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Council for Trade in Goods

MINUTES OF THE MEETING OF THE COUNCIL FOR TRADE IN GOODS 8 AND 9 JULY 2019

CHAIRPERSON: HE MR JOSE LUIS CANCELA (URUGUAY)

The meeting of the Council for Trade in Goods (CTG, or the Council) was convened by Airgram WTO/AIR/CTG/14; the proposed agenda for the meeting was circulated in document G/C/W/766. The meeting proceeded on the basis of the following agenda:

Before the Agenda had been adopted, the delegations of Argentina, Côte d'Ivoire, the Dominican Republic, and Nicaragua, requested to be added as co-sponsors of Agenda Item 8 (European Union – Implementation of Non-Tariff Barriers on Agricultural Products); the delegation of Argentina requested to be added as a co-sponsor of Agenda Item 13 (European Union – Quality Schemes for Agricultural Products and Foodstuffs); and the delegation of Colombia requested to be included as a co-sponsor of Agenda Item 30 (European Union – Amendments to the Directive 2009/28/EC, Renewable Energy Directive). The delegation of the Republic of Korea indicated that, under Agenda Item "Other Business", it intended to raise the issue of Japan's export control measures on materials essential for semiconductors and displays. 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 two RTAs had been notified to the CRTA, as followed:

- Free Trade Agreement between the Southern Common Market (MERCOSUR) and Israel (WT/REG398/N/1); and

- Revised Treaty of the Economic Community of West African States (ECOWAS) (WT/REG399/N/1).

1.2. The delegate of Nigeria stated that, since ECOWAS had been notified as a Free Trade Area in 2005 under the Enabling Clause, a number of developments had occurred. These developments furthered the region's objective of establishing an Economic Union of West Africa, in order to raise the living standards of its people, to maintain and enhance economic stability, to foster relations among member States, and to contribute to the progress and development of the African continent. In 2009, the region had adopted a Common External Tariff (CET) of five bands, namely 0%, 5%, 10%, 20% and 35%, which had entered into effect on 1 January 2015, thereby transforming ECOWAS from a Free Trade Area (FTA) into a Customs Union (CU). For transparency purposes and given the importance of the ECOWAS Authority of Heads of States and Government decision, Nigeria, in its capacity as ECOWAS Informal Group Coordinator, had notified the establishment of the Customs Union under Article XXIV of the GATT on behalf of ECOWAS member States. He indicated that the ECOWAS CU member States were mindful of the provisions of GATT Article XXIV:5(a), and of the need for some members to modify their WTO Tariff Schedule. Consequently, he informed the Council that arrangements were being concluded for parties to the ECOWAS Customs Union to commence renegotiations of tariff concessions pursuant to Article XXVIII of the GATT, as a group, and in line with the provisions of GATT Article XXIV:6. The purpose of these renegotiations was to

[1] See documents WT/REG/16, WT/L/671, and G/C/M/88.

align the ECOWAS CET with the WTO bound tariffs of certain ECOWAS member States that were currently in violation of their commitments as a result of the ECOWAS CET.

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

1.4. The Council so agreed.

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

2.1. The Chairperson informed Members that, in a communication dated 26 June 2019, the Russian Federation had requested the Secretariat to include this issue on the agenda. In a communication dated 27 June 2019, the delegations of Australia, Canada, China, New Zealand, and the United States had also requested to include this issue on the agenda.

2.2. The delegate of Australia remained concerned about the negative trade impact of the proposed modifications to the EU and UK's WTO tariff rate quotas. Both markets were important for Australia's agricultural exporters of beef, sheep meat, dairy, and sugar. Australia continued to be concerned about the uncertainty surrounding the future UK-EU trading relationship post-Brexit, and reiterated the need for clarity, including with assurances that any agreement would not breach UK-EU obligations to other Members or create disruptions in global agricultural markets. Australia recognized the legal rights of the EU and UK to modify their concessions on goods provided that compensatory concessions were granted to Members affected by such modifications. However, Australia could not accept the EU's assertion that no compensation was required because there had been no loss in the value of the concessions granted. Nevertheless, Australia welcomed the EU's commitment, undertaken at the Committee on Agriculture, to continue negotiations in an open and transparent manner under the terms of the GATT Article XXVIII process, and Australia looked forward to working with both the EU and UK to resolve its concerns in this regard.

2.3. The delegate of Chile shared Australia's systemic concerns on the issue of TRQ commitments under GATT Article XXVIII in the context of the UK's withdrawal from the EU, and Chile urged the EU to abide by its commitments and to find a satisfactory solution to these concerns.

2.4. The delegate of Canada continued to have significant concerns regarding the EU and UK's approach to apportioning the EU-28's TRQs, which Canada had conveyed to the EU in this Council and in other WTO Committees, as well as bilaterally. Canada noted the EU's willingness to engage with Members on these issues; indeed, Canada expected the EU to continue to make concrete efforts to address these longstanding concerns. Canada reminded the EU that an outcome on the current GATT Article XXVIII negotiations depended on further clarity regarding the future EU-UK trade and economic relationship. Given the reduction in market access to the EU, Canada believed that the EU must offer meaningful compensation as part of this process. Canada looked forward to continuing bilateral discussions on this issue.

2.5. The delegate of New Zealand noted that, after nearly two years, the concerns consistently expressed by New Zealand and others on this issue had remained unaddressed. As New Zealand had already made clear on previous occasions, among its important specific concerns were the following: (i) a significant loss of access into the EU market, including complete elimination of a small number of current quotas and a large-scale reduction in many more; (ii) the risk that much of what remained of the reduced MFN TRQ access would be absorbed by the significant level of bilateral EU-UK trade; and (iii) the loss of flexibility referred to above constraining the ability of both exporters and markets to respond appropriately to fluctuations in demand in the current uncertain environment. New Zealand again called upon the EU and the UK to use the time remaining under the Brexit extension to engage constructively with concerned Members to arrive at a mutually acceptable solution that did not leave partners at the WTO worse off relative to the EU's current bound access commitments. New Zealand stood ready to engage in further dialogue with the EU to achieve this objective.

2.6. The delegate of Uruguay reiterated the concerns that it had expressed previously both in the Council and in other WTO fora and emphasized the importance for the multilateral trading system

(MTS) that this matter be resolved through negotiation between the parties concerned, in accordance with the WTO rules, and respecting WTO market access commitments and the balance of concessions that had previously been agreed.

2.7. The delegate of Indonesia reiterated his delegation's concern over EU unwillingness to accept data provided by Indonesia on the EU TRQ on manioc. Indonesia urged the EU to resolve this matter and to accept the validated data that it received from WTO Members.

2.8. The delegate of the United States said that, as previously noted in this Council and other Committees, her delegation supported the UK establishing itself as an independent Member of the WTO. However, the United States rejected the EU-UK approach to TRQs because it was prejudicial to its WTO rights and trade interests; in particular, the US considered that it was an approach that would reduce market access opportunities for US exporters into both markets. Although the United States was engaging with the EU and the UK on an overall solution, progress to date had only been procedural. In the US view, prospects for a negotiated solution under GATT Article XXVIII were dim before a potential Brexit on 31 October 2019. The United States remained concerned about what would happen to the US TRQs into both markets beginning as early as 1 November 2019, the day after a potential Brexit. The United States understood that the default position on 1 November 2019 would be the original EU-UK proposal for apportioning EU TRQs, which the United States had repeatedly rejected. The United States believed that the current approach to the negotiations was unacceptable. Nevertheless, the US stood ready to engage with the EU and the UK in productive negotiations to ensure that its trade interests were maintained.

2.9. The delegate of Brazil shared the concerns of other Members about the way in which the EU was seeking to modify the TRQs in its Schedule. Brazil would continue to follow developments in the discussions on this topic and expected the EU to engage in negotiations and consultations so as to prevent exporting countries, like Brazil, from being worse off in terms of market access post-Brexit.

2.10. The delegate of the Russian Federation reiterated her delegation's deep concern over the EU's approach to TRQ negotiations in the context of Brexit. The Russian Federation believed that, while the Brexit process was complicated, complex, and broad in scope, within the WTO this process should be conducted in accordance with the Organization's rules. Within the framework of the EU's TRQ renegotiations, the reduction in market access opportunities for WTO Members, as well as the WTO norms provided for in Article XXVIII of the GATT, should not be disregarded or ignored. In her delegation's view, the TRQ splitting methodology proposed by the EU would decrease Members' current in-quota shares. It was an approach that would result in declining terms of trade and mounting market access barriers in respect of both agricultural and NAMA products. Indeed, the Russian Federation was convinced that it was an approach that was not WTO consistent without compensatory adjustments; in this regard, she noted that GATT Article XXVIII permitted Members to modify a concession, but also established an obligation to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided prior to any renegotiations. The Russian Federation urged the EU to provide its compensatory proposal.

2.11. The delegate of Costa Rica indicated that Costa Rica was aware of the importance of a strong and effective MTS, as well as of the need to maintain and foster predictability in trading relations between WTO Members. Costa Rica emphasized that the UK and the EU should ensure that the process carried out under GATT Article XXVIII would be transparent, inclusive, and not prejudice Members' guarantees established under the WTO Agreements; furthermore, they should ensure that any changes introduced were introduced in a way that would allow all Members effectively to assess their impact on international trade flows. On this topic, Costa Rica maintained, and would continue to maintain, a constructive dialogue with the EU and interested Members both bilaterally and in the framework of this Council and its subsidiary bodies.

2.12. The delegate of China shared the concerns and views expressed by previous speakers. While China was willing to work with the EU to modify its TRQ schedule, and with the UK to establish its own TRQ schedule, China could not accept the proposed apportionment approach by the EU and the UK, which China believed would lead to a significant loss of market access opportunity and flexibility in future EU and UK markets. Without wishing to repeat China's statements on this issue from previous CTG meetings, she nevertheless confirmed that China's views, concerns, and requests, as expressed in previous meetings, remained the same.

2.13. The delegate of Switzerland shared other Members' concerns over the legal uncertainty regarding access to EU and UK tariff quotas, specifically in the context of a hard Brexit. Switzerland also shared the view that the unbinding and reallocation of appropriate TRQ quantities to the EU27 and UK was highly relevant to many Members and therefore of systemic importance to the WTO. Switzerland hoped that the necessary processes would be completed as quickly as possible and with the consensus of all Members.

2.14. The delegate of the Republic of Korea joined previous speakers in expressing the systemic concerns of his delegation regarding the proposed modification of EU TRQ commitments. The uncertainty surrounding Brexit was giving rise to substantive concerns for bilateral and multilateral relations. Korea was keen for the negotiations between the EU and other WTO Members to continue because, in its view, any modification in this regard would bring about significant consequences for the WTO system.

2.15. The delegate of Japan highlighted the importance of 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 reiterated the importance of maintaining legal stability under the WTO Agreement, and of ensuring clarity concerning the EU and the UK's application of the MFN rates to Members in accordance with their bound schedules. In this regard, Japan again requested the EU to ensure a high level of transparency as concerned the procedures for this process.

2.16. The delegate of Mexico reiterated Mexico's systemic concerns already expressed in this Council, and in other fora, regarding the methodology used for the modification of TRQs following Brexit. Mexico believed that any methodology used must maintain the balance between the rights and obligations negotiated by Members.

2.17. The delegate of Chinese Taipei shared the concerns expressed by previous speakers, particularly regarding the uncertainty surrounding a possible disruption in trade. Chinese Taipei had registered its systematic concerns at previous CTG meetings and had highlighted that its trade interests should be maintained and not be less favourable than those enjoyed prior to this notification. In addition, Chinese Taipei hoped that this issue would be resolved in a transparent way.

2.18. The delegate of India echoed the concerns that had been raised by other Members. India appreciated the efforts made by the EU in providing the revised data for *erga omnes* TRQ re-allocation and consultations under GATT Article XXVIII. India had already expressed its concerns both in writing and during the formal consultations with the EU delegation and had made it clear to the EU that the present methodology and the threshold years taken into account for TRQ apportionment by the EU were affecting Members' rights relative to the obligation previously undertaken by the EU on those specific tariff lines. India expected the EU to conduct these negotiations in full compliance with the WTO's rules, and expected the EU to provide reasonable opportunities to all WTO Members, including India, to exercise their rights under the WTO Agreement. India looked forward to fruitful discussions with the EU and the UK on that basis.

2.19. The delegate of the European Union acknowledged Members' concerns about the current uncertainty surrounding the UK leaving the EU. The EU and the UK had engaged jointly as early as October 2017 with WTO Members on the approach envisaged for apportioning the bound WTO TRQs. As already stated by the EU on many occasions, the key principle was to maintain the existing level of market access between the EU27 and the UK. The EU was a supporter of the rules-based multilateral trading system, and it had followed all the relevant WTO procedures when launching its Article XXVIII negotiations and would continue to do so. The EU had engaged with relevant WTO partners on a regular basis even before launching the Article XXVIII procedure and would continue to do so in good faith as part of those procedures. She informed the Council that the negotiations under GATT Article XXVIII procedures were ongoing with those partners having recognized rights. The EU welcomed Members' engagement in these formal negotiations, bearing in mind that the formal negotiations had begun only recently. The EU reiterated its willingness to continue to engage in negotiations in an open and fair manner under GATT Article XXVIII regardless of the scenarios for the UK's withdrawal. On EU-UK access to each other's MFN TRQs, the EU had repeatedly stated its commitment to achieving an orderly withdrawal of the UK from the EU, including a comprehensive trade arrangement with the UK for the future. The EU continued to believe that continuing free trade between the UK and the EU was the best way to ensure access to each other's market without the need to use each other's WTO MFN TRQs in the future.

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

2.21. The Council so agreed.

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

3.1. The Chairperson informed Members that, in a communication dated 26 June 2019, the delegation of the Russian Federation had requested the Secretariat to include this item on the agenda.

3.2. The delegate of the Russian Federation reiterated her delegation's deep concerns regarding the European Union's negotiations under Article XXIV:6 of the GATT in the framework of its enlargement to include Croatia. The Russian Federation had repeatedly raised this issue bilaterally, at the Committee on Market Access, and in the meetings of this Council. The Russian Federation's concerns had been communicated to the European Union in writing as well as circulated to WTO Members. Although the Russian Federation's negotiating rights had been provided for in the EU's notification, the EU had failed to engage in negotiations with Russia. She noted that, by refusing to negotiate with the Russian Federation, the EU was ignoring not only its own statistics, but also the indication of Members' negotiating rights in its own notification. She considered that to ignore the rights of the Russian Federation violated WTO rules. For these reasons, the Russian Federation concluded that the negotiations could not be considered to have been completed, and she again called upon the EU to engage in compensatory adjustment negotiations with the Russian Federation.

3.3. The delegate of the European Union reminded Members of the EU's explanations that had been given to them at previous Council meetings. She clarified that the negotiations following Croatia's accession to the EU were now closed. The EU had informed WTO Members about the conclusion of these negotiations one year earlier, in document G/SECRET/35/Add.2, dated 26 July 2018, and that the outcome of the Article XXIV:6 process would be reflected in the EU-28 Schedule, which was currently undergoing certification. The EU had extensively and repeatedly explained, orally and in writing, in the WTO and bilaterally, its reasons for not having accepted the compensation claims of the Russian Federation in the context of the EU's most recent enlargement. Once again, the EU underscored that the indication of a WTO Member as principal supplier in a GATT Article XXIV:6/XXVIII notification was not an automatic recognition of a right for that WTO Member to obtain compensation.

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

3.5. The Council so agreed.

4 CHILE, CHINA, INDIA AND THAILAND – REQUEST FOR THE EXTENSION OF THE WAIVER FOR PREFERENTIAL TARIFF TREATMENT FOR LEAST DEVELOPED COUNTRIES (G/C/W/764)

4.1. The Chairperson informed Members that, in a communication dated 13 June 2019, the delegations of Chile, China, India, and Thailand had requested the Secretariat to circulate the request for the extension and the draft decision to extend the validity of the waiver for the granting of preferential tariff treatment to Least Developed Countries (LDCs). The request for extension was circulated to Members in document G/C/W/764. In communications dated 4 and 5 July 2019, the delegations of Turkey and Brazil had requested the Secretariat to be added as co-sponsors to this document (G/C/W/764/Add.1 and G/C/W/764/Add.2).

4.2. The delegate of China stated that her delegation had worked together with Brazil, Chile, India, Thailand, and Turkey, and had submitted the request for the waiver extension on developing Members' preferential treatment to LDCs. China also thanked the Chair for his efforts and consultations on this issue. China believed that the integration of LDCs into the global trading system and the global economy required effort from all WTO Members. While the Enabling Clause adopted in 1979 provided the legal basis for developed Members to accord non-reciprocal preferential treatment, developing Members also needed a legal instrument to grant unilateral tariff preferences

to LDCs. Thus, a Decision granting a waiver to paragraph 1 of Article I of the GATT 1994 had been initially adopted by the General Council in 1999 and then the waiver's validity was extended in 2009 until 30 June 2019. China recognized that, under this waiver, some developing Members, although themselves facing capacity and resource constraints, were currently implementing preferential tariff access schemes for LDCs. For example, China had granted duty-free treatment to 97% of tariff lines originating from all LDCs that enjoyed diplomatic relations with China. China believed that these preferential tariff access schemes provided by developing Members had promoted market access opportunities for LDCs and had also improved LDC participation in global trade. According to UNCTAD trade data, LDC exports to most of the preference-granting developing Members had increased considerably. In general, developing Members' share in total LDC exports had increased from 35% in 1999 to 55% in 2017. Meanwhile, LDCs still experienced vulnerability and special structural difficulties in the world economy. China believed that the exceptional circumstances that justified the initial granting of the LDC waiver continued to exist; therefore, it remained essential to extend the waiver as a legal instrument so that developing Members could continue to implement their preferential treatment, and more developing Members could also be encouraged to grant such treatment to LDCs. For these reasons, China, together with its co-sponsors, sought the extension of the LDC waiver for a further 10 years, from 1 July 2019 until 30 June 2029. China hoped that the CTG would approve this waiver extension request and then submit it to the General Council for adoption.

4.3. The delegate of Chile supported the statement made by China on the reasoning behind the co-sponsorship of this document. For Chile, this was a highly important issue, looking to support the development of LDCs through their integration into international trade. For this reason, Chile hoped that Members would agree on the extension of the waiver decision from 31 July 2019, as indicated in document G/C/W/764.

4.4. The delegate of India supported the statements made by previous speakers. India recalled that addressing the developmental concerns of LDCs through the granting of targeted preferential market access had been one of the underlying principles of the WTO, and that both the GATT and the Enabling Clause had always encouraged the granting of greater concessions to LDCs. In this regard, India acknowledged that the focus on this issue over two decades, and the increasing efforts of the WTO Membership, had been noteworthy. The Ministerial Declaration on the Duty-Free Quota-Free (DFQF) Access for all LDCs was one such momentous decision, adopted by WTO Members at the Hong Kong Ministerial Conference, in 2005. Over the last few years, developing countries had been increasingly finding the means within their own developmental imperatives to meet the requirements of the LDCs and to grant them meaningful concessions. India had announced its Duty-Free Tariff Preference Scheme for LDCs in April 2008, providing duty free and preferential treatment to LDCs on 98.4% of India's tariff lines. India believed that, given the constraints on several developing countries, this proposal was certainly a positive development. Given the right environment and enabling provisions, these developing countries, which were yet to provide tariff preferences to LDCs, could be encouraged to enhance their efforts to do so. India noted that, to provide the enabling legal basis, developing country Members had been seeking an extension to this waiver every 10 years, since 1999, to extend the Ministerial Decision granting a waiver under Article IX of the WTO Agreement to developing countries providing preferential tariff access to LDCs. The most recent extension had been granted in 2009 and was valid until 30 June 2019. India believed that, through the proposed Decision to extend the waiver for a further period of 10 years, Members would be creating a stable and predictable legal basis on which developing countries could continue to implement their preferential tariff schemes for LDCs on a generalized, non-reciprocal, and non-discriminatory basis. For India, it was in this context that the proposed waiver extension was important. India looked forward to Members giving their complete support and approval for the proposal so that it could be considered by the General Council at its meeting of 23 July 2019.

4.5. The delegate of Thailand said that his country highly valued the preferential tariff treatment for LDCs designed to promote and enable LDCs to integrate more fully into the multilateral trading system. Since 2015, Thailand had extended the Duty-Free Quota-Free Scheme to LDCs under the unilateral non-reciprocal tariff preference scheme for LDCs. Under the scheme, the preferential tariff treatment had been granted to all LDCs classified as such by the United Nations. Customs duties and quotas, covering both agricultural and industrial products, were exempted for nearly 7,000 products, accounting for approximately 73% of all Thailand's tariff lines. Thailand was in the process of reviewing its DFQF scheme concerning the list of products under the preferential tariff treatment and rules of origin in order to facilitate and support LDCs to utilize the scheme as efficiently

as possible. Thailand was pleased to see that all LDCs had benefited from this scheme and would continue co-sponsor it.

