No matter how many workshops the WTO might provide, if there was not enough institutional memory, or succession planning, or sufficient qualified human resources trained to study and analyse data according to the requirements of the different notifications, a punitive measures approach would still not help the Members concerned to address these challenges. In fact, it would result in further marginalization of developing and least developed countries.

9.70. South Africa believed that a more cooperative approach was required, where Members were incentivized to comply with their notification obligations rather than punished for not doing so. This would go a long way to building a sense of trust, which the Organization much needed. The African Group was of the view that any potential reform in this area should begin with a comprehensive review of notification requirements by the respective Committees to ensure that these were not unnecessarily complex, burdensome, or vague. South Africa sought clarification as to where each of these notifications were to be submitted because there appeared to be a duplication of work between the various Committees. There also needed to be a comprehensive assessment of the current notifications relating to technical assistance and capacity-building programmes. A proper comprehensive assessment would better inform discussions about how to improve Members' compliance with their notification obligations. The African Group concluded by clearly stating that it was not in a position to support any transparency and notification measures that went beyond existing obligations.

9.71. The delegate of Mexico argued that it was through the timely presentation of notifications that Members showed that they honoured and respected their WTO commitments, thus strengthening the Organization. Since last year, Mexico had stayed in touch with the proponents of this proposal. Mexico considered that this new version was moving in the right direction by incorporating Members' comments. Mexico emphasized that the limitation in scope applied to existing commitments, not to notifications relating to future commitments; there was also no explicit differentiation in the first article between the Agreement on Agriculture and other agreements. However, in paragraph 7, it was proposed that, for notifications on internal agricultural support, a longer time-period would be allowed before administrative measures were taken. Mexico considered that there was still scope for improvement and that a specific date should be indicated in this paragraph for the entry into force of such measures. Mexico was prepared to continue working constructively with the proponents on these issues.

9.72. The delegate of Switzerland noted that the monitoring function of the WTO was a key pillar of the multilateral trading system. An effective monitoring of WTO Agreements required Members scrupulously to respect their notification obligations. In carrying out this monitoring function, the WTO bodies relied on information from Members, which made it essential that all Members submitted high-quality notifications. However, Switzerland noted that many notification obligations were currently not being met and that it was important to fill those gaps. Switzerland believed that the proposal offered ways to correct this situation. Therefore, Switzerland was supportive of the proposal and its objective to improve transparency. Switzerland noted that the proposal considered the complexity of some notifications as well as the burden that these could impose on countries with limited resources. However, Switzerland noted that some aspects of the proposal could also create difficulties. First, Switzerland expressed concern with regard to the possible application of sanctions, in particular relative to LDCs. Second, Switzerland stated its understanding that sanctions would apply retroactively and without a grace period. In this regard, Switzerland said that it was unsure if such an approach were feasible.

9.73. The delegate of Senegal thanked the proponents for their revised submission and for allowing Senegal an opportunity to indicate its views in bilateral consultations. Senegal considered that transparency in the implementation of Members' existing notification obligations was a fundamental pillar of the multilateral trading system and an essential component of the WTO's negotiating function. Nevertheless, certain Members faced deep structural challenges when attempting to comply with their notification obligations, and these challenges would not be eliminated simply through technical assistance and capacity-building seminars. Beyond political will and capacity-building, the pertinent internal structures and coordination mechanisms were also necessary. For these reasons, Senegal declared itself in favour of paragraph 2 of the revised submission, which aimed to prepare recommendations in order to improve notification compliance under the agreements and understandings mentioned under paragraph 1. Senegal believed that specific systemic improvements could help Members better to comply with their notification obligations under the relevant WTO Agreements; strengthening technical assistance could also be useful in this regard. Such an approach would help Members to establish a diagnosis before prescribing a cure. Regrettably, Senegal noted that, despite its many bilateral meetings with the proponents, as well as its statement at the CTG's meeting of 12-13 November 2018[3], Senegal's concerns had not been taken into consideration in this revised proposal. In this regard, Senegal recalled that it had already indicated that it could not support those elements in the proposal that proposed to submit Members to punitive measures, administrative or financial, following notification delay. In the name of transparency, proposals were now being put forward to submit Members to punitive administrative and financial measures. In the name of transparency, proposals are being made to deny Members their right to sustainably support their fisheries sector. Senegal wondered what the next stage in these punitive proposals in the name of transparency would be, and how far they would go. Senegal associated itself with the statements made by the ACP Group, the African Group, and the LDC Group, and stood ready to engage with Members in constructive dialogue in the context of the different Committees, and the Working Group, with a view to finding positive solutions to the question of WTO notifications.

9.74. The delegate of Norway shared the objective of improving transparency and notification practices in the WTO. Norway noted that the revised proposal had benefited from consultations among the proponents, which had moved the proposal in the right direction. Norway submitted that the major issue concerning transparency was how to improve both the timeliness and the quality of notifications, bearing in mind that some notifications, such as annual tariff line nomenclature, were relatively easy to prepare while, for instance, subsidy notifications, or notifications of quantitative restrictions, were more complicated and included a need for assessments. Norway believed that to solve the transparency and notification challenges in different WTO Committees, Members must look into the specificities of each Committee. To improve compliance, Members needed to be Committee-specific and, at the same time, to learn from best practices across all Committees.

9.75. Furthermore, Norway submitted that Members should stimulate voluntary data exchange between the Secretariat and the relevant Member institutions. For instance, Norway had noted that the Secretariat had begun work to modernize the Integrated Database (IDB)'s data collection methods. Members should support any such effort to modernize and facilitate the work of both Members and the Secretariat. Norway said that to focus on missing notifications in TPR Reports from the Secretariat, as proposed by the proponents, was only a first and descriptive step. The Secretariat should actively use the TPR Reports to advise Members on how best to catch up with their backlog. This would require that different parts of the Secretariat worked together and not in silos.

9.76. Finally, Norway mentioned two reservations with regard to the revised proposal: (i) the Secretariat should not notify on behalf of Members or judge sensitive issues in notifications on behalf of Members since the responsibility for submitting timely and correct notifications rested solely with the Members themselves, even if the Secretariat could provide valuable advice and assistance in that context; and (ii) when introducing penalties for delayed notifications, there was an obvious risk that Members would increase the number of one-line notifications in order to avoid economic penalties, which would in turn be counterproductive to the objective of enhancing transparency.

9.77. In conclusion, Norway shared a sense of urgency with other Members over the need to improve notification and transparency performance in WTO Committees. To reach this objective, Norway believed that it would be useful to prioritize ideas and proposals that might achieve the Membership's broad support. In this regard, Norway urged the co-sponsors to strengthen their

[3] Document G/C/M/133, paragraphs 13.61–13.66.

informal contacts and to reach out to the Membership at large in order to obtain a broader support for the next version of the proposal.

9.78. The delegate of Jamaica, on behalf of the ACP Group, agreed that transparency and compliance with notification obligations in the WTO were important; nevertheless, the proposal presented certain difficulties. It remained clear that many developing country Members continued to be hampered by their capacity constraints. The gaps in fulfilling transparency and notification commitments were a symptom of the failure of the multilateral system to live up to its promises. In short, while the multilateral trading system might have resulted in greater opportunities for welfare enhancement, the benefits of economic globalization had not been distributed equitably. The resultant inequity and concentration of wealth undermined any prospect of solidarity between and among countries. Jamaica stated that it appeared that the "winners" in the system were seeking to impose new and more onerous obligations on those countries that were still grappling with their implementation-related obstacles.

9.79. With regard to the draft decision, Jamaica expressed its deep concern that the approach proposed would single out Members through the reporting function of Committees as well as through an ill-defined counter-notification procedure. A source of still more concern was that Members identified via counter-notifications that were unable to justify their failure to notify would then be subject to administrative measures under paragraph 11. Moreover, Members unable to provide the required notification by the prescribed arbitrary deadline suggested in the communication would be subjected to an invasive procedure before the Committee. In addition, Jamaica noted that the draft proposed punitive measures fell outside the practice of the covered Agreements.

9.80. This irregularity was made even more glaring when compared to the functioning of the WTO dispute settlement system. Given that the DSU allowed counter-measures only as a temporary remedy for non-compliance with DSB recommendations concerning violations of the covered Agreements, the punitive measures proposed in the draft Decision constituted an unprecedented expansion of the power of Committees. This extraordinary latitude to impose measures outside of the aegis of the dispute settlement system represented a highly irregular application of pressure. Further, Jamaica submitted that the proposed punitive measures for administrative non-compliance constituted a threat to the balance of rights and responsibilities enjoyed by all Members that would also increase penalties for non-compliance and destabilize the acquis agreed by Members. Jamaica noted the commitment by the ACP Group to find a solution to the question of compliance with transparency-related obligations in a context where many developed countries were also guilty of non-compliance. Jamaica submitted that the nature of the punitive measures proposed violated the principles of fairness and equity. The values espoused by this Organization should not include seeking to diminish Members that simply did not have the capacity to comply with even sometimes basic obligations. This was not a direction that the ACP Group would want the WTO to take. Finally, Jamaica noted that an assessment of the overarching variables relating to this issue was critical if Members were to arrive to an evidence-based approach.

9.81. The delegate of Egypt shared the position of the African Group and many developing countries that the best way of improving transparency at the WTO was through a more cooperative approach. He noted that many developing countries struggled to comply with their notification obligations due mainly to institutional challenges and capacity constraints relating to their levels of development. The proposed punitive measures approach would not help these Members in facing these challenges but would instead result in a further marginalization of developing and least developed countries within the Organization. Egypt submitted that the desired reforms in this area should begin with a comprehensive review of the notification requirements in all the WTO Agreements by the respective Committees to ensure that these were not unnecessarily complex or burdensome. It was also necessary to undertake a comprehensive assessment of the current notification-related technical assistance and capacity-building schemes. Such an assessment would facilitate discussions on how best to improve the developing Members' compliance with their notification obligations. Based on such reviews, updates to the requirements or incentives could then be considered and more focused technical assistance and capacity-building schemes could be provided to developing countries that had fallen behind.

9.82. The delegate of the Plurinational State of Bolivia emphasized the importance of transparency and reiterated its commitment to giving visibility and predictability to Bolivia's trade practices. He expressed Bolivia's hope that all Members would do the same. He stated that transparency was the pillar not only of the rules-based trading system but also of the whole multilateral diplomatic and

trading system. Bolivia reiterated that it did not believe that transparency was an issue that should be dealt with using punitive measures. Bolivia did not consider the administrative measures foreseen in paragraph 11, consisting in a list of sanctions against Members, to be acceptable. Rather, Bolivia submitted that the proposal should focus on positive incentives since failures to notify were due to individual Member circumstances. Bolivia added that technical cooperation should not be imposed or be conditional on certain sanctions. S&D provisions could be an incentive to be included in the proposal as a basis for negotiation. Bolivia concluded that the relationship between international organizations and States should be a horizontal relationship based on sovereignty and mutual respect.

9.83. The delegate of Nigeria echoed the statements by the African Group and the ACP Group on this issue. Nigeria stated that, while the proposal was still being reviewed in Capital, it believed that transparency was an issue of critical importance to the effective functioning of the Multilateral Trading System. However, Nigeria expressed its concern that a number of developing countries lacked the institutional capacity to comply with their notification obligations. These challenges were unlikely to be addressed by the S&D provisions of paragraph 10 of the revised draft decision. In its view, the administrative measures under paragraph 11 of the proposal would place a burden on many developing countries. Nigeria reiterated that it was open to further consultations on how to enhance transparency and strengthen notification requirements. In this regard, Nigeria believed that Members should be able to discuss this issue freely and to engage constructively and without prejudice to their respective positions. Therefore, Nigeria emphasized again the need for a careful and balanced approach to ensure that Members, especially developing countries, were not punished because of onerous notification obligations.

9.84. The delegate of the Russian Federation considered that strengthening and improving the WTO's functioning, including its monitoring mechanism, was of the utmost importance and was long overdue. The Russian Federation considered that enhancing transparency and improving the effectiveness of notification requirements were integral to WTO reform. Therefore, it supported all efforts aimed at promoting transparency in the multilateral trading system, also through the improvement of the quality and timeliness of the information submitted by Members. With regard to the proposal for setting new time-frames for the submission of information by Members, the Russian Federation stated that the proposed initiative would enhance the already existing obligations under the WTO Agreements while maintaining a fair degree of flexibility for Members to comply with notification commitments. In this regard, he stated that there had to be the right balance established between setting reasonably short timelines and providing Members with an adequate time period for compliance. Maintaining overly tight deadlines would not be feasible for technical reasons and because of cumbersome bureaucratic procedures in cases where different agencies were involved in the process of preparing notifications. The Russian Federation stated that, in sum, it considered this proposal to be a timely document, and of essential importance; it should be further discussed by the Membership. The Russian Federation indicated that it stood ready to engage constructively with Members to improve the existing WTO notification procedures, in order to ensure the predictability and transparency of Members' trade regimes.

9.85. The delegate of Hong Kong, China stated that her delegation accorded a very high priority to the fulfilment of its notification requirements as it believed that this was a fundamental obligation of Members and that transparency had a profound impact on the functioning of the multilateral trading system. Support and assistance should be provided to Members experiencing genuine difficulties in meeting their notification obligations. Hong Kong, China, added that, at the same time, in a rules-based system it would also expect to see active deterrents in place against non-compliance. She said that the proposal was a useful basis for discussion. The objective of enhancing transparency through better notification performance was shared by all Members. With regard to the revised proposal itself, she welcomed changes made in order to address certain questions that had been raised by Members, including in relation to the circulated time-frame. However, as there had not been significant changes introduced to the types of administrative measures set out in the proposal, Hong Kong, China, continued to question their effectiveness, particularly when the same measures were applied in the same manner to different types and extents of non-compliance. She called upon Members and proponents to remain flexible and constructive and to work together towards making good progress on these issues. She suggested that Members pursue a more open approach and process in order first to find common ground on certain building blocks. For example, there were elements in the proposal that could form the basis of a broad framework, such as the Working Group on Notification Obligations, assistance provided to developing countries, possible measures, a workable and meaningful time-frame, and so on. If Members could agree on such a framework or

backbone, they could then leave it to the Working Group and respective Committees to draw up further technical details for implementation. In this way, the application of measures could take into consideration the nature, complexity, and challenges specific to each Agreement. It would also be helpful if proponents and Members could iron out their differences at informal and technical meetings.

9.86. The delegate of Ukraine acknowledged the essential role of transparency in the process of implementation of the WTO Agreements and considered notifications to be an important and indispensable instrument in assessing Members' compliance with their WTO commitments. Transparency and notifications could also be tools to build or re-build trust between Members. Ukraine noted three main features of the proposal: first, the establishment of non-compliance, administrative measures, and capacity-building. Ukraine welcomed the role given in this regard to the Trade Policy Review Mechanism and to the SPS and TBT Committees; second, the charge of the contributions towards technical assistance rather than towards the WTO budget; and third, the acknowledgement that notification failure could be caused by a lack of information or capacity. Members could request the Secretariat's assistance and even ask the Secretariat to submit notifications on a Member's behalf. Ukraine also considered that developing country Members with limited capacity and in need of assistance should not be subject to "administrative measures". A Working Group was tasked to "consider both systemic and specific improvements that can help Members to improve compliance with notification obligations". Ukraine agreed with the approach of "disclose and assist" rather than "litigate and sanction" as it could be a quicker and more efficient route to compliance. The proposed document was a good start for further discussion and consideration by Members with a view to enhancing transparency. It was also important for Committees and the Secretariat to try not only to note the number of missing notifications, but also the reasons that explained why notifications had not been submitted, as well as why the deadlines were not being met, based on the explanations presented by the Member itself. Additionally, Members could decide to put on the list of the administrative measures a provision according to which Members that breached their WTO notification obligations or were late in submitting their notifications could not propose to host a Ministerial Conference.

9.87. The delegate of Uruguay highlighted the systemic importance of tackling this issue, which guaranteed the application of the WTO commitments that Members had undertaken. Uruguay stated that it aligned itself with the statements made by other Members about the need to improve the system of notifications and to fulfil notification obligations voluntarily signed up to by Members. Uruguay noted that there seemed to be disagreement over certain parts of the proposal and that many Members had made reference to the administrative sanctions set out in the proposal. Uruguay submitted that it was nobody's intention to punish anyone; the purpose was rather to determine how to ensure the effective fulfilment of obligations undertaken by Members. Uruguay suggested that one way to do this could be to adopt a creative thinking approach towards how to improve the system. It was a system that needed of necessity to be based on incentives to notify and to meet the obligations undertaken, but it should also have mechanisms to ensure compliance. There needed to be a balance struck between Members' various legitimate concerns, such as in relation to the following: how to deal with the variety of different situations that could lead to a failure to notify in relation to the different kinds of notifications; how to tackle the possible negative effects that might be the consequence of some of the proposed measures; and how to strike a balance between these aspects and a mechanism that worked in practical terms. Uruguay stated that technical assistance and capacity-building should be respected and, with regard to the Secretariat's role, the Secretariat could help in seeking creative solutions to the issue of how best to encourage Members to fulfil their obligations. In addition, he stated that one of the elements needing improvement was in relation to coherence between the different Agreements. For example, the exception for domestic support under the Agreement on Agriculture was not convenient since it would be better to have a systematic and coherent approach that covered all of the covered Agreements.

9.88. The delegate of Guatemala reaffirmed that improving transparency at the WTO and in its Committees was important. She noted that Guatemala had been working with the Secretariat to improve its record on notifications across a range of committees and that some were now up-to-date in comparison to other countries. Guatemala highlighted the importance of technical assistance provided by the Secretariat, which had enabled Guatemala to tackle certain pending notifications. This was achieved in part through annual seminars organized by the Secretariat, which trained the responsible officials in the relevant Ministries on how and where to notify the relevant policies. Guatemala noted that its Capital was reviewing the document, particularly as concerned the retroactive character of the administrative measures, which would require government

authorization. Guatemala underlined the importance of addressing the different levels of Members' development in the negotiations, particularly with regard to time-periods and resource limitations.

9.89. The delegate of Turkey stated that the revised proposal was a constructive attempt to strengthen transparency and to improve the effectiveness of notification requirements. He welcomed the fact that the new proposal included notifications on the Trade Facilitation Agreement, and also that it included notifications under the Agreement on Agriculture. However, although the proposal mitigated some of Turkey's concerns, Turkey considered that the paper still needed further modification. First, Turkey questioned the necessity and function of counter-notifications. This practice would involve the question of how to test the validity and accuracy of the information provided by another Member. Second, it was not appropriate to empower the Secretariat to provide notifications on behalf of Members, even with the consent or approval of the Member concerned. Third, Turkey sought clarification as to whether or not partial non-compliance and full non-compliance would be treated in the same way. Fourth, Turkey's most significant concern was with regard to the proposed administrative measures. Non-compliance should result in some consequences, but the administrative or punitive measures proposed in the paper could result rather in pushing Members away from the system and discouraging them from respecting their obligations. Budgetary measures, and putting an additional financial burden on Members, might only run the risk of further isolating them, especially least developed and developing Members. With regard to missing notifications, Turkey suggested that a periodic compliance report by the Director General be circulated to the Trade Ministers of those Members concerned, instead of sending a bill to those countries, as proposed in the current text. Turkey stated that developing Members faced several capacity challenges when preparing their notifications and that technical assistance in this regard would be beneficial, as suggested in the proposal. However, the notification process was not only a simple one-time action, consisting only of submitting existing or already "stored" data to the related Committees; rather, it was an ongoing process, which included collection, analysis, and coordination of all the relevant national data. At a later stage, Members were also required to answer all the questions that arose from their notifications. In addition to this, developing countries did not always have the technical capacity to analyse the notifications received from other Members. In this context, developing Members might for many reasons require longer periods of time. Turkey concluded that it supported the general direction of the proposal and was interested in working with Members on these issues.

9.90. The delegate of Cuba informed the Council that the updated document was being reviewed in Capital but that her delegation wished to provide a couple of preliminary remarks. She noted that there were a number of elements with which Cuba had already disagreed on previous occasions, but which had remained in the current proposal. Cuba submitted that this proposal intended to add to Members' existing notification obligations. In particular, it proposed to include an obligation on Members to explain the reasons why they could not comply with their notification obligations. Cuba submitted that this would add an extra administrative burden on Members, alongside the commitments already undertaken under the covered Agreements. Cuba noted that the proposal included administrative measures to punish those Members that did not comply with their notification obligations. In this regard, Cuba highlighted that developing country Members faced difficulties complying with their notification obligations. Cuba concluded that it could not support punishing those Members that already had only scarce resources available to meet their many notification obligations.

9.91. The delegate of Sri Lanka recognized the importance of the transparency pillar for the WTO system, and therefore considered that compliance with notification requirements was an essential element in the context of Members' discharging their WTO obligations. Sri Lanka, after it had recognized and acknowledged its own backlog of notifications, had made several genuine and best efforts to comply with its notification obligations by addressing the obstacles that had been hindering its compliance. Sri Lanka had subsequently succeeded in clearing the backlog by increasing its notification compliance with regard to most of the WTO Agreements. In the process of the preparation of these notifications, the obstacles faced by Sri Lanka were not only limited to a general lack of technical assistance, but included also the following: (i) institutional capacity to understand the technicalities behind the notification concepts and complex notification formats; (ii) data gathering and data analysis; (iii) a lack of staff within the institutions; and (iv) a lack of institutional memory. Based on these experiences, Sri Lanka expressed concerns over the following dimensions of the proposal: (i) the aim to impose additional burdens on small countries; (ii) the creation of additional rights to be exercised by certain Members, particularly in relation to the right to make counter-notifications, which went beyond the current disciplines of the WTO Agreements and altered

the balance in Members' rights and obligations. She concluded that her delegation found it difficult to agree with the current proposal as it prescribed penalties and administrative action in case of default, rather than making an effort to understand the difficulties facing developing countries and to provide them with the necessary resources to strengthen their capacity and to overcome the obstacles identified.

9.92. The delegate of the European Union stated that the EU found it encouraging that many Members stood ready to engage constructively on this issue, and her delegation looked forward to continuing the conversation in light of the fact that the co-sponsors were well aware that certain aspects of the proposal needed further reflection. Regarding the questions or comments on the scope of the proposal, notably in relation to Services, TRIPS, or even RTAs, the co-sponsors considered that the notification requirements under the CTG would be a good starting point because their compliance performance was well documented in the annual Secretariat report. In addition, the notification requirements of the GATT were especially clear since Members did not have to judge for themselves what should or should not be notified; indeed, this could explain why Members' notification performance was in general terms better in this area. Regarding RTAs, the EU said that the co-sponsors were open to hearing Members' ideas. Regarding TRIPs, the EU recognized that certain countries had a heightened sensitivity; for this reason, the co-sponsors considered it preferable to begin with the Agreements falling under the purview of the CTG. If Members were interested in addressing their notification concerns under these various Agreements the co-sponsors would be willing to discuss and to consider the most efficient way to do so.

9.93. Regarding coverage and ad hoc notifications, the intention in the proposal was to apply the measures set out within it to all notifications for Agreements listed in paragraph 1, since there were delays in the submission of each type of notification. The EU stated that covering ad hoc notifications relating to the TBT and SPS Agreements in the proposal would have to be delegated to the respective Committees because those types of notifications were highly technical. Regarding administrative measures, the EU noted that Members had raised the issue of proportionality, or the fact that administrative measures would apply irrespective of how many deadlines had been missed. The objective behind the administrative measures was to send a strong message as soon as there was non-compliance. However, the measures would not kick-in as soon as there was a delay but would be applied only when there had been a serious delay without progress. The EU added that the co-sponsors were open to listening to Members' suggestions for a more gradual approach. Furthermore, the EU noted that there were also calls for flexibility for LDCs.

9.94. Compliance with WTO obligations, including notification obligations, benefited all Members. The EU reiterated that the proposal included elements that related to technical assistance and to capacity-building, as well as additional time in cases where assistance was needed. The EU added that they were also open to reflecting further on how best to address the needs and constraints of LDCs more specifically, bearing in mind that the overall objective was to help them to notify. With regard to the questions concerning the quality of notifications, the EU recognized that the current proposal focused more on the issue of quantity rather than quality. The EU expressed an interest in discussing ways to improve this but stated that it would rather see this kind of conversation in the respective Committees based on the input of relevant experts. The EU noted that this was typically an issue that could feed into a discussion in the Working Group. The EU concluded by noting that the comments that had been made had been very helpful and that these would certainly be considered when advancing the work on the proposal.

9.95. The delegate of the United States stated that the US had found that counter-notifications did indeed provide important transparency, and that, while some Agreements specifically encouraged the practice of providing counter-notifications, others were silent; thus, there was nothing stopping a counter-notification from being made. With regard to the role of the Secretariat, the US did not believe that the proposal would over-extend the Secretariat; in fact, it was already the case that any Member could seek technical assistance. In addition, any Member could also prioritize the full implementation of its WTO commitments, to include notifications, in its development assistance plans. The US noted that, for a number of developing country Members, it was possible that the Secretariat's assistance would be a one-time occurrence in order simply to verify a notification, as in the case, for example, of a Member that did not have any state-trading enterprises, or which did not provide agricultural or industrial subsidies. In practice, some Members, despite having a fully prepared notification, still did not submit it; a delegated authority might assist in such instances. With regard to the administrative measures and the budgetary assessment, the US stated that it believed that the current abysmal record on notification compliance would continue unless there

were clear consequences to continued wilful non-compliance with long-standing notification obligations. In this context, the proponents wished to find ways to increase pressure on Members to notify, including by eliciting, if possible, a whole Government response to the issue of notification non-compliance; the US considered that the current proposal represented an effective approach in this regard. On the issue of the retrospective nature of the proposal, the US understood that this did raise questions for certain Members over its implementation, an issue that the proposal's co-sponsors were continuing to discuss. In addition, the US and co-sponsors stood ready to listen to any additional concerns that Members had, as well as to hear any practical suggestions from Members about how best to advance on this issue. Finally, the US addressed the suggestion from some Members that this proposal altered the balance of Members' rights and obligations, reiterating her Ambassador's earlier comments, when he stated that this proposal did not change the notification obligations required of any Member under the WTO Agreements; rather, it merely sought, by means of various incentives and administrative measures, to encourage Members to comply with their notification obligations. The US stood ready to continue working with Members on this proposal with the aim of moving this important initiative forward.

9.96. The delegate of Japan noted that some Members considered that the proponents could have better sequenced the work set out in the proposal; for example, by beginning with a diagnosis of programmes and an assessment of the reasons behind non-compliance. However, Japan pointed out that there had already been much time and opportunity for such discussions; nevertheless, such discussions had not resulted in any improvement. The issue was now urgent, including for the WTO system itself; it now required Members to approve concrete measures. Japan had also heard it said that Members sometimes had specific constraints that technical assistance alone could not redress. In this regard, Japan found it useful to clarify the proposed general role of the Working Group, as set out in paragraph 2. Japan considered that the Working Group would preside horizontally over notification-related procedures. The Working Group was expected to play a coordinating role between the work of the Committees and the Secretariat; it was also expected, with assistance from the Secretariat, to summarize the general notification situation and to report back to the CTG accordingly. In addition, the Working Group was expected to work with other relevant bodies in examining the challenges faced by Members and in providing technical assistance to Members to improve their levels of domestic coordination and compliance. Finally, it would share its best practices among Members, both at Committee level and at especially designed workshops. Japan was also looking forward to further discussions on these issues with all Members.

9.97. The delegate of Chinese Taipei responded to the comments made on technical assistance and capacity-building. Chinese Taipei noted that the notification commitments of WTO Members remained unchanged under the current proposal. Similarly, Members would still have access to all the currently available tools, including access to the Secretariat's technical assistance, in case they faced challenges in fulfilling their notification commitments. Members would also enjoy the same opportunities as before to discuss their concerns and difficulties in the relevant Committees and Working Groups. Chinese Taipei also highlighted a number of positive additions in the proposal, which effectively enhanced the existing tools already available to Members. These additional tools aimed to create a cost-effective incentive to address the various constraints that might currently be hampering Members' ability to comply with their notification commitments. First, the proposal contained elements that could help to address issues of internal cooperation and institutional capacity constraints at the domestic level; for example, government authorities, especially those involved in international trade, would have an additional tool with which to highlight the importance of transparency at the WTO, and thereby to encourage an appropriate reassignment of resources in order to strengthen national notification systems. Nevertheless, Chinese Taipei recognized that this was not a universal solution, and that it was up to Members to assess the utility of this tool with regard to its specific circumstances. Second, Chinese Taipei noted that, while Members could currently discuss their concerns and difficulties in the relevant Committees, the proposal also provided for a specific forum, in the context of the Working Group on Notification Obligations and Procedures, where Members could present their systemic difficulties and find technically driven solutions to their needs; at the same time, Members would benefit from the possibility of contributing to the development of recommendations to improve transparency performance in general.

9.98. The delegate of Argentina noted that the different co-sponsors had coordinated closely in the proposal's development. Against this background, Argentina wished to highlight several elements in addition to those already referred to by Chinese Taipei on technical assistance and capacity-building. Argentina stated that it remained convinced that the benefits of providing notifications far exceeded any attendant costs, and that this was even more the case for developing Members. The creation of

a notification system could certainly be resource-intensive in the short term, but this was only one aspect of the issue. Argentina considered that establishing a national market intelligence system like that provided by the WTO would otherwise be beyond the reach of most Members. Indeed, by providing one notification, Members then had access to the information provided by the rest of the WTO, in a standardized manner, and translated into the WTO's three official languages. Argentina stated that this was therefore the most cost-efficient framework and that, over the longer term, it would also be reasonable to expect a more efficient use of available resources as activities became more solution-oriented.

9.99. The delegate of Australia responded to Members' comments regarding agriculture notifications by indicating that the Agreement on Agriculture had now been consolidated with the other Agreements' understandings in paragraph 1, and that, rather than treating all of the relevant notifications differently, allowance had now been made for DS:1 for domestic support. Australia highlighted that the proposal did not change any of the notification obligations required by any Member under the WTO Agreements, including the DS:1 notification obligation. Paragraph 7 proposed additional time for the submission of DS:1 notifications only, before administrative measures would then be applied. This proposal came from a review of missing notifications as found in document G/AG/2, which noted that there were over 800 missing DS:1 notifications; however, there were fewer than a hundred missing notifications for each of the other required agriculture notifications. As concerned this specific situation, the proposal limited flexibility to an additional two years before timing began for administrative measures that would apply to DS:1 only, and only until document G/AG/2 had been updated.

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

9.101. The Council so agreed.

10 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

10.1. The Chairperson informed Members that, in a communication dated 25 March 2019, the delegations of the European Union, Switzerland, and the United States, respectively, had requested the Secretariat to include this issue on the agenda.

10.2. The delegate of Switzerland recalled that the issue of the selective tax in question, which was being applied to energy drinks and carbonated soft drinks, had already appeared on the agenda of previous CTG meetings. He indicated that, despite the various bilateral meetings on this issue that had taken place in the WTO since November 20018, the issue had remained unresolved. Nevertheless, Switzerland welcomed the fact that GCC Members were giving their active consideration to possible reforms of their tax regime. A first step, according to the information most recently available, could be an extension of the tax base to other products. However, Switzerland requested to get more precise information on the products that would be subject to the tax in this regard. Switzerland also expressed the concern that this first step would not in fact solve the discriminatory treatment that currently existed between energy drinks and carbonated soft drinks, since these would still be subject to different *ad valorem* excise tax rates. A second step, in Switzerland's understanding, was the replacement of the *ad valorem* selective tax for a volume-based tax. Switzerland reiterated its request for more information in this regard. Furthermore, Switzerland stated that it had received a note from the GCC Secretariat that had emphasized the compliance of the current measures with WTO rules but did not answer to the outstanding additional written question sent last November regarding the scientific basis justifying the imposition of different tax rates on energy drinks and carbonated soft drinks. Switzerland requested an answer also to this question.

10.3. With regard to the note, Switzerland understood that it invited industry leaders to provide comments and suggestions on regulatory and legislative issues. In this regard, he repeated Switzerland's proposal from the last CTG: (i) an immediate reduction of the level of the tax on energy drinks and the application of the same level to energy drinks and carbonated soft drinks; (ii) consideration of enlargement of the tax base in order for all beverages subject to tax to face the same tax rate; and (iii) replacement of the current *ad valorem* selective tax base to a specific tax based on the volume of the sugar content. In the last reform, only the last two elements had been

considered, Switzerland therefore requested the immediate reduction of the tax rate on energy drinks to the rate applicable to carbonated soft drinks. In addition, Switzerland raised a new issue regarding sports drinks. These were not energy drinks and they did not contain any caffeine; nevertheless, they were currently being taxed in the Kingdom of Bahrain as energy drinks. The tax rates that were currently being applied to three brands of sport drinks were different. Two brands were subject to a tax rate of zero per cent, whereas the third was subject to a tax rate of 100%. Switzerland asked the Kingdom of Bahrain for its reasoning behind its treatment of sport drinks and asked the Kingdom of Saudi Arabia and the United Arab Emirates (UAE) if, in their countries, sports drinks brands were also subject to different selection tax rates.

10.4. The delegate of the United States reiterated US concerns over 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 UAE, and that was also under consideration by other GCC member States. The current implementation of the excise tax on these products had a discriminatory effect by singling out particular types of beverages produced by multinational companies, while excluding non-carbonated sweetened beverages produced by domestic companies. She also noted, in the TBT Committee, the introduction of additional draft measures by the Kingdom of Saudi Arabia that sought to limit the caffeine levels of purchased beverages such as energy drinks to levels that could be produced in beverages at home. She stated that, while the US supported efforts to prevent and control non-communicable diseases, 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. 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 would be applied in a transparent and non-discriminatory manner, and to address any remaining concerns. In coordination with other Members, the US had also raised these concerns in the Capitals of the GCC member States.

10.5. The delegate of the European Union expressed concern over the discriminatory aspect of the relevant excise tax on energy drinks and carbonated drinks, and over the scope of this tax, its calculation basis, as well as its compatibility with the WHO recommendations, which had included the recommendation that there be a tax of not more than 20% on all sugar-sweetened beverages. She reiterated that concerns remained regarding the scientific basis for taxing carbonated drinks, and regarding the conformity of these tax measures with the non-discrimination principle and obligation under GATT Article III:2. The EU invited the GCC to advance in its internal review of these measures, considering Members' comments, and suggested establishing an interim solution during the scheme's review period that would reduce and equalize the current tax rates applied to energy drinks to those of soft drinks, meaning 50% as opposed to 100%. In addition, the EU informed Members that it had sent a diplomatic note verbale to each GCC country in June 2018 as well as sending letters at ministerial level in March 2019. The EU noted its expectation of formal, written responses to these submissions.

10.6. The delegate of Japan noted that his delegation had not received any response to its written questions, but that it continued to be concerned over this issue.

10.7. The delegate of the Kingdom of Bahrain, on behalf of the Kingdom of Saudi Arabia, the UAE, and the Kingdom of Bahrain, informed Members that this matter was being handled at GCC level, and assured them that their concerns were being taken into consideration. He noted that a response was being prepared by the GCC Secretariat and thanked those delegations that had engaged in bilateral consultations on this issue. Finally, the Kingdom of Bahrain invited concerned Members to approach it if they had any further questions.

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

10.9. The Council so agreed.

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

11.1. The Chairperson informed the Council that, in communications dated 25 and 29 March 2019, the delegations of the European Union, Japan, Norway, and the United States, respectively, had requested the Secretariat to include this issue on the agenda.

11.2. The delegate of the European Union noted that this item had been on the CTG's agenda for over four years, and that her delegation's concerns still remained. The EU noted that Indonesia had made some efforts to address its cumbersome measures, including a certain simplification of its import procedures; nevertheless, the EU remained concerned by the persistently protectionist nature of Indonesia's trade policy, as well as by a climate of legal uncertainty, which saw frequent modifications to laws whose state of implementation was likewise unclear. Among the measures of particular concern to the EU were the following: (i) the use of local content requirements in a number of sectors; (ii) complex and burdensome import requirements for a number of products, including for cosmetics which were recently subjected to increased, very high registration fees; (iii) burdensome and non-transparent SPS measures, including lack of feedback from Indonesia on market access applications - some of which were submitted in 2013 (on which the EU would welcome the SPS approval procedures to be undertaken and completed without undue delay); (iv) QRs for meat, steel, and tyres; export restrictions for certain raw materials (on which the EU would especially appreciate receiving further information); and (v) burdensome and discriminatory conformity assessment procedures and the growing proliferation of mandatory technical standards. In particular, with regard to the "Halal" Law No. 33/2014 and its implementing regulations and procedures, the EU noted that it was still waiting for a precise and official overview of the way in which Indonesia intended to implement its Halal-related rules, as well as of the scope, object and timing of the measures under preparation. The EU called upon Indonesia to notify them in accordance with WTO rules and to keep Halal certification and labelling voluntary, as a less trade-restrictive measure. In addition, the EU requested a state of play regarding the rules and standards for milk, as well as the Ministerial Decree Nos. 82/2017 and 80/2018 on maritime transport and insurance. The EU urged Indonesia to eliminate its high number of trade barriers and to refrain from issuing new ones, in line with its commitments in the G20.

11.3. The delegate of Japan reiterated its concern over Indonesia's restricting policies and practices, which had been brought to Members' attention before, at the TRIMs Committee and at the CTG. Japan regretted that Indonesia had only replied that these measures were consistent with WTO rules instead of providing concrete answers. He requested Indonesia to provide the following information: (i) how the measures to be introduced were consistent with the WTO Agreement; (ii) specific details of the approach to the reform that Indonesia was considering to adopt; and (iii) an update on the latest situation of these series of measures.

11.4. The delegate of the United States recalled that, in previous interventions in this body, it had reviewed in some detail the broad range of its concerns under this agenda item, including localization requirements, import licensing requirements, standards requirements, pre-shipment inspection requirements, and export restrictions, including taxes and prohibitions, among others. These types of restrictions affected a broad range of sectors. The US had also expressed its concern over the general lack of transparency shown by Indonesia. In particular, the US highlighted its concern regarding the lack of clarity surrounding implementation of Indonesia's Halal Law. She urged Indonesia to notify any implementing regulations of this law to the TBT Committee prior to their finalization, and to provide time for comments from stakeholders.