4.6. The delegate of Turkey, as a co-sponsor of this document, noted that, for LDCs, trade was the most meaningful path towards integration into the global economy and ending poverty. However, due to certain structural difficulties on their side, LDCs faced specific problems integrating into the world economy and harvesting the benefits of free trade. Like previous speakers, Turkey believed that the recognition of these specific problems and, as stated in the chapeau of the Marrakesh Agreement, the ensuing need for positive efforts, were vital to the economic development of LDCs. In this regard, Turkey considered that this document was one such effort, which would ensure the continuation of the necessary WTO legal basis for the provision of preferential tariff access schemes for LDCs by developing country WTO Members. Like others, Turkey also called upon the Membership to support this waiver extension request so that the waiver would remain valid until 30 June 2029.

4.7. The delegate of Chad, on behalf of the LDC Group, emphasized that the matter of preferential tariff treatment granted to LDCs was crucial insofar as LDCs were far behind and their market share in global trade represented barely 1%. Chad welcomed the waiver for preferential tariff treatment for LDCs proposed by developing countries since it helped further the common objective of better integrating LDCs into the multilateral trading system and contributed to achieving sustainable development as indicated by the Sustainable Development Goals and in the Agenda 2030. The LDC Group expressed its sincere appreciation to Chile, China, India, Thailand, and Turkey for presenting this communication aimed at extending the waiver for preferential tariff treatment for LDCs until 2029 and also thanked the WTO Secretariat and the Chair for their support. Chad noted that it was obvious that these preferences were beneficial; since they had been implemented, in 1999, LDC exports to developing countries had increased by about 420% between 1999 and 2016, according to data provided by the WTO Secretariat. In 2000, total LDC exports to developing countries stood at about USD 15 billion. In 2016, this volume grew to close to USD 79 billion, representing an increase of approximately 420% between 2000 and 2016. To this day, despite the progress made, the LDC Group underscored that the conditions that had prevailed when this waiver was put into place were still valid, and that the contribution from LDCs to world trade in terms of market share remained very small. Given that the waiver was due to expire on 30 June 2019, the LDC Group had held informal consultations since April with developing and developed countries alike and with the support of the WTO Secretariat and the CTG Chair. The LDC Group had also requested that this waiver be adopted sufficiently early, at a special CTG session, to be followed by an extraordinary session of the General Council. The LDC Group reiterated this request on 24 June 2019 during informal consultations with certain developed and developing countries, the WTO Secretariat, and the CTG Chair. The LDC Group expressed its concern over the waiver's expiration on 30 June 2019 and on the potential unknown consequences on the ground for their exporters. The LDC Group thus called for extraordinary sessions of the CTG and the General Council before 30 June 2019, specifically to approve the request by Chile, China, India, Thailand, and Turkey. However, he explained that consultations led by the Chair had revealed that certain delegations had stated a need to await instructions from their Capitals. The LDC Group recalled that any interruption of the waiver would constitute an additional barrier in the process of integrating LDCs into the multilateral trading system and would prevent developing countries from granting preferences to goods originating from LDCs, while developed countries granted preferential treatment without delay within the framework of the WTO. The LDC Group expressed its concern over any further delay in the current context of uncertainty at the WTO. The preferential treatment granted to LDCs was an essential engine of growth and was conducive to the formulation and implementation of policies aimed at reducing poverty, generating employment, accessing markets, protecting livelihoods, and providing basic health care and infrastructure to help LDCs to advance. The LDC Group reiterated that their exports had increased over the past years since the waiver had first been put in place, which in turn had improved the DFQF market access provided by developing countries such as China. It was the LDC Group's wish that the LDCs not be left in a situation of uncertainty and without WTO support in the matter of preferential treatment by developing countries now that the waiver had expired since 30 June 2019. A lack of support for the waiver's extension would send a very bitter message to the poorest and weakest Members of the WTO and the LDC Group hoped that this would not be the case. He recalled that the WTO's founding principles were balance, fairness, transparency, and consensus. The LDC Group was favourable to a consensual approach to resolving any issue within the WTO and to obtaining balanced outcomes.

4.8. The delegate of the Republic of Korea believed that preferential treatment for LDCs could provide improved market access opportunities by enabling LDCs to participate in and derive benefit

from the multilateral trading system. In her delegation's view, the extension of the waiver for preferential tariff treatment was therefore essential. This new Decision would allow developing country Members to grant unilateral tariff preferences to LDCs; for this reason, Korea strongly supported the extension. Currently, Members were required to renew the decision every 10 years. In conclusion, Korea encouraged Members to seek ways to make the waiver permanent in order to stabilize this treatment for LDCs.

4.9. The delegate of Nepal shared the views expressed by Chad in its capacity as LDC Group Coordinator. Nepal was appreciative of the fact that Brazil, Chile, China, India, Thailand, and Turkey had taken the initiative of circulating a communication regarding this request for the extension of the waiver for the preferential tariff treatment for LDCs, contained in document G/C/W/764. Nepal also thanked China, Chile, India, Thailand, Turkey, and the Republic of Korea for their statements, as well as the Chair for his consultations with several Members from developed, developing, and least developed countries. Nepal recalled that the General Council decision adopted on 15 June 1999 in this regard was a legal instrument that would allow developing country Members to grant unilateral tariff preferences to least developed countries pursuant to a waiver under the provisions of Article IX:3 of the WTO Agreement. Nepal further noted that the 1999 waiver decision had been extended, as if automatically, until 2009, and then again until 2019. Some developing country Members were currently implementing their preferential tariff schemes for LDCs under this waiver decision. Nepal emphasized the importance of noting that the economic and trade performance of most LDCs had not improved and that the structural difficulty and vulnerability facing LDCs in the multilateral trading system had not changed. The integration of LDCs into the MTS required meaningful market access, and support for the diversification of the production and export base. Nepal recalled that the Doha Ministerial Declaration and the Declarations and Decisions that had been adopted at the Ministerial Conferences that had been held since then, had shown Members' commitment to addressing the marginalization of LDCs in international trade and to improving their effective participation in the MTS. In conclusion, Nepal requested all WTO Members to support the proposal for the extension of the LDC waiver until 30 June 2029.

4.10. The delegate of Brazil joined other Members in co-sponsoring this request to extend the waiver for preferential tariff treatment to LDCs, as Brazil had done when the waiver had last been extended. Brazil recognized that it was important that all Members contributed to the trading system, especially regarding those Members in greater need of support, namely the LDCs. Therefore, Brazil hoped that this request could count on the support of all Members and that Members could move forward expeditiously with the matter.

4.11. The delegate of Argentina welcomed the waiver extension request. As pointed out by the proponents, the waiver in question provided a legal basis for the granting of preferential non-reciprocal tariff treatment to LDCs. Recognizing that Members in this group faced particular realities and constraints, Argentina expressed its support for this initiative and conveyed its agreement for the extension of the waiver.

4.12. The delegate of Burkina Faso thanked all the developing countries that had agreed to extend the waiver for preferential tariff treatment for LDCs. Burkina Faso hoped that all WTO Members – both developing and developed countries – would strive to ensure that this provision be made effective at the meeting itself. On the usefulness of the waiver, Burkina Faso acknowledged that it demonstrated the role played by international trade for LDCs, in that it allowed these countries to increase their exports and create wealth, which in turn allowed and would continue to allow thousands of people to find a route out of poverty. Burkina Faso requested that this waiver be renewed and even made permanent, and therefore predictable, so that, in the future, it might become an automatic procedure towards ensuring that LDCs could better integrate into the multilateral trading system.

4.13. The delegate of Uruguay, bearing in mind that LDCs faced particular vulnerabilities and structural difficulties, as had been recognized in previous Ministerial declarations and decisions, emphasized the importance of the waiver in meeting the needs of these Members and helping them to integrate more effectively into international trade, given that trade had been recognized as one of the pathways to development. Uruguay believed that, although the waiver was insufficient in itself, it had nevertheless proven to be an important instrument for enhancing LDC Member participation in international trade, in line with Sustainable Development Goal 17.11 of the 2030 Agenda. To that end, on the understanding that the conditions that gave rise to the waiver in 2009 remained valid, Uruguay was in favour of extending it for an additional 10-year period. Uruguay

emphasized that, besides the need for compliance with each Member's internal procedures, it was also important to maintain the current conditions on the ground and to avoid potential trade disruptions. In this regard, Uruguay hoped that the formal aspects of the LDC waiver renewal would be resolved without difficulty so that the necessary assurances could be given to enable those developing Members in a position to do so to continue applying their preferential treatment arrangements for LDCs on a continuous basis.

4.14. The delegate of the European Union considered it important that developing countries could grant preferential tariff treatment to products from LDCs. In her delegation's view, this was a useful contribution from developing countries in terms of the support for and economic development of LDCs, and it closed a gap in the Enabling Clause. Therefore, the European Union expressed its support for the extension of the waiver as of 1 July 2019, as mentioned in the proposed decision. However, she noted that the request for extension had been introduced fairly late, as it had been circulated only on 14 June 2019, and the EU needed to complete its internal procedures before joining the consensus on the formal adoption of the relevant decision at the level of the General Council. For this reason, the EU therefore requested the CTG to forward the draft Decision once its internal procedures had been finalized.

4.15. The delegate of Canada expressed his delegation's full support for this waiver extension request. At the same time, Canada reminded Members of the document that had been circulated by the LDC Group five years before on challenges faced by LDCs in complying with preferential rules of origin under unilateral preference schemes. In Canada's view, this document was a good reference point for Members as they proceeded to implement these preferences and operated these preference schemes for LDCs.

4.16. The delegate of Japan joined other speakers in expressing its support for the waiver extension request. However, Japan pointed to the lack of legal basis for this waiver starting from 1 July 2019 until the date on which the draft decision would be adopted. Japan requested the proponents to avoid repeating such a situation in the future.

4.17. The delegate of Chad, on behalf of the LDC Group, reiterated its gratitude to all of the delegations that had taken the floor, particularly Brazil, which had spoken as a co-sponsor of this proposal, as well as the EU, Canada, Uruguay, Argentina, and all the other Members that had given their support to this request for an extension to the LDC waiver. The LDC Group believed that this waiver was a key instrument for promoting LDC integration into the MTS, bearing in mind the fact that these countries were marginalized. Therefore, for the LDCs, this was very important, and they were grateful to all those delegations that had expressed their support for this proposal.

4.18. The delegate of Mali addressed all Members that had supported this proposal and underscored the need for such support because if Members could help LDCs to integrate into international trade, and if LDCs in this way received help to sell their goods, then they could at the same time address such issues as migration, given that people migrated because they lacked jobs and their children lacked food. Mali believed that no Member was pleased to witness the current problem of migration. Similarly, Mali also believed that it was an obligation to help LDCs.

4.19. The Chairperson thanked delegations for their interventions and indicated that, based on Members' statements, he understood that no Member objected to approving the waiver extension request. However, the delegation of the European Union had indicated that, due to the waiver extension request's late submission, it required additional time to complete its internal procedures before the draft Decision annexed to the request contained in document G/C/W/764 could be sent to the General Council for adoption. He therefore proposed that the Council take note of the statements made and approve the request contained in document G/C/W/764. Likewise, he proposed that the Council agree to send the draft decision to the General Council for adoption once the European Union had informed the Council, through the Secretariat, of the completion of its internal procedures.[2]

4.20. The Council so agreed.

[2] Following a communication from the European Union, dated 3 October 2019, indicating that it had finalized its internal procedures, the draft waiver decision contained in document G/C/W/764 was forwarded to the General Council for adoption at its meeting of 15 October 2019.

5 UNITED STATES – REQUEST FOR A WAIVER – CARIBBEAN BASIN ECONOMIC RECOVERY ACT (CBERA AS AMENDED) (G/C/W/765)

5.1. The Chairperson informed Members that, in a communication dated 27 June 2019, the delegation of the United States had requested the Secretariat to include this item on the agenda.

5.2. The delegate of the United States recalled that the US trade preferences programmes for the Central American and Caribbean region were initially launched in 1983 by the Caribbean Basin Economic Recovery Act (CBERA). Since its implementation, CBERA had continued to generate important benefits for beneficiary countries and territories. The expansion of benefits through enactment of subsequent legislation had represented an important affirmation of the ongoing US commitment to economic development in the Caribbean Basin, by expanding duty-free access to the US market for eligible goods. At present, 17 countries and territories received benefits under the program, namely: Antigua and Barbuda; Aruba; Bahamas; Barbados; Belize; British Virgin Islands; Curaçao; Dominica; Grenada; Guyana; Haiti; Jamaica; Montserrat; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; and Trinidad and Tobago. In 2018, US imports under CBERA preferences had increased by 9.1% over 2017, to USD 1.7 billion; of that amount, energy-related products had accounted for 31%, textiles and apparel for 56%, and agricultural products and processed food for 7.9%. The US sought a new waiver so that it could continue to provide these preferences to the countries and territories of the Caribbean. The waiver request included a revised termination date of 30 September 2025, which was the date on which certain preferences were scheduled to expire. The US was committed to working in partnership with its neighbours in the Caribbean to expand their economic opportunities and believed that the CBERA made a vital contribution to their efforts in this partnership by creating opportunities to expand trade between the US and the Caribbean, thus promoting economic opportunity and growth in the region.

5.3. The delegate of Trinidad and Tobago, on behalf of the Caribbean Community (CARICOM) Group, thanked the US delegation for its submission. She said that Members of the CARICOM Group and the US enjoyed cordial relations and looked forward to the continuation and expansion of their mutually beneficial commercial interactions. The CARICOM Group recognized the US commitment to Caribbean basin economies by providing duty-free access to the US market for a wide range of goods. Economic programmes of this nature had been described as a vital element in US economic relations with its neighbours in the Caribbean. The Caribbean Basin Economic Recovery Act (CBERA), allowed for the granting of duty-free treatment for imports of eligible articles from beneficiary countries. The CARICOM Group applauded the US commitment to working with its partners in the Caribbean to expand economic opportunities through greater economic integration. The Caribbean countries were among the most vulnerable nations in terms of natural disasters, and while comprehensive solutions were needed from the international community to treat the harmful effects of these phenomena on trade, they appreciated the efforts of the US in using CBERA to help stabilize the region's economies. In the Caribbean, the 2017 hurricane season had ushered in a record number of six consecutive hurricanes, which had accounted for USD 229 billion in damage, resulting in significant economic losses across the region. The 2010 earthquake in Haiti was another example of how natural disasters could decimate economies and curtail years of development efforts. The CARICOM Group highlighted that an examination of the Twelfth Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act (CBERA), which had been prepared by the Office of the United States Trade Representative (USTR) on 29 December 2017, clearly revealed that beneficiary countries were actively using the preference provisions. The CARICOM Group applauded US efforts to facilitate the economic development and export diversification of Caribbean economies and thanked the US for its commitment to the Caribbean. For these reasons, the CARICOM Group unequivocally supported the US request to extend this waiver.

5.4. The delegate Trinidad and Tobago, on behalf of her own country, expressed support for the US request for a waiver extending the CBERA because it supported Trinidad and Tobago's goals for export growth and diversification, which in turn had a positive impact on other development goals, including economic transformation and poverty and unemployment reduction. Since the waiver's previous review, in 2015, Trinidad and Tobago had been the largest exporter to the US among the CBERA beneficiary countries as a result of exports of methanol and petroleum oils. Trinidad and Tobago accounted for 57% of total US imports under CBERA in 2018. In addition, since 2015, the US had been Trinidad and Tobago's largest export market. As such, CBERA had been very useful in supporting the export growth and diversification goals of Trinidad and Tobago. Trinidad and Tobago, in its commitment to fully meet each aspect of the eligibility criteria for the programme, had been making efforts to address any enforcement deficiency in relation to intellectual property rights with

the US. Trinidad and Tobago's relationship with the US had proven to be a vital part of the country's overall trade, in that the US remained Trinidad and Tobago's number one import and export market over the period 2015 to 2018. Indeed, during the period from 2015 to 2018, an average of 26% of Trinidad and Tobago's exports had gone to the US, while an average of 52% of Trinidad and Tobago's imports had come from the US, thereby indicating that the US had traditionally been the main source and destination of Trinidad and Tobago's trade, and that Trinidad and Tobago greatly benefitted from the CBERA programme. Trinidad and Tobago recorded surplus trade balances with the US for 2015 to 2018, with minor changes in the composition of exports. Five products which had maintained their position in the top ten exports from 2015 to 2018, were the following: Anhydrous Ammonia; Liquefied Natural Gas (LNG); other Crude Petroleum; Methanol; and Urea. Furthermore, Trinidad and Tobago had benefitted from the preferences under the Caribbean Basin Trade Partnership Act (CBTPA), with over 200 companies exporting duty-free to the US in 2018. Trinidad and Tobago had significantly utilized the preferences received under the CBERA and CBTPA. In 2018, the country's exports to the US had amounted to TT$16.3 billion, while imports had amounted to TT$12.5 billion. Trinidad and Tobago had also been the top participant in these programmes. She emphasized that, for these reasons, the renewal of the CBERA and CBTPA, and the preferences received under these programmes, were of critical importance to Trinidad and Tobago. In a period in which Trinidad and Tobago had been facing falling oil prices and a resultant recession, trade with the US had represented a positive light in an otherwise negative period, helping the country to earn valuable foreign currency. Trinidad and Tobago's recent experience had served to reinforce the vulnerability of small states with open economies. In this period of discussion of WTO reform, it raised the importance of features that should be maintained, for the benefit of smaller, vulnerable economies. According to Trinidad and Tobago, the renewal of the waiver for the CBERA would positively impact upon the competitiveness of local products in the US market, which would in turn give positive results for employment, wages, and other economic factors. In this light, Trinidad and Tobago joined other CARICOM delegations in underscoring the importance of the preferential access provided under CBERA to the trade and economic development of the Caribbean Region. In conclusion, Trinidad and Tobago reiterated its support for the continuation of the CBERA arrangement until 30 September 2025 and encouraged WTO Members to support the US' request for the waiver's renewal.

5.5. The delegate of Jamaica aligned his delegation with the statement made by Trinidad and Tobago on behalf of the CARICOM Group and thanked the US delegation for its submission contained in document G/C/W/765, reporting on CBERA and outlining the specific circumstances justifying the measure, as well as calling for a renewal of the waiver permitting the Act until 2025. Jamaica, like other Caribbean countries, had been a beneficiary of the CBERA since the CBERA's inception and continued to attach high importance to it. Jamaica especially valued the market opportunities provided under the CBERA, especially at a time when achieving sustained and robust private sector-led growth and broad and sustained job creation were among its high priorities. Jamaica was seeking to leverage the value of its global brand, not only to penetrate new markets, but also to expand exports to existing markets, such as the US market, and to further integrate its economy into global value chains. Against this background, he noted that any interruption in Jamaica's trade flows with the US under the CBERA would have a negative impact upon Jamaica's economy, particularly in terms of Jamaica's thrust towards increased exports, employment, and an ability to create jobs. Over the past five years, approximately 43% of Jamaica's total exports had entered the United States, 80% of which had been granted duty-free access under the CBERA. In 2017, exports to the US had stood at USD 535 million, representing an increase of 9% over the value of exports for 2016, which had stood at USD 487 million. Exports had increased further in 2018, by 8%, to USD 582 million. Therefore, between 2016 and 2018 alone, Jamaica's overall exports to the US had increased by around USD 94 million. This highlighted the significant role that preferential arrangements, such as the CBERA, played in facilitating improved market access for small and vulnerable economies like that of Jamaica. Of particular significance was the fact that the scope of coverage of the Act had facilitated the vibrant flow of trade in agricultural and manufactured products and had assisted with the diversification of Jamaica's exports to include non-traditional products, such as alcoholic beverages (excluding rum), sauces, yams, mineral fuels (excluding ethanol), and baked products. In 2017, non-traditional exports had accounted for approximately 69% of Jamaica's total exports to the US. Jamaica reaffirmed its appreciation for the US Government for its maintenance of the CBERA as a strong demonstration of its commitment to a partnership for trade and development with its Caribbean neighbours, and Jamaica looked forward to a continued positive engagement with the US in order to deepen their bilateral trade relations still further, and to advance the objectives of the Act. In conclusion, Jamaica trusted that the Council would endorse the request

for the renewal of the CBERA waiver, so that the waiver extension request could then be transmitted to the General Council for final approval.