11.5. In addition, the US stated that it remained deeply concerned by Indonesia's use of localization requirements across a broad and expanding range of sectors, including telecommunications, mobile technology, energy, agriculture, retail, and franchising. Not only did these local content requirements raise questions about consistency with Indonesia's trade obligations, but they also acted as barriers to trade that potentially diverted investment from other developing countries. In the US understanding, Indonesia was now considering expanding these requirements to the pharmaceutical and medical device sectors. The US was deeply concerned about this prospect and noted that it had already submitted questions to Indonesia on these potential new local content requirements. At the October 2018 TRIMs Committee meeting, the US had requested that Indonesia keep Members informed on any progress it was making in its ongoing comprehensive review of localization measures, and to report on any meaningful milestones with regard to the eventual

elimination of these trade-distorting LCR measures. The US expressed its hope to see this report at, or before, the upcoming June 2019 TRIMs Committee meeting.

11.6. She expressed additional US concern over the developments in the digital trade space, including Indonesia's creation of tariff lines for electronically transmitted software and digital products. She noted that any move to raise import duty rates on these tariff lines would raise serious questions regarding Indonesia's compliance with the moratorium on customs duties on electronic transmissions. Finally, the US noted that it had already raised its concerns regarding these policies on numerous occasions at the CTG, and that it would continue to raise them bilaterally and in the appropriate WTO Committees.

11.7. The delegate of Norway brought to the Council's attention a concern regarding the export of seafood. Norway informed the Council that it had received information from Norwegian seafood exporters that Indonesia no longer required third party verifications of all consignments before shipping to Indonesia. Norway welcomed this change in practice. However, Norway noted that the Indonesian system of import quotas for seafood still represented a restriction on exports of Norwegian seafood to Indonesia, and that a limited number of quotas and a lack of transparency in the process for granting them made the framework for trade in Indonesia unpredictable. Norway noted that the new regulation, which had entered into force in 2018, may form only part of a larger overhaul of the Indonesian import regime for fishery products. Nevertheless, Norway would welcome more detailed information from Indonesia in this regard.

11.8. The delegate of China shared the concerns expressed by other Members over Indonesia's import and export restrictions. China was also concerned over the pre-paid income tax on imported products under Article 22 of Indonesia's Income Tax Law and considered that this mechanism placed a heavier tax burden on imported products, and in a discriminatory manner, as it required importers to pay 2.5 to 10% pre-paid income tax. China also noted that, on 30 September 2018, Indonesia had further raised the pre-paid income tax rate for 1,174 products, thus limiting imported goods to a less favourable competitive position. China urged Indonesia to bring its measures into conformity with the WTO's rules as soon as possible.

11.9. The delegate of New Zealand echoed the concerns raised by other Members. As noted at previous CTG meetings, New Zealand submitted 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 WTO decision and the steps that had been taken towards compliance to date. However, New Zealand continued to have significant concerns over several of Indonesia's import restrictions affecting trade across a range of agricultural products. In particular, New Zealand expressed concern over the two-month delay in issuing Import Approvals for New Zealand horticulture products earlier in 2019, especially as Indonesian Ministry of Trade Regulation 64/2018 had specified that these would be issued within two working days, and with other restrictions that continued to be applied to horticulture and dairy products. New Zealand submitted that these issues reflected a lack of progress from Indonesia in removing restrictive trade practices in accordance with the WTO ruling. 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. Like other delegations, New Zealand hoped that Indonesia would implement its reform plans through policies that were consistent with its WTO obligations.

11.10. The delegate of Brazil shared the concerns of other Members, particularly with regard to undue delays in inspection and approval for Brazilian meat exporters, which Brazil submitted was a clear breach of Article 8 and Annex C of the SPS Agreement. Brazil noted that these measures had been particularly harmful to Brazilian exports of poultry and beef.

11.11. The delegate of the Russian Federation stated that, like other Members, the Russian Federation was seriously concerned over Indonesia's widespread trade-restrictive practices, including measures applicable to a wide range of agricultural and industrial products. The complex, burdensome, and discriminatory measures applied by Indonesia were obstructing imports, among other products, of meat and meat products, milk products, wheat, horticultural products, tyres, wood and forest products. The Russian Federation had noted a decrease in Indonesia's imports from the Russian Federation and other Members. The Russian Federation urged Indonesia to share a timeline

indicating when it planned to remove its unnecessary obstacles to trade in order to bring its measures into conformity with WTO rules.

11.12. The delegate of Chinese Taipei shared the concerns expressed by other Members, and also noted that this item had been on the CTG's agenda for four years. In particular, she expressed concern over Indonesia's local content requirements for mobile phones and telecommunications equipment. Chinese Taipei submitted that this measure adversely affected trade and investment and urged Indonesia to ensure its compliance with its WTO obligations.

11.13. The delegate of Indonesia thanked those delegations that had taken the floor for their interest in the Indonesian market. Indonesia had carefully considered Members' concerns regarding several of its policy measures that had been alleged to be trade restrictive. Indonesia indicated that its trade policies corresponded well to its WTO commitments, and that Indonesia championed the free flow of trade in goods across, and within, its borders. Indonesia reiterated that, what certain Members perceived to be measures that were restrictive in nature might in fact be the result of its efforts to cope with certain outstanding problems or negative consequences that Indonesia was confronting in relation precisely to its openness to international trade. Indonesia said that it would keep Members updated on these measures at the relevant Committee meetings where these issues were raised. Indonesia concluded by stating that this was a work in progress.

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

11.15. The Council so agreed.

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

12.1. The Chairperson informed the Council that, in communications dated 25 and 29 March 2019, the delegations of Canada, China, the European Union, Japan, Norway, Chinese Taipei, and the United States, respectively, had requested the Secretariat to include this issue on the agenda.

12.2. The delegate of the European Union recalled that her delegation had expressed its concerns on this matter at the CTG and in the Committees on Market Access and ITA for several years. She noted that the EU had requested consultations with India on 2 April 2019. The EU challenged India's introduction of import duties on a wide range of ICT products, despite India's commitments in the WTO not to charge any duties on these products. In light of this development, the EU stated that it would not elaborate further on this occasion.

12.3. The delegate of the United States said that it was unfortunate to have to raise 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. She noted that, prior to the CTG's previous meeting, India had just announced another round of tariff increases on telecommunications equipment, further raising rates at the border from 10 to 20%, including on products for which the US had understood that India had duty-free binding commitments. Since that meeting, India's customs authorities had continued to issue notifications, such as Notification No. 02/2019, which raised additional questions about the precise scope of these recent increases. The US found these continuous tariff increases on ICT products, and the lack of transparency with regard to the scope of the products covered by these increases, to be deeply troubling. She noted that, for far too long, the US and other Members had been discussing discrepancies between India's WTO commitments to provide duty-free access to certain products, and the non-zero import duties that India was in fact charging imported products. She further noted that the US had urged India, on multiple occasions, both bilaterally and in the relevant Committees, to address its actions and abide by its commitments; however, India's tariff increases had nevertheless continued. The US stated that its patience with India in this regard was running thin and noted with interest the request for consultations filed recently by the EU. The US concluded by calling upon India to provide duty-free access for ICT and telecommunications equipment products, as India had committed to do.

12.4. The delegate of Japan recalled that his delegation had expressed its concerns on this issue at the CTG, the Market Access Committee, and the ITA Committee, as well as at bilateral meetings at

different levels, including at Minister level. Japan submitted that it was clear that India's measures were in violation of its tariff schedule. Therefore, Japan requested that India swiftly remove these measures, not only because of their commercial impact, but also because this issue had the potential to become very serious also from a systemic perspective.

12.5. The delegate of China recalled that her delegation had raised this issue several times at the CTG and in the relevant Committees. China noted that India had circulated document G/MA/TAR/RS/572, requesting rectifications of its 2007 schedule on certain ICT products, on 25 September 2018. China had registered its objection to India's proposed rectification pursuant to the 1980 procedures. China stated that the items concerned were mainly covered under ITA-1; as such, India's Schedule already included binding commitments to provide duty-free access on ICT products. China reiterated its position that India's measures, especially the increase in applied rates on mobile phones and accessories, were inconsistent with its commitments undertaken under the ITA, and set out in its WTO Schedule, and that they had severely impaired China's trade interests. China urged India promptly to withdraw the applied tax duty on the products concerned. Finally, China stated that it would closely follow any developments in relation to the consultations requested by the EU.

12.6. The delegate of Norway reiterated that Norway still had commercial and systemic concerns regarding this issue. Norway took note of recent developments with the EU and would follow this item closely.

12.7. The delegate of Chinese Taipei shared the concerns raised by other Members. Chinese Taipei noted that, since 2014, India had raised tariffs on at least 33 ICT products through its Union Budget and the publication of other government notifications. These products were subject to HS Chapters 70, 84, 85, and 90. Chinese Taipei submitted that the tariffs raised had surpassed India's zero bound commitments and violated Article II:1(a) and (b) of GATT 1994 with regard to tariff binding obligations. Therefore, Chinese Taipei requested India to abide by its commitments by restoring the original tariff rates. Chinese Taipei noted the request for consultations on this issue and stated that it was also considering this option.

12.8. The delegate of Canada stated that Canada continued to have both systemic and commercial concerns over India's application of tariffs on ICT products in excess of its WTO bound commitments. He indicated that, as noted in Canada's objection letter provided to India on 20 December 2018, Canada did not accept India's attempt to address the situation via a rectifications and modification to its Schedule XII, as any such changes would alter the scope of India's tariff commitments with regard to these ICT products. Canada once again called upon India immediately to rescind its tariff increases and to refrain from pursuing any further tariff increases above its WTO commitments.

12.9. The delegate of Thailand shared the concerns of other Members and urged India to bring its tariffs into line with its WTO commitments.

12.10. The delegate of Singapore stated that Singapore remained concerned by India's continuing imposition of tariffs on ICT products covered by India's ITA commitments. Singapore indicated that it would continue to follow this issue very closely. Singapore also noted that bilateral meetings with officials in New Delhi were ongoing. Singapore expressed its hope that this issue would be swiftly resolved, with a minimal negative impact on trade.

12.11. The delegate of the Republic of Korea shared the concerns expressed by other Members and noted that this issue had been discussed already at previous CTG meetings, as well as in the relevant Committee meetings. Korea requested India immediately to restore duty-free access to the ICT products in question. At the same time, and considering the theme of procedural transparency, Korea encouraged India to share with Members sufficient information on the regulations in question.

12.12. The delegate of Switzerland also reiterated its serious concern over this issue. Since 2014, India had progressively increased its customs duties on ICT products. 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 tariff schedule of concessions. Switzerland, as an exporter of these products to India, indicated that its industry had been affected in consequence. India had made a notification to the Market Access Committee in September 2018 regarding 15 tariff positions for which India had wanted to change its bound level of duties to

unbound. Switzerland objected to the proposed rectification as the change seriously altered the balance of concessions among Members and thus could not be considered as a change of purely former character. Switzerland stated that it would closely follow the process of consultations that had been requested by the EU.

12.13. The delegate of New Zealand shared the concerns raised by other delegations, particularly with regard to the systemic importance of applied tariffs not exceeding bound commitments.

12.14. The delegate of Australia again expressed Australia's interest in this matter.

12.15. The delegate of India thanked previous speakers for their continued interest in India's raising of customs duties on certain telecommunications equipment and other products. On the duty imposed on certain products considered by some Members to be part of ITA-1, India had already made statements in this regard in various Committees and at the CTG, as well as in bilateral meetings with Members on the technicalities of the rectification sought by India. India reiterated that it 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 reiterated that it had the right to revisit any errors or mistakes committed in assigning bound tariffs while transposing India's HS schedule, and to place the necessary rectification request before the committee concerned. Accordingly, India had filed its rectification request to correct certain errors in its HS2007 Schedule, in accordance with "the Procedures for Modification and Rectification of Schedules of Tariff Concessions". India encouraged Members to go through its rectification request and, in case a Member had any other views on the technical aspects of these products or their classification, to discuss these with India directly.

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

12.17. The Council so agreed.

13 EUROPEAN UNION – QUALITY SCHEMES FOR AGRICULTURAL PRODUCTS AND FOODSTUFFS – THE REGISTRATION OF CERTAIN TERMS OF CHEESE AS GEOGRAPHICAL INDICATIONS – REQUEST FROM ARGENTINA, THE UNITED STATES AND URUGUAY

13.1. The Chairperson informed the Council that, in a communication dated 28 March 2019, the delegations of the United States and Uruguay, respectively, had requested the Secretariat to include this issue on the agenda.

13.2. The delegate of Uruguay regretted to have to raise this issue again at the CTG. Uruguay reiterated that it had begun producing Danbo cheese thanks to the very valuable technical cooperation that had been offered to Uruguay by Denmark in the 1960s. The Danish Government had itself been the main promoter and driving force behind the spread of the *savoir-faire* of how to produce this kind of cheese around the world, notably in Uruguay and Argentina, two WTO Members which, since then, had become the main producers of Danbo cheese outside the EU. Uruguay noted that the authorities in Denmark had changed their stance and had requested protection of the term in the EU, as a protected geographical indication, in 2012. Despite Uruguay's opposition and the opposition of other Members in the CTG and the TBT Committee, the EU had responded that this was an ongoing matter. Subsequently, on 19 October 2017, and without any prior notice, Uruguay had noted the publication of the implementing regulation 2017/1901, in which the term "Danbo" was set out as an EU geographical protected indication. Uruguay recalled that "Danbo" had its own Codex Standard, which set out its production and labelling requirements. Its standard, Codex Stan 264, had been adopted in 1966 and updated on a number of occasions with the participation and approval of the EU. The standard set out clearly that "Danbo" was a generic term that was used to refer to a kind of cheese that might be produced in different localities as long as it met the requirements of the standard. Uruguay recalled the importance of codex standards as the relevant international standards in this area, in keeping with Article 2.4 of the TBT Agreement, which was recognized by the panel in *European Communities – Trade Description of Sardines* (DS231). Uruguay expressed its systemic concern that a Member of the WTO as significant as the EU would choose not to give its consideration to this standard, thus harming the multilateral efforts under the Codex to harmonize rules in this area internationally. Uruguay stated that "Danbo" was a generic term;

therefore, it could not be appropriated as a geographical indicator or be the reason for any other limitation. He indicated that these limitations not only affected trade but also set up a dangerous precedent. Commercially, Uruguay expressed its concern, as an important producer and exporter of Danbo cheese, over the obstacle to trade to the EU that this measure represented. Uruguay expressed its disagreement over the EU's answers on this issue to the CTG and the TBT Committee, including the statement that this issue related to intellectual property and, as such, should not be addressed at the CTG. Uruguay reminded the EU that the norm that granted these rights was notified to the TBT Committee on 18 November 2013, as document G/TBT/N/EU/139, including elements relating to labelling. Therefore, Uruguay requested the EU to provide appropriate answers to Members and to reconsider the effects of its measure with a view to avoiding any unnecessary restrictions on trade.

13.3. The delegate of the United States reiterated the Unites States' concern over the EU's process of registration of common cheese names for which there were international standards as protected geographical indications (PGI). She recalled that the US had repeatedly raised its concerns regarding the registration of the name "Danbo" as a PGI, with a complete disregard for the international standard in Codex. The US reiterated its view that the consultation process had been unsatisfactory and had lacked sufficient transparency. The US stated that it had not yet received an explanation as to how the Commission had considered the existing Codex standard. In addition, the US expressed concern over many of the proposed amendments that the EU had made to the underlying regulation, and which had been notified to the TBT Committee in August 2018. The US stated that these amendments appeared to exacerbate rather than to alleviate its existing concerns. Shifting authority from the Commission to member States and providing member States with greater flexibilities and control over GI applications could have a negative impact on existing applications and on member States' fulfilment of their WTO commitments. The amendments would also sharply reduce the period for filing a reasoned basis in support of an opposition to register a GI. The US requested an update from the EU regarding the status of these proposed amendments. In addition, the US urged the EU to rescind the elements of the Proposed Amendments. Furthermore, with regard to the term "Havarti", the US submitted that the application under consideration for this term also lacked transparency. The US noted its understanding that the application of Havarti was coming up for review and vote, and once again asked the EU for a status update. The US – and other trading partners – registered its objection to the establishment of GI protection for Havarti during the 2014 opposition period, as well as in subsequent TBT Committee meetings and in meetings of this Council. The US said that, given that Havarti was a commonly used cheese name worldwide, the proposed action appeared to be a transparent effort to advantage EU cheesemakers. Any EU decision to move forward would raise serious questions about the views of Denmark and the EU Commission regarding the legal relevance of Codex and the integrity of the international trading system. The US encouraged Denmark to uphold its TBT obligations to follow international standards, withdraw the GI application, and find a different solution for protecting Havarti producers. With regard to the exchange at the previous CTG meeting, where the EU had indicated a preference to discuss this in a GI focused forum, the US disagreed and noted that this was a TBT matter. The EU had correctly notified its quality schemes regulations under the TBT Agreement precisely because there were TBT implications to them, such as the labelling elements and relevant international standards.

13.4. The delegate of Argentina requested that Argentina be included as a co-sponsor of this agenda item and reiterated that the registration of the term "Danbo", as a protected geographical indication in favour of Denmark, did not give due consideration to the Codex standards; Argentina also submitted that the process of consultations and registration had not been especially transparent. The term "Danbo" was a generic term, in accordance with the agreed international standards to which Members had earlier referred; therefore, it should not be possible to register "Danbo" as a geographical indication. Argentina also noted that there should not be any limitation to the use of the term in accordance with panel findings in *European Communities – Trade Description of Sardines* (DS231). The Codex Standard was a relevant international standard under Article 2.4 of the TBT Agreement, in accordance with the WTO. Therefore, the use of "Danbo" as a geographical indication showed that the EU had not used Codex Standard 264 as the basis for Regulation (EU) 2017/1901. Argentina urged the EU to review the measure.

13.5. The delegate of Australia stated that his delegation would welcome an update on the status of the application for Havarti as a geographical indication in the EU, noting the commercial interests of Australian producers in the ongoing use of this term.

13.6. The delegate of New Zealand reiterated that it remained concerned that the EU 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 preserves its generic nature". Such actions would negatively affect producers outside Denmark who had invested in Danbo production with the legitimate expectation that they could use the Codex standard. New Zealand submitted that these actions showed disregard for the integrity of the international standards setting system that promoted reliability and consistency in international trade rules, which New Zealand would have expected the EU to support. Additionally, New Zealand stated that any suggestion that the term "Havarti" should be registered only amplified its concerns by providing a further example of potential disregard for the integrity of the Codex standard.

13.7. The delegate of the European Union responded 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, was publicly available. The Commission had always said that the fact that a name had a specific Codex Alimentarius Standard, or that it was listed in Annex B to the Stresa Convention, did not imply that the said name had become generic. Generic status in the EU could be assessed with regard to the perception of consumers in the EU territory. With regard to the EU internal procedures on the assessment of the application for granting protection to the term "Havarti" as a Geographical Indication, the EU had informed Members that these had not yet been finalized. Regulation (EU)1151/2012 on geographical indications, as well as subsequent delegated and implementing regulations, were notified to the WTO under the TBT Agreement. She explained that this was because they contained provisions relevant for the purposes of the TBT Agreement (for instance, provisions relating to technical standards, definitions, and labelling issues). Nevertheless, even if intellectual property rights issues (in particular, elements relating to the substantive protection of geographical indications) were part of the notified measures, these were not relevant for TBT purposes. The EU stated that any issues strictly concerning intellectual property rights, such as the registration of names as geographical indications, should not be discussed under the TBT Committee or through TBT notification channels, but in the appropriate fora and, in particular, in the TRIPS Council.

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

13.9. The Council so agreed.

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

14.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of the European Union had requested the Secretariat to include this issue on the agenda.

14.2. The delegate of the European Union reiterated the EU's serious concerns over Egypt's procedure for compulsory registration of foreign companies. The EU noted that two Egyptian Ministerial Decrees (No. 991/2015 and No. 43/2016) were continuing to create unnecessary obstacles to trade despite numerous bilateral exchanges in the TBT Committee and the CTG. The EU expressed its great concern over Egypt's decision to extend the mandatory registration requirements to new product categories via Decree No. 44/2019 of 15 January 2019. The EU industry, in particular SMEs, continued to report serious difficulties with regard to the duplication of procedures and, in particular, long delays in the registration process. The process of registration was still not transparent. The EU urged Egypt to suspend the application of these measures and to review them in full consideration of the principles and obligations laid down under WTO law. In addition, the EU enquired whether or not the Egyptian authorities had considered the improvements to the implementation of the decrees suggested in previous exchanges. The discussed improvements had covered the following: setting a strict deadline for the decision on registration requests; creating a publicly accessible database of registered companies; providing an opportunity of appeal to companies in case of refused registration; and registering without further delay all the companies that had submitted their complete documentation and that were currently waiting for ministerial approval of their registration.

14.3. The delegate of Thailand registered Thailand's continued interest in this matter. Thailand recalled that it had raised this issue at the TBT Committee, and had also sent the names of the Thai

companies pending approval, as Egypt had requested it to do. Thailand stated that it would continue to monitor the situation closely, and to engage with Egypt and other concerned Members where necessary.

14.4. The delegate of Brazil shared the concerns raised under this item by other Members, particularly with regard to the delays in the registration process and the renewal of previous registrations. Brazil submitted that these delays remained a source of uncertainty in its bilateral trade dialogues. He said that the manufacturer registration system had severely affected many Brazilian exporters, especially in the fields of ceramics, tableware, food, and cosmetics. Brazil recalled that it had repeatedly tried to engage with the Egyptian authorities, both in Geneva and in Capital, to convey the message that the measures established by Decree No. 43/2016 not only represented unjustified hurdles to its bilateral trade but also failed to comply with Article 2.2 of the TBT Agreement. Brazil reported that its bilateral efforts had not yet yielded any results and urged Egypt to engage with Brazil in good faith in order to find concrete solutions to this problem.

14.5. The delegate of the Republic of Korea shared the concerns raised by previous speakers. In particular, Korea expressed its concern over the delay in the registration procedure under Decree No. 43/2016, under which several Korean companies (SMEs) were experiencing difficulties in exporting certain goods. Korea submitted that this was possibly inconsistent with WTO rules, such as Articles XI and X of the GATT as well as Article 1(b) of the Import Licensing Agreement. Korea urged Egypt actively to reconsider its trade restrictive policies and practices and to take measures, providing sufficient and transparent information, which were in line with the WTO's rules.

14.6. The delegate of the Russian Federation shared the concerns raised by other Members and underlined the lack of transparency in the adoption and introduction of these measures. The Russian Federation submitted that these measures had created additional and unnecessary obstacles to trade. The Russian Federation further stated that these measures were more trade restrictive in character than necessary in order to fulfil the legitimate objectives provided for in the TBT Agreement.

14.7. The delegate of Switzerland shared the concerns raised by other Members.

14.8. The delegate of Egypt referred Members to Egypt's interventions reported in the Minutes of previous meetings of the Council and TBT Committee meetings.[4] Egypt reiterated that Ministerial Decree No. 43/2016 had been adopted as a tool for market surveillance without any intention to place restrictions on foreign trade. He indicated that its argument in this regard was strongly supported by the continuous increase in Egypt's imports since the adoption of the decree. For example, Egypt's imports in 2018 had increased by more than 20% and had reached USD 80.4 billion, compared to USD 66.5 billion in 2017. Egypt also repeated that monitoring the Egyptian market through registration of credible suppliers was essential for the protection of consumers from counterfeit products, and that it would also be of great benefit to all credible suppliers interested in doing business on the Egyptian market. Since the adoption of this decree, the Egyptian authorities were doing their best to improve and accelerate the process of registration. He noted that Egypt understood there were delays in dealing with some cases due to human resources limitations, but that Egypt was also willing to deal with this issue in order to accelerate the process of registration. Egypt stated that it had taken note of the concerns raised and confirmed its readiness to engage constructively with interested delegations and to provide assistance with regard to any implementation obstacles that their companies may be facing in coordination with Egypt's authorities in Capital.

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

14.10. The Council so agreed.

[4] Document G/C/M/133, paragraphs 23.7-23.8, and document G/TBT/M/77, paragraph 3.187.

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

15.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of the Russian Federation had requested the Secretariat to include this item on the agenda.

15.2. The delegate of the Russian Federation said that, in 2013, Mongolia had established a quota regime on the importation of certain agricultural products, including wheat flour, wheat, milk, drinking water, and beef. According to Government Resolution No. 77, as of 2 March 2013, the responsible authority would determine the volumes of corresponding quotas each year. Importation outside of those quotas was prohibited. Resolution No. 77 also set out basic criteria for determining quota volumes. The responsible authority calculated such volumes on the basis of the estimated 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. In May 2018, Mongolia had introduced a quota on the import of wheat flour for the remainder of 2018. However, Russia submitted that this declaration had remained a mere statement because the Ministry of Food, Agriculture, and Light Industry of Mongolia had never actually allocated the quota volume among importers of wheat flour. As a result, importers could not import within the quota volume and a de facto import ban on wheat flour had therefore prevailed in 2018. In January 2019, Mongolia had announced the quota opening for wheat flour but then had not allocated that quota either. The Russian Federation stated that it considered that the general elimination of quantitative restrictions was one of the core disciplines of the GATT and the WTO legal systems, and that Mongolia's measures were inconsistent with its obligations under the WTO Agreements, in particular, Article XI of the GATT 1994 and Article 4.2 of the Agreement on Agriculture, as well as Mongolia's accession commitments under paragraph 20 of the Working Party Report. The Russian Federation urged Mongolia to bring its legislation and measures into compliance with the relevant WTO provisions.

15.3. The delegate of Canada reiterated Canada's systemic concerns over Mongolia's use of import prohibitions and quantitative restrictions. As a significant global exporter of wheat, Canada also had a commercial interest in the use of these measures that limited or restricted wheat imports. Canada encouraged Mongolia to reconsider this measure.

15.4. The delegate of Mongolia requested the Russian Federation to provide its questions in writing. Mongolia responded that it would provide an update to Members on recent developments of the issue and partial responses to the questions posed. Mongolia informed Members that, since the previous meeting of the CTG, internal consultations had been reinforced following the restructuring of the respective ministries at the end of 2018. Following the recommendations of the National Security Council for Food Security, and the decision by the Ministry of Food, Agriculture and Light Industry in January 2019 and the necessary procedures, on 8 April 2019, the quotas on imports of wheat flour had been allocated. Mongolia noted that the relevant bidding committee was in the process of formalizing the decision, which would be communicated to bidders and made publicly available. Mongolia informed Members that certain temporary measures had been taken with regard to strategically important food products for monitoring purposes. The Law on the Enrichment of Food Products was due to enter into force on 31 December 2019. The Law was adopted upon the recommendation of the WHO, which recommended to enrich food products with iron, zinc, vitamins B and D. To prepare for the implementation of this law, monitoring had been undertaken, including on the imports of certain food products, such as wheat flour. Mongolia stated that this monitoring through quota was only a temporary measure until the full implementation of the Enrichment Law itself. Mongolia concluded by stating its willingness to continue to engage bilaterally with the Russian Federation and other interested Members.

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

15.6. The Council so agreed.

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

16.1. The Chairperson informed the Council that, in communications dated 29 March 2019, the delegation of the United States had requested the Secretariat to include this issue on the agenda.

16.2. The representative of the United States said that they continued to have serious concerns over the disruption of market access for motor vehicles resulting from Viet Nam's Decree No. 116 and Circular No. 3. It was unclear whether revisions to the lot-by-lot testing requirements, as announced by the Prime Minister in October 2018, had yet been drafted by the Ministry of Transport, or when they would enter into effect. Therefore, the US renewed its request to Viet Nam to provide any available updates regarding the development of the new regulations, including a timeline and opportunities for consultations with stakeholders.

16.3. The representative of Thailand reiterated Thailand's concerns on the matter and indicated that they would continue to monitor the situation closely.

16.4. The representative of the Russian Federation shared the concerns raised by the United States and reminded Viet Nam that it was required to follow international best practices in adoption of conformity assessment procedures in order to maintain stable trade flows with key trade partners.

16.5. The representative of the European Union echoed the concerns voiced by other Members. The testing procedures and the request for a vehicle type approval certificate, imposed by the Decree, had created delays at customs, imposed additional costs on exporters, and harmed their competitiveness vis-à-vis locally-manufactured brands. The fall-off in car imports into Viet Nam since the implementation of the Decree in early 2018 demonstrated that the measure constituted a barrier to trade; at the same time, it did not bring any additional safety or other benefits to Vietnamese consumers. Conformity assessment procedures should avoid creating unnecessary obstacles to trade.

16.6. The EU reiterated that any implementing measure must be notified to the WTO while still in draft form, and that all stakeholders, including importers of foreign cars, should be included in consultations when developing further legislation. However, in this case, the notification requirements under the TBT Agreement, allowing sufficient time for comments, had not been fully respected. In consequence, the EU requested Viet Nam to suspend the application of the Decree and to reconsider the comments made by WTO Members in various fora.

16.7. The representative of Viet Nam repeated that the intention behind Decree No. 116 was to ensure human safety, to improve compliance, and to strengthen environmental protection, as well as to uphold consumers' rights on the basis of a healthy competition principle. In this spirit, the requirements of the new measure, notably the lot-by-lot inspection and the Vehicle Type Approval, were included for legitimate public policy purposes and were not discriminatory.

16.8. Many meetings and consultations had been held at the highest Government levels to consider importers' compliance difficulties, and to explain to them that it was simply a question of requiring more time to become fully acquainted with the new requirements and to adjust to them successfully. According to Viet Nam Customs' statistics, car imports had picked up in the second half of 2018 following lower than average year-on-year imports during the first half of the year. In the first quarter of 2019, car imports had shown a 48% growth, reaching a record 39,045 units, and surpassing the 26,369 units for the same period in 2017.

16.9. Finally, Viet Nam stood ready to engage constructively with any interested delegation and to provide any necessary support and assistance to trade partners' manufacturers or exporters.

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

16.11. The Council so agreed.

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

17.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of the United States had requested the Secretariat to include this issue on the agenda.

17.2. The representative of the United States reiterated US concerns over China's measures banning or severely limiting the import of scrap materials. On 18 July 2017, China had notified to the TBT Committee its notifications CHN 1211 and 1212, banning the import of scrap post-consumer plastics, mixed paper, and textiles; as well as setting new border inspection and identification rules for scrap materials that China qualified as 'waste'. China had implemented these measures on 31 December 2017.

17.3. 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 because they were technically infeasible and acted as a *de facto* ban on the import of many scrap materials.

17.4. 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.

17.5. These new measures had entered into force without any reasonable interval for industry and recyclers to make the 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.

17.6. While China had asserted that the solution to its import policies lay in affected countries adjusting their domestic recycling processes to meet China's import parameters, for a vast number of materials outlined in China's ban and import control standards, China had no mandatory commensurate domestic standard or ban 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 cause for concern.

17.7. China had persisted in its refusal to notify its new technical measures in a manner consistent with its obligations under the TBT Agreement. China 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.

17.8. 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.

17.9. Australia was concerned by the broad scope and lack of clarity around China's 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.

17.10. The representative of Canada aligned Canada with the concerns voiced by the US. While Canada did not dispute China's goal of limiting the harmful environmental impact resulting from contaminated waste material, it 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.

17.11. The representative of the Dominican Republic echoed the concerns voiced by the US. It was important for the transparency of the multilateral trading system that Members followed notification procedures in a timely manner, particularly when those measures could have a considerable impact on trade. Countries had the right to protect their environment, but they had also to respect the integrity of global standards and rules in doing so, especially with regard to non-discriminatory treatment between imported and domestic products.

17.12. The representative of the Republic of Korea shared the concerns expressed by previous speakers, and emphasized that China's measures should be implemented in a less trade-restrictive way. Korea looked forward to China sharing sufficient information on the relevant regulations and to cooperating on the implementation of its measures.

17.13. The representative of the European Union said that the European Union continued to wait for China's responses to its questions previously raised, and requested China to provide its responses as soon as possible. The EU looked forward to working with China and all WTO Members towards addressing the issue of trade in waste in the most environmentally and economically efficient way, and in full transparency.

17.14. The representative of New Zealand reiterated his authorities' view that all WTO Members had the right to regulate to protect their environments, and New Zealand welcomed China's objectives in relation to sustainable development. New Zealand had a domestic programme aimed at reducing the environmental impact of domestically produced solid waste through improved domestic treatment and processing of recyclable solid waste. New Zealand also supported and encouraged all WTO Members to develop programmes that would contribute to safeguarding the global environment and was happy to share its knowledge in that regard.

17.15. New Zealand continued to have a specific concern with regard to the inclusion of vanadium slag, a purposefully produced co-product with an end-use in the production of specific forms of steel, in China's catalogue of banned imports. China was the largest global producer of vanadium slag, and New Zealand queried how China provided equal treatment to all vanadium slag (domestic and imported) in accordance with Article 2 of the TBT Agreement. New Zealand questioned how an import ban on less than an annual 50,000 tonnes of vanadium slag from its country achieved China's environmental and health objectives when the ban did not apply to China's domestic production or processing; how China ensured that foreign products were treated no less favourably than domestic products; and how China ensured that the import ban on vanadium slag was not more trade restrictive than necessary to achieve its environmental and health protection objectives.

17.16. For the sake of the multilateral trading system, it was vital that all WTO Members adhered to the agreed TBT Committee procedures relating to the notification of new measures and to avoid a short comment time-frame and implementation period as had occurred in this case.

17.17. The representative of China said that solid waste had inherent pollutant attributes, which differentiated it from other goods. Huge quantities of solid wastes had been exported to China in past decades, and while enormous profits had been made from such exports, China had suffered a lot. For example, for a long time, more than 90% of annual global electronic wastes were exported to China. The processing of waste had caused serious land and water pollution, and in some villages, almost every family had a family member suffering from pollution-related cancer.

17.18. China was seeking a path towards modernization that would not have a negative impact on its environment and human health. According to the Basel Convention and other internationally recognized principles, every Member was obliged properly to handle and to dispose of its domestically-produced solid wastes. China hoped that exporting countries could also actively shoulder their international responsibilities in this regard.

17.19. China, in adjusting its relevant policies, had taken all factors into consideration, including its WTO obligations. It had notified its quantitative restrictions for the periods 2016-2018 and 2018-2020 under the Market Access Committee, for example, which included the updated Catalogue of Solid Wastes Prohibited from Import. It would also notify any other measures as required under the WTO Agreements. China indicated that the EU's questions would be conveyed to Capital.

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

17.21. The Council so agreed.

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

18.1. The Chairperson informed the Council that, in communications dated 28 March 2019, the delegations of Australia, Canada, the European Union, the Russian Federation, and the United States, respectively, had requested the Secretariat to include this issue on the agenda.

18.2. The representative of Australia said that the Australian Government's concerns over India's quantitative restrictions on imports of certain pulses were strengthening due to new measures that had been announced by India on 29 March 2019, which had restricted pulse imports into India for an additional year. Australia's co-sponsorship of the Canadian–US counter-notification (document G/AG/W/193) at the 26-27 February 2019 Committee on Agriculture meeting demonstrated Australia's broader concerns, particularly with regard to India's Market Price Support (MPS) measures for pulses. In August 2017, India had applied QRs on an annual basis of 150,000 tonnes for both Moong beans (green gram) and Urad beans (black gram), and 200,000 tonnes for Pigeon Peas. The QRs had been modified and expanded on 4 May 2018. On 25 April 2018, India had applied a three-month 100,000 tonnes QR on the importation of peas, back-dated to start on 1 April 2018. The QR had since been extended three times, for three months each, with no additional volume, with the last QR extension having ended on 31 March 2019.

18.3. On 29 March 2019, India had notified that the existing QRs on Moong, Urad, and Pigeon Peas would continue to apply for the current fiscal year commencing 1 April 2019. The QRs on peas would extend for another full year, starting on 1 April 2019, limiting imports of peas, including yellow, green, dun, and kaspa peas, to 150,000 tonnes during that period.

18.4. This counter-notification clearly demonstrated how India was providing market price support (MPS) well in excess of its *de minimis* limits for a range of pulses. This WTO-inconsistent MPS, combined with QRs and high tariffs, was having a detrimental impact on the global pulses trade and on consumers in developing and developed countries alike.

18.5. The Australian Government requested explanations from India regarding the following: (i) the WTO basis of the application of India's quantitative restrictions on pulses imports; (ii) how the measures could be understood to be 'temporary' since the QRs would restrict pulse imports for two years or more; (iii) whether the QRs for Moong, Urad, and Pigeon Peas would continue in future fiscal years, until removed; (iv) whether the QR for peas would stop on 31 March 2020, unless removed; and (v) why the announcement of the measures had not been accompanied by information on licensing procedures to ensure traders could access the quotas in question.

18.6. The Australian Government also sought explanations on the following: (i) what measures the Indian Government was taking to address the WTO-inconsistency of its domestic support for pulses, as clearly demonstrated in the counter-notification; and (ii) what measures India was taking to improve transparency in its agriculture notifications.

18.7. The representative of the Russian Federation expressed Russia's concern over India's policy on the import of yellow peas, and particularly the increase in import tariffs on yellow peas of up to 50%. Between April and December 2018, India had introduced a QR on the import of yellow peas (100,000 tonnes), from 1 April 2018 until 31 March 2019. In late March 2019, India had issued a notification establishing a new quota of 150,000 metric tonnes for the period from 1 April 2019 until 31 March 2020. In late September 2018, India had issued a notification stating that the import of dry peas classified under Exim Code 0713 10 00 would be restricted until 31 December 2018.

18.8. The Russian Federation believed that the extension of the QRs until March 2020 made them in effect an import prohibition, which India had been unable to justify in any of the WTO's bodies in either 2018 or 2019. Therefore, the Russian Federation requested India to bring its measures into conformity with the WTO rules, since QRs and import prohibitions could not be applied by WTO Members without proper justification.

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

18.10. Since August 2017, India had set annual import quotas for several types of pulses, for which India's WTO commitments had no allowance for a tariff-rate quota. Consequently, the product was effectively banned from entering India once annual import quotas had been met, as had happened in June 2018 when the 100,000 metric tonne (MT) quota limit for peas had been reached.

18.11. Indian imports of pulses classified under HS 0713 had fallen from USD 4.0 billion in 2016 to USD 1.1 billion in 2018, representing a 74% decrease in two years. In addition, on 29 March 2019, India's Ministry of Commerce and Industry had issued notifications restricting imports of Moong beans, peas, black gram lentils, and pigeon peas, in the Indian fiscal year 2019-2020. Although India had stated that such QRs were temporary, restrictions on some products had been in effect for over one-and-a-half years, and US authorities wanted to know when India planned to rescind these restrictions. The US Government also sought information from India on whether or not it planned to institute more quantitative restrictions on imports of agricultural products and, if so, for which products. In addition, the Government requested an explanation from India on its use of QRs on pulse imports, and on how its measures complied with India's WTO commitments.