5.6. The delegate of Saint Vincent and the Grenadines, on behalf of the Members of the Organization of Eastern Caribbean States (OECS), associated her delegation with the statement delivered by Trinidad and Tobago on behalf of the CARICOM Group. She stated that international trade did produce some winners, but often those that were unable to compete were left behind. OECS member States believed that the foundational tenets of the rules-based system existed to secure the interests of weaker Members and to ensure that a rising tide lifted all boats. In this context, Members were reminded that the Marrakesh Agreement recognized that relations in the field of trade were to be conducted with a view to raising living standards, ensuring full employment, realizing a large and steadily growing volume of real income and effective demand, and expanding trade in goods and services. More importantly, the Marrakesh Agreement demanded that international trade lead to the optimal use of the world's resources, in accordance with the aim of sustainable development, and in a manner consistent with the needs and concerns of countries at different levels of economic development. It was against this backdrop that the OECS member States welcomed the request for an extension of the Caribbean Basin Economic Recovery Act. They further supported the proposed waiver being granted through 30 September 2025 in order to provide stability and predictability in trade relations. OECS member States noted that the United States remained the principal market for many Caribbean countries; and that the US market was one on which tens of thousands of jobs depended. The extension of the waiver would therefore support economic diversification and improved social and economic conditions for participating member States. In the case of the OECS, all seven members of the protocol establishing the Organization of Eastern Caribbean States' Economic Union would benefit under the waiver. For OECS member States, this proposed extension was particularly timely given the recent disruptions to trade between the beneficiary countries and the United States because of the passage of recent catastrophic hurricanes. International trade must therefore be driven by development concerns. For these reasons, Saint Vincent and the Grenadines thanked the United States for its continuing support of their bilateral trade relations, as established under the 1979 Enabling Clause, and looked forward to this waiver extension request receiving Members' positive support.

5.7. The delegation of Barbados joined the statement made by Trinidad and Tobago on behalf of the CARICOM Group. He recalled that the Caribbean Basin Economic Recovery Act, also known as the CBERA, had been implemented on 1 January 1984, a product of the Caribbean Basin initiative, which had been launched the previous year. The CBERA provided preferential access for specific goods that were being exported to the US from specific countries of Central America and the Caribbean. This provision had then been amended and expanded through the United States-Caribbean Basin Trade Partnership Act (CBTPA). In this regard, Barbados underscored the critical role that trade had played in poverty alleviation and job creation, noting that nobody disagreed that trade could be an engine for development and an important driver of sustained economic growth. The CBERA was instituted to assist the nations of the Caribbean, like Barbados, along the path to development by creating market opportunities for their goods and in turn expanding their manufacturing sector. Barbados was a small open economy with limited production capacity, and statistics had shown that, during the period 2009-2018, on average, 60% of Barbados' exports to the US had entered the US under this programme. According to his delegation, the preferential access accorded to Barbadian goods had increased their ability to compete in the US market and at the same time had allowed their local industries to grow. Barbadian exports under the CBERA also accounted for 10% of Barbados' total exports, which consisted of goods representing the major exported products to any market, including Barbados Rum, a significant source of export revenue. In conclusion, Barbados considered that the CBERA continued to be economically beneficial. Barbados supported the request submitted by the US to extend the waiver of the CBERA through 30 September 2025 and encouraged WTO Members to provide their support.

5.8. The delegate of Haiti joined the statement made by Trinidad and Tobago on behalf of the CARICOM Group. Haiti believed that this Act constituted one of the sources of exports and employment in Haiti as more than 80% of Haiti's exports in textiles went to the US market. Haiti reiterated its recognition and gratitude to the US and supported this request; it should be accepted.

5.9. The delegate of the European Union supported the extension of this waiver. As mentioned in connection with the request for a waiver extension under the previous agenda item, due to its internal procedures, the EU requested the CTG to forward the draft Decision once the EU's internal procedures had been finalized.

5.10. The Chairperson thanked delegations for their interventions and indicated that, based on the statements that had been made by delegations, he had understood that there was no objection to the approval of the request for the extension of the waiver. However, the delegation of the European Union had indicated that it required additional time to complete its internal procedures before the draft decision annexed to the request contained in document G/C/W/765 could be sent to the General Council for adoption. He therefore proposed that the Council take note of the statements made and approve the request contained in document G/C/W/765. Likewise, he proposed that the Council agree to send the draft decision to the General Council for adoption once the European Union had informed the Council, through the Secretariat, of the completion of its internal procedures.[3]

5.11. The Council so agreed.

6 SWITZERLAND–LIECHTENSTEIN – NEGOTIATIONS UNDER ARTICLE XXVIII:5 OF GATT 1994 (G/L/1262/ADD.1)

6.1. The Chairperson recalled that, at the Council's previous meeting, the delegation of Switzerland, on its own behalf and on behalf of Liechtenstein, had requested, under agenda item "Other Business", the circulation of document G/L/1262/Add.1, concerning the extension of the period for Members' withdrawal of concessions in relation to the modification of the tariff line relating to "meat not further prepared than seasoned" in Schedule LIX – Switzerland and Liechtenstein. In that document, Switzerland and Liechtenstein had indicated that they would not assert that the WTO Members that had submitted a claim under Article XXVIII of the GATT 1994 were precluded from withdrawing substantially equivalent concessions under Article XXVIII:3 because this withdrawal had occurred later than six months after Switzerland and Liechtenstein's withdrawal of concessions (namely, 4 April 2018), provided that the claiming WTO Member withdrew concessions no later than 24 months after Switzerland and Liechtenstein's modification of those concessions (namely, until 4 April 2020). In this regard, the Chairperson reminded Members that, at its meeting of 12-13 November 2018, the Council had granted a similar extension to Switzerland and Liechtenstein.

6.2. The delegate of Switzerland stated that, as mentioned at the Council's April 2019 meeting, negotiations and consultations pursuant to GATT Article XXVIII for simply seasoned meat had continued with the Members concerned. As the deadline for the withdrawal of concessions had expired on 4 April 2019 and negotiations were still ongoing, Switzerland requested an extension of 12 additional months, namely, until 4 April 2020. Switzerland noted that significant progress had been made and hoped swiftly to conclude the negotiations and consultations under GATT Article XXVIII.

6.3. The Chairperson suggested that the Council take note of the request made by Switzerland and Liechtenstein and agree to extend the deadline, as indicated in document G/L/1262/Add.1, until 4 April 2020.

6.4. The Council so agreed.

7 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 – REQUEST FROM CHAD ON BEHALF OF THE LDC GROUP (WT/GC/W/742-G/C/W/752)

7.1. The Chairperson recalled that, at the Council's meetings of July and November 2018, and in April 2019, the delegations of the Central African Republic and Chad had introduced this matter on behalf of the LDCs. At those meetings, some delegations had requested additional information and clarification on certain aspects relating to this matter. Similarly, at the Council's previous meeting, it had been agreed that this item would be discussed again at this meeting, if the LDCs so requested. In a communication dated 13 June 2019, the delegation of Chad, on behalf of the LDC Group, requested the Secretariat again to include this item on the agenda.

[3] Following a communication from the European Union, dated 3 October 2019, indicating that it had finalized its internal procedures, the draft waiver decision contained in document G/C/W/765 was forwarded to the General Council for adoption at its meeting of 15 October 2019.

7.2. The delegate of Chad, on behalf of the LDC Group, recalled the essence and significance of this submission, which had been made in 2018, and for which the LDC Group sought a decision by the General Council. The LDC Group wished to ensure that the favourable treatment granted to developing countries within the framework of Annex VII(b) of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) applied also to graduating LDCs so long as their gross national product (GNP) per capita did not exceed USD 1,000 per year in 1990 USD. Furthermore, graduating LDCs should be able to benefit from the flexibilities contained in Article 27.2 of the above-mentioned Agreement so long as their GNP per capita fell under USD 1,000 for three consecutive years. The LDC Group wished to ensure that the same conditions that applied to non-LDCs, as provided for in Article 10.4 of the Doha Ministerial Declaration on implementation-related issues and concerns, applied also to LDCs that had graduated and been removed from the list under paragraph (a) of Annex VII. According to the LDC Group, graduating LDCs should be listed under paragraph (b) of Annex VII, based on the above-mentioned criteria. He clarified that the sole purpose of this submission was to respond to a need expressed by their Ministers at the Buenos Aires Ministerial Conference, and to enable a smooth economic transition for LDCs to their new status as developing countries. Therefore, the LDC Group called upon WTO Members to adopt a decision along these lines at the next meeting of the General Council, in July 2019, and to thereby grant graduating LDCs the possibility of maintaining the existing flexibilities afforded to them under Annex VII.

7.3. The delegate of the United States reiterated that the specific need for this proposal remained unclear as there did not seem to be export subsidy programmes in place for which an extension might be needed. As such, the US continued to question the need to change the rules in this area.

7.4. The delegate of Nepal associated her delegation with the statement delivered by Chad as the LDC Group Coordinator. Nepal reiterated that the LDC proposal aimed to correct the missing information and technical error in the existing provision of Annex VII(b) of the SCM Agreement. Nepal believed that if Members did not correct the missing information or technical oversight, they would be doing an injustice to graduating LDC Members considering that several developing countries were evoking this flexibility time and again. Nepal emphasized that "graduation" itself was very challenging because graduating LDC Members had to relinquish several international support mechanisms, including preferences and special treatments specific to LDCs. Nepal thanked those Members that had extended their support to the LDC proposal and also recognized that certain Members had raised concerns in previous meetings about the list of beneficiary countries and the utilization of subsidies. Nepal noted that the list of beneficiaries depended upon their level of income and that the lists of such Members were updated by the WTO Secretariat. If graduating countries had a GNP per capita of below USD 1000 in 1990 value, those graduating LDCs should be entitled to the flexibilities indicated under Annex VII(b) of the SCM Agreement; however, if the income of a graduating LDC was higher than this threshold they were not entitled to use these flexibilities. Nepal invited Members with further queries and concerns to share them with Nepal in written form.

7.5. The delegate of Turkey thanked the LDC Group for its proposal, which Turkey had already supported at previous Council meetings.[4] Turkey encouraged Members to take the actions necessary to achieve the full integration of LDCs into the multilateral trading system, including assisting them to overcome any remaining challenges in this regard. Turkey reiterated that graduated LDCs with a GNP below USD 1,000 should be granted the same rights as the developing countries listed in Annex VII(b) of the SCM Agreement.

7.6. The delegate of Bangladesh associated his delegation with the statement made by Chad on behalf of the LDC Group, Nepal, and Turkey. According to Bangladesh, the submission by the LDC Group was self-explanatory and the LDC coordinator had extensively narrated the context and background of the current proposal. Bangladesh also recalled that Members had previously discussed this issue on several formal and informal occasions, in Committee and at Council meetings. Bangladesh had always supported this proposal and reiterated its previous position. Article 27.2(a) of the SCM Agreement, read with paragraph 10.1 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns, provided flexibilities to LDCs and countries with per capita of below USD 1,000 in constant 1990 dollars listed in Annex VII in providing export subsidies. In reading Annex VII of the SCM Agreement, Bangladesh did not clearly understand if a graduated LDC having per capita GNI below USD 1,000 in constant 1990 dollar terms would receive the same treatment available to developing country Members with GNI per capita below USD 1,000 in

[4] Document G/C/M/134, paragraph 8.17.

1990 US dollar terms under the same Annex VII. Bangladesh reminded Members that when the SCM Agreement had been agreed upon, probably LDC graduation had not been foreseen at all. However, there was now an aspiration among LDCs to meet the graduation target and Bangladesh considered that it was the appropriate moment to address this missing element in Annex VII through a decision by the General Council; indeed, Bangladesh hoped that Members would realize the merit of the submission and work together to address this missing element. Bangladesh clarified that the proposal did not envisage any new flexibility; rather, it called for a decision to allow for the continuation of the same flexibilities as previously enjoyed if a graduated LDC fell within the criteria previously agreed upon by Members. This flexibility would not be extended to all graduated LDCs but only to those that fell within the agreed criteria at the time of graduation. Bangladesh further noted that it did not foresee that graduated LDCs, eligible for this flexibility, would automatically use this exemption; rather, they may resort to it only when necessary. Bangladesh believed that a positive recommendation by the CTG with a subsequent decision by the General Council would allow the Secretariat to calculate GNI per capita for graduated LDCs for the year after their graduation during annual updates of the Annex VII list. Bangladesh highlighted that this exercise could only be carried out after graduation as it was not possible to calculate GNI per capita before graduation. Bangladesh had also noted that, at previous Council meetings, both formal and informal, many Members had acknowledged the logic and merit of this proposal and had extended their unequivocal support to it, whereas only a few Members had sought further clarification regarding the impact of the proposal. Bangladesh therefore requested Members to reflect on the following three points in order to take a decision going in the right direction: (i) did Members agree that the proposed decision intended to address a missing element, which was not earlier foreseen; (ii) did Members agree that the proposed decision would not create any new flexibility for any Member; and (iii) did Members agree that a graduated LDC deserved the same flexibility available to other developing countries with the same level of development. Bangladesh believed that, if the responses to these questions were in the affirmative, then Members should accept the proposal positively. Bangladesh looked forward to working with Members in this regard.

7.7. The delegate of India welcomed this agenda item from Chad, on behalf of the LDC Group, about deeming newly graduated LDCs as Annex VII(b) Members until such time as they met the income criteria for graduation from Annex VII of the WTO SCM Agreement. As stated at previous Council meetings, India reiterated its agreement with the principle that the Annex VII income threshold for graduation should also be extended to newly graduated LDC Members. India looked forward to extending its support to the finalization and adoption of the proposed decision.

7.8. The delegate of the European Union, as stated at the Council's previous meeting[5], reiterated her delegation's support for constructive initiatives to better integrate LDCs into the multilateral trading system. The European Union encouraged discussion of this proposal – as any SDT proposal – based on an analysis that showed where the specific problems were located. Members needed to begin by assessing the actual use of export subsidies by LDCs in order to establish whether a transition period was needed that would allow graduated LDCs to continue using export subsidies. Unfortunately, Members had little knowledge of whether, or to what extent, LDCs used export or any other subsidies because many LDC notifications under Article 25 of the SCM Agreement were missing. The EU again encouraged the LDC Group to work with the Secretariat to improve the situation on notifications and to tap into the possibilities of technical assistance that were available to this end. Realizing that preparing first-time notifications could take time, the EU suggested that the LDC Group help the debate by presenting anecdotal evidence of whether and how LDCs had made use of export subsidies and how that had helped their economic development. In addition, the EU suggested that the countries concerned also seek assistance for reshaping their export subsidies in order to make them WTO-compatible. The EU stood ready to engage in informal consultations with the LDC Group in this regard.

7.9. The delegate of Canada was mindful of the challenges faced by LDCs and of the need for flexibilities in the rules. Canada believed that the agenda item relating to the extension of preferences from developing countries to LDCs was a good example of how WTO Members had worked together to achieve that goal. Nonetheless, Canada emphasized that disciplines on export subsidies were core disciplines in the SCM Agreement, and any additional flexibilities needed to be well-substantiated and needs-based. Canada recalled that the ultimate goal of the WTO was the elimination of such subsidies overall and that some of the questions raised by Canada and others on this proposal remained unanswered in this regard. For instance, clarification was required as

[5] Document G/C/M/134, paragraph 8.15.

concerned which recently-graduated LDCs would benefit from this proposal; clarification was also required as to why this flexibility was needed. Canada was mindful that many LDC Members had not notified any subsidy under Article 25 of the SCM Agreement and considered that notifying existing subsidies would be an important step. Canada encouraged LDCs to engage with the Secretariat and other Members with regard to technical assistance, if required. Canada also had questions concerning the proposal's implementation. For example, Canada wondered how the absence of data on GNP per capita for certain LDC Members could be addressed. Canada was available to continue its engagement with the LDC Group on these questions.

7.10. The delegate of Chad thanked those delegations that had expressed their support for the LDC request, as well as those that had indicated their objections to it. The LDC Group had offered explanations, had held bilateral consultations, had undertaken technical analyses, and had reached the conclusion that it had been a technical oversight. As explained by India, the threshold for graduating was provided in Annex VII, whereas the list of graduating LDCs was not. Therefore, according to the LDC Group, what was at issue here was a matter just of justice, equity, and balance. He noted that Bangladesh and Nepal had underscored various relevant issues, and that these issues had been submitted to LDC partners who, in turn, had said that the proposal had not been clear and who had questioned the need to modify the rules. Chad reaffirmed that the LDCs were not changing the rules; rather, they were simply recognizing that certain aspects were not currently covered by the rules. The LDC Group emphasized that today's context had evolved as compared to the past and that, as a result, the current context needed to take into account things that had been overlooked in the past. The LDC Group had examined all the issues, had offered figures, and had offered technical analyses, to address these challenges; it had also remained open and flexible. The LDC Group agreed to continue holding informal discussions with those delegations objecting to the proposal with the objective of reaching an understanding and encouraged Members with concerns or objections to clarify what exactly they were and where they were located. The LDC Group believed that this was a matter of balance and equity, not of amending texts. In the LDC Group, there were Members that were about to graduate from their LDC status to become developing countries, such as Bangladesh, Vanuatu, Angola, and Nepal. The LDC Group wished that, once these countries had graduated from LDC status, they could still maintain a link with the developing countries listed under Annex VII. The LDC Group stood ready and willing to continue discussions with Members to this end but emphasized that this proposal was intended to be adopted by the General Council.

7.11. The Chairperson proposed that the Council take note of the statements made, invited the LDCs to continue their discussions on this issue with other Members, and suggested that the Council revert to this issue at its next meeting, if the LDCs requested it to do so.

7.12. The Council so agreed.

8 EUROPEAN UNION – IMPLEMENTATION OF NON-TARIFF BARRIERS ON AGRICULTURAL PRODUCTS – REQUEST FROM ARGENTINA, AUSTRALIA, BRAZIL, CANADA, COLOMBIA, COSTA RICA, CÔTE D'IVOIRE, DOMINICAN REPUBLIC, ECUADOR, GUATEMALA, HONDURAS, MALAYSIA, NICARAGUA, PANAMA, PARAGUAY, PERU, UNITED STATES, AND URUGUAY

8.1. The Chairperson informed Members that, in a communication dated 27 June 2019, the delegations of Australia, Brazil, Canada, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Malaysia, Panama, Paraguay, Peru, the United States, and Uruguay had requested the Secretariat to include this issue on the agenda. After the agenda's circulation, and at the beginning of the meeting, the delegations of Argentina, Côte d'Ivoire, the Dominican Republic, and Nicaragua requested to be added to the list of proponents. Likewise, the Chairperson informed the Council that, on 4 July 2019, the proponents had requested the Secretariat to circulate a joint communication, which had been distributed to all Members in document G/C/W/767 and its addendum. The unofficial translation of the communication in Spanish and French, as provided by the proponents, had also been distributed to all delegations at their request.