18.12. The representative of the European Union expressed the EU's concern 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 was not convinced that the measures taken were in the long-term interests of pulses producers, including India's own producers. It called on India to respond to the repeated calls from Members for its engagement on the issue.

18.13. 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. India's amendment to its import policy on 29 March 2019 to re-establish a QR on dry peas for an extra full year resulted in a restriction of imports to a level that represented only 5% of India's imports of dry peas in 2017. Together with India's QRs on additional pulses, these measures were contrary to the elimination of QRs under the GATT and WTO. Canada was very concerned over India's lack of transparency and the imposition of these measures with no WTO justification. Therefore, Canada called upon India to comply with its WTO obligations and to repeal the QRs in question.

18.14. The representative of Ukraine echoed the concerns of previous speakers. It was important to get a clear understanding of the objectives of multiple increases in tariff rates, of QRs and import-limiting licensing arrangements that had been imposed by India. Ukraine called upon India to comply

with its transparency obligations and to bring its trade-distorting policies into conformity with WTO rules.

18.15. 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 had therefore informed these Committees, and the CTG, at that time.

18.16. 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. India was constantly reviewing the measures at issue, which were temporary in nature and which would be extended or removed in accordance with the domestic demand and supply situations.

18.17. Despite the additional quota restrictions on imports of peas during the financial year 2018-2019, imports had reached the level of 0.55 million metric tonnes between 1 April and 31 December 2018. A DGFT notification dated 29 March 2019 had announced new quotas for 2019-2020 and the procedure for quota allocation would be issued in the near future.

18.18. 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. India had already responded to additional issues that had been raised during the last meeting of the Committee on Agriculture and it would address any further query on the issue in the appropriate committee.

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

18.20. The Council so agreed.

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

19.1. The Chairperson informed the Council that, in communications dated 29 March 2019, the delegations of the European Union, Japan, and Chinese Taipei had requested the Secretariat to include this issue on the agenda.

19.2. The representative of the European Union thanked China for sharing with other Members, both bilaterally and in other contexts, an overview of its tariffs on MCOs following the transposition towards tariff heading 8542 under HS2017, as well as for sharing information on additional elements concerning the division of MCOs into different categories and the respective allocation of the different duty rates. However, the information provided had still not allayed the EU's concerns.

19.3. According to WTO Secretariat guidance regarding the new set of procedures for transposing Goods Schedules into HS2017 nomenclature, the concession elements of the new HS2017 tariff line had to reflect any differences from the HS2012 nomenclature and had to be broken down to a more detailed level so that the draft HS2017 file fully reflected the original concessions. Accordingly, China could have created additional national tariff lines to continue to apply a zero duty on those products that had previously been duty-free, and in this way it would have maintained the value of its concessions, in keeping with the spirit of the ITA Expansion.

19.4. The European Union encouraged China to rectify the situation as soon as possible, especially in light of the advanced stage of tariff reductions on the products in question. Alternatively, if China did not wish to modify its HS2017 classification right away, it would perhaps be willing instead to give a sign of its commitment to the ITA by accelerating the phasing in of tariff reductions on the relevant products.

19.5. The representative of Japan expressed his delegation's appreciation to China for their bilateral meetings, as well as for China's explanation of the HS classification of IGBT IPMs (semi-conductor products). Japan wished to continue its technical discussions with China following Capital's review of China's explanation. Japan was also closely monitoring China's commitment to abolishing customs

duties, in July 2021, on all relevant items in line with the staging commitments set out under the ITA-2.

19.6. The representative of Chinese Taipei said that Chinese Taipei was concerned by China's imposition of tariffs, as of 1 January 2017, on previously duty-free HS 2017 lines 85423119, 85423210, 85423310, and 85423910 (multi-component integrated circuits (MCOs) products). According to the General Council Decision of 7 December 2016, a Member's schedule of concessions and other commitments should remain unchanged after HS 2017 transposition. Therefore, Chinese Taipei called upon China immediately to eliminate its tariffs on the MCO products at issue.

19.7. The representative of the Republic of Korea said that Korea shared previous speakers' concerns, in particular regarding the tariff rates applied by China on imports of reclassified MCO products, which were incompatible with the ITA. Korea encouraged China to provide further information on the relevant measures.

19.8. 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 this Council, but also at the Market Access and ITA Committees. 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.

19.9. The representative of Switzerland said that her authorities shared the concerns expressed by previous speakers. 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.

19.10. 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. She stated that her delegation had already responded to similar questions and comments in previous meetings of the Council, as well as at the Market Access and ITA Committees. They had also conducted a number of bilateral consultations with interested Members and had clarified the technical reasons for China's approach. While Members were happy with those products with lower tariff rates, they were complaining of the higher tariff rates resulting from the transposition.

19.11. 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 under the ITA Expansion, all duties on MCO products would be eliminated by July 2021.

19.12. For technical reasons, China had used the fourth methodology set out in the WTO rules on HS2017 transposition. It had experienced practical difficulties in distinguishing the referenced MCO products and had not had any intention purposefully to raise any tariff rate, nor to delay the implementation of China's ITA tariff reduction commitments. From 1 July 2019, the tariff rates on MCO products would be further reduced, to 1.3%, 1.4%, and 3.3%, respectively. All tariffs on MCO products would be eliminated by July 2021, as scheduled.

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

19.14. The Council so agreed.

20 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

20.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of the United States had requested the Secretariat to include this item on the agenda. At the start of the currant meeting, Argentina had requested to be added as a co-sponsor.

20.2. 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. It would also be helpful if the EU could provide some transparency on the status of other applications to compare with the US applications.

20.3. The EU had recently issued draft revised regulations relating to traditional terms, yet they appeared to contain no changes that could explain or justify the egregious delays. The US sought clarification as to why the EU had not made any effort to include precise timelines or transparency in the revised draft regulations to ensure that such delays would not continue.

20.4. The US concerns regarding the revised measures related to the EU's efforts to restrict the ability of US producers to use common descriptive tools for the labelling and marketing of their products, such as restricting the use of the term "barrel aged" and certain bottle shapes to wines with geographical indications. Her delegation sought clarification on the status of the EU's written responses referred to by the EU at the previous Council meeting. The US would continue to call 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 until this outcome was reached.

20.5. The representative of Argentina reiterated Argentina's concerns over the unjustified delay on the part of the European Union for approving the registry of traditional terms "Reserva" and "Gran Reserva" for its use on the labelling of wines from Argentina sold on the EU market, even though Argentina had concluded most of the required registry steps for the approval of both terms in 2012. Argentina had been raising its concerns regarding Regulation Nos. 607/2009 and 479/2008 for more than ten years, in particular with regard to EU Regulation No. 607/2009, which had been repealed by EU Regulation No. 2019/33.

20.6. The EU had concluded a "wine sector reform" with the publication and entry into force of EU Regulation No. 2019/33 and the implementing Regulation No. 2019/34. Nevertheless, the processing of Argentina's registry requests remained delayed as the result of a current freeze in the European Commission. The reform, which was undertaken above all in relation to the internal workings of the Commission, did not justify the lack of treatment of pending requests from third countries. In addition, having concluded its reform, it was surprising that the EU had still not implemented the corresponding procedures for requests from third countries, in contrast to the treatment of requests from EU member States.

20.7. According to the meetings of the wine subgroup of the Committee for the Common Organization of Agricultural Markets, in January and March 2019, progress was being made on the requests from Hungary and Croatia for registering traditional terms, and these countries had been urged by the Commission to complete the registration process. Therefore, it was clear that the Commission considered certain cases to be urgent, to the detriment of others. Consequently, Argentina called upon the EU immediately to approve the traditional terms "Reserva" and "Gran Reserva". Argentina had also requested the inclusion of this item on the agenda of the next meeting of the EU College of Commissioners, as well as in the publication of the Regulatory Act in the EU Official Diary.

20.8. The representative of the European Union said that the EU had undertaken a revision of its legislation on wine, including on traditional terms, which they had notified to the TBT Committee in document G/TBT/N/EU/571. The revision had resulted in the adoption of Commission Implementing Regulation No. 2019/34, of 17 October 2018, which, among other elements, had established the rules regarding the procedures to be followed for the registration of traditional terms. The EU had replied to TBT comments received from the US, China, Australia, and Argentina on the relevant notification, and had also included clarifications regarding the definition of traditional terms. The pending applications were currently being processed and it was not yet possible to provide timelines.

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

20.10. The Council so agreed.

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

21.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of Japan had requested the Secretariat to include this issue on the agenda.

21.2. The representative of Japan reiterated Japan's concerns, including that the draft law included overly stringent export regulations that went beyond the scope of the international export management regime and were inconsistent with GATT Article 11 on quantitative restrictions. Japan welcomed China's explanation at the Council's previous meeting that the draft law was limited in scope and that China had no intention to misuse countermeasure provisions that related to national security purposes. Japan would continue to closely monitor the situation in light of the detailed regulations that the law brought into force and how they would be administered. Japan reiterated its concern that China's provisions on countermeasures constituted unilateral export control measures, not national security measures, and that, accordingly, they should be withdrawn.

21.3. Japan reiterated its request that China provide updates, in a transparent manner, detailing how it intended to reflect the comments that had been made on the draft law, as well as its plans for the draft law's review. It also requested to be provided with the implementation schedule of the law, including the schedule of the detailed enforcement regulations, that would ensure a sufficient grace period for the law's implementation.

21.4. The representative of the Republic of Korea reiterated Korea's concerns regarding China's draft new export control law, especially regarding Articles 1, 2, and 64 of the draft. According to Article 1, the purpose of the draft law extended to national security, development interests, and non-proliferation. However, the purpose lacked specificity, in particular with regard to development interests. Export restrictions imposed for national security reasons should, at a minimum, be taken in accordance with strict requirements.

21.5. The scope of the law's application, as described in Article 64, was uncertain and required concrete, detailed examples or lists of requirements necessary for its application. According to Article 64, the draft law would apply if the value of controlled items reached a certain proportion of foreign products, which could impose additional restrictive trade measures and was inappropriate in respect of other international laws. Korea would continue to monitor developments closely and urged China to abide by the relevant international rules and standards, including by WTO rules.

21.6. The representative of the European Union said that it had submitted the EU's written comments on China's draft law during the consultation period in July 2017 and it had been raising questions for a year since then. The EU recognized that, while the draft law could work to consolidate China's export control system, strategic export controls were nevertheless derived from international obligations and commitments. Certain provisions in China's draft law required further clarification as concerned their alignment to international security standards, and their conformity with multilateral WTO trade rules. The EU reiterated its previous request for an explanation of the reference in Article 1 to the development interests of the State, to the use of strategic export controls as retaliatory measures against discriminatory export control measures, as well as to the reference to the protection of important strategic rare materials. It also restated its concerns regarding the reference in Article 33 to the need to submit a technical description or testing report.

21.7. The EU requested further information from China, in particular concerning any changes that had been introduced to the draft law, as well as the timetable for its finalization.

21.8. The representative of China said that China had suffered a lot from other countries' export control measures, and that it would never use such measures to restrict normal trade. The purpose of the draft law was to consolidate various existing export control provisions into a single draft export control law. The draft law had been published on the internet during 2017 and 252 comments had been received from the public. Reasonable comments had already been incorporated or would be incorporated in the draft, and some others would be taken into account in the further supporting regulations and rules. The draft law was under legislative review by the State Council and currently there was no deadline on promulgation or implementation. The scope of the products and the measures covered in the draft law, as raised by other delegations, were much more moderate than those of other Members.

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

21.10. The Council so agreed.

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

22.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of China had requested the Secretariat to include this item on the agenda.

22.2. The representative of China reiterated its concern regarding 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.

22.3. China had significant concerns regarding the US invoking its national security exemption to introduce such a rule. Such a broad interpretation and arbitrary invocation of the national security exemption would disrupt the normal IT trade and supply chain all over the world. Following the closure of the comment period on 2 July 2018, China had requested an update on the proposal, including with regard to the comments received from both US domestic and foreign industries expressing objections to the proposed rule. 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.

22.4. China urged the US to ensure the compliance of FCC measures with WTO rules and to keep the commitments made by both countries at the G20 meeting in 2016, as followed: "consistent with WTO Agreements, commit that their respective generally-applicable information and communication technology [(ICT)] security-related measures in commercial sectors (1) should treat technology in a non-discriminatory manner; (2) are not to unnecessarily limit or prevent commercial sales opportunities for foreign suppliers of ICT products or services; (3) should be narrowly tailored, take into account international norms, be non-discriminatory, and not impose nationality based conditions or restrictions, on the purchases, sales, or use of ICT products by commercial enterprises unnecessarily".

22.5. The representative of the United States expressed the US confusion as to why China continued to raise this proposed rule, since it dealt exclusively with matters of national security. If implemented, the rule would prohibit the proceeds of the US Government's Universal Service Fund from being used to purchase equipment or services from companies that posed a national security risk to communications networks or the communications supply chain. The draft rule was explicitly addressed to national security threats. Such a rule fell squarely within the WTO exception for essential security interests. The WTO would not expect any Member to procure goods or services from a Member that it determined would pose a national security threat.

22.6. 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. In late 2018, the FCC had sought additional comments on how the proposed rule might interact with recently passed laws in the US. The FCC had continued to receive and accept *ex parte* comments—including by multiple Chinese firms.

22.7. The Notice of Proposed Rulemaking remained pending, and the FCC had not yet moved forward with the rule.

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

22.9. The Council so agreed.

23 EUROPEAN UNION – SAFEGUARD MEASURES ON INDICA RICE FROM CAMBODIA – REQUEST FROM CAMBODIA

23.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of Cambodia had requested the Secretariat to include this item on the agenda.

23.2. The representative of Cambodia said that Cambodia was concerned about the introduction of EU Regulation 2019/67, adopted on 16 January 2019. Under the EU's "Everything But Arms (EBA)" scheme, which granted LDCs duty-free and quota-free access for all products except arms and armaments, Cambodia's exports of Indica Rice had benefited from duty-free access to the EU market. However, EU Regulation 2019/67 withdrew "duty free" treatment for Indica rice and imposed a duty of 175 euros per tonne, which equalled the EU bound and applied tariff rates for Indica rice.

23.3. The EU was Cambodia's largest trading partner, accounting for 45% of Cambodian exports in 2018, and Cambodian authorities were concerned about the adverse impact on Cambodia's growth and development of EU Regulation 2019/67. The imposition of the import duty was the result of a domestic safeguard proceeding in the EU to withdraw tariff preferences for products under the EU's GSP programme, and the reason for this was an ostensible surge in imports of Indica Rice from Cambodia onto the EU market, which had allegedly caused injury to the EU's domestic industry.

23.4. However, the duty at issue did not meet the definition of a safeguard measure under the GATT 1994 and the Safeguards Agreement, and it also seemed to be inconsistent with the MFN obligation under the GATT 1994. Since the import duty on Indica Rice had not been applied to other similarly-situated LDCs, the EU was effectively placing Cambodia's rice exports at a competitive disadvantage compared to other rice exports that would continue to enjoy duty-free access under the EU's Generalized System of Preferences (GSP) scheme. This was at odds not only with the Enabling Clause requirement for non-discrimination in the granting of tariff preferences to developing and least developed countries, but also with the overall objectives of its GSP programme and the Enabling Clause to facilitate the integration of developing and least developed countries into international trade.

23.5. Contrary to the EU's policy, the imposition of this duty negatively affected Cambodia's efforts to graduate and to achieve the 2030 Sustainable Development Goals (SDGs). By eliminating their only source of income, the measure had had a severe impact upon the families of poor rice farmers who lived with debts to financial institutions as a result of loans to support farm production. Therefore, the Cambodian Government called upon the EU to withdraw the imposition of these import duties on Indica Rice from Cambodia.

23.6. His delegation wished to express their satisfaction with the excellent relations and long-lasting cooperation between Cambodia and the EU despite their concerns over this current issue.

23.7. The representative of Indonesia supported Cambodia's intervention. It was important to ensure that developing Members, especially least developed countries (LDCs), could develop their economies through integration into global trade. Any measures taken with regard to LDCs should take into account their challenges and particular needs, and in particular with regard to achieving the overall SDGs.

23.8. The representative of Thailand acknowledged the positive objectives of the EU's GSP and EBA schemes to promote sustainable development, good governance, and to contribute to poverty eradication through expanding exports from developing countries and LDCs. The EU needed to ensure that its stakeholders' economic interests were also safeguarded. Nevertheless, Thailand encouraged the EU to apply due care when implementing decisions relating to preferential treatment under the EBA scheme.

23.9. The representative of Myanmar said that the WTO Agreements, including the GATT Enabling Clause, contained indispensable provisions for preferential treatment to enable developing Members, especially LDCs, to overcome structural and capacity constraints and to integrate into global trade in a way that would support their sustainable and inclusive economic growth. Myanmar always supported the ongoing efforts by WTO Members to ensure that these objectives were achieved and

encouraged Members to take a constructive and pragmatic approach to maintaining preferential treatment in a non-discriminatory manner.

23.10. Accordingly, Myanmar would not accept any decision that was contrary to the overall objectives of preferential treatment. Instead, Myanmar called upon all Members to continue pursuing the current policies of encouraging LDCs to graduate and to achieve the 2030 SDGs.

23.11. The representative of China said that China commended the EU's efforts to reduce tariffs across a considerable range of LDC products under its EBA scheme. However, when measures were taken to withdraw such preferences, the fairness and potential negative impact on relevant LDCs should be clearly taken into account. In addition, there should be consistency in the application of WTO principles and rules. While the proposed tariff level did not exceed the EU's bound rate, the withdrawal of preferential tariff treatment would seriously hurt vulnerable LDCs.

23.12. For example, in Cambodia's case, Indica rice was its most important agricultural export and the withdrawal of the EBA preference treatment could disrupt its normal trade in this product. In addition, it would have a serious impact on the livelihood of a large number of small-scale rice farmers who relied on the export of Indica rice. Indica rice was a critical product that affected the national economy and livelihood of LDCs like Cambodia. For this reason, China hoped that the EU would reconsider its measure on Indica rice.

23.13. The representative of Lao People's Democratic Republic associated Lao PDR with the statement made by Cambodia. It also supported the ongoing efforts of WTO Members to ensure that LDCs, including Lao PDR, could successfully benefit from special and differential treatment in order to participate in international markets. LDCs required legal flexibility, including trade preferences, to benefit from trade liberalization and integration, to overcome structural and capacity constraints, and to carry out trade integration in ways that supported sustainable and inclusive economic growth.

23.14. Lao PDR appreciated Members' assistance in helping LDCs to overcome their challenges and to address their particular needs, to promote their trade and development, and to achieve the SDGs 2030 objectives.

23.15. The representative of the Philippines expressed his delegation's sympathy for Cambodia's situation. The Philippines supported the statements made by its Asian neighbours and hoped that a positive resolution to this issue would soon be found.

23.16. The representative of the European Union said that the EU had adopted the safeguard measure in question within the framework of its GSP, and that it should not be confused with WTO safeguards. The measure was not discriminatory and was compatible with WTO rules.