8.2. The delegate of Colombia, on behalf of the co-sponsors, stated that, in order to face the challenge of producing more food in a safer and sustainable way, farmers must be able to access the full range of safe tools and technologies that were available for agricultural production. Yet the farmers' choice of safe tools was increasingly undermined by regulatory barriers that were not founded on internationally agreed risk-analysis principles and did not take into account alternative approaches to meeting regulatory objectives. The proponents believed that this was already having

a substantial negative impact on the production and trade of safe food and agricultural products, an impact that was likely to increase in the future. The proponents raised concerns in the CTG because the EU had begun to implement measures that effectively prohibited the use of a number of substances that were required for safe and sustainable agricultural production and had been assessed and authorized for use by many WTO Members. The proponents stressed that the EU had moved forward with the implementation of its measures, which were first enacted in 2009, even though other Members had, over the years, repeatedly expressed concerns in the Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) Committees regarding the overly restrictive impact of these measures on the trade in agricultural goods. The co-sponsors believed in protecting human health and facilitating trade, both goals recognized under the WTO Agreements. To ensure a balanced approach, the international community had determined standards that followed the principle of evidence and science-based risk assessments, allowing WTO Members to achieve an appropriate level of protection, while at the same time ensuring that such measures were not more trade-restrictive than necessary. However, the proponents believed that the EU was diverging from those standards by incorporating a hazard-based approach to the approval and renewal of plant protection product authorizations for certain substances. In their view, this was creating a high degree of uncertainty with regard to how import tolerances would be considered and set for authorization in the EU. Despite repeated requests in the TBT and SPS Committees over the past four years, they considered that the EU had not identified either the level of protection being sought or the specific pathways of exposure or risks that it sought to mitigate, to justify the trade impact of these restrictions. In the proponents' view, the EU had not taken into consideration the comments of other WTO Members on draft regulations and it had also ignored requests to complete science-based risk assessments before the implementation of these measures, to take into account risk assessment techniques developed by international organizations, and to articulate how risks would be assessed. In addition, the proponents believed that the EU had not clarified, despite multiple requests to do so, how it intended to consider applications for import tolerances for those substances that were being assessed following hazard-based criteria. In implementing these measures, it appeared that the EU was unilaterally attempting to impose its own domestic regulatory approach onto its trading partners. As a result, the proponents believed that the EU was effectively prohibiting the use of critical tools to manage pests and resistance, while damaging the livelihood of farmers beyond its borders, especially those in developing countries and LDCs. Agricultural production varied by region and what worked in Europe might not be appropriate in other climates and regions. The EU's insistence that farmers around the world would find alternatives rang hollow for many of the EU's trading partners who knew that, in most cases, viable alternatives simply did not exist or in fact might carry higher risks than the substances effectively banned by the EU. In addition, most Members that used these substances did not have the capacity to develop viable and economically feasible alternatives to use in their production systems. Even if those alternatives were to be developed elsewhere, the process for registration and approval would take more time than the grace period established by the EU. In addition, the EU had not even considered Members' requests for additional transition periods in order to adapt to these regulations. The EU's implementation of these measures was already having an impact upon global agricultural production and trade in key products such as bananas, grapes, cereals, and tree nuts. The proponents stressed that this disruption threatened to escalate significantly in the coming years if the EU did not change its current approach. The EU's implementation of these measures would disproportionately affect farmers in developing countries and LDCs, and the livelihood of millions of families whose income and sustenance depended on agriculture. This, in turn, would also affect Members' ability to achieve goals relating to food security and sustainable development. Therefore, the proponents asked the EU to re-evaluate its hazard-based approach to the approval and renewal of plant protection product authorizations; to confirm that import tolerances would continue to be established based on internationally accepted approaches for risk assessment; and to cease to implement those measures that unnecessarily and inappropriately restricted international trade. The proponents urged the EU to provide additional information on the process and timelines to set import tolerances for active substances that were not re-authorized in the EU, as well as applicable transition periods for Maximum Residue Levels (MRLs). Additionally, the proponents strongly encouraged the EU to establish a transparent, predictable, and commercially viable import tolerance process for plant protection products that had not been re-approved that included a risk assessment, taking into account risk assessment techniques developed by the relevant international organizations. Finally, the proponents encouraged the EU to engage meaningfully with its trading partners on this issue.

8.3. The delegate of Colombia, on behalf of his own delegation, added some points of national interest. Colombia was the fifth largest banana exporter in the world, reaching a production of 2 million tonnes of fruit in 2018 and exports worth USD 866 million in the same year, representing

the third line of Colombia's agricultural exports, after coffee and flowers. 80% of these exports went to the European Union, mainly to Belgium, Germany, Spain, and the Netherlands. Banana producers were important generators of employment and development, especially benefiting remote areas of the Colombian geography where armed conflict had taken place. The sector generated approximately 178 thousand jobs (39 thousand direct and 138 thousand indirect jobs). For some time, and as Colombia had reported on different occasions at the WTO and bilaterally, Colombia had seen how bananas and other products, such as citrus fruits, mango, green banana, melons, and watermelons, were being affected by recent EU measures relating to MRLs. To take only bananas as an example, the use of a series of necessary substances in the entire production chain was being banned in practice, such as the buprofezin, chlorothalonil, and imazalil molecules. Without these substances, export of Colombian bananas into the European market would be practically impossible. This series of measures, in addition to those already described in the joint declaration, undermined the multilateral trading system, leaving aside the principle of predictability. Through stability and predictability investments were encouraged, jobs were created, and consumers benefitted. However, thousands of small producers were in this case risking losing their livelihoods in a sector that had been characterized by its search for environmental sustainability and for complying with the highest international standards. Colombia hoped that the concerns of a significant and representative number of WTO Members would be addressed by the EU and that the EU would deepen its interaction with its business partners interested in this matter.

8.4. The delegate of Brazil stated that his delegation and the other co-sponsors had decided to bring this issue to the CTG because they believed that the EU decision to implement measures prohibiting the use of substances required for safe and sustainable agricultural production was to be regretted and avoided as it jeopardized the balance of rights and obligations under the SPS Agreement. Brazil believed in a balanced approach, one that protected human, animal and plant life or health and that, at the same time, facilitated trade, both goals recognized under the WTO Agreements. In order to fulfil these objectives, Members should abide by Article 2.3 of the SPS Agreement, which provided that the adoption of measures should not be applied in a manner that constituted a disguised restriction on international trade. Members should also follow Article 2 of the SPS Agreement, in which it was established that SPS measures were to be applied only to the extent necessary to protect human, animal, plant life or health, and based on scientific principles. Brazil believed that WTO Members should not implement measures based on political decisions that did not observe and follow the standards based on the principle of evidence and science-based risk assessments established by the relevant international organizations and their subsidiary bodies, as well as other organizations recognized by the SPS Agreement. He noted that the adoption of Article 5.7 of the SPS Agreement as a rule rather than as an exception increased uncertainty in international trade and jeopardized trade flows. Even more seriously, this behaviour could undermine the cornerstones of the agreed multilateral trading rules. Brazil believed that the EU measures were already having a substantial negative impact upon the production of and trade in safe food and agricultural products, an impact that was likely to increase. Should the implementation of these policies continue, they would disproportionately affect farmers in developing countries and LDCs and the livelihoods of millions of families whose income and sustenance depended on agriculture. In the case of Brazil, the sustainability of many production structures was under threat, such as for soya beans, citric, coffee, wheat, banana, and papaya, which were important sources of income for large sectors of Brazil's population. Despite Brazil's repeated concerns in the TBT and SPS Committees over the past four years, the EU had moved ahead with the implementation of such unilateral and discretionary measures at the expense of other WTO Members. This situation could no longer continue. The paper that Brazil had co-sponsored with its trading partners underscored that this issue was not merely technical or legal. In Brazil's view, the EU's current regulatory barriers posed concrete risks to the production of food in a safer and sustainable way in many regions of the world, since it prohibited the use of critical state of the art technologies and tools to manage pests and resistance. Nevertheless, the Brazilian government was confident that the trade disciplines of the trade deal recently signed between the EU and MERCOSUR would stimulate the European bloc to meet the commitments embodied in paragraph 8 of the Joint Declaration. Brazil encouraged the EU to establish and implement transparent and predictable policies regarding SPS that were in line with internationally agreed and recognized standards so as not to restrict international trade unnecessarily and inappropriately, and nor to affect WTO Members' ability to achieve goals relating to food security and sustainable development.

8.5. The delegate of Panama thanked the co-sponsors for their interventions. Panama continued to follow with great concern the measures taken by the European Union that went beyond international guidelines, and which had been taken without investigation or substantiated justification, as required

under the WTO TBT and SPS Agreements. From the beginning, Panama had raised its concerns in the SPS and TBT Committees and it had also been a signatory to the 2017 Buenos Aires Ministerial Declaration on Maximum Residue Levels (MRLs) and the more recent Antigua Declaration presented in Brussels. Panama believed that, while each WTO Member was free to take any precautions necessary for the safety of its citizens, such measures should not affect trade more than was necessary in order to achieve its permissible goals. For this reason, there were international standards, to which most Members adhered. For example, the Food and Agriculture Organization (FAO) Codex Alimentarius and the World Health Organization (WHO) were recognized internationally by WTO Members as setting the standards for world food security and the promotion of fair trade. Panama believed that any Member that wished to apply more stringent practices to these standards must provide substantial justifications, alternatives to these measures, and due adaptation times. The EU's decision to remove products from the market or to limit the maximum levels of these agents to 0.01, which were essentially undetectable traces, amounted to prohibiting their use. Panama considered that measures taken with regard to the agents buprofezin, chlorothalonil, and picoxystrobin, among others of national use, could disrupt trade with the EU and cause significant losses to sectors such as the banana sector. At the same time, it would generate a negative impact on the well-being and work of thousands of families of the indigenous Ngäbe-Buglé people, who were the main workers in the banana plantations of Changuinola and Puerto Armuelles. In 2017, agricultural exports from Panama to the European Union were about USD 200 million dollars, with banana being the most important export. Panama applied the levels recommended by Codex Alimentarius for these agents and these levels were also meticulously monitored by national authorities. Substances such as chlorothalonil were essential tools for fighting plant diseases such as black sigatoka that had proliferated because of global warming. Panama believed that the absence of mechanisms to protect the challenges of the tropics could lead to significant losses in food production or require additional spaces to plant, putting tropical forests and global biodiversity at risk. As in previous interventions in other Committees, Panama called upon the EU to establish technical discussions with the affected Members. Panama also asked the EU to reconsider taking a risk analysis approach to adopting measures that did not go beyond international standards and scientific studies that supported and justified decisions, without forgetting the importance of adaptation times and supporting Members with possible substitutes for these products.

8.6. The delegate of Costa Rica stated that his delegation was a co-sponsor of this agenda item and of the joint communication presented by Colombia. In addition to what had been indicated in that communication, Costa Rica believed that it was appropriate to highlight some specific issues surrounding its concerns. Costa Rica had brought this matter to the attention of the CTG faced with the threat posed by EU implementation of a set of phytosanitary measures that directly jeopardized the capacity of local agricultural producers and exporters to combat pests and diseases that affected crops in tropical climates. Costa Rica had expressed its concerns to the European Union on several occasions, both at the bilateral, regional, and multilateral levels, and in the context of the growing number of concerns raised in the SPS and TBT Committees. However, to date Costa Rica had not received a satisfactory response from the European Union, which had decided to pursue its current approach regardless of its impact on food safety at the global level and on the most vulnerable populations in developing countries. In past years, Costa Rica had observed with concern the systematic reduction of MRLs by the European Union regarding a range of substances required for insect and pest control in tropical climates. These reductions often deviated from the tolerance levels established by the international community in the Codex Alimentarius, and thus ran counter to the objective of trade facilitation and harmonization that governed international trade commitments agreed at the multilateral level. Costa Rica believed that the implementation of these MRLs tended to be based on risks for which no conclusive results had been obtained and for which doubts existed as to the validity of toxicological studies and dietary dosage. In spite of these significant constraints, the European Union had maintained the non-renewal of certain substances, clearly in pursuit of a hazard-based rather than risk-based approach. In addition to the doubts surrounding the scientific basis for these reductions, production realities also needed to be considered, as well as the possibility for farmers to substitute their use of these substances with others that complied with national registers and were permitted for trade with the EU. Users of these substances were generally producers and exporters in developing countries, who did not necessarily have the technical capacity to develop new molecules or the institutional capacity to conduct their own scientific studies to establish across-the-board measures relating to MRLs. In Costa Rica's view, the non-renewal and the consequent reduction of MRLs for many of these substances would cause serious problems for the agricultural sector of tropical countries, including Costa Rica. There existed a limited supply of duly registered substances that would enable an appropriate rotation for pest-control in fields, which was why the few that did exist were crucial for reducing the possibility of developing

cross-resistance, as was the case for the banana crop. The production of bananas in Costa Rica generated sales worth about USD 1 billion annually, representing close to 2% of GDP and 38.6% of agricultural GDP. The sector generated 40,000 direct jobs and close to 100,000 indirect jobs, mostly in underdeveloped rural areas that were highly vulnerable to climate change. The main export destination was precisely the European Union, where over 50% of the crop was sent. Regrettably, Costa Rican producers were already starting to feel the effects of the change in EU regulations as they were limited in the substances they could use for the control of pests, such as black sigatoka. At this time, it would be impossible for agricultural production to adapt to new requirements and tolerance in the time-frames provided by the EU, when only the registration of new molecules must undergo a complex evaluation lasting much longer than this time-limit. In this regard, on several occasions Costa Rica had urged the European Union to consider extending the deadline for compliance with the new tolerance for substances required for production in tropical regions, and to begin a dialogue with countries that exported agricultural products that were deeply affected by amendments to the MRLs. Regrettably, Costa Rica's requests had not been met with a favourable consideration. Nevertheless, Costa Rica once more urged the European Union: (i) to apply the MRLs established in the Codex Alimentarius as the leading global reference for their standardization. In cases where conclusive scientific evidence existed that would indicate that tolerance for a given substance should be reduced, this process should take place within the context of the Codex Alimentarius through the coordinated work of the international community, and to the benefit of trade harmonization and facilitation; (ii) to conduct a risk assessment for each substance and specific product in accordance with the EU's multilateral commitments, such that each amendment of the MRLs was based on conclusive scientific evidence and enabled the application of less trade-restrictive measures; and (iii) to set transition periods for the application of new MRLs of at least 24 months with a view to ensuring that the agricultural sectors of exporting countries could conduct the necessary studies for identifying alternative substances that complied with the same level of protection, whose use was permitted in the EU, and that could be duly registered in exporting countries with a sufficient time between harvests for their use.

8.7. The delegate of Nicaragua shared the views of the other co-sponsors. In its national legislation, Nicaragua recognized the important technical role played by international standardization organizations in the management of national food control systems, which had made it possible to achieve an appropriate level of protection, guaranteeing that Nicaragua's measures were not more trade-restricting than necessary, an essential condition for progress towards fairer and more transparent trade. Nicaragua noted with concern the MRLs policy implemented by the European Union for agricultural products, which affected Nicaragua's principal exports such as bananas, among others. In Nicaragua's view, this would have a direct impact on the household and cooperative economy of Nicaraguan producers, affecting the livelihoods of thousands of rural families whose income depended on agriculture. While Nicaragua shared the objective of guaranteeing food safety, each Member, in accordance with its obligations, should ensure that this objective was aligned with the provisions of the Codex Alimentarius, as the international organization recognized by all Members for its work and its scientific rigour in the area of food safety. Considering the potential impact that this policy could have on the global flow of food trade and on interregional trade, Nicaragua urged the European Union: (i) to reconsider its hazard-based approach and risk assessment so as to ensure that any modification of MRLs be based on scientific evidence; (ii) to give consideration to longer transition periods for agricultural and export sectors; and (iii) to base such efforts on the coordinated work of the international community, through the Codex Alimentarius.

8.8. The delegate of Dominican Republic reiterated his delegation's interest in participating as a co-sponsor under this item. For the Dominican Republic, the impact of these measures on trade in agricultural products, particularly in developing countries that had no alternatives, was a matter of the utmost concern. The Dominican Republic confirmed its interest in the adoption by the EU only of measures that were not trade-restricting and that were underpinned by scientific analysis and evaluation prior to their implementation.

8.9. The delegate of Côte d'Ivoire thanked those Members that had registered this important issue on the CTG's agenda. Given the structure of Côte d'Ivoire's economy, largely dominated by agro-industry and agricultural products, Côte d'Ivoire expressed its support for the statement made by Colombia with regard to the implementation of non-tariff measures targeting agricultural products implemented by the European Union, of which Côte d'Ivoire was a co-sponsor. Côte d'Ivoire was deeply concerned by the implementation of these measures, especially given that Côte d'Ivoire had been the largest producer and exporter of bananas in Africa to the European Union since 2016. In his delegation's view, the measures taken by the European Union would undoubtedly affect the

terms of trade between Côte d'Ivoire and the European Union. For that reason, Cote d'Ivoire asked the European Union to respect the MRLs of pesticides fixed by the Codex Alimentarius. Côte d'Ivoire indicated that it also endorsed the statement that would be made by Jamaica on behalf of the ACP Group.

8.10. The delegate of Canada thanked the co-sponsors for bringing the statement on the implementation of non-tariff barriers by the EU on agricultural products to the attention of the Council. As a co-signatory, Canada strongly supported the concerns noted within the statement. Canada had previously raised its concerns on the EU's approach to the regulation of plant protection products in the WTO SPS and TBT Committees, and other international fora, on multiple occasions. The statement highlighted Members' shared concerns regarding the lack of transparency and predictability in the EU's approach to approval and renewal of plant protection product authorizations, and the impact that this was having on trade in food. Canada noted that multiple requests seeking clarification, justification, and additional details from the EU had not been addressed to the satisfaction of Members. Canada recognized the right of Members to adopt measures to achieve legitimate objectives. However, such measures needed to be implemented in a manner consistent with the principles and obligations of the WTO Agreements. In Canada's view, the EU's hazard-based approach to regulating certain plant protection products and the lack of clarity on how an import tolerance would be set for an active substance falling under the cut-off criteria, was causing a high degree of uncertainty and risk for exporters wishing to maintain access to the EU, which prevented producers in Canada and around the world from using important plant protection tools on commodities destined for the EU market. Moreover, Canada maintained that it also unfairly stigmatized agriculture and food exports from Canada and other countries where food production was subject to rigorous oversight and the utmost consideration for human, animal and plant health. Non-renewal decisions of plant protection products under the EU's hazard-based approach were now translating into a real impact upon trade as MRLs for plant protection products were being revoked. Canada considered that it was troubling that a growing number of plant protection products were not being renewed in the EU, even though many of them had been assessed and were registered for use in a large number of countries around the world. In Canada's view, due consideration must be given to the mitigation measures that were expected to be put in place to reduce the potential risks of dietary exposure to an acceptable level. From a trade-facilitation perspective, this was particularly true of import tolerances. Canada urged the EU to provide its trading partners with confirmation that import tolerances for plant protection products that fell under the hazard-based cut-off criteria would be established on the basis of an assessment of risks conducted in accordance with international guidelines, and provide detailed information to clarify the process the EU would follow. Until such a clear and predictable process was implemented, Canada requested that import tolerances in the EU for active substances that fell under the EU's hazard-based cut-off criteria be maintained at existing levels to allow trade to continue. Canada hoped that elevating the concerns contained in this statement to the CTG served as a clear indication of the importance many WTO Members attributed to this issue. At the same time, he emphasized the need for the EU to provide sufficient information to reassure Members that it would avoid unnecessary trade disruptions by meeting its WTO obligations with regard to import tolerances for active substances that fell under the EU's hazard-based cut-off criteria.

8.11. The delegate of Honduras noted that her delegation was a co-sponsor of the joint statement, as Honduras was also concerned by this issue, which was an issue of public interest. Honduras was concerned by the fact that, in recent years, the European Union had been reducing MRLs on a series of agricultural chemical products and other substances that were fundamental to agricultural production, particularly for pest management and rotation in tropical countries. These reductions often moved away from the tolerances established by the international community in Codex Alimentarius, which ran contrary to the objectives of trade facilitation and harmonization that governed multilaterally agreed upon international trade obligations. Given the budgetary and institutional limitations faced by Honduras for the generation of its own scientific studies, which would allow the establishment of measures relating to MRLs in a generalized way, Honduras' trust was placed instead in cooperation with the international scientific community and the work being done in favour of harmonization under the Codex Alimentarius, of which the EU was an active member. However, the selection of safe measures by farmers in Honduras was increasingly affected by regulatory barriers that were not based on risk analysis principles agreed upon internationally and that did not take into account alternative approaches to meet those regulatory objectives, which was a matter of great concern to Honduras. In Honduras, there was a limited supply of substances that were duly registered, and that would allow appropriate rotation for pest control in the field. The few that did exist were therefore of fundamental importance in reducing the possibility of developing

cross-resistance. In Honduras, agricultural production was one of the largest contributors to the economy, generating significant social benefits, as demonstrated by sustained growth over the previous three years. The European market was one of the largest destination markets for Honduran products, representing more than USD 1 billion and generating more than 100,000 direct and indirect jobs. Honduras noted with deep concern how its exports, such as bananas and other products in Honduras' export basket to the EU, such as coffee, cocoa, melons, and sweet potatoes, were being affected by the adoption of MRLs by the European Union; indeed, the trade impact on Honduras in the near future would be significant. Honduras emphasized that each decision that the EU took regarding the modification of SPS conditions and technical regulations for imports had a huge impact on the economy, employment, and welfare of thousands of people in Honduras. For these reasons, Honduras joined other Members in expressing its concerns and in urging the EU to take such concerns into account in its decision-making process.