23.17. The EU was fully aware of the economic importance of rice exports for Cambodia. Cambodia had benefitted from the EBA scheme, the EU's special arrangement for LDCs under the GSP, which unilaterally granted duty-free quota-free access to LDCs for all products except arms, including rice.

23.18. The EU GSP had foreseen the possibility of using safeguards to address a situation where increased imports under the preferences system had caused financial difficulties to EU producers that would not have existed in the absence of those preferences. In such cases, safeguard measures could be adopted for a specific period. Accordingly, the EU's measure was temporary and would be progressively reduced over a three-year period.

23.19. There had been no breach of WTO rules and the EU considered that the matter should be addressed bilaterally between Capitals. Indeed, it had already been the subject of bilateral exchanges between the EU and Cambodia on several occasions during the investigation procedure.

23.20. The representative of Cambodia thanked Members for their comments and thanked the EU for its response. The EU provided duty-free access to Cambodia unilaterally, in accordance with the Enabling Clause, and Cambodia had concerns regarding the consistency of its measure with its obligations under the GATT 1994, especially with regard to footnote 3 of paragraph 2(a) of the Enabling Clause, which constituted WTO Law.

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

23.22. The Council so agreed.

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

24.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of China had requested the Secretariat to include this issue on the agenda.

24.2. The representative of China said that China had raised concerns regarding Australia's prohibition on Chinese equipment in relation to Australia's 5G rollout in previous Market Access Committee and Council meetings. Further to Australia's response, China had addressed follow-up questions to Australia and was looking forward to receiving Australia's further explanation and clarification in this regard.

24.3. During the Market Access Committee meeting that had been held in October 2018, Australia had "affirmed its commitment to transparency, in the WTO especially, and in our international dealings generally". However, from August 2018 until now, the Australian Government had provided neither clear nor sufficient evidence in fact or in law for the exclusion of the Chinese equipment vendors from Australia's 5G rollout.

24.4. China could not ascertain why Australia had implemented the measure. The Australian Government had not published any relevant official documents regarding the prohibition, nor notified it to the WTO. Neither the content nor the legal basis of the measure was transparent and only some indirect information could be found from the media and websites. China enquired whether Australia's decision, which had had a significant impact upon international trade, would be made publicly available and notified to the WTO, and if Australia would provide Members with the relevant documents relating to the decision.

24.5. China also wanted to know if Australia has excluded the 5G equipment of vendors from other WTO Members. It was also interested to learn on the basis of which conditions and standards Australia had distinguished between 5G equipment from vendors from China and vendors of like equipment from other Members.

24.6. Australia had stated that its Government's announcement on 23 August 2018 had been made on the basis of the Telecommunications Act 1997, as amended by Telecommunications and Other Legislation Amendment Act 2017, and had taken effect on 18 September 2018. It seemed that the decision on exclusion was made before its legal entry into force. China would like to know Australia's understanding of its transparency obligations under the WTO and common international law.

24.7. Australia had pointed out in its announcement of 23 August 2018 that, with 5G networks, "the distinction between the core and the edge will disappear over time [...] This shift introduces new challenges for carriers trying to maintain their customers' security." China wanted to know if it was Australia's position, as stated in its news release, that "the distinction between the core and the edge will disappear over time", consistent with the technical characteristics of a 5G network as defined by 3GPP relevant standards. China suspected that Australia's practice violated various WTO Agreements.

24.8. Firstly, the measure was inconsistent with the MFN principle as set out in Article 1 and Article 11 of the GATT because it was discriminatory towards Chinese vendors and deprived them of market access to the Australian market. Secondly, Australia had failed to promptly publish the laws, regulations, or administrative rulings affecting the sales of imported products in such a manner as to enable governments and traders to become acquainted with them. It was inconsistent with Article 10 of the GATT. Thirdly, Australia's decision was not based on international standards. In China's view, as a next-generation communication technology, 5G was a global industry.

24.9. Cybersecurity was a global challenge for all countries and cybersecurity and 5G security solutions depended on internationally agreed standards and certification mechanisms and required international cooperation. Only through cooperation among equipment vendors, network service providers, and policy and law makers, could the challenges of global cybersecurity be properly addressed. The cybersecurity concerns could not be addressed by country-specific and discriminatory restrictive measures, which would not protect anyone but only disrupt global

industrial chains, isolating any country attempting to impose them from access to more advanced technology.

24.10. China believed that any restrictive measures on 5G cybersecurity should be implemented in a WTO-consistent manner; should be open and transparent; should be implemented in a manner that was least restrictive to trade while meeting the intended policy objectives; and should be implemented on the basis of international standards and in a non-discriminatory manner.

24.11. China urged Australia to comply with its WTO obligations.

24.12. The representative of Australia said that China's detailed set of written questions had been received by Capital on 10 April 2019. Australia was in the process of consulting internally and would respond to China in due course.

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

24.14. The Council so agreed.

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

25.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of the Russian Federation had requested the Secretariat to include this item on the agenda.

25.2. The representative of the Russian Federation said that in document G/TBT/N/EU/629 the EU had notified WTO Members of a new classification of titanium dioxide as a category 2 carcinogen and cobalt as a category 1b carcinogen for all routes of exposure, and as reprotoxic category 1b. The amendments had been raised multiple times in the TBT Committee since 2017.

25.3. The Russian Federation considered that the proposal, in particular regarding cobalt, could potentially disrupt trade in a wide variety of products containing even small amounts of cobalt, such as stainless steel. The regulation could potentially disrupt trade also in nickel and nickel goods, such as nickel concentrates or mattes.

25.4. The EU had not taken into account the full range of studies or the possible impact of the proposed classification. In particular, the carcinogenicity classification for the inhalation routes of exposure was based on the results of a two-year carcinogenicity study by inhalation on mice and rats. The proposed classification would be unacceptable even if studies of thousands of workers with the highest rate of exposure to cobalt had shown elevated cancer risks. However, there were no animal or human data to indicate any concerns regarding the oral ingestion of cobalt. The EU had not considered the lack of systemic tumours in human workers' data nor in patients with co-containing alloy implants. Best international practice in the classification of chemicals stipulated that classification decisions should be based on risk rather than hazard.

25.5. The Russian Government was deeply concerned that the Commission had decided to rush through this classification proposal covering all possible means of exposure while lacking solid positive systemic carcinogenicity animal data and having thousands of human datapoints showing an absence of cancer. The only situation to justify such a course of action would be if there were reasonable grounds to suspect a serious and immediate threat to public health, which was not the case. There were no reasonable grounds for foregoing scientific research that would allow for sound decision-making based on hard data rather than pushing for a pre-emptive classification without data.

25.6. The classification of cobalt metal as a reprotoxic category 1b was considered to be precautionary and was not based on solid evidence. There were no definitive first-generation, second generation, or extended first-generation studies on cobalt metal that demonstrated the reproductive effects of cobalt or that supported the proposed classification.

25.7. In accordance with the Decision of the General Court of 7 March 2019, "Kingdom of Sweden vs European Commission", the Commission was obliged to verify completeness, coherence, and

pertinence when it adopted the scientific or technical advice of a European Chemical Agency Committee. As there were clear gaps in the current case, the Commission should have addressed questions to the Committee so as to remedy these.

25.8. The Russian Federation questioned the EU's lack of consideration of the WTO notification procedure since the Commission had organized a vote on the regulation only four days after the period for comments had closed. It was Russia's understanding that the European Commission had gone ahead without any meaningful consideration of the many comments received from WTO Members. Hence, Russia called on the EU to undertake a thorough review of the comments received. In Russia's view, the measure could be considered as lacking consistency with regard to several articles in the TBT Agreement, namely: Article 2.2, because the measure would be more trade-restrictive than necessary; Article 2.4, because the methodology was not based on international practices and recommendations; and Article 2.9.2, because no adaptation period had been provided.

25.9. The Russian Federation requested that the European Commission refrain from the adoption of amendments to the current CLP Regulation on cobalt metal until further studies had clarified the classification needs. His authorities sought confirmation from the EU that the proposed classification was based on scientific data and the results of comprehensive studies. They also sought clarification as to whether or not the proposed amendments had taken into consideration international practices, recommendations, and studies, and especially the study of the international agency for research on cancer under the auspices of the World Health Organization. His Capital also enquired whether the European Commission had conducted a socio-economic assessment of the decision to add cobalt to the list of hazardous substances; and what were the grounds for attributing cobalt as a hazardous substance for all routes of exposure.

25.10. The representative of the United States thanked the Russian Federation for raising this item on the agenda. The US was also concerned regarding the process whereby the EU had harmonized substance classifications via the CLP regulation (Classification, Labelling, and Packaging of Chemical Substances and Mixtures).

25.11. The US had concerns regarding the proposed update to the CLP, which had been notified to the TBT Committee in December 2018, and which would update the classifications of a number of substances, including titanium dioxide and cobalt, and could have an impact of billions of dollars in US–EU trade.

25.12. The US had previously raised its concerns at the TBT Committee, as well as with written comments on the transparency of the process, the use of international standards, and the scientific basis of many of the chemical classifications. They had also raised questions regarding the EU observance of its TBT obligations. The US had also raised questions about the timing of the EU's WTO notifications and called upon the EU to notify in a more frequent and timely manner. The US had requested that the EU list which products and articles, in addition to chemicals, would be impacted by its TBT notifications. Their current CLP notifications only listed chemicals, although the EU already knew many of the products that would be impacted. For example, the titanium dioxide classification could result in the reformulation or labelling of a number of products, including paint, toys, cosmetics, and plastics.

25.13. The US written submission also included comments specific to titanium dioxide and cobalt. For both substances, the EU was proposing harmonized carcinogen classifications that would impact upon a wide range of products, despite having scientific evidence and the means via the CLP regulation to make more targeted classifications with regard to specific forms or uses of the substances. For example, in the case of cobalt, the EU, by its own admission, in the text of the notified draft regulation, had noted that it had not yet completed its scientific assessment of cobalt in metal compounds. However, instead of issuing an exemption for metal compounds until an assessment could be completed, the European Commission was moving forward with a classification that would impact upon innumerable products that used metals, such as stainless steel.

25.14. For titanium dioxide, the US, in both the TBT Committee and in its written comments, had asked the Commission to clarify how the titanium dioxide draft classification aligned with the international standard for the labelling and classification of chemicals, the UN Globally Harmonized System (GHS). The US understood that votes on the proposals had been delayed in both February

and March of 2019, and would appreciate an update on the status for the potential harmonized classification of titanium dioxide and cobalt. They also requested an update on the status of a response to their written comments.

25.15. Given these concerns, the US called upon the EU to postpone a vote on the proposed classification and labelling proposals on the two substances until it could meaningfully consider the comments received as well as considering less trade-disruptive alternatives.

25.16. The representative of Canada said that Canada shared the concerns raised by Russia and the United States over the EU's proposed changes to its CLP Regulations. In particular, Canada was concerned about the potential impact on trade in products that contained cobalt and titanium dioxide and the process that the EU had followed to arrive at the proposed amendments to the CLP Regulations. Changing the classification of cobalt and titanium dioxide under those regulations could result in stricter requirements under other regulations, beyond simple labelling requirements, which could in turn have a significant impact on trade from Canada.

25.17. Cobalt was present in small amounts in nickel. Canada had exported USD 1.1 billion in various types of nickel to the EU in 2017, much of which had been used in the production of stainless steel. Canada requested the EU to provide information on the next steps in its process to consider the proposed changes, including any relevant timelines. Canada also requested information on how products that contained cobalt and titanium dioxide would be treated under the entire EU regulatory framework as a result of the proposal. In particular, given the wide range of products that included stainless steel, such as medical devices and cooking implements, Canada sought an explanation of how the new regulation would affect those products.

25.18. The EU had not completed a scientific assessment of cobalt in metal compounds. Canada therefore called upon the EU to explain why they were proposing such an accelerated timeline for the decision. In that context, Canada suggested that the EU conduct a Better Regulation Impact Assessment in order to ascertain the full range of economic, health and safety impacts that might result from the proposal.

25.19. The representative of Mexico thanked the Russian Federation for putting this item on the agenda. Mexico shared the concerns of the US, Russia, and Canada, with regard to the lack of consideration by the EU of the results of international studies, and the overall process followed by the EU, which was characterized by a very short time between notifications, introduction, assessment, comments, and final decisions.

25.20. Mexico had previously expressed its concerns at the TBT Committee meeting of March 2019 with regard to the EU's proposal for harmonized regulations in terms of CLP for titanium dioxide through the CLP regulation of the European Union, as notified in document G/TBT/N/EU/629, dated 12 December 2018. The proposed classification of titanium dioxide as a possible category 2 carcinogen would have implications in various Mexican industrial sectors and could restrict international trade more than necessary.

25.21. Mexico reiterated its concerns, as set out in document G/TBT/W/619, with regard to any scientific justification for the contradiction between international standards. Mexico also called for an update of the status of the proposal within the EU. Lastly, Mexico also urged the EU to give due consideration to the observations made by all of its trading partners and Members of the WTO.

25.22. The representative of Australia said that Australia recognized the EU's right to regulate for public and occupational health and safety. It also recognized that appropriate classification and labelling for hazardous substances and mixtures could address legitimate public and occupational health concerns. However, Australia was concerned that the EU's proposed changes to its CLP Regulation could create unnecessary obstacles to international trade. There were alternative regulatory measures available to address the EU's concerns, including measures more directly to address the potential health hazards of substances, without unnecessarily affecting trade. Australia looked forward to working with the EU to address its concerns in the TBT Committee.

25.23. The representative of the Philippines thanked the Russian Federation for placing this issue on the agenda. The Philippines also had concerns over the regulation as it affected food and cosmetics and other industries in the Philippines that used titanium oxide. The Philippines was also

concerned regarding cobalt as the Philippines was a large producer of nickel. The issue had been discussed in the TBT Committee since 2017, and the Philippines called on the EU to reconsider the measure and suspend its implementation until a more in-depth study of the issue had been carried out, including science-based data. The Philippines had capacity constraints and was not in a position to comment on the changes to the regulation within the short time period given by the EU. The Philippines also looked forward to receiving a reply to its request for clarification addressed to the EU TBT enquiry point.

25.24. The representative of the European Union said that the classification of cobalt as a carcinogen for all routes of exposure had been based on the scientific opinion of the Risk Assessment Committee (RAC) of the European Chemicals Agency (ECHA). This had been in line with the CLP Regulation as well as the UN Globally Harmonized System of Classification and Labelling of Chemicals. The opinion and the background documents containing all the relevant scientific information on which the opinion had been based were available to all WTO Members and stakeholders on the website of the European Chemicals Agency.

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

25.26. The Council so agreed.

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

26.1. The Chairperson informed the Committee that, in a communication dated 29 March 2019, the delegation of China had requested the Secretariat to include this issue on the agenda.

26.2. The representative of China reiterated its concern regarding the refusal by the US Transportation Security Administration (TSA) of applications by Chinese enterprises for TSA certification. Their concerns had not been addressed and no convincing reply had been received to date. China believed that the US refusal was inconsistent with the relevant rules of the TBT Agreement, such as the conformity assessment procedures of central government agencies and transparency principles, which imposed unnecessary obstacles to trade.

26.3. China urged the US to follow the relevant provisions and principles of the WTO Agreements, treating Chinese companies and products in an equal manner, including granting national and MFN treatment in order to eliminate technical barriers to trade.

26.4. At the Council meeting in November 2018, the US had responded that the issue was one of security. China could not agree. It was clear that every Member had security issues, but these should not be used as trade barriers. Furthermore, China's aviation security equipment had been recognized worldwide and had been used by many other countries. The equipment had met the most stringent safety technical standards and requirements. Therefore, China believed that the security issue should not be used as a reason to restrict normal trade, and urged the US to give a positive response to Chinese applicants.

26.5. The representative of the United States reiterated the US responses given at the Council meeting in November 2018. The measures on aviation security equipment that China continued to raise in this Council dealt with matters of national security, and airplane security in particular. The Council had no mandate to attempt to discuss or solve matters specific to national security and airplane security and the US assumed that all Members would agree.

26.6. The United States once again referred China to the US TSA, which had competency over the relevant measures. The US urged China and other Members that had concerns to discuss these with the TSA and to refrain from placing measures on the agenda of the Council's meetings for which the Council had no mandate.

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

26.8. The Council so agreed.

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

27.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of the European Union had requested the Secretariat to include this issue on the agenda.

27.2. The representative of the European Union said that the EU and other WTO Members continued to be confronted with numerous measures that had been introduced by Russia with the apparent intention to disadvantage the market access of foreign products into the Russian market. This had raised significant questions with regard to the consistency of Russia's measures with the WTO rules.

27.3. The EU reiterated its concern with regard to the introduction by Russia in March 2016 of a GOST standard on cement certification. At the meeting of the Council in November 2018, Russia had indicated that the standard was being revised and that testing at the border would be eliminated. The EU called for an update on the situation. They also called upon Russia to modify the technical regulation and standard and to rely on proportionate, non-discriminatory requirements in future. They also called upon Russia and the other four Members of the Eurasian Economic Union not to replicate the discriminatory character of the measure in the Technical Regulation that was under preparation at the EAEU level.

27.4. The requirement of "good manufacturing practice" (GMP) certificates for pharmaceuticals had not yet been notified to the WTO and had a discriminatory dimension. Foreign pharmaceutical manufacturers were handicapped by long delays relating to the limited capacity for inspection and other inefficiencies. Moreover, 40% of foreign sites had their application for GMP certification rejected. Importing companies were clearly at a disadvantage. The EU requested a general revision of GMP certification schemes so as to remove any legal or factual discrimination against foreign products.

27.5. The EU also remained concerned about the SPS ban on fishery products, particularly affecting processed fish products from Estonia, which was not properly justified. At the Council meeting of November 2018, Russia had referred to the resumption of trade. However, the resumption concerned less than 5% of the establishments exporting processed fish products to Russia before June 2015. The EU requested a general lift of this unjustified ban.

27.6. Regarding the taxation regime on wine that had been established in 2018 and which was still in place, the EU welcomed Russia's proposed modifications, as submitted to the Duma, which would address the discriminatory element in the regime. The EU called for an update on the proposal and for information regarding when the new rules would enter into force.

27.7. The EU then turned to the issue of the increasing difficulty faced by importing companies (for goods) and foreign companies (for services) in participating in Russian SOEs' purchases. Recently, Law 44/2013-FZ on Government Procurement had been amended by Law 174-FZ of June 2018, apparently in a way that further limited national treatment of foreign products. The EU sought an explanation as to 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.

27.8. The EU then raised the issue of Russia's renewal, under Decree No. 194 of 27 February 2019, of the 2014 so-called temporary export ban on raw hides and skins, until June 2019. The EU sought an explanation from Russia in light of its statement at the November 2018 Council meeting that the ban would expire in December 2018 and that it would not be reintroduced. In the current circumstances, the ban could not be considered temporary.

27.9. The Russian Government had introduced temporary quantitative restrictions on the export of birch logs from January to June 2019. In view of the precedent with the four-year ban on exports of raw hides and skins, the EU would like to receive confirmation that the measure would not be extended beyond 30 June 2019.

27.10. The representative of the United States said that the United States shared the EU's concerns regarding Russia's "good manufacturing practice" certificates for pharmaceuticals.