8.12. The delegate of Ecuador expressed her delegation's support for the statements made by previous Members and was concerned by the situation of agricultural producers in Ecuador following the measures taken by the EU over recent years. Ecuador had witnessed an increase in the number of non-tariff barriers created by the EU, which could have a serious impact on many producers, whose exports represented a significant share of Ecuador's agriculture GDP. Ecuador was particularly concerned by the progressive prohibition of the use of SPS-protected measures, which were essential to guarantee the absence of pests and the quality of food going through to the final consumer in EU markets. For these reasons, Ecuador had raised this issue before the TBT and SPS Committees, as well as bilaterally in Brussels and in other appropriate fora. Ecuador believed that the uncertainty generated by these measures was of great concern due to the consequences that it could have on production sectors upon which hundreds of thousands of families depended. This could have a negative impact on global production and the safe and sustainable trade in food, particularly affecting small-scale producers from developing countries and LDCs, the majority of whom were farmers with few resources. Ecuador called upon the EU not to adopt excessively restrictive measures without conclusive scientific evidence and without consideration of the social and economic impact that these measures could have in the short, mid, and long term. Ecuador also called upon the EU to respect globally recognized international standards for the protection of human, animal, and plant health, to grant sufficient transition periods of at least 36 months to make the necessary adjustments in producing regions, and to adhere to obligations established under the WTO Agreements, in particular the SPS Agreement, framing all measures on a risk-based approach, minimizing trade-distorting effect, and avoiding that these measures become unnecessary barriers to trade.

8.13. The delegate of Guatemala joined the other co-sponsors and reiterated her delegation's concern over the recent measures on the reduction of MRLs by the European Union on a series of agrochemicals that were of fundamental importance in agricultural production and in the management of pests of quarantine significance in tropical countries. Guatemala was concerned by the resulting lack of harmonization and the failure to take into consideration the tolerance levels established by the international community in the Codex Alimentarius. The main issue of concern for Guatemala was the negative impact that these measures would have on its exports of agricultural products. Guatemala shared the goal of ensuring the safety of food provided to consumers; at the same time, the exercise of this right necessitated the conduct of risk-analysis so that new MRLs were established on the basis of scientific evidence and an appropriate identification of risk. Guatemala requested that the MRLs established in the Codex Alimentarius be applied as the first global reference for the standardization of MRLs and that a risk-assessment be carried out for each specific substance and product, allowing application of the least trade-restrictive measure. Guatemala believed that the six-month transition period that had been accorded by the EU did not correspond to the actual situation in respect of production and the real possibilities available to farmers, in particular in developing countries, to replace the use of this substance with one that complied with national registrations and was permitted in trade with the EU. Guatemala requested that the EU grant a transition period of at least 24 months for the implementation of a new MRL to ensure that the agricultural sectors of the exporting countries could carry out the necessary studies for the identification of alternative substances that met the same level of protection and whose use would be permitted in the EU. More importantly, Guatemala emphasized that farmers should have sufficient time available between harvests for the switch between products and their new use. Therefore, Guatemala asked the EU to consider this request to ensure that trade was not obstructed.

8.14. The delegate of Malaysia supported the concerns raised by other Members over the EU's implementation of non-tariff barriers on agricultural products. Malaysia highlighted that it and other developing countries had made various efforts and taken various initiatives to move towards

sustainability. Additional efforts had been made, and resources spent, by the developing countries and LDCs to comply with the various standards set by the international standard setting bodies, such as Codex Alimentarius and the International Plant Protection Convention. In particular, Malaysia had been continuously developing its agriculture policies, which included the transformation of the agriculture sector and agro-based industry into a modern, dynamic, and competitive sector, with a special focus on standards, certification, and export quality. Malaysia had developed and implemented standards and programmes such as the Malaysian Good Agricultural Practices and various other sustainable certification standards, including the Malaysian Sustainable Palm Oil Certification Scheme, to ensure that its products could gain better recognition and acceptance in the local and international market. These standards prescribed a generic code of practice that defined essential elements for agricultural producers to follow for sustainable crop production that was legally compliant, environmentally sound, socially acceptable, and economically viable, to ensure quality produce that was safe and suitable for consumption and/or utilization. As such, Malaysia urged the EU to support the efforts being made by the developing countries, and to work together towards further sustainable agriculture development, rather than putting up barriers that could discourage those efforts.

8.15. The delegate of Peru thanked the delegation of Colombia and, together with the delegations of Argentina, Australia, Brazil, Canada, Costa Rica, Côte d'Ivoire, Dominican Republic, Ecuador, Guatemala, Honduras, Malaysia, Nicaragua, Panama, United States, and Uruguay, reiterated his delegation's support for the trade concern presented in document G/C/W/767 regarding the non-tariff barriers to agricultural imports that the European Union had been implementing regarding the use of certain products in agriculture, and which had an excessively restrictive impact on trade in agricultural products. Peru reminded the European Union that any implemented measures, in addition to addressing the legitimate interests of protecting consumers, must also observe the no less legitimate commitments assumed with other WTO Members and, in this regard, they must be based on scientific principles and an appropriate risk assessment of the circumstances and not in a hazard assessment as decided by the European Union. Peru emphasized that such measures must be consistent with the provisions of the WTO covered agreements, be based on the regulatory developments of international standardization and standardization bodies such as Codex Alimentarius, and be applied in a way that avoided them constituting a disguised restriction on international trade.

8.16. The delegate of the United States joined Argentina, Australia, Brazil, Canada, Colombia, Costa Rica, Côte d'Ivoire, Dominican Republic, Ecuador, Guatemala, Honduras, Malaysia, Nicaragua, Panama, Paraguay, Peru, and Uruguay, to request this item on the Council's agenda. The United States had also joined Argentina, Australia, Brazil, Canada, Colombia, Costa Rica, Côte d'Ivoire, Dominican Republic, Ecuador, Guatemala, Honduras, Malaysia, Nicaragua, Panama, Paraguay, Peru, and Uruguay, in a joint statement outlining its concerns on the EU's implementation of non-tariff barriers on agricultural products. The joint statement had been circulated in document G/C/W/767. The US observed that, for over four years, over 40 Members had taken the floor in the SPS and TBT Committees to ask the European Union to reconsider the unsound policies at issue, the implementation of which would have a profound and adverse impact upon global agricultural production and trade, particularly in developing countries. In addition, the US reminded the Council that nearly a quarter of those WTO Members that had taken the floor at the EU's Trade Policy Review, on 5 July 2017, had raised these policies as an area of concern. Given the many concerns raised in the SPS and TBT Committees, as well as in the TPRB, by an unprecedented number of Members over the past several years, the United States was extremely troubled and disappointed that the EU: (i) had adopted criteria for banning the use of certain substances in agricultural production that were far more stringent than those initially notified to the WTO, and which would likely lead to the banning of a greater number of substances than initially disclosed; (ii) had removed and then failed to reintroduce the risk-based amendment to its derogation procedures, breaking the repeated assurances made to WTO Members that critical substances used by agricultural producers around the world would be evaluated on the basis of risk; and (iii) on 10 November 2018, had begun implementing its criteria to identify and subsequently ban certain substances, thus finalizing a regulation that codified a hazard-based approach to pesticide regulation. The United States believed that, under this approach, it remained uncertain how the EU intended to ensure that its actions were consistent with a central tenet of the SPS Agreement that measures be based on an assessment of risk. The US observed that the concerns by a record number of Members in each of the SPS and TBT Committees, as well as concerns expressed in the TPRB over the past four years, had gone entirely unheeded by the European Union. Implementation of the EU's pesticide policies, as codified in EU Regulations 1107/2009, 396/2005, and 2018/605, had begun in November 2018, and were

unnecessarily disrupting agricultural production and trade in cereals, tree nuts, bananas, cranberries, grapes, sweet potatoes, mangos, and other agricultural products. As the EU continued to move forward with additional pesticide bans, the US expected potentially severe impacts on agricultural production and trade. A study published in October 2017 had estimated that the lowering of pesticide residue tolerances (or MRLs) due to the EU's hazard-based criteria had the potential to adversely affect agricultural trade flows valued at approximately USD 86 billion annually worldwide, with a disproportionate impact upon growers in Central and South America and Sub-Saharan Africa. The United States emphasized its commitment to providing high levels of public health protection based on sound science and internationally accepted risk analysis principles, and to supporting the efforts of other Members to do the same, including through collaboration in Codex to set international standards on pesticide MRLs that protected consumers and established the basis for fair trade. In the TBT and SPS Committees, the US had repeatedly asked the EU why it continued to implement trade-restrictive measures when there was inconclusive or no scientific evidence of actual risk to human health or, worse yet, to implement measures that ran contrary to the scientific evidence. Furthermore, the US had asked the EU to explain why exemptions, grace periods, and transitional arrangements granted to domestic producers had not been extended to foreign producers. The US stated that its questions remained unanswered. The US recognized that the continued implementation of the EU's hazard-based approach would result in a continued ban of safe tools and technologies essential to feed a growing world population; it was thus an approach that carried the potential to undermine food security and sustainable development. The US brought this issue to the attention of the Council on Trade in Goods to defend the incomes and the livelihoods of farmers around the world and welcomed the views of other Members on this critically important concern.

8.17. The delegate of Australia as a co-sponsor of the paper shared the concerns raised in relation to the direction of the European Union's agricultural chemical regulations and policy and the potential negative effect on farmers and trade. Australia had previously raised the concerns about the EU's risk assessment and import tolerance setting policies in both the TBT and SPS Committees. While Australia recognized the right of WTO Members to regulate agricultural and other chemicals in a manner that protected human, animal, and plant health and the environment, Members were also bound by WTO obligations particularly in relation to undertaking science-based risk assessments and ensuring that measures were not more trade-restrictive than necessary. Australia questioned the EU's approach to the approval and renewal of plant protection product authorizations and import tolerance limits that relied primarily on hazard-based assessment. In Australia's view, it was unclear how the EU hazards-based assessment was consistent with internationally agreed risk assessment standards for import tolerances. Australia sought clarification on how the EU determined hazards to consumers of treated produce and would welcome discussion on the risk assessments that underpinned EU decisions on import tolerances. Australia also sought greater clarity on how the hazards of a substance were differentiated in terms of the substance use in a production system compared with presence in consumed produce. To support this, Australia would continue to share details with the EU on its regulatory approaches to these substances and the foundation for its assessments. Australia supported, wherever possible, alignment with international scientific and regulatory standards to facilitate trade and provide greater certainty around the use of plant protection products. Where there were concerns about the scientific rigour or validity of international approaches, Australia encouraged an open discussion on this topic with a view to addressing trading partners' concerns and to facilitate mutually beneficial trade.

8.18. The delegate of Uruguay reiterated his delegation's long-standing trade and systemic concerns regarding the European Union's increasing use of a risk-based approach to its regulatory determinations relating to sanitary and phytosanitary issues. In this regard, Uruguay insisted that any determination, in particular when it departed from internationally accepted standards, must be based on a full scientific risk assessment underpinned by validated methodologies, in line with the provisions of the relevant Agreements, as this was essential for the maintenance of the effective balance that must exist between the right of Members to pursue their legitimate objectives and the need to avoid creating unnecessary obstacles to trade. Uruguay believed that it was the responsibility of WTO Members to consider the effects that their regulatory approaches might have on developing and LDC Members whose economies, and the household economies of their citizens, were largely based on the production and trade of agricultural and agro-industrial products. Uruguay invited Members not to overlook the enormous contribution made by those industries to the provision of adequate supplies of safe food for the growing world population, for the benefit of food security, and in line with the provisions of Sustainable Development Goal 2 of the 2030 Agenda of the United Nations. Uruguay therefore called upon the European Union to reconsider its regulatory approach with a view to avoiding the unjustified proliferation of obstacles to international trade in agricultural

products and the serious social and economic consequences of such an approach on other Members, particularly developing and LDC Members, for which the European market was of key importance.

8.19. The delegate of Chile thanked Members for including this agenda item as it was an issue of interest to his country, as previously mentioned in the TBT and SPS Committees. Chile had been consistent in supporting the risk-based approach in accordance with the SPS Agreement. As a result, Chile was concerned about the hazard-based approach in addressing MRLs and pesticides being used by the EU. Chile supported the recommendations issued by the Codex Alimentarius and endorsed the concerns raised by Members because in Chile's view the EU's approach would place the burden of proof on the importing country. Chile urged Members to resolve this issue.

8.20. The delegate of El Salvador said that her authorities continued to follow the measures implemented by the European Union on the banning and reduction of the tolerance levels of certain substances required for safe and sustainable agricultural production. El Salvador believed that the EU measures had been implemented despite concerns that had been repeatedly stated by several Members in the TBT and SPS Committees. El Salvador pointed to the restrictive nature of these barriers and their impact on agricultural trade, particularly in developing countries. In addition to concerns about the scientific basis underpinning these measures, El Salvador was concerned by the short deadlines given, which did not reflect the reality of production and the needs of Salvadorian farmers to find alternatives for these banned substances given that the substances in question had previously been on national registers and allowed in trade with the EU. Having said that, El Salvador shared the systemic and trade concerns expressed by other Members and would continue to follow this issue closely.

8.21. The delegate of Paraguay observed that the harmonization of regulations on the use of plant protection products and the setting of maximum residue limits, along with the recognition of the standards set by international organizations such as Codex, guaranteed food safety and protected the health of consumers, while avoiding disruptions to trade, and without placing unnecessary obstructions on trade. Paraguay believed that the use of substances considered safe, in accordance with internationally established criteria and standards, ensured their efficient production and the subsistence of millions of producers around the world. This subsistence, together with food security, would be badly affected by the EU's measures because farmers would not necessarily have access to the technological resources needed to protect their crops from pests and diseases in various productive ecosystems. Substances such as chlorothalonil, picoxystrobin, glufosinate, and diflubenzuron, although they were not the main active substances in integrated pest management, were used in the crop rotation process that ensured the sustainable production of soybeans, corn, wheat, sorghum, sunflower, sugar cane, peanuts, and other crops. Paraguay was a food-producing country, thanks to its high agricultural potential. In total, 35% of Paraguay's gross domestic product (GDP) came from agro-industrial production, with agricultural products constituting about 85% of Paraguay's exports. A significant share of the country's employment was in agriculture, either directly or in associated activities. Paraguay believed that decisions aimed at not renewing active substances and the subsequent amendment of the EU's maximum residue limits, disregarding international standards and without completing the risk analysis, taking into account only hazard criteria, placed the farmers in Paraguay at risk by failing to ensure import tolerance with a clear and transparent methodology, or to put forward reasonable timelines that allowed for the adaptation of production methods to these new requirements. Paraguay considered that the list of new active substances was not comprehensive. Similarly, the elimination of existing tools without the use of science-based criteria led to the distortion of agricultural production through the application of pressure for the integrated management of diseases and pests. Furthermore, the list of active substances awaiting renewal in the EU was extensive. Paraguay had systemic and economic interests and concerns with regard to the trade-disrupting potential of these measures, which deviated from internationally established safety and security criteria, and risked generating millions of dollars in losses in a sector that was key to the economic stability of Paraguay. Paraguay therefore urged the European Union to maintain a frank exchange with its trading partners on this issue in order to ensure that trade could continue without disruption.

8.22. The delegate of Sri Lanka joined others in expressing concerns over the EU's implementation of such measures as they would effectively prohibit the use of a number of substances that were required for safe and sustainable agricultural production and had been assessed and authorized for use by many WTO Members. Sri Lanka recognized that the EU had moved forward with the implementation of its measures, which were first enacted in 2009, even though other Members had, over the years, repeatedly expressed concerns in the SPS and TBT Committees regarding the overly

restrictive impact of these measures on the trade of agricultural goods. As reflected in the communication, the EU Regulation No. 1107/2009 provided that active substances used in crop protection products be assessed for potential hazard each time a substance was subject to an approval or renewal of approval at the EU level. The irony was that, if deemed to belong to one of the cut-off categories, the EU MRLs could be revoked and the substance withdrawn from the market. Therefore, Sri Lanka believed that the application of the criteria under regular EU reviews created the potential for numerous plant protection products to be withdrawn from usage in EU member states and tolerances for residues on imported goods to fall to the default level of 0.01 ppm. Sri Lanka had no doubt that revocation of MRLs would patently have an impact upon worldwide exporters of agricultural products to the European Union and that such trade flow impacts could be substantial. A lack of predictability and transparency in application of the measures and defining very low MRLs by the EU in its subjected regulation against an array of pesticides commonly used by the farming community in developing countries, which were presumed to pose no significant health risks at present, would act as a significant trade barrier to many developing and LDC Members in accessing the EU market. To ensure a balanced approach, the international community had determined standards that followed the principle of evidence and science-based risk assessments, allowing WTO Members to achieve an appropriate level of protection, while at the same time ensuring that such measures were not more trade-restrictive than necessary. Sri Lanka acknowledged that the standards and applicable MRLs on the use of chemical substances, including plant protection products, established by the International Bodies, such as the IPPC and Codex, were the norms that needed to be adopted by WTO Members while pursuing their legitimate objectives pertaining to protection of human, animal, and plant health. When such standards were not available at international level, such country specific standards should be applied while complying with the related provisions enshrined in the SPS Agreement, which warranted the use of realistic and achievable compliance levels. Sri Lanka believed that, until the scientific evidence was gathered, and affirmative decisions had been taken on the permissible or tolerable levels, the flow of products presumed to be containing such chemical substances should not be halted. But, if MRLs of such chemical substances were defined at 0.01%, then such measures would actually displace other competitive exporting countries by giving undue advantages to EU domestic producers over its competitors. Sri Lanka believed that the EU was diverging from the relevant standards by incorporating a hazard-based approach to the approval and renewal of plant protection product authorizations for certain substances. This was creating a high degree of uncertainty regarding how import tolerances would be considered and set for authorization decisions in the EU. Such an approach would marginalize the developing and least developed countries, as they did not have either capacity to comply with such standards or the ability to adopt to such new and highly sophisticated requirements. This in turn would increase the exiting disparities and have a drastic impact on their productive capacities by closing the EU market, which they had heavily relied upon for generating export income for their economic development. According to Sri Lanka, the export crops likely to be most impacted by this Regulation were tea, coconut, oil seeds, vegetables, rice, cocoa, and cinnamon, which constituted a significant proportion of Sri Lanka's exports to the EU, amounting to 202 million euros. Sri Lanka was also concerned over the very short time periods granted in the EU regulation for foreign suppliers to comply with the requirements. Until those suppliers had been granted adequate time to find alternative means of achieving the same level of EU compliance and requiring their farming community to adapt to and introduce such changes, the EU should seriously consider deferring the implementation of the measures in question. Sri Lanka also urged the EU to provide additional information on its process and timelines for setting import tolerances for active substances that were not re-authorized in the EU, as well as applicable transition periods for MRLs. Additionally, Sri Lanka encouraged the EU to establish a transparent, predictable, and commercially viable import tolerance process for plant protection products, which had not been re-approved, and that included a risk assessment, taking into account risk assessment techniques developed by the relevant international organizations, and to engage meaningfully with trading partners on this issue.

8.23. The delegate of Jamaica, on behalf of the ACP Group, thanked the co-sponsors of document G/C/W/767 for bringing to the Council an issue that had grave systemic implications for WTO Members, especially developing countries and LDCs, whose populations and economies depended heavily on agricultural exports for their livelihood security. The ACP Group believed that any arbitrary adoption of measures that negatively affected developing countries and LDCs went against the principle of facilitating development through trade. ACP members relied heavily on many substances that were subject to these arbitrary measures, as these substances were often necessary for production and in post-harvest activities. Nevertheless, ACP members acknowledged the right of WTO Members to exercise policy space to legitimately protect human, animal, and plant health and

safety. At the same time, the ACP members called upon Members adopting these measures to do so in line with the established rules and ethos of the WTO. In the case of bananas, for example, the crop played an indispensable role in job creation, rural development, and livelihood security in a number of ACP States. She further noted that the European Union had been a primary market for ACP banana exports. Therefore, lowering MRLs for imazalil, a key post-harvest input, could have a severe and wide-ranging impact on the banana sectors in many ACP countries. She stressed that in many instances there was no effective substitute among the available phytosanitary products with the efficacy of those affected by the lowering of MRLs, especially with regard to sporulation control. The ACP concern was particularly centred on the arbitrary nature of the steps taken towards the implementation of these new measures, given that the assumed consumer risks were often premised on what the ACP believed to be insufficient data and inconsistency with the recommendations of international organizations such as the Codex Alimentarius, the FAO, and the WHO. In the ACP members' view, this brought into question whether the measure was more trade-restrictive than necessary to achieve the same objective. She stated that concerns expressed during the consultations phase were too often disregarded and, in this context, the limited resource capacity of developing countries to seek redress through dispute settlement would bring into question the relevance of the WTO in the quest for development through trade. The ACP Group called upon the European Union to use dialogue and diplomacy in its efforts to adopt certain measures, especially measures in relation to which developing countries and LDCs had expressed serious concern. She reminded the Council that many Members had negotiated market access arrangements with the EU for products of export interest. The outcomes of those good faith negotiations and the resulting agreements could be severely undermined if such NTBs were implemented without due concern for the deleterious impact of such trade restrictive measures. The ACP Group thanked the co-sponsors for their initiative and indicated their readiness to dialogue with the EU with a view to finding a mutually satisfactory approach to the adoption of non-tariff measures that diminished the benefits to be derived by ACP Members from their membership in the WTO.

8.24. The delegate of Mexico thanked the proponents for including this item on the agenda and for their statements. Mexico agreed with the positions stated by other Members regarding the establishment of MRLs by the European Union. In Mexico's opinion, the European Union should adhere to a risk-based approach when determining MRLs and ensure that scientific evidence determined the conditions for establishing them, thereby avoiding affecting global agricultural trade. Mexico considered that it was key to maintain science-based procedures when adopting SPS measures in conformity with the provisions of the SPS and TBT Agreements. Mexico reiterated the importance of ensuring that transparency prevailed in measures to be implemented by the European Union. In particular, Mexico requested that Members be kept informed with regard to planned measures and that reasonable time periods be considered for the implementation of such measures so that Members could adapt to them. More importantly, Mexico called upon the European Union to ensure that a risk-based approach and scientific criteria were used for the adoption of such measures.

8.25. The delegate of New Zealand reaffirmed her delegation's commitment to a rules-based trading system under the WTO Agreement and was concerned when any Member adopted hazard rather than risk-based measures. New Zealand believed that the EU's hazard-based approach to regulating substances identified as endocrine disruptors posed an unnecessary barrier to trade and would appreciate any update the EU had on its measure, or an update on the derogation and plans to progress it.

8.26. The delegate of Thailand thanked the co-sponsors of this agenda item and joined others in expressing his delegation's systemic and trade concerns regarding certain NTBs on agricultural products applied by the European Union, which unnecessarily restricted trade. Thailand had also raised its relevant concerns in past TBT Committees, on numerous occasions, and had encouraged the EU to constructively engage with concerned Members, as well as ensuring that these types of measures were considered on risk-based assessment in accordance with international standards in order to minimize the adverse impact on agricultural trade.

8.27. The delegate of India echoed the concerns raised in document G/C/W/767 regarding the implementation of non-tariff barriers on agricultural products by the EU. India stated that the WTO Agreements required Members to ensure that non-tariff measures were not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevailed or were a disguised restriction on international trade. In particular, the SPS Agreement stated that a Member may introduce measures that were not based on the

relevant international standards, guidelines, or recommendations, only if there was a scientific justification for them. Notwithstanding these obligations, in India's view, the EU had continued to impose measures that were more trade restrictive than necessary, without providing sufficient scientific evidence and/or undertaking a risk assessment. India reiterated its concerns regarding the EU measures, which had a significant trade impact, and requested the EU to consider other options, such as the risk-based assessment approach available within the WTO SPS framework, rather than the hazard-based approach.

8.28. The delegate of China joined others in expressing its concerns over the EU's non-tariff measures on agriculture products, especially on the hazard-based approach and the overly restrictive MRLs. China had for years also repeatedly raised its concerns in the SPS Committee. While respecting the EU's right to take measures to protect human beings, animals and plants, China believed that any measure should be based on risk assessment, with scientific evidence, and should be consistent with international standards. In this regard, China requested the EU to consider the comments and concerns of Members and to make adjustments as soon as possible to the relevant measures in order to minimize their negative impact upon international trade.

8.29. The delegate of the Plurinational State of Bolivia thanked the delegations that had included this issue on the Council's agenda. Bolivia reaffirmed the importance of food regulations to the protection of human health. Nevertheless, Bolivia believed that these regulations must pursue legitimate goals and be based on scientific principles. Bolivia attached great importance to the work done by rural workers and to its agricultural production. For that reason, Bolivia believed that the existence of regulatory barriers that did not comply with the WTO Agreements was not justified. Bolivia supported the inclusion of this item on the agenda and reiterated that, when imposing trade barriers, Members should be very careful about focusing on a risk-based approach that was not supported by clear scientific evidence. The multilateral commitment of all Members should be towards maintaining the criteria established in Article 5 of the SPS Agreement in order to guarantee the balanced protection of human health, and the development and living conditions of agricultural workers.

8.30. The delegate of the Philippines registered her delegation's interest in this agenda item as this measure could also affect Philippine's agricultural exports. While her Capital was still looking into this matter, the Philippines was following this topic very closely and stood ready to engage with the EU and other concerned Members on this issue.

8.31. The delegate of Indonesia shared the concerns raised by the proponents of this agenda item. Indonesia was fully aware that there was an increasing trend by the EU in setting up non-tariff barriers, especially for agricultural products. As stated by previous Members, the measures at issue could significantly affect global agricultural products, including from Indonesia. Products such as coffee, coconuts, and palm oil were among highly recorded agricultural products from Indonesia to the EU markets. Indonesia believed that adopting hazard-based cut-off criteria for active substances used in crop protection products and the possible loss of pesticide MRLs would adversely affect its agricultural exports and threaten the livelihood of farmers and their families. Indonesia concurred that international standards established by the international community provided the balanced approach to ensuring that the legitimate objectives of Members were not more trade restrictive than necessary. Indonesia therefore supported the proponents in urging the EU to provide additional information on this issue and to abide by international standards.

8.32. The delegate of Argentina thanked the EU for the technical discussions that had proven useful in dispelling certain doubts. However, as pointed out by Colombia, Argentina remained particularly concerned by the uncertainty surrounding the treatment of applications for import tolerances for active substances that had been affected by the hazard-based approach of Regulation 1107/2009. In Argentina's view, applications for import tolerances were a palliative in the event of the possible non-renewal or rejection of the authorization of an active substance based on mere hazard identification without a full risk assessment. Argentina urged the EU to take appropriate steps to avoid the application of measures that constituted an unnecessary obstacle to international trade.

8.33. The delegate of the European Union thanked the proponents for the circulation of their comments in writing. He assured Members that the EU's SPS regulatory system was fully transparent, and that the EU met all its WTO obligations regarding notifications of measures and the consideration of and response to comments received. The EU had taken note of the statements made. However, it maintained that all EU SPS measures were fully consistent with the

SPS Agreement in that they were based on science and the risk assessment necessary to achieve the EU level of health protection, which applied equally to domestic production and imports. As concerned plant protection products, the EU explained that there existed a limited group of hazards for which the EU level of health protection required no exposure from their use in the EU as any such exposure could indeed lead to risks that the EU considered unacceptable. However, the EU confirmed that, even for those substances, requests for import tolerances would be handled in a consistent and transparent manner through a process that included a full risk assessment. The EU had regularly provided detailed explanations in the SPS Committee of the rationale and necessity for its SPS measures, as well as on their implementation. The EU appreciated the concerns of Members and acknowledged the potential trade impact of certain EU measures. But the EU also insisted that its level of health protection could not be compromised. The EU also invested heavily in providing technical assistance to developing countries to assist them to meet EU and global SPS standards.

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

8.35. The Council so agreed.

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

9.1. The Chairperson informed the Council that, in a communication dated 27 June 2019, the delegations of the European Union, Switzerland, and the United States, respectively, had requested the Secretariat to include this issue on the agenda of this meeting.

9.2. The delegate of Switzerland recalled that this issue had already been on the CTG's agenda and welcomed the new developments that had taken place since April 2019 regarding the selective tax but indicated that, despite such developments, concerns continued to exist on the discriminatory impact of the selective tax on energy drinks that remained unaddressed. His delegation had pursued its efforts both in the WTO and in Capitals.

9.3. Switzerland had also understood that, as of 15 June 2019, Oman had levied a selective tax on certain products; however, the implementing legislation had not yet been published. This contradicted GATT Article X, as the key elements of the selective tax had not been publicly available, and governments and traders therefore had no opportunity to become acquainted with it. He urged Oman to promptly publish the implementing legislation.

9.4. According to recent information, the Kingdom of Saudi Arabia was the first GCC member State to have implemented the first step of the selective tax reform, on 1 July 2019, and consequently the tax base had been expanded to cover e-cigarettes and their products as well as fizzy drinks. Unfortunately, the discriminatory treatment between energy drinks and carbonated soft drinks remained.

9.5. The second step of the reform, which would take place 12 months after the extension of the tax base, would be the replacement of the *ad valorem* selective tax by a volume-based tax. In principle, this would take Switzerland's concerns into consideration. He therefore asked the representatives of the Kingdom of Saudi Arabia, the Kingdom of Bahrain, the United Arab Emirates, and Oman, to confirm and to provide more details regarding the reforms, especially on the expansion of the tax base and the modification of its nature.

9.6. Regarding sport drinks, there was a discrimination between different sport drinks brands, as some were subject to a 100% selective tax, whereas other were not subject to any tax. This constituted a breach of the MFN principle. In May 2019, the authorities had assured Switzerland that this had been a mistake and that the Kingdom of Saudi Arabia, the Kingdom of Bahrain, and the United Arab Emirates would remove the discrimination. He requested again that this removal occur without delay and to receive also an indication as to when the harmonization of the tax rate for sport drinks would be realized.

9.7. A note sent by the GCC Secretariat in the name of the Kingdom of Saudi Arabia, the Kingdom of Bahrain, and the United Arab Emirates, in March 2019, had emphasized the priority given by the

three States to their WTO compliance. However, this note had not addressed the additional written questions that had been sent by Switzerland to Saudi Arabia, Bahrain, and the UAE, in September 2018, regarding the scientific basis justifying the imposition of different tax rates on energy drinks and carbonated soft drinks. His delegation was still looking forward to receiving an answer to those questions and encouraged the GCC States to engage and to work closely with the industry in order to modify the selective tax, to apply it in a transparent and non-discriminatory manner, and to meet the legitimate health policy objectives. Switzerland looked forward to receiving detailed information on a regular basis on the foreseen developments relating to the selective tax, as well as to being consulted on the changes foreseen.

9.8. The delegate of the European Union reiterated its concerns in relation to the GCC "Treaty on Excise Tax" of December 2016, as these had become significant barriers to trade. The EU called upon the GCC to engage in modifying the regulations with interested trading partners and private sector stakeholders in order to ensure that the regulations took into account scientific evidence for meeting specific health objectives, while minimizing any potential negative economic impact.

9.9. The EU understood that the measures in question were under consideration by GCC regulatory authorities and welcomed the fact that the Kingdom of Saudi Arabia had already revised its regulation and published it on 15 May 2019. The EU had also noted that Saudi Arabia had included other sweetened beverages under the excise tax and thus no longer discriminated against soft drinks containing sugar. However, the EU was still concerned that Saudi Arabia had not decreased the tax for energy drinks from 100% to 50% in order to not discriminate between energy drinks and other sugary drinks.

9.10. The EU looked forward to receiving details about the proposed modifications or timelines for revisions from other GCC countries to assess whether the proposed modifications would address the EU's concerns. In addition, the EU asked the GCC countries to accelerate the modification of the tax base from retail price into ingredient/volume base, as indicated by the Kingdom of Bahrain at the last Market Access Committee meeting, on 28 May 2019. The EU thanked the Kingdom of Saudi Arabia for its reply to the recent EU Ministerial letter and looked forward to receiving written replies from the other GCC countries as well.

9.11. The delegate of the United States reiterated her delegation's concerns over the excise tax on carbonated soft drinks, malt beverages, and energy and sports drinks currently implemented by the Kingdom of Saudi Arabia, the Kingdom of Bahrain, the United Arab Emirates, and Oman. The US had raised these concerns directly with the GCC member States' governments, as well as in a number of previous WTO meetings, along with representatives from the EU, Switzerland, and Japan, but without yet receiving any detailed responses.

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

9.13. While the US supported domestic efforts to prevent and control non-communicable diseases, the report of the World Health Organization High-Level Commission on such diseases did not recommend the use of beverage taxes to advance public health outcomes. The US understood that multinational producers had publicly committed to working with GCC member States through public-private partnerships in a voluntary effort to address health concerns and strongly encouraged GCC member States to engage private industry stakeholders to ensure that the excise tax was applied in a transparent and non-discriminatory manner, and to consult with industry stakeholders on possible suggestions for revising the implementation of the current tax.

9.14. The US had acknowledged that GCC member States had decided to revise certain aspects of the excise tax, including possibly widening the tax base to include non-carbonated beverages and possibly changing the tax base from *ad valorem* to one based on ingredients, and that this expansion might go into effect later in 2019. Therefore, the US requested the GCC member States to provide detailed information on this issue and to arrange discussions with GCC officials, including the Ministries of Finance, and private sector stakeholders, for them to discuss directly the concerns raised as well as to arrange discussions with GCC officials and representatives of the International Monetary Fund, which would also be willing to provide guidance regarding excise taxation schemes if requested to do so by the GCC member States.

9.15. The delegate of the Kingdom of Bahrain, on behalf of the Kingdom of Bahrain, the Kingdom of Saudi Arabia, the United Arab Emirates, and the Sultanate of Oman, thanked the US, the EU, and Switzerland for their interest in this matter, and referred to the statement that they had made at the most recent meeting of the Market Access Committee, on 28 May 2019. At the same time, he assured the delegations that had intervened that their comments would be reviewed and addressed at the GCC level in due course. The GCC member States remained open for bilateral discussions on this matter, in particular if there were new or specific concerns to be discussed.

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

9.17. The Council so agreed.

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

10.1. The Chairperson informed the Council that, in a communication dated 27 June 2019, the delegations of the European Union, Japan, and the United States, had requested the Secretariat to include this issue on the agenda of this meeting.

10.2. The delegate of the European Union said that, since this was a long-standing agenda item, she would not repeat the points the EU had previously raised and referred instead to the EU's statements made at earlier meetings, which remained valid to date.

10.3. The EU regretted to add that, since April 2019, imports of alcoholic beverages of EU origin into the Indonesian market had been *de facto* denied without any formal notification or justification of a ban, and urged the Indonesian authorities to restore the situation and to allow again the entry of EU alcoholic beverages.

10.4. Efforts had been made by Indonesia since the last meeting to lift the Avian Influenza import ban for poultry and poultry imports as concerned a number of EU member States. However, the ban had remained in place for a number of other EU member States, despite the fact that these had been declared free from outbreaks according to OIE rules.

10.5. At the Council's previous meeting, the EU had also expressed concerns over the implementation of Halal Law 33/2014. Given that Government Regulation No. 31 of 2019 implementing that Law had entered into force in May 2019, the EU called upon Indonesia to provide precise information on the scope, object, and timing of the measures, to notify them in accordance with WTO rules, to keep halal certification and halal labelling voluntary, as a less trade restrictive measure, and not to require haram products to be labelled as containing haram substances.

10.6. The EU made a general call to Indonesia to eliminate its high number of trade barriers and to refrain from creating new trade barriers in line with its G20 commitments.

10.7. The delegate of Japan said that at this Council, as well as in the TRIMs Committee meeting, Japan, together with other Members, had expressed its concerns over the following Indonesian measures: the export restrictions imposed by the new Mining Law; the new laws on trade and industry; restrictions in the retail sector; and local content requirements in the telecommunications sector, including for 4G mobile phones. Japan regretted, however, that Indonesia had only replied that these measures were consistent with the WTO Agreement, without providing any concrete answers.

10.8. Japan therefore requested Indonesia to clarify: (i) how it could consider the measures to be introduced to be consistent with the WTO Agreements; (ii) to provide specific details of the approach Indonesia was considering adopting to promote reform; and (iii) to update Members on the latest situation regarding all these measures.

10.9. The delegate of the United States said that this Council was well aware of the breadth of concerns raised by her delegation with regard to Indonesia's trade and investment regime.

10.10. She recalled that in previous interventions in this body, her delegation had reviewed in detail the broad range of its concerns, which included 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.

10.11. As also mentioned at previous CTG meetings, as well as in the CTG's subsidiary bodies, the US 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. These local content requirements not only raised concerns about their consistency with Indonesia's trade obligations, but also acted as barriers to trade that potentially diverted investment from other developing countries.

10.12. The US appreciated the fact that Indonesia had taken some positive steps in the past year, including by amending its local purchase requirements for dairy products. However, the US remained deeply concerned that Indonesia was now considering expanding its local content requirements to the pharmaceutical and medical device sectors. Her delegation had submitted a second set of questions (G/TRIMS/Q/IDN/5) on these potential new local content requirements to the Committee on Trade-Related Investment Measures.

10.13. Concerns also existed regarding developments in the digital trade space, including Indonesia's creation of tariff lines for electronically transmitted software and digital products. The US considered 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.

10.14. All these concerns had been raised on numerous occasions in the CTG, bilaterally, and in other relevant WTO Committees, not only by the United States but also by other Members.

10.15. Given President Jokowi's stated goal to improve the business and investment climate in Indonesia during his second term, the United States hoped that Indonesia would work to address US concerns and ensure a free and fair trade between the two countries.

10.16. The delegate of New Zealand echoed Members' previous concerns and recalled that, as had been indicated also in previous CTG meetings, New Zealand believed that Indonesia's restrictions on agricultural imports undermined core WTO principles and were inconsistent with key obligations in the WTO Agreements. As stated also in previous DSB meetings, New Zealand welcomed Indonesia's commitment to implement the WTO decision and the steps that had been taken towards compliance to date. However, New Zealand was disappointed that full compliance had still not been achieved, particularly as concerned Indonesia's failure to meet the 22 June 2019 deadline to remove measure 18, which limited imports based on the sufficiency of domestic supply. New Zealand would continue to encourage Indonesia to achieve commercially meaningful long-term compliance with the WTO decision.

10.17. Additionally, New Zealand continued to have significant concerns over a number of Indonesia's import restrictions that affected trade across a range of agricultural products, and in particular regarding the two-month delay in issuing Import Approvals for New Zealand horticulture products, especially as Indonesian Ministry of Trade Regulation 64/2018 specified that these would be issued within two working days. Other restrictions continued to be applied to New Zealand's horticultural and dairy products where progress had not been made by Indonesia in removing its restrictive trade practices in accordance with the WTO ruling.

10.18. Indonesia's restrictions hurt not only exporters but also Indonesian consumers, processors, and producers, as the measures in place had contributed to rises in food prices in Indonesia, including for basic foodstuffs and ingredients for the domestic manufacturing sector.

10.19. Like previous delegations, New Zealand hoped that Indonesia would implement its reform plans through WTO-consistent policies and looked forward to working with Indonesia during this implementation process.

10.20. The delegate of Chinese Taipei joined previous delegations in expressing its concern on this issue, particularly regarding local content requirements for 4G mobile phones and telecommunications.

10.21. Indonesia's Halal regulation of 2014, which mandated Halal certification for the circulation and trade in all products in Indonesia, once implemented, would require all products on the Indonesian market to be identified with labels indicating whether the item was halal or non-halal. Given the Law's imminent implementation, on 17 October 2019, a number of Chinese Taipei's industries had requested her authorities to seek clarification from Indonesia regarding the specific practices required. In this vein, she asked Indonesia to explain the requirement and procedure of mutual recognition between Indonesia's halal certification bureau, the BPJPH, and foreign halal institutions.

10.22. She also called upon Indonesia to notify to the TBT Committee its draft implementation rules so as to provide stakeholders with an opportunity to comment, and for the Indonesian government to take those comments into consideration. In addition, she asked Indonesia to ensure that a reasonable time period be provided from the date of announcement to the date of implementation of the rules and regulations so that foreign producers could make the relevant adjustments.

10.23. The delegate of the Russian Federation shared the concerns of other Members regarding Indonesia's trade restricting policies applied across a broad range of products. The Russian Federation noted that Indonesia's import licensing requirements impeded market access and that the complex and burdensome measures it applied had resulted in a decrease in Indonesia's imports from the Russian Federation, as well as from other WTO Members. The Russian Federation urged Indonesia to remove unnecessary obstacles to trade and to bring its measures into conformity with WTO rules.

10.24. The delegate of Brazil associated his delegation with Members' previous statements on this issue, expressing Brazil's concern over Indonesia's trade restrictive measures, in particular regarding undue delays in the process of inspection and approval of Brazilian meat exporters, which was clearly in breach of Article 8 and Annex C of the SPS Agreement. These measures, as Brazil had stated before on many occasions, had been harmful to Brazilian exports of poultry and beef. He urged the Indonesian Government, once again, to engage with Brazil and other delegations in order to address this issue as soon as possible.

10.25. The delegate of Thailand again registered Thailand's concern on this issue and referred to its statements made at previous CTG meetings. Thailand called upon Indonesia to align its measures with its WTO obligations.