27.11. The US recognized that Russia had made minimal improvements to the practice, but that the system overall continued to raise concerns. The discrepancy in approval numbers, the long delays due to limited capacity, and the inefficiencies caused by product-specific inspections all appeared to be yet more tools to discriminate against imports. The US requested Russia to revise its GMP certification regime in order to remove all discriminatory practices, whether created by law or in practice. The US also shared concerns over Russia's discriminatory excise tax regime on wine, which applied a lower excise tax to wines that carried a geographical indication, although only Russian wines could carry a geographical indication.

27.12. The US expected Russia to meet its obligations under the WTO fundamental principle of National Treatment and it looked forward to receiving updates from Russia regarding the measure, including on the date of its abolition.

27.13. The US had also raised concerns in this Council and at other WTO Committees about restrictions and obligations applied to Russia's SOEs purchasing decisions. The US was still reviewing amendments to Federal Law No. 44 but were very concerned that these were yet another example of Russia's rejection of the open trading system of the WTO in favour of the discredited policies of import substitution. The US would welcome any explanation that Russia could provide on this issue.

27.14. Regarding the ban on exports of raw hides, the US had been interested in Russia's explanation of how a measure that had been in place since 2014 could be considered "temporary." They reiterated their concern that the ban was in fact yet another manifestation of Russia's increasing reliance on import-substitution policies and of its rejection of the core market-opening principles of the WTO.

27.15. Finally, the US echoed the EU's request for assurances from the Russian Federation that the so-called "temporary" ban on the export of birch logs would indeed be lifted on 30 June 2019, and that it would not follow the example of the so-called "temporary" ban on raw hides and skins.

27.16. The representative of Sri Lanka thanked the EU and other speakers for raising this issue. Sri Lanka had worked very closely with the Russian Federation's authorities, submitting various applications and data, as well as allowing inspection of Sri Lanka's fishery processing establishments, in order to gain market access in the product areas concerned. However, Sri Lanka had still not been able to break the market access impasse. Fisheries and fish processing were very important to the Sri Lankan economy. For this reason, Sri Lanka requested Russia to give an adequate hearing to their concerns and to help Sri Lanka to overcome these obstacles in the very near future.

27.17. The representative of Ukraine said that Ukraine shared the concerns raised by the EU, the US, and Sri Lanka. Ukraine reiterated its concerns regarding new transit restrictions that had been imposed by Russia and that had been raised by Ukraine at the February 2019 meeting of the Committee on Trade Facilitation.

27.18. Russia's Resolution No. 1716-83 of 29 December 2018 prohibited, *inter alia*, the importation into the Russian Federation of certain agricultural and industrial goods, if such goods had been in transit through the territory of Ukraine. The list of banned products included a wide range of goods, including beer, chocolates, wheat, wallpaper, machinery, and equipment. According to 2018 statistics, the volume of exports of the aforementioned products to Russia transiting via Ukraine was 11 times greater than Ukrainian exports to Russia of the same products. Therefore, the restrictions seemed primarily to target products originating in other WTO Members. Ukraine requested Russia fully to comply with its WTO commitments in order to ensure predictable trade conditions.

27.19. The representative of the Russian Federation said that, with regard to cement certification, the Russian Federation would like to reiterate its statements from the meeting of the Committee on Technical Barriers to Trade. The relevant amendments abolishing additional border inspections were being elaborated and discussed among the relevant Ministries and Agencies involved in the technical regulation. It was not possible at that time to provide a precise timeline for the outcome of those discussions. The Russian Federation would notify its decision to the WTO when it had been approved.

27.20. Regarding the EU's concerns on Russia's GMP certification of medicines, he reiterated the statement made by his delegation during the previous meeting of the Committee on Technical

Barriers to Trade. Russia insisted that the Russian GMP rules and procedures had been fully based on the relevant international standards and recommendations in that area.

27.21. With regard to Members' concerns over the lack of inspection capacity in the Russian Federation, he said that Russian inspection capacities had quadrupled in the period covering 2016 to 2018. It was currently the case that 85% of Russian inspectors were responsible for conducting inspections abroad. The inspectors regularly participated in experience-sharing activities with their foreign counterparts, and also participated in advanced training courses, including some that had been approved by the World Health Organization. From 2016 to 2018, a total of 2,110 applications for GMP certification had been received from foreign entities; of those applications, 1,452 inspections had been carried out, with the result that 1,007 foreign entities had been certified and 410 applications had been declined. In that context, he requested the EU to disclose the source and calculation methodology of the statistics it had provided on the number of applications from foreign entities that had been rejected.

27.22. Addressing the SPS ban on fish products from Estonia, Russia had informed Members during the previous meeting of the SPS Committee that the inspection would take place in late April 2019. It had taken some time to agree on new dates due to scheduling conflicts and other inspection commitments as well as budgetary issues. The Estonian authorities had agreed to the re-inspections to demonstrate that all of the relevant corrective measures had been taken and that the SPS requirements of the Eurasian Economic Union were now being fully met and implemented. The Russian Federation confirmed its readiness to settle the issue and to continue with the resumption of fishery exports.

27.23. With regard to wine taxation, the Ministry of Finance had prepared the amendments to the Tax Code of the Russian Federation, which had aligned excise rates for imported wines and wines produced in the territory of the Russian Federation, and which had abolished the definitions "the wine with the appellation of origin" and "the wine with geographical indication". The draft was currently being discussed by the responsible Ministries of the Russian Federation. WTO Members would be notified by his delegation once the relevant amendments had been approved.

27.24. With regard to the EU and US concerns in respect of export restrictions on raw hides and skins, Russia would like to emphasize that this measure had been introduced with the purpose of assuring state defence procurement needs.

27.25. Addressing the quantitative restrictions on exports of birch logs, the Russian Federation believed that, in exceptional cases, the WTO rules allowed Members to establish quantitative restrictions on exports. Imports of plywood materials into Russia were practically nil. Taking into account the lack of other sources of plywood raw materials in Russia, the Russian Federation considered that the measure was justified.

27.26. In any case, the concerns expressed by Members would be transmitted to Capital. He refrained from commenting on the issue raised by Ukraine regarding transit restrictions as this was an issue that remained under the consideration of the DSB.

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

27.28. The Council so agreed.

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

28.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of the Russian Federation had requested the Secretariat to include this item on the agenda.

28.2. The representative of the Russian Federation expressed concern over the discriminatory character of Croatia's policies against certain imported oil products from the Russian Federation.

28.3. Under Croatia's 2014 Regulation "On conditions for wholesale trading and trading with third countries applied to certain goods", the minimum volume of containers for trade in oil products

and biofuels had been fixed at 300 and 100 cubic meters, respectively. Such treatment was not being applied to imports from EU member States, states of the European Economic Area, plus the Republic of Turkey. The Regulation had been in effect since 2014, and despite the Russian Federation having systematically raised its concerns over it, the measure had not been withdrawn by Croatia and nor had it been brought into compliance with WTO rules.

28.4. As a result, the Russian oil industry was suffering heavy losses. In Russia's view, Croatia's trade regime was inconsistent with its obligations undertaken upon WTO accession, and GATT Articles I and III, in particular. The Russian Federation requested the delegations of Croatia and the European Union to provide the relevant information regarding the current situation in Croatia concerning abolishment of discriminative practices with regard to products originating in the Russian Federation.

28.5. The representative of the European Union confirmed that the revision process of the measure was ongoing and that the revised measure would be fully consistent with WTO rules. The EU would inform the Council once the revised measure was available.

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

28.7. The Council so agreed.

29 JAMAICA – REGULATIONS NOs. 145 AND 146 BANNING SINGLE-USE PLASTIC PRODUCTS – REQUEST FROM THE DOMINICAN REPUBLIC

29.1. The Chairperson informed the Council that, in a communication dated 22 March 2019, the delegation of the Dominican Republic had requested the Secretariat to include this item on the agenda.

29.2. The representative of the Dominican Republic said that Regulation Nos. 145 and 146, respectively, of 24 December 2018, which had been published in the Jamaican official journal supplement, under the authority of the Ministry of Industry and Trade, Agriculture, and Fisheries, had prohibited the importation of single-use plastic products.

29.3. This regulation was a cause for concern to the Dominican Republic because of its trade-restrictive impact. The Dominican Republic also questioned the consistency of the measure with regard to Jamaica's WTO commitments. The Jamaican measure provided discretional powers to the Ministry to provide authorizations to national manufactures of single-use plastic products, yet the exception was not available for imports of the same products, which was a violation of MFN treatment for plastic products.

29.4. Under the regulation, the exception was being provided only to domestic producers of the goods, which would be a violation of the MFN provisions under Article 3.4 of GATT 1994. The regulation could not be justified under Article XX of GATT 1994 either, because the restrictions were applied to the same products in certain circumstances, while those same products were considered safe in other circumstances. The measures were technical regulations because they provided compulsorily characteristics for plastic products to be marketed in Jamaica. For these reasons, the Dominican Republic had submitted its trade concern in the TBT Committee meeting that had taken place in March 2019.

29.5. The Dominican Republic was concerned over the consistency of the Jamaican measures with the non-discrimination obligation under Article 2.1 of the TBT Agreement. It was also concerned that the regulations would be trade-distorting and more restrictive than necessary, which would also make them inconsistent with Article 2.2 of the TBT Agreement. The Dominican Republic doubted that the restrictive measures were completely necessary, or that Jamaica did not have other measures or possibilities available to help it to meet its objectives in this area.

29.6. The Jamaican Government had not informed WTO Members of the measure in advance, had not asked for comments from Members, and had not notified the regulations to the Dominican Republic or to the WTO. Jamaica's regulations seemed to be in violation of the transparency provisions contained in the TBT Agreement and required clarification. He also called upon Jamaica to submit a notification to the WTO under the relevant agreement. The Dominican Republic requested

Jamaica to suspend implementation of the measure during consultations with interested Members in order to ensure that WTO rules were being respected by all Members. The Dominican Republic was fully prepared to continue to discuss this matter with Jamaica with a view to trying to resolve the issue and they looked forward to receiving a response to their concerns as raised in December 2018.

29.7. The representative of the United States said that the United States shared the concerns raised by the Dominican Republic. The US recognized the unique set of waste management challenges that island nations faced but believed that environmental objectives were best served through upholding national treatment obligations. If local capacity to recycle single-use plastics was unavailable and the goal of such prohibitions had been to prevent plastic leakage into the environment, then meeting that goal should be contingent upon the equal application of the relevant policies both to foreign and domestic products. Therefore, the United States encouraged Jamaica to revise the measures in a manner such that the same treatment would then be applied to both foreign and domestic plastic products.

29.8. The representative of Guatemala said that Guatemala also held systemic concerns with regard to Jamaica's measure. It called upon Members to meet the commitments that they had undertaken in the WTO framework.

29.9. The representative of Jamaica advised the Council that the observations raised by the Dominican Republic had been duly noted in Capital and that Jamaica would revert back to the Council on this issue at a later date.

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

29.11. The Council so agreed.

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

30.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of Malaysia had requested the Secretariat to include this item on the agenda. Colombia had requested to be added as a co-sponsor after the agenda had closed.

30.2. The representative of Malaysia said that Malaysia had concerns over Directive (EU) 2018/2001 of the European Parliament and of the Council, of 11 December 2018, on the promotion of the use of energy from renewable sources (or RED II), which had entered into force on 24 December 2018.

30.3. On 13 March 2019, in accordance with Articles 26(2) and 35 of the Directive, the European Commission had adopted a Delegated Act, , supplementing the Directive and setting out the criteria for certification of low indirect land use change (ILUC) risk biofuels, bioliquids, and biomass fuels, and for determining the high ILU risk feedstock for which a significant expansion of the production area into land with high carbon stock had been observed.

30.4. The Delegated Act had significant negative implications for the development of the oil palm industry globally, and lacked scientific data and reliable information to determine high and low indirect land use change risk biofuels and bioliquids, which resulted in disinformation and misleading interpretations of the production of palm oil worldwide. Malaysia believed that this created an arbitrary and unjustifiable discrimination and constituted a disguised restriction on the international trade in palm oil and palm oil products.

30.5. Malaysia considered that, contrary to the EU's assertion that the delegated resolution served to count the extent to which certain biofuels could be considered to meet the EU's renewable energy targets, the adopted delegated regulation was tantamount to a ban on biofuels and bioliquids produced from palm oil. Therefore, Malaysia urged the EU to provide equitable treatment across all oil crops' biofuels and bioliquids, in line with the WTO principle of non-discrimination between "like" products from different trading partners.

30.6. Malaysia considered that the methodology used for the calculation of the share of land expansion used in the delegated regulation was not a recognized international standard. Accordingly,

Malaysia requested the EU to provide scientific evidence and clarification with regard to the formula that it had used to determine the share of land expansion and the productivity factor, as well as the literature that had been used to determine the deforestation and wetlands land expansion for all oil crops.

30.7. Scientific evidence had proven that palm oil was the most productive of the annual oil-bearing crops. A single hectare of cultivated palm oil could supply between five to ten times more oil compared to rapeseed and soybean respectively. Malaysia reiterated that the use of biofuels as well as bioliquids from other oil crops would create a greater risk of deforestation and land-use changes.

30.8. Malaysia's bilateral engagement with the EU, which had resulted in an open exchange of views and information, had not led to a fair treatment for palm oil. The previous Renewable Energy Directive (RED I) had already required that biofuels and bioliquids be certified under voluntary schemes to demonstrate their compliance with the stipulated sustainability and greenhouse gas (GHG) emission-saving criteria. The additional criteria for certification of ILUC under RED II would create unnecessary obstacles to trade in biofuels and bioliquids with the EU. The Delegated Act of the RED II was more trade restrictive than necessary and more burdensome for producers of palm oil biofuels and bioliquids, including for Malaysian producers.

30.9. Malaysia emphasized that its palm oil was produced in a sustainable manner. Malaysian palm oil industry was committed to following sustainable practices and criteria, in accordance with the Malaysian Sustainable Palm Oil (MSPO) certification scheme, which would be implemented on a mandatory basis by 31 December 2019. Accordingly, Malaysia urged the EU to accept and recognize the MSPO certification scheme as one of the voluntary schemes under the "Directive for the Certification of Low Indirect Land Use Change Risk Biofuels and Bioliquids". Malaysia was open to further discussions with the EU on this matter.

30.10. Malaysia recognized the importance of protecting the environment and had put a policy framework in place that implemented sustainable practices and measures to ensure the protection of the environment. The policy framework included the reduction of greenhouse gas emissions, the prevention of pollution and environmental degradation, and the efficient management of resources and wastes.

30.11. Malaysia was also committed to maintaining at least 50% of its land under forest as pledged in the 1992 Rio Earth Summit and as reiterated at the following subsequent conferences: the United Nations Climate Change Conference; the fifteenth session of the Conference of the Parties (COP 15), Copenhagen, in 2009; and the twenty-first session of the Conference of the Parties (COP 21), in Paris, in 2015. Malaysia was proud that 55.3% of its land was currently under afforestation. Malaysia was also committed to protecting and conserving the country's rich biodiversity. It was serious in combating climate change. Under the Paris Agreement, Malaysia had made an ambitious Nationally Determined Commitment (NDC) to reduce the emissions intensity of its gross domestic product (GDP) by 45% by 2030 relative to its emissions intensity of GDP in 2005, and it was on track to meet its commitment. In that context, Malaysia requested the EU to take into consideration Malaysia's continuous efforts to mitigate climate change.

30.12. Malaysia remained fully committed to negotiating with the EU in a frank and constructive manner to ensure non-discriminatory treatment for palm products and to prevent an unnecessary barrier to access of palm products into the EU market. Malaysia looked forward to receiving a positive response from the EU.

30.13. The representative of Colombia appreciated the EU's intention to adopt a public policy to protect the environment through promoting the use of renewable energies. Nevertheless, Colombia shared Malaysia's concern that the measure should be applied in a non-discriminatory way, that it should not be more trade restrictive than necessary, and that it should not become an unnecessary obstacle or a disguised barrier to trade that affected the population and economic activities reliant on these agricultural activities.

30.14. According to the Directive 2018/2001 of the EU Parliament and Council, as from 2021, biofuels of the first generation could be computed as a renewable energy in the transport sector, up to a quota of 7%. Moreover, the EU Directive also established that the quota of renewable energy for biofuels of the first generation, which had a large ILUC potential, would be gradually reduced to

0% by 2030. Colombia considered that these provisions were incompatible with national treatment obligations, the MFN clause, and GATT Article III.

30.15. Likewise, Colombia was concerned over the EU Commission Delegated Act through which it had already established criteria to identify biofuels with high ILUC risk, as well as the criteria to certify low ILUC risk.

30.16. Colombia drew attention to the ILUC methodology that was being used in the current case as, in its view, it was not based on a sound or internationally recognized scientific basis to calculate the environmental impact of productive activities. Nor were there calculations for the expected reduction of greenhouse gases. Moreover, the Commission had not considered other methodologies, such as Life Cycle Assessment or Carbon Footprint, which had already been validated and proven internationally.

30.17. Concerning the classification of certain biofuels with high ILUC risk, the considerations were not technically appropriate since the deforestation associated with these products was not high in all of the producing countries, and, countries like Colombia had lands available to increase the arable land without deforesting.

30.18. Moreover, other products that led to greater deforestation according to the international studies were not considered to be high risk under the ILUC, such as soy and colza. Despite the fact that the Delegated Act established criteria to measure risks on a crop-by-crop basis, it also contained various references from which it could be inferred that in the future the production of palm oil would be excluded because of "exaggerated growing of the palm oil crops" but without specifying clear indicators as to how to make the process more efficient and equally applicable to other crops relating to the production of biofuels. Therefore, Colombia believed that the Dedicated Act and its implementation might even go against the objectives of the EU-RED, since oils, coming from other crops that created or required greater areas for volume production, might then be used in the production of biofuels.

30.19. The dedicated Act also pointed out that biofuels, bioliquids and biomass biofuels, could only be certified as having low risk if they met a series of criteria. This was of great concern, especially because of the definition used for small producers, which were identified as farmers that carry out agriculture activities independently using an area of less than two hectares and having a real estate title or land lease contracts. Colombia believed that this classification had no technical or scientific basis and that it did not follow the standards set out by the main international organizations. In this vein, Colombia pointed out that the classification of a small producer, a small farmer, changed from country to country, hence the certification set out in the new directive, could lead to unjustified costs for producers, particularly since the criteria did not meet any internationally recognized standard, and that the methodology used was not used globally.

30.20. Colombia believed that this was a *de facto* discriminatory and trade restrictive measure, particularly when it compared like products from different countries and like products of national and foreign origin. Colombia also pointed out that there existed an economic and technical substitution between different types of vegetable oils. In this vein, Colombia indicated that the Directive and the Delegate Act, established that a raw material could be high risk under ILUC when using indicators, criteria, and definition, which, *de facto*, were discriminatory for palm oil, but at the same time excluded other similar raw materials. In this regard, Colombia referred to the conclusion of the Panel report in *Brazil – Measures Affecting Imports of Retreaded Tyres* (DS332) concerning GATT Article XX(b) and the existence of risks not only for the environment in general but also the direct risks on human, animal, and plant health.

30.21. Colombia believed that the measures adopted by the EU did not stimulate the use of biofuels produced from palm oil sustainable crops and would have a disproportionately negative impact on Colombia as an environmentally responsible producer of this product. Colombia therefore requested the European Union to clarify how it reconciled this discriminatory treatment to palm-oil producing countries and its WTO national treatment obligations and MFN commitments.