10.26. The delegate of China reiterated China's concerns over the pre-paid income tax on imported products under Article 22 of Indonesia's Income Tax Law. China had also noted that, unfortunately, Indonesia had further raised the pre-paid income tax rate on 1,174 products, in September 2018. China believed that such measures represented heavier tax burdens on imported products and thus constituted discrimination against such products. She therefore urged Indonesia immediately to withdraw its trade restricting measures and to align its relevant measures with WTO rules.

10.27. The delegate of Indonesia thanked Members that had signalled their high level of interest in Indonesia's market. His delegation would carefully consider the concerns raised regarding a number of Indonesia's policies or measures that had been alleged to be trade restrictive in nature. As Indonesia had mentioned in previous CTG meetings, what certain Members perceived to be measures restrictive in nature may well be originating in Indonesia's efforts to cope with certain outstanding problems and the negative impact that Indonesia was confronting from opening its market to international trade. However, this did not undermine Indonesia's commitment to the MTS. Indonesia had updated and would continue to update Members on these measures in the relevant Committees and remained open for further discussion with interested Members on any specific issue.

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

10.29. The Council so agreed.

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

11.1. The Chairperson informed the Council that, in communications dated 27 June 2019, the delegations of Canada, China, Norway, Chinese Taipei, and the United States, respectively, had requested the Secretariat to include this issue on the agenda of this meeting.

11.2. The delegate of the United States recalled that, from long ago, her delegation, as well as numerous other Members, had been discussing inconsistencies between India's WTO commitments to provide duty-free access to certain information and communication technology products, including commercially significant products from the United States, and the non-zero import duties that India was in fact charging those imported products. The US had repeatedly urged India, both bilaterally and in the relevant WTO bodies, to address its actions and to abide by its commitments. However, tariff increases continued and the patience of the United States was running out. The US had also noted with interest the requests for consultations filed by the European Union and Japan and called upon India to provide duty-free access for the ICT and telecommunications equipment products for which India had a WTO commitment to do so.

11.3. The delegate of Norway, as one of the five co-sponsors of this agenda item, indicated that Norway's concerns remained, and were both systemic and commercial.

11.4. The delegate of Chinese Taipei, as a co-sponsor of this agenda item, stated that Chinese Taipei remained deeply disturbed by India's continuous raising of its tariffs on at least 32 ICT products through its Union Budget and the publication of other government notifications since 2014.

11.5. Given that her delegation had registered its concerns in previous CTG meetings, she referred to the statements already delivered[6] and urged India to eliminate the tariffs at issue to ensure duty-free access where India had committed to provide it. Chinese Taipei would be monitoring this issue closely and would not rule-out the option of requesting formal consultations with India under the WTO dispute settlement mechanism.

11.6. The delegate of Canada regretted to be compelled once again to raise this issue in this Council. Canada's concerns had also been raised in the Committee on Market Access (CMA) and at the ITA Committee. However, Canada's concerns had still not been addressed. Canada's concerns regarding India's application of tariffs on ICT products in excess of its WTO bound commitments were both systemic and commercial. He called upon India once again to immediately rescind its tariff increases and to refrain from pursuing any further tariff increases above its WTO commitments.

11.7. Canada also regretted India's rejection of Canada's request to join the separate requests for consultations made by the EU and Japan, as Canada considered it had a substantial trade interest in the matter.

11.8. The delegate of China reiterated the concerns of her delegation regarding India's tariffs on ICT products, especially those on mobile phones and their components, as these severely affected China's commercial interests. China was of the view that these products were within the scope of ITA-1; therefore, India's current applied rates exceeded its WTO bound rates. China urged India immediately to bring the customs duties on the relevant products back to their WTO bound rates.

11.9. With regard to the consultations requested by the EU and Japan under the DSB, China regretted India's refusal of China's requests to join these consultations, particularly as China had significant interests, where there was a clear commercial impact on such products from China. Nevertheless, China hoped that the issue, through consultations, could be promptly resolved.

11.10. The delegate of Australia reiterated Australia's continuing interest in this matter.

[6] Document G/C/M/134, paragraph 12.7.

11.11. The delegate of New Zealand stated that his delegation continued to share the concerns expressed by other Members, particularly in respect of the systemic importance of applied tariffs not exceeding bound commitments.

11.12. The delegate of Switzerland reiterated his delegation's serious concerns regarding the customs treatment of certain ICT products by India. Since 2014, India had progressively increased customs duties on several ICT products, which constituted *prima facie* violations of India's WTO commitments, particularly as the tariff lines in question were subject to duty-free commitments in India's GATT Schedule of Concessions.

11.13. The delegate of Thailand again registered Thailand's continued systemic and commercial interests in this issue.

11.14. The delegate of Singapore shared the concerns raised by previous speakers on this issue. Singapore had both a systemic and commercial interest in this matter and believed that it was crucial for all WTO Members to abide by their commitments. However, India had continued to impose tariffs on products that were covered under the ITA that affected Singapore's exports. As on previous occasions, Singapore once again urged India to bring its applied tariffs on ITC products into line with its ITA Commitments. Singapore would continue to monitor this issue closely.

11.15. The delegate of the Republic of Korea shared the concerns previously raised by other Members regarding the inconsistency of the duties imposed by India with its WTO commitments. Korea requested India to remove the tariffs on the ICT products in question and to resolve this issue promptly.

11.16. The delegate of Japan stated that, for Japan, it was clear that India's measures violated its tariff schedule. Japan had expressed its concerns on this issue repeatedly at the meetings of this Council and those of other relevant Committees. Since this issue had not been resolved, on 10 May 2019, Japan had made a formal request to hold bilateral consultations with India.

11.17. The delegate of India thanked previous speakers for their continued interest in India's customs duties on certain telecommunications and other products. On the issue of duty imposed on certain products, which were listed as ITA-1 products by some Members, he recalled India's previous statements in various Committees, including the CMA, the ITA, and this Council.[7] India had also offered bilateral meetings with Members on the technicalities of the rectification it had sought and fruitful and constructive discussions had taken place with a few Members, which had accepted bilateral discussions. India referred to the statements made at previous CTG meetings. For the sake of saving time, India reiterated that it was fully aware of its obligations and commitments under the ITA and had been abiding by the same.

11.18. India signed the ITA-1 in 1997 and presented its schedule of concessions, which was subsequently certified in document WT/LET/181. India did not intend to commit what was there beyond the scope of its ITA-1 commitment inscribed in such document. India had also stated in previous meetings that Members had the right to revisit any errors or mistakes committed in assigning bound tariffs while transposing their HS Schedule and place the necessary rectification request before the concerned committee. Accordingly, India had filed its rectification request aimed at correcting certain areas in its HS2007 Schedule. This was in accordance with the procedures for modification and rectification of the schedules of tariff concessions contained in the Decision of 26 March 1980, under the category "other rectifications".

11.19. India encouraged interested Members to discuss directly with India any of their views on the technical aspects of these products, as well as their classification.

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

11.21. The Council so agreed.

[7] Document G/C/M/134, paragraph 12.15.

12 TRANSPARENCY AND NOTIFICATION REQUIREMENTS

12.1 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.2-JOB/CTG/14/Rev.2)

12.1. The Chairperson informed delegations that the Council had before it two communications referring to the issue of transparency and notification requirements. The first was the second revision of document JOB/CTG/14, being considered by this Council since November 2018, and with regard to which the proponents had held various consultations with interested delegations. The Council also had for its consideration document JOB/CTG/15, dated 27 June 2019, which had been circulated by the Secretariat on the request of various delegations. He therefore proposed to the Council first to consider document JOB/CTG/14/Rev.2, dated 27 June 2019, entitled "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.

12.2. The representative of the United States thanked the co-sponsors of the document for making the revised proposal what it was today. He recalled that the United States had initially tabled a proposal, at the November 2017 CTG meeting, to improve Member's compliance with the notification requirements of various WTO Agreements.

12.3. The revised proposal circulated for today's meeting was a culmination of additional improvements based on the work of all the co-sponsors, the extremely helpful Member feedback the proponents had received during the four previous Council meetings, as well as countless bilateral and small group meetings.

12.4. The United States continued to see this proposal as 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.

12.5. Members' compliance rate with notification obligations continued to be extremely low in many critical areas of the Organization's work. This lack of transparency was problematic for Members and traders and it undermined the proper functioning and operation of the WTO Agreements.

12.6. Lack of compliance with basic notification obligations also undermined confidence in the system. If Members could not comply with their most basic obligations, he questioned, then what certainty could there be that they were complying with those that were more substantive.

12.7. From a systemic perspective, it was also very difficult to develop, evaluate, and assess negotiating proposals to improve the operation of various WTO Agreements without the information that Members should have provided under existing WTO notification obligations.

12.8. To encourage better compliance with notification obligations, this proposal included incentives to seek improved performance, such as the ability to request technical assistance, and the ability to compile information through the TPR process, as well as modest administrative measures acknowledging that sustained problems in compliance should have at least some consequences.

12.9. However, this proposal did not change the balance of Members' obligations, nor the notification obligations required of any Member under the WTO Agreements. It merely sought to encourage better compliance with existing obligations through various incentives and administrative measures.

12.10. In order to address the key revisions and improvements made since the previous version the US representative passed the floor to his colleague.

12.11. The delegate of the United States thanked her representative for highlighting that, while the proposal might look significantly different from its previous version, the revisions had in fact been

targeted on a few key areas. The provisions had been re-ordered in such a way to create a better flow and clarity in the process by which administrative measures might be triggered.

12.12. Paragraphs 8, 9, and 10 in the previous version were now paragraphs 5, 6, and 7 in this version, namely the provisions that encouraged Members to provide an explanation as to the reason for any delay in submitting their notification, to seek Secretariat assistance if needed, and also the technical assistance provisions for developing country Members.

12.13. The earlier paragraph 7, on DS:1 notifications, was now paragraph 8.

12.14. The paragraph concerning "counter-notifications", previously paragraph 5, had been shifted and was now paragraph 9, which, in turn, had been amended. This paragraph no longer referred to "counter-notifications", an issue on which she would elaborate further later in her intervention.

12.15. She turned to specific drafting revisions.

12.16. In the Preamble, the words "as follows" had been added after the word "Decides" in order to account for the drafting structure that followed throughout the text.

12.17. In paragraph 1, the word "including" had been added in order to ensure that this paragraph did not unintentionally limit the scope of the Decision to only "regular" notifications, meaning that this decision would apply to all types of notifications, including *ad hoc* notifications.

12.18. In paragraph 3, the drafting of this provision had been cleaned-up in order to capture all relevant Handbooks that might need to be updated.

12.19. Throughout the text and, in particular, in the new paragraphs 5, 6, and 7, cross-references to old paragraph 6 and paragraph 7 had been deleted and pegged these provisions to the deadlines in the relevant Agreements and Understandings listed in paragraph 1. This change had been made in order to provide certainty as to the deadline for notifications, simply the current deadline, which had been indicated in the relevant agreement or understanding.

12.20. In paragraph 9, reference specifically to "counter-notifications" had been removed and this provision had more clearly been tied back to the obligations contained in the Agreements and Understandings listed in paragraph 1. Members continued to be encouraged to bring forward information they considered had not been notified by another Member, but the language here was now consistent with the language used in the relevant Agreements and Understandings, such as, for instance, the Agreement on Agriculture.

12.21. In the previous version of this proposal, old paragraph 6 was the original paragraph that teed up the administrative measures. The proponents had instead merged this language into the chapeau of the new paragraph 10 and had clearly spelled out the different treatment for different types of notifications. This was contained in subparagraphs 10(a), 10(b) and 10(c), which were, respectively, regular notifications going forward from the date of adoption of this decision, the DS:1 notifications, and the retrospective one-time notifications and relevant updates of such one-time notifications.

12.22. Regarding paragraph 10(c), Members' concerns regarding the retrospective nature of this proposal had been considered and any retrospectivity had been limited to "one-time" notifications only. These one-time notifications tended to be information regarding a Member's laws, regulations, and other measures used to fulfil particular obligations of relevant agreements. As the expression "one-time" notifications was widely used and understood but not explicitly defined, the proponents were open to stating clearly which notification requirements were meant in this context, and she wished also to be clear that what was being sought here was the most current information that should have been notified, not, for instance, information that should have been notified in 1995, but which was now irrelevant. Therefore, this provision had been circumscribed even more to be that which is most current with respect to a one-time notification. Members would also have a year from the adoption of the decision to come into compliance with these notifications.

12.23. The administrative measures had also been separated into two distinct paragraphs, paragraphs 10 and 11. Significantly, the proponents had listened to some of the concerns raised by

Members regarding the administrative measures but continued to believe that there must be consequences for any lack of compliance with these pivotal obligations; however, the administrative measures had now been shifted within the two sets in order to demonstrate a more "progressive" nature. Moreover, what some would consider to be the more severe measures to the second set contained in paragraph 11 had been moved, giving Members more time to come into compliance before these measures would kick in.

12.24. The proposal had also separated into its own provision, the new paragraph 12, the concept of deferring the administrative measures by an additional year for developing country Members that had requested assistance, if the Member concerned still failed to provide the required notification.

12.25. The United States was appreciative of this opportunity to provide additional information on this notifications proposal, along with co-sponsors, who believed that improving transparency through existing WTO notification requirements was a necessary institutional reform to facilitate future negotiations across negotiating topics, and a worthy and desirable outcome in the near term.

12.26. To advance this work, the United States and other proponents planned to continue proponent-based discussions with all interested Members on improving this current proposed General Council Decision on Notifications and looked forward to hearing Members' comments and engaging with Members in this regard in the days and weeks to come.

12.27. The representative of Japan thanked the United States for introducing the revised proposal. Japan greatly appreciated the collective effort that had been made by all the co-sponsors to improve the proposal, as well as the various comments and feedback received from all Members. In addition to the main changes and additional flexibilities already introduced, he highlighted the following three points: (i) the revised proposal did not create any new obligations. Its aim was to realize transparency, the most basic principle of the WTO, by ensuring that the existing notification requirements were fulfilled; (ii) the administrative measures included in the proposal were consequences that the proponents hoped no Member would need to face, as the proposal provided a mechanism to help Members to complete their notifications through technical assistance. For this reason, developing Members were given an additional year before the administrative measures kicked in; and (iii) increased transparency through notification was beneficial to a notifying country because transparency was an essential element of good governance.

12.28. During the conversations with developing Members, many had indicated the challenges posed by capacity constraints, such as difficulties with internal coordination with different government branches, or lack of human resources in preparing notifications. If the discussion in the WTO helped to raise awareness in Capitals concerning the importance of transparency, it would create a momentum to improve internal coordination and better mobilize domestic human resources so that Members would be in a position to better address their own capacity constraints.

12.29. Japan reiterated that enhancing transparency was the most important foundation for the effective functioning of the WTO. Although this initiative might be a small step, Japan believed that it had a symbolic meaning given its importance as a litmus test for WTO reform. If nothing was done in this area, the Organization would lose the trust of its external stakeholders.

12.30. Japan remained committed to this matter and looked forward to further discussions with other Members.

12.31. The representative of Canada thanked the United States for explaining the various improvements that Canada and the other co-sponsors had made to this proposal since the previous CTG meeting. Based on Members' comments on that occasion, there was a recognition by all that the existing transparency obligations were important to the well-being of the WTO, and that failure to fulfil these existing obligations impaired the rights of all of Members, especially those with least capacity to obtain the relevant information on their own behalf.

12.32. This explained why the United States had highlighted, and the co-sponsors had included in the proposal, incentives to seek improved performance, such as the ability to request technical assistance and the ability to compile information through the TPR process.

12.33. Undoubtedly, the provision of this technical assistance would be very helpful. Indeed, as noted by Guatemala at the November 2018 meeting, thanks to a national workshop organized by the Secretariat, Guatemala had been able to address a ten-year backlog of notifications, and to train a team set-up specifically to deal with its notification obligations.

12.34. Moreover, the Global Trade-Related Technical Assistance Database showed that 118 national or regional workshops or seminars were given from 2010 to 2018 with "notifications" as the topic of learning. This number included 47 in the last three years alone, and 31 of these 118 seminars and workshops had been specifically about agriculture notifications. The revision 26 of document G/L/223 had shown improvements in the notification compliance rate of many developing Members from 2014 to 2017, particularly in respect of agriculture domestic support and export subsidy notifications. Therefore, with some assistance, transparency could be improved, and the proposal was aimed at providing such support.

12.35. The representative of Argentina indicated that his delegation would refer to the two communications announced by the Chairperson under this agenda item as they had common elements but also differences in dealing with the issue of transparency and the attention it deserved.

12.36. The changes introduced in the revised version of the proposal co-sponsored by Argentina had been explained in detail by the delegation of the United States. In summary, this new revision reflected the continuous efforts of the co-sponsors, who had sought to incorporate into this revision as many of the comments made by Members as possible.

12.37. He highlighted the clarification that that this proposal did not bring with it new notification requirements. What the proponents were seeking was to ensure that existing obligations were linked to consequences and that those consequences were assumed by the Members concerned. In other terms, a Member could currently fail to fulfil its obligations without its rights being affected; however, such failure undermined the right of other Members to access the information that should have been provided in the relevant notifications. Thus, the proposal was addressing a situation that could itself be considered to be unfair or unacceptable.

12.38. In Argentina's opinion, whenever there was deviation from WTO rules, the rights of those Members with least capacity were always those most affected and undermined. Such Members did not have sophisticated market intelligence mechanisms allowing them to self-generate information that other Members had committed themselves to provide.

12.39. The proposal considered the particular realities of certain developing countries. Argentina itself had experienced difficulties in updating its notifications in areas such as subsidies and countervailing measures. Challenges still remained, as was clear from document G/L/223/Rev.26. For this reason, Argentina considered that the proposal was not best served if judged simply from a developing country versus developed country binary standpoint.

12.40. In sum, Argentina considered that the two communications had elements in common, including the aspiration to achieve an inclusive approach to transparency.

12.41. The representative of the European Union welcomed the continued discussion of the revised and improved version of the transparency proposal. As noted by Argentina's Ambassador, the proponents considered that the proposal remained a work in progress and that the current version reflected how far co-sponsors had gone since the April CTG meeting.

12.42. Since then, the proponents had continued their consultations with interested Members; these had provided valuable views and comments, including from the LDC Group. The exchange of views would continue in the coming weeks and months in order to find ways of alleviating Members' concerns while maintaining the essence of the proposal.

12.43. The Ambassador of the United States had already reiterated today that, based on the comments received, it was once again necessary to reassure Members that this proposal did not create new notification obligations. It merely promoted a collective effort to abide by obligations that all Members had already undertaken, and to do so in a timely manner.

12.44. Several Members were of the view that technical assistance and capacity-building were not by themselves enough to overcome the challenges that hampered some Members' ability to meet their transparency requirements, including the particular challenges faced by LDCs. Members had also indicated that the existing assistance was not sufficiently alleviating the challenges. The issue of whether or not the existing assistance was effective was indeed an important issue that Members needed to assess. The proponents were open to discuss this, as stated in the proposal's paragraph 2. The EU and other proponents looked forward to receiving Members' feedback at this meeting and to further working with all Members to advance the proposal.

12.45. The representative of New Zealand stated that his delegation had long been an advocate for improving notification compliance and transparency. Transparency was fundamental to knowing whether or not Members were implementing their commitments, to understanding the potential impact of notification non-compliance on the rights of other Members, and to informing continuing negotiations.

12.46. All Members benefited from a transparent and rules-based system, and WTO oversight bodies, such as the CTG, would perform their monitoring function better when the full information about Members' policies was available in a timely manner.

12.47. Moreover, Members' notifications provided a valuable source of information for other Members and stakeholders. When combined with the work being done by the Secretariat, in partnership with other organizations, such as the ITC, notifications provided valuable information for SMEs, in both developing and developed Members.

12.48. New Zealand continued to engage actively in discussions with the other co-sponsors to improve the proposal, to address the concerns that Members had raised, and to ensure that the proposal would effectively fulfil its objective of enhancing notification performance. New Zealand encouraged the wider WTO Membership to participate constructively in the development of this proposal.

12.49. The delegate of Chinese Taipei, associated her delegation with the statement made by the United States and emphasized how critical the issue of transparency was for the future work and sustainability of the WTO. All WTO Members had signed up to the principle of a rules-based system in the arena of global trade. All stakeholders expected to benefit from the system one way or another; but similarly, they all had to make the same effort to ensure that it would work. Traders, businesses, and consumers benefited from the predictability that a global rules-based system provided; especially for them, trust was the major factor. However, trust could only be built upon confidence and the fact that the WTO system was based on transparency.

12.50. From the comments made both during the most recent CTG meeting, and in the consultations, there were concerns that this proposal would increase the burden of obligations on some Members, while others would prefer the incentives approach. She therefore reiterated that this revised proposal was still mainly focussed on re-committing to the existing obligations. What was being proposed was simply to improve the procedures in order to enhance transparency through clearer and stronger notification requirements. Some of the challenges and difficulties raised by Members had been addressed by suggestions in this proposal, and the proponents would continue to work with Members to identify and agree on possible ways forward.

12.51. As other proponents had just indicated, this revised proposal merely reflected the work-in-progress so far, and Members' comments and feedback remained vital to the process of getting the necessary WTO reforms under way. Support for the proposal from additional Members would be greatly welcomed. Together with the other proponents, Chinese Taipei remained open to receiving any views and suggestions from Members in this regard.

12.52. The delegate of Costa Rica expressed Costa Rica's satisfaction at being part of this joint proposal. For Costa Rica, transparency was a core principle and a public good at the heart of the MTS. It was an individual responsibility and a collective obligation because without access to information, the e-monitoring and negotiation functions of the WTO would be weakened and the risk of conflicts increased. The WTO performed a job of compiling information that would otherwise only be accessible to just a few Members, thus the importance of strengthening these mechanisms and ensuring compliance with them.

12.53. Costa Rica reiterated that the proposal did not increase the existing notification obligations for any Members. Furthermore, the revised proposal offered additional incentives to address the difficulties that Members might have in meeting their notification obligations. Likewise, Costa Rica believed that technical assistance provided by the Secretariat should help to boost national capacity in the area of notifications and level the playing field so that all Members could meet their current notification obligations. Along these lines, the proposal offered suitable incentives to improve the role and efficiency of resources for technical assistance, with support from the Secretariat.

12.54. Costa Rica recognized that preparing notifications often required institutional coordination, which was not always straightforward. Nevertheless, Costa Rica believed that this proposal offered additional incentives to encourage national notification systems to be given the necessary priority and relevant resources.

12.55. He thanked delegations for their comments and constructive contributions on this proposal given both in the context of recent consultations and here at this meeting. Costa Rica urged all Members to support the proposal and to contribute to improving it so that it could become an instrument that would effectively strengthen the transparency pillar of the WTO.

12.56. The delegate of Australia reiterated Australia's co-sponsorship of this proposal, the aim of which was to encourage better compliance with existing notification obligations. Australia considered Members' compliance with these obligations to be vital to the proper functioning of the WTO. Therefore, Australia welcomed the interest shown by other Members in this proposal. Australia was also pleased that, since the April CTG meeting, discussions on the proposal had continued and, as a consequence, further changes had been made to clarify it. Among the recent changes, he highlighted the limiting of retrospectivity to "one-time" notifications only in paragraph 10(c). This ensured that, under this proposal, Members only had to provide recent and relevant information, and not, for example, information that should have been provided shortly after accession. Nothing in the proposal changed or added to any of the notification obligations required of any Member under the WTO Agreements. Indeed, the whole purpose of the proposal was to encourage and to assist Members in meeting their existing notification obligations. While acknowledging the capacity constraints of many developing Members, Australia noted that the WTO's notification obligations existed for a reason and played an important role in ensuring transparency and predictability in the international trading environment. In Australia's view, this proposal provided a pathway out of non-compliance and into compliance, including by offering technical assistance options.

12.57. Australia encouraged Members to view the notification system as a common resource that, when working as it should, would benefit everyone. In conclusion, he urged Members to co-sponsor, or at least to lend their support, to this proposal as a way of moving the issue forward towards a sustainable solution that would benefit the system and all its Members.

12.58. The delegate of Brazil indicated that he would refer to the two proposals together, which Brazil welcomed as ways to enhance transparency and improve notification requirements in the WTO. Brazil understood some of the views expressed in document JOB/CTG/15 and was aware that certain required notifications were indeed technical and complex and might pose difficulties for many developing countries and LDCs that wished to meet their obligations in good faith. However, this was a matter that could be best addressed through technical cooperation and assistance, with which Members were ready to collaborate. Notification and transparency were not options but obligations under the WTO. In this regard, Brazil concurred with the views expressed by the US and other co-sponsors of the proposal in document JOB/CTG/14/Rev.2 that WTO Members had committed to submit notifications. Brazil's views also coincided with those of the proponents in terms of the need to develop a mechanism to ensure the effective presentation of timely and complete notifications.

12.59. Brazil also acknowledged and welcomed the revised version of the proposal, which had resulted from an effort towards inclusiveness and consensus-building, as highlighted in the Council's previous meeting. Brazil agreed that transparency was essential to a well-functioning WTO. It also believed that there were no insurmountable hurdles in this area, and that Members should be able to work together to find feasible solutions to address this issue. Brazil stood ready to engage constructively with all Members to find practical solutions and to develop a mechanism to encourage better notification compliance.

12.60. The delegate of Saint Lucia, on behalf of the ACP Group, thanked the co-sponsors of document JOB/CTG/14 for its latest revision. Notification and transparency remained critical to the good functioning of any governance system and the WTO was not an exception to this rule. Transparency provided confirmation that Members were complying with their commitments; it also provided a mechanism through which Members could audit their own procedures against best practice. More fundamentally, transparency ensured that WTO Members could report to the Membership on matters of common concern. Hence, the notification system provided an agreed procedural mechanism for achieving the established aim of transparency.

12.61. The revised proposal aimed to tone down the obligation on counter-notification and also bifurcated the administrative measures to be applied for non-compliance. The proposal further attempted to address the issue of capacity constraints by establishing a role for the Secretariat to support Members that required assistance as well as potentially submitting notifications on behalf of a requesting country.

12.62. The ACP Group commended the proponents for their efforts but believed that, for countries already experiencing difficulties in implementing their existing obligations, establishing a new regime of sanctions or, as the proponents had euphemistically referred to it, "administrative measures", would not serve to remedy non-compliance with transparency commitments. At best, these sanctions might further call into question the essential equity within the system and, at worst, they would erode the confidence of Members in assuming new binding rules.

12.63. At a time when the system was facing unprecedented and existential challenges, the Members that were most likely to be negatively affected by such punitive measures were the very Members that remained faithful and steadfast in their support of multilateralism and the rules-based system.

12.64. The ACP Group acknowledged that some Members were tardy in fulfilling notification obligations. However, this tardiness was a consequence of limited internal capacity that could not be addressed by short-term technical assistance interventions provided by the Secretariat. For some Members, ministries with responsibility for trade were staffed by a complement of three or sometimes four officials who together were responsible for negotiations, both bilateral and multilateral, the implementation of regional commitments within regional integration processes, the implementation of new commitments such as the Trade Facilitation Agreement and Economic Partnership Agreements, monitoring and responding to ongoing negotiations at the WTO such as the Fisheries Subsidies negotiations, and responsible, too, for the raft of plurilateral engagements under the self-styled joint statement initiatives. Coverage of these commitments, and more, left very little room for data collection and analysis as it related to transparency. In the face of these daunting challenges, the ACP Members had made every effort to meet their obligations. Their tardiness in meeting related commitments was in large measure a result of capacity constraints and not the result of proactive or strategic non-compliance.

12.65. The ACP Members were keen to find a solution to this issue but urged the proponents to seek more constructive and positive approaches to assist in bridging information and transparency gaps. Therefore, they urged the proponents to assess approaches based on positive, trust building measures that could also aid Members in reaching a higher level of compliance with their notification obligations. Such an approach would not only address gaps in transparency but also strengthen trust in the system, particularly at a time when Members were contemplating new notification obligations within the fisheries subsidies negotiations.

12.66. He again thanked the co-sponsors for their efforts and looked forward to further engagement that would lead to a positive and constructive result.

12.67. The representative of Singapore indicated that he would refer to both the proposals under this agenda item. He thanked the proponents of the "Procedures to Enhance Transparency and Strengthen Notification Requirements Under WTO Agreements" for having consulted other Members, and also for having taken their comments into account to improve the revised draft. In particular, Singapore welcomed the clarification that the sanctions would not apply retroactively, and that a grace period would be provided for one-off notifications. Singapore also appreciated the re-arranged order for the application of administrative measures, with heavier measures imposed over time. These amendments went in the right direction. Nevertheless, Singapore continued to hold strongly

the view that Members with genuine challenges in meeting their notification obligations due to capacity and other domestic constraints should not be penalized.

12.68. Singapore also firmly supported the broader aim of improving transparency and strengthening Members' compliance with notification requirements under the WTO Agreements.

12.69. Indeed, there were gaps in the notification records of both developed and developing countries. Hence, it was the responsibility of all Members, both developed and developing, to make their utmost efforts to fulfil their notification obligations in a timely and accurate manner. There was no excuse for continuing to maintain the status quo.

12.70. All Members would benefit from greater transparency regarding their respective trade policies. Notifications provided advance information of draft measures that might come into effect and of changes to existing measures. This allowed businesses to adapt to those measures and provided for predictability in the broader trading environment.

12.71. Singapore also welcomed the ongoing dialogue aimed at improving the effectiveness of technical assistance provided to developing country Members to meet their notification obligations. The discussions on how best to help improve compliance among those Members that faced genuine capacity constraints should be intensified, including through the provision of more tailor-made technical assistance and capacity-building.

12.72. Singapore shared both proposals' urgency to improve notifications and transparency in WTO Committees, and looked forward to working with all Members to deliver concrete outcomes.

12.73. The delegate of the Russian Federation thanked the proponents for their joint communication. Strengthening and improving the WTO's functioning, including its monitoring mechanism, was of utmost importance and was long overdue. The Russian Federation considered that enhancing transparency and improving the effectiveness of notification requirements was an integral part of WTO reform. The Russian Federation stood ready to engage in further discussions on this issue in order to ensure the predictability and transparency of Members' trade regimes.

12.74. The delegate of South Africa thanked the co-sponsors of the revised document and their explanation of changes made to the original proposal. However, her delegation did not believe that the changes introduced to this revision addressed the concerns previously raised by other Members at this Council. South Africa considered that punitive approaches were not helpful and represented a disproportionate response to the inability of many developing countries to fulfil their notification obligations. The proponents also claimed that the issue of counter-notifications had been removed from the text; however, a close reading confirmed that paragraph 9 still provided for this possibility. A fundamental difficulty that underlay the approach advocated under paragraph 9 was that it proposed to expand counter-notifications to all the Agreements and Understandings listed under paragraph 1. However, this was done without following the amendment processes prescribed under the Marrakesh Agreement, thus severely affecting the rights and obligations of Members.

12.75. Clearly the same rationale applied to paragraph 4, where it had been proposed that Members' TPRs further expand inquisitions on transparency and notification. South Africa noted clearly that paragraph (a)(i) of Annex 3 of the TPRM recognized that that a Member's TPR was not intended to serve as a basis for the enforcement of specific obligations or to impose new policy commitments on Members.

12.76. While the revised paper failed to address the capacity constraints of developing Members, it increased notification requirements on final bound rate Aggregate Measurement of Support (AMS) commitments for developed Members to two years. Furthermore, the assumption that more technical assistance would adequately address the notification deficits of developing countries missed the point. Broadly speaking, much of the capacity constraints faced by most developing countries stemmed from chronic development constraints and the lack of infrastructure and human resources.

12.77. Additionally, the proposal only covered Agreements in Annex 1A, while some developed Members had chronic notification shortcomings in other covered agreements. South Africa believed that selective approaches and cherry picking was not helpful; therefore, South Africa did not believe

that punitive approaches should drive transparency, and nor could it accept the increased burden of notification and transparency for which this proposal was advocating.

12.78. The delegate of Switzerland supported the objective of the revised proposal, aimed at improving transparency and compliance with notification obligations. The monitoring function of the WTO could be carried out effectively if Members scrupulously respected their notification obligations. Switzerland appreciated that some of its own concerns had been addressed, in particular on the amended retroactivity clause.

12.79. Improving transparency was an important element in WTO reform. In this vein, Switzerland believed that solutions that significantly improved the situation while considering the administrative constraints faced by some Members, particularly LDCs, should be developed. In conclusion, her delegation looked forward to actively pursuing discussions with co-sponsors to work out and improve this proposal to strengthen the monitoring function of the WTO, which was in everyone's interest.

12.80. The delegate of Norway welcomed both the Revision 2 of JOB/CTG/14 and JOB/CTG/15 from seven developing Members. He welcomed the amendments made to Revision 1, which now gave the document a more logical and streamlined appearance. A substantive amendment was postponing the economic penalty stage of one year for all Members.

12.81. However, a follow-up question was whether the proposed economic penalty, at least for DS:1, domestic support in agriculture, was now almost redundant. According to Norway's understanding, the penalty for DS:1 notifications in agriculture would now kick in after 52 months for developed Members and 64 months for developing Members.

12.82. With one notable exception, current performance in DS:1 notifications was already better than this suggested. The developed Member with the longest delay had notified DS:1 after 41 months. The developing Member with the second longest delay had notified DS:1 after 51 months. However, this proposal could still have an impact on the 28 Members that had never submitted a DS:1 notification. More than half of these were LDCs, and Members could not expect them to be able to pay extra fees to the WTO. To conclude, the proposed economic penalty, at least for DS:1, seemed primarily to be politically motivated. It distracted attention from more important discussions in the WTO.

12.83. Norway's second main reservation against the proposal remained unchanged as Norway opposed the idea that the Secretariat could notify on behalf of Members. The Secretariat could not accept to do this either as it was obliged to preserve its neutral position.

12.84. Regarding JOB/CTG/15, from seven developing Members, Norway had taken due note of the capacity constraints of most developing Members, and also realized that lack of continuity in administration was a bigger problem for most developing Members than for developed ones. Norway agreed that there was room for improvement in notification practices for all Members, including those Members with the best performance, and had similar views as the proponents regarding economic penalties and notifications by the Secretariat. However, Norway could not subscribe to the idea of a reform pause in the WTO. Any new negotiated outcome would include new commitments and it was necessary to monitor these commitments based on notifications from Members. This was also relevant for the moderate Swiss proposal on non-preferential rules of origin, of which Norway was a co-sponsor.

12.85. If developing Members were to maintain that they could not do more reporting than they did currently, it would effectively put an end to implementing new commitments and negotiated outcomes in the WTO. Measured by the number of recent proposals from developing Members, Norway did not think that this was the intention of developing Members.

12.86. The delegate of Ukraine thanked all co-sponsors for the proposals on strengthening transparency and notification requirements under the WTO Agreements. Ukraine acknowledged the essential role of transparency in the implementation process of the WTO Agreements and considered notifications to be a key instrument for assessing Members' compliance with their substantive WTO commitments. Transparency and notifications were also tools to build and reaffirm trust between WTO Members. Ukraine supported an open discussion of potential options that could further enhance transparency and was willing to cooperate to achieve greater trust among Members.

12.87. The delegate of Uruguay welcomed the revised version of the transparency proposal, incorporating modifications in response to Members' comments; it constituted an improvement with regard to the previous text. Nevertheless, Uruguay reiterated that the recommendations or proposals on the notifications indicated must adhere strictly to what was mandated in the WTO Agreements. The modifications made to the proposal had much merit, but greater effort should be deployed to seek a solution to surmount the punitive approach. An approach based on incentives for cooperation and technical assistance would be preferable, while ensuring faithful compliance with the obligations undertaken.

12.88. Similarly, coherence in the approaches for dealing with the different Agreements, including in the case of DS:1 notifications in agriculture, should also be ensured.

12.89. The delegate of Nigeria thanked the proponents for the revision of the proposed Decision on Procedures to Enhance Transparency and Strengthen Notification Requirements under WTO Agreements, contained in document JOB/CTG/14/Rev.2. However, Nigeria noted that there were no significant differences between Revision 1 and the current Revision 2. One would have expected that Revision 2 would reflect the feedback and comments from developing Members on this issue, especially those that had been made at the previous CTG meeting, where the additional notification obligation of Revision 1 had been objected to, given inherent capacity constraints. But this had not been the case.

12.90. Nigeria noted that the proponents had expunged the paragraph on counter-notification from the proposal's Revision 2. However, the effect of paragraph 9 in Revision 2 was the same as paragraph 5 of Revision 1. Nigeria believed that there was no doubt as to the potential effect of this paragraph, especially as it would most certainly trigger the proliferation of counter-notifications to which developing Members would need to respond.

12.91. Paragraph 4, which effectively expanded Members' Trade Policy Review obligations, as well as paragraphs 5 and 7, regarding six-month notice of explanations of delay, and information on delays in notification due to capacity constraints, respectively, would further stretch the already overstretched lean resources of developing counties.

12.92. At the Council's previous meeting, Nigeria had noted that a good number of developing countries lacked institutional capacity to comply with their respective notification obligations. These challenges included the following: a shortage of adequate manpower in Government Ministries, Departments, and Agencies, with in-depth knowledge of WTO Agreements and their applications, as well as weak inter-Agency channels of communication. This was particularly problematic given that officials dealing with trade policy issues cut across several Ministries, Departments, and Agencies. Notification required the participation of several Ministries and Agencies that, in most cases, strived hard to preserve their respective mandate and that were not always willing to share information. These challenges were unlikely to be addressed by the capacity-building provisions of paragraph 7 of Revision 2. In Nigeria's view, the punitive administrative measures set out in paragraphs 10 and 11 of Revision 2 amounted to punishing developing countries for being poor given that their ability to comply with notification obligations was directly related to their level of economic development.

12.93. Nigeria believed that transparency and notifications were issues of critical and fundamental importance to the effective functioning of the MTS. Nigeria was therefore open to engaging in discussions on a careful and balanced approach to transparency that would ensure that Members, especially developing countries, were not punished unduly as a result of onerous notification obligations.

12.94. The delegate of Mexico thanked the co-sponsors for their introduction to the revised proposal. Mexico considered that this revised proposal constituted a significant contribution to incentivising transparency and improving Members' compliance with their notification commitments.

12.95. Although Mexico welcomed the improvements that the co-proponents had explained to Members and continued to consider that this revision went in the right direction, Mexico at the same time regretted that different treatment remained for DS:1 notifications in Agriculture, granting an additional time-frame before a Member would be subject to administrative measures.

12.96. Therefore, Mexico believed that there was room for still further improvement and that, in order to meet Members' concerns, this paragraph should be subject to a precise date and not to the eventual conclusion of a discussion.

12.97. Mexico was convinced that what the WTO required were rules that were not permissive and that dealt with all topics in the same way.

12.98. Mexico indicated that the document presented by Cuba, India, Nigeria, South Africa, Tunisia, Uganda, and Zimbabwe, was still under consideration in Capital, but by way of a preliminary observation, Mexico welcomed this contribution to the discussion.

12.99. Mexico was convinced that improving the notification and monitoring procedures for the commitments that Members had undertaken was of great importance; for this reason, Mexico reiterated its thanks to the proponents of both documents.

12.100. The delegate of Turkey indicated that he would refer to both documents under this agenda item. As stated by his delegation since the very beginning of this discussion, Turkey strongly believed that transparency was the centrepiece of the whole functioning of the WTO and that proposals to enhance it were always welcomed. Turkey had closely followed the constructive efforts of the proponents for the effective implementation of notification requirements and commended their intense work in order to craft a new guide for strengthening transparency. Since the proposal was first introduced, Turkey had stated repeatedly that the proposed actions and disciplines should contribute towards solidifying Members' compliance with notifications but should not discourage them from fulfilling their obligations. Therefore, Turkey had duly raised its concerns on the proposed "administrative measures" and had underlined the need for Members to address the capacity constraints of developing countries. Based on this understanding, Turkey had carefully reviewed the latest revision of document JOB/CTG/14 and had noted that the concept of administrative measures still remained and was unchanged, despite the recent, if slight, modifications with regard to this element.

12.101. Consequently, Turkey again emphasized its concern that the administrative measures against non-compliance could have the unintended effect of pushing Members even further away from the system. The approach of placing punitive measures at the centre of any proposed reform could have a marginalizing effect, especially on developing WTO Members.

12.102. Turkey believed that developmental concerns should go hand in hand in each facet of the WTO, and that all proposals, including the proposal in question, had to take Members' capacity constraints fully into consideration. In this regard, Turkey shared the perspective and "inclusive approach" of document JOB/CTG/15.

12.103. Turkey stood ready to work constructively with the Membership in order to reach a balance between the challenges of developing Members and the vital issue of enhancement of transparency.

12.104. The delegate of India thanked the proponents for the revised proposal contained in document JOB/CTG/14/Rev.2 and reiterated that India strongly believed in transparency as one of the pillars of the rules-based MTS as it provided information and clarity to Members on the laws and regulations, facts and figures, as well as measures impacting