30.22. Colombia, as had been recognized by the EU, had zero per cent deforestation associated with palm oil production, although its palm oil fuels still did not have access to the renewable energy market in the EU. Despite the fact that, globally speaking, palm oil met the criteria established in

the Delegated Act to be considered as a high-risk raw material for ILUC, there were significant regional differences concerning the impact of expansion of this product in deforestation processes. Indeed, some recent scientific evidence had shown, for example, that only three countries had significant deforestation related to palm oil production. For the rest of the producing palm oil regions, deforestation was under 10%. Colombia wished very much to hear the EU's response in this regard.[5]

30.23. The representative of Indonesia thanked Malaysia for putting the issue on the agenda. Indonesia continued to have serious concerns about the EU Amendment to its Directive 2009/28/EC. Indonesia had made previous statements on this issue, in documents G/TBT/W/651 and G/TBT/W/615. Time and again the EU had insisted that the issue was not covered under the TBT Agreement, even though the shape and features of the measures clearly indicated otherwise. The EU position, that the measure did not create a ban or otherwise single out any specific biofuels, did not mean that the measure could not be qualified under the TBT Agreement.

30.24. Moreover, the EU's ILUC criteria, which would be forced through by means of the Delegated Act of the RED II, were unilateral and scientifically flawed. The EU was basically attempting to justify the illegitimate objectives of the measures, including discrimination and market access limitation of palm oil-based biofuels. These regulations undermined, even ignored, Indonesia's ongoing efforts to meet the objectives of the Sustainable Development Goals 2030, through Indonesia's national commitment towards forest preservation, its sustainable palm oil production, and particularly its efforts towards poverty alleviation guaranteed by the Marrakesh Agreement, as well as the SDGs themselves.

30.25. Indonesia reiterated its strong opposition to RED II and its Delegated Act and urged the EU not to enact any delegated measures that were not constructive to trade and development, nor supportive of Members' efforts to achieve the ultimate objectives of the Sustainable Development Goals.

30.26. The representative of Thailand thanked Malaysia and Colombia for raising this issue. Thailand reiterated its interest in the matter and encouraged a treatment of palm oil that would be equitable with products from other oil crops. Thailand looked forward to receiving an update from the EU as well as further clarification with regard to all the other concerns that Members had raised over this issue.

30.27. The representative of Honduras shared the concerns of previous speakers. Palm oil was a very important industry for Honduras. It was an industry that created thousands of jobs on a permanent basis and also sustained a large number of small-scale farmers. Honduras carried out controlled production under its Tropical Forest Protection Act and there was a minimal, or marginal, impact on the environment. Honduras would appreciate receiving updated information from the EU in this regard.

30.28. The representative of Guatemala said that Guatemala also shared the same concerns as those that had been raised by previous speakers. The measure would have a negative impact on Guatemala's production of palm oil. While it did not restrict imports of oils, it would be prejudicial to palm oil in relation to other oils. Guatemala's Ambassador in Brussels had requested that a global discussion take place on the issue of palm oil.

30.29. The representative of Costa Rica joined other speakers in expressing concerns over the policy of promoting renewable energy sources in the EU. Costa Rica was following this issue very closely and hoped that the EU would take into account the impact that such a policy would have on the biofuels market and on the people whose livelihoods depended on it, especially in developing countries already investing in sustainable production practices.

30.30. The representative of the European Union said that the revision of the Renewable Energy Directive (RED) had been discussed at a number of bilateral meetings among experts and at higher level. The EU was aware of the positions expressed on the recast Directive and on the identification of biofuels at "high risk" of contributing to Indirect Land Use Change (ILUC). The purpose of the Directive was not to introduce import restrictions, but rather to promote sustainable renewable energies and to reduce the carbon footprint of the transport sector. In particular, the Directive did

[5] See also Colombia's statement delivered in full at the CTG meeting of 23 and 26 March 2018, as recorded in document G/C/M/131, paragraphs 20.8-20.10.

not set a ban on any specific biofuel. It established rules for the calculations used to achieve the EU renewable energy targets, including in the transport sector. The EU market remained open to palm oil, in the biofuel sector as in other sectors. EU imports of palm oil had increased in volume in 2018, and no specific restriction was in place. The EU remained available for further discussions on this issue.

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

30.32. The Council so agreed.

31 TRINIDAD AND TOBAGO – ANNOUNCEMENT CONCERNING THE BAN ON THE MARKETING AND IMPORTATION OF POLYSTYRENE PLASTICS – REQUEST FROM THE DOMINICAN REPUBLIC

31.1. The Chairperson informed the Council that, in a communication dated 22 March 2019, the delegation of the Dominican Republic had requested the Secretariat to include this item on the agenda.

31.2. The delegate of the Dominican Republic stated that Trinidad and Tobago's Ministry of Planning and Development had announced, on 27 July 2018, an import and marketing ban on polystyrene plastic. The prohibition had included glasses and food containers, dishes, cups, and other utensils, which were to be eliminated by 2019. The Dominican Republic expressed its concern over the measure's restrictive nature on imports of polystyrene products. If the measure were to be adopted, it would be detrimental to the conditions of import competition, in contradiction to GATT Article III. The Dominican Republic further submitted that the measure would be a covert restriction on international trade, which could not be accepted under GATT Article XX. The Dominican Republic had expressed its concerns already in the March 2019 meeting of the TBT Committee. This measure had been described as a "technical regulation" under Article 11 of the TBT Agreement because plastic products should not be able to be produced using polystyrene for export. However, the measure was more restrictive than necessary, thus also contravening GATT Article II.2. It would also be contrary to GATT Article II.1, since it had a prejudicial effect on the imports of polystyrene products. Furthermore, the measure had not been notified to the TBT Committee, thus contravening the transparency provisions of the TBT Agreement. He requested Trinidad and Tobago to inform Members about the evolution of this legislation and to consider its WTO obligations before implementing the measure.

31.3. The representative of the United States expressed its concern over the proposed measure; before it was finalized, they wished to discuss the measure's objectives with Trinidad and Tobago in order to identify possible solutions that would not overly burden trade.

31.4. The representative of Honduras shared the previous systemic concerns and noted that Honduras would appreciate receiving additional information from Trinidad and Tobago in this regard.

31.5. The representative of Guatemala shared the concerns of other Members and requested Trinidad and Tobago to respect its WTO obligations.

31.6. The representative of Trinidad and Tobago informed Members that the legislation was not yet in force and that its details were being finalized, including with regard to the scope of the ban. Trinidad and Tobago intended to notify the WTO of the proposed measure once its details had been finalized, and would do so via both its official TBT Contact Point and this Council. Its notification would also include the measure's proposed date of entry into force. Trinidad and Tobago intended to provide its trading partners with all the relevant information once the measure had been finalized.

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

31.8. The Council so agreed.

32 BETTER FUNCTIONING OF THE COUNCIL FOR TRADE IN GOODS AND SUBSIDIARY COMMITTEES – STATEMENT BY HONG KONG, CHINA

32.1. The Chairperson informed the Council that, in a communication dated 29 March 2019, the delegation of Hong Kong, China had requested the Secretariat to include this issue on the agenda and recalled that, at the November 2018 meeting, he had invited delegations to reflect on how best to improve the work of the Goods Council, and how to make its work more efficient, in particular with regard to specific trade concerns (STCs). To this end, at an informal meeting of the Council that had taken place on 4 March 2019, Members had presented various suggestions and identified various areas where the Council's work and the work of its subsidiary bodies could be improved. Among the issues mentioned by delegations had been the following: (i) insufficient preparation when a trade concern was brought to the CTG or other bodies for the first time; (ii) differing expectations from Members as to how trade concerns would be considered, including the different practices across different WTO bodies; (iii) a systematic lack of substantive responses to questions posed at meetings; and (iv) the repetition of statements at CTG meetings and across Committees. Members also mentioned some ideas to remedy these issues, including the following: (i) developing a set of rules, by identifying the good practices of other WTO bodies, which would encourage meaningful dialogue between Members and that could be applied through different bodies; (ii) creating an integrated management system to keep track of trade concerns across different bodies; (iii) encouraging Members to consult bilaterally with one another in order to make better use of the time available between meetings to resolve their STCs; (iv) focusing only on developments since the previous meeting when turning to recurring trade concerns, rather than always repeating the same statements on the same issues; and (v) providing a role for the Chair to assist in resolving trade concerns. In addition, some Members identified the relationship and coordination between the CTG and its subsidiary bodies as another area where there was need for improvement. In this regard, two ideas were proposed, as followed: (i) to promote regular meetings between the CTG Chair and the Officers of the CTG's subsidiary bodies in order to maximize opportunities to work together more efficiently; and (ii) to address all issues first and foremost in the relevant Committees, and not at the CTG.

32.2. The representative of Hong Kong, China, said that her delegation considered it important not only to have the CTG and its subsidiary Committees functioning well individually, but also to establish a framework for the Council and its subsidiary bodies to work together in an effective, coherent, and results-oriented manner. This was pertinent to ensuring the WTO's continued relevance in a fast-evolving trading environment. There was no perfect organization, but good organizations continually reviewed the ways in which they operated and coordinated with relevant parties. Hong Kong, China, appreciated the Chair's foresight in initiating a timely discussion and mentioned that the ideas raised by Members could make a big difference to the effectiveness of the WTO and to better preparing the Organization for reform. Hong Kong, China stated that, although informal discussions were useful, in addition, in this Member-driven process, it was time for Members to express their interest in this issue and to take ownership of it by placing it clearly on the agenda. She noted that the agenda item included by her delegation did not include a proposal because this was not a matter only for Hong Kong, China but for all Members. Hong Kong, China expressed its hope that Members could work together to develop the ideas initially set out in the CTG's informal meeting of 4 March, or else to explore new ideas.

32.3. The representative of Costa Rica stated that her delegation would be happy to work with other interested Members on improving the work of this Council and its subsidiary bodies. She stated that Costa Rica would keep a close watch on developments in this discussion.

32.4. The representative of China said that her delegation saw the value of Hong Kong, China's room document and the importance of improving the overall functioning and efficiency of the CTG and its subsidiary Committees.

32.5. The representative of Singapore said that her delegation was supportive of this work and would continue to participate in it. She recalled that Singapore had been working on a discussion paper identifying good practices in the TBT Committee. In this regard, she expressed Singapore's hope that the paper would spark discussions on how some of the tools developed for the TBT Committee could also be useful to facilitate the work of other WTO Committees under the CTG. Singapore noted that it had started to reach out to delegations bilaterally and was available to interested delegations to discuss this matter further.

32.6. The representative of the Republic of Korea stated that it was also ready to participate actively in these discussions. He noted that critics were questioning the relevance of the multilateral trading system and that, against such a backdrop, it was essential to prove the WTO's concrete and ongoing progress through the active engagement of all its Members.

32.7. The representative of Argentina welcomed this initiative and indeed any idea that could improve the work of the CTG and its subsidiary bodies. Argentina noted that the communication had included suggestions on how the CTG's work could be improved. Argentina supported the suggestion that the Secretariat circulate reminders of the dates of the CTG's meetings, with a deadline for inclusion of items on the agenda, as indeed was done already in certain of the CTG's subsidiary bodies.

32.8. The representative of Guatemala stated that her delegation also supported improving the work of the CTG and its subsidiary bodies. Guatemala emphasized that Members should first determine the details of a proposal in order to facilitate a real discussion of the issues raised.

32.9. The representative of the United States found that the contents of the document provided by Hong Kong, China were basic common sense and stood ready to continue the conversation with interested Members. The United States emphasized that any proposals on how to reform and improve the WTO Committees, including this Council, must be Member-proposed and driven.

32.10. The representative of Switzerland also found that the ideas contained in the document made common sense. He noted his delegation's interest in continuing the discussions, and also that the meeting's agenda was once again very long, containing 35 items. Switzerland believed that this suggested a need for improvement; for example, among the 35 items on the agenda, 22 were trade concerns that had already been raised at previous CTG meetings or in Committees. Switzerland submitted that this proliferation of concerns could be the result of two things: an environment of enhanced global trade tensions, which Switzerland believed to be the case; and also, beyond the CTG, the risk that certain trade concerns would escalate and become subject to dispute settlement, which was an area already under pressure. Thus, Switzerland stated that there was additional room for intermediary solutions between Committee work, CTG work, and the DSB, to support Members in finding mutually agreeable solutions to their trade concerns so that these did not remain forever at the CTG in an "in between" zone. One possible track to explore would be the development of a mediation framework, which could be at once pragmatic, efficient, and accessible, to complement existing WTO tools, with a view to resolving trade concerns more efficiently.

32.11. The representative of Canada also supported dialogue in this area. He noted that there was room for improvement and that looking at ways to improve the functioning of the CTG and its Committees was not something done often enough. Canada agreed with Guatemala that Members should take time before the CTG's next meeting to go further into these conversations in informal mode. Canada encouraged engagement from all Members and noted that Members received back from the WTO what they put into it. Canada highlighted the usefulness of policy and experience-sharing discussions. For example, the SPS Committee had agreed on a catalogue of instruments to be available to Members to assist them in resolving their SPS issues. This catalogue had been developed from discussions of resources already available to officials working on particular SPS-related tasks or issues.

32.12. The representative of New Zealand supported Members' continued efforts to work together constructively to achieve continuing and concrete improvements to the functioning of the CTG and its subsidiary bodies.

32.13. The representative of Paraguay agreed that this was a useful debate but cautioned that any process adopted in this regard should not limit the ability of Members to tackle their specific trade problems and concerns.

32.14. The representative of the European Union appreciated this initiative to improve the functioning of the CTG. She agreed that the current meeting's long agenda illustrated once again that Members put a lot of effort into raising trade concerns even if progress in resolving them was often slow. At the Chair's consultations in early March, the EU had shared its ideas on how better to equip the CTG, as well as other Councils and Committees, to deal with their trade concerns in the context of an overall reflection on how to strengthen regular WTO work. The EU believed that

developing a set of horizontal procedural guidelines would help to better equip Councils and Committees to support Members in their efforts to resolve their trade concerns. The EU submitted that ideas to be considered included the following: improved meeting arrangements, such as systematically informing partners in advance when raising a concern, circulating agendas earlier and with more information, and the swifter circulation of minutes; a requirement that Members respond also in writing to written questions; to record all relevant information on a trade concern in a Secretariat database, as was already current practice in the Ag-IMS database in the Committee on Agriculture; and encouraging Members to hold more bilateral consultations, and to give the Secretariat and the Chair greater opportunity to help Members to resolve their persistent trade concerns by organizing, upon request, a dedicated informal conversation in this regard, and by reporting back to Members on its outcome.

32.15. The representative of Mexico stated that his delegation was committed to improving the effectiveness of the work carried out at the WTO, and in particular in relation to the work of the CTG. He noted that the contributions that had been discussed under this item, and the ideas that had emerged during consultations, clearly indicated that there remained scope for this work to continue. Mexico also considered that informal consultations were useful in this regard.

32.16. The representative of Japan welcomed the initiative and shared the views expressed in the document.

32.17. The representative of Australia also supported this initiative. He recalled that valuable ideas were raised at the consultations already in March.

32.18. The representative of Colombia stated that her delegation considered Hong Kong, China's document to be constructive and that certain of its ideas could be positive for all Members. Colombia noted that it was willing to work further on this initiative since it would strengthen the multilateral trading system and could also contribute towards resolving Members' trade concerns.

32.19. The Chairperson stated that this had been a useful discussion in which delegations had expressed interesting ideas requiring further discussion, clarification, and elaboration. The Chairperson proposed that his successor continue this process in informal mode.

32.20. The Council so agreed.

33 WORK PROGRAMME ON ELECTRONIC COMMERCE

33.1. The Chairperson recalled that a Ministerial Decision had been 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, and in order to fulfil its mandate, the E-Commerce issue was a standalone agenda item. The Chairperson invited delegations to continue expressing their opinions and to make suggestions as to how to work on the preparation of the periodic review to be held in the General Council at its session of July 2019.

33.2. The representative of Chad, on behalf of the LDC Group, invited the four WTO bodies entrusted with the implementation of the WPEC to intensify their work, prior to the expiration of the Ministerial Decision on the WPEC by end-2019, by considering the benefits and costs of E-Commerce for LDCs. Indeed, the LDCs were very interested in exploring and benefitting from the opportunities presented by E-Commerce as these would be beneficial to companies, consumers, and the economy. However, the LDC Group had identified certain difficulties affecting LDCs in terms of the actual use of E-Commerce that should be borne in mind when setting up the Work Programme on E-Commerce. The issues highlighted by the LDCs that made it difficult for them to engage in and benefit from E-Commerce included the following: limited knowledge of the digital market and E-Commerce platforms; difficulties in creating an appropriate institutional and regulatory framework; absence of enterprise development mechanisms to encourage the creation and growth of E-Commerce-based businesses; difficulty in identifying and resolving the challenges and possible negative impact of

E-Commerce; lack of infrastructure and technology, with limited access to relevant information and technology equipment; limited use of credit cards that could be used for e-payments; logistics constraints when delivering goods; and consumer protection. To consider how best to address these challenges the LDC Group intended to hold a dedicated internal workshop on these issues.

33.3. The Chairperson encouraged delegations to continue their dialogue on this issue and proposed that the Council take note of the statement made.

33.4. The Council so agreed.

34 OTHER BUSINESS

34.1 Switzerland's modification of Schedule of Concessions LIX

34.1. The Chairperson recalled that Switzerland had indicated that, under agenda item "Other Business", it would make an announcement concerning the extension of the period for Members' withdrawal of substantially equivalent concessions under Article XXVIII:3, following its request to modify its Schedule of Concessions, Switzerland-Liechtenstein LIX, communicated on 4 April 2018, in document G/SECRET/40.

34.2. The representative of Switzerland informed Members that 4 April 2019 was the date on which had expired the first extension of the period during which substantially equivalent concessions could be withdrawn by those Members having submitted a claim of interest following the modification of the tariff concession for "meat not further prepared than seasoned". Switzerland had subsequently requested, in document G/L/1262/Add.1, dated 1 April 2019, for a further 12-month extension of such period. Considering the significant progress that had taken place under GATT Article XXVIII negotiations, Switzerland expressed its hope promptly to conclude this process.

34.3. The Chairperson encouraged delegations to continue their dialogue on this issue and proposed that the Council take note of the statement made.

34.4. The Council so agreed.

34.2 Date of the next meeting

34.5. The Chairperson informed delegations that the next meeting of the Council was scheduled to take place on Monday, 8 July, and Tuesday, 9 July 2019. The Agenda would close at 4:30 p.m. on Thursday, 27 June 2019.

34.6. Regarding closure of the agenda, he reminded delegations that, according to the Rules of Procedure, meetings of WTO bodies were convened by a meeting notice issued not less than ten calendar days prior to the date set for the meeting. Therefore, the agenda closed one 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).

35 ELECTION OF CHAIRPERSON OF THE COUNCIL FOR TRADE IN GOODS

35.1. The Chairperson recalled that the Chairman of the General Council had carried out consultations on a slate of names for Chairpersons to the different WTO standing bodies in accordance with the established Guidelines for the Appointment of Officers. These proposed nominations had been approved by the General Council at its last meeting. In line with the nominations, he proposed that the CTG elect Ambassador José Luis Cancela Gómez from Uruguay as Chairperson of the Council by acclamation.

35.2. The Council so agreed.

35.3. The meeting was closed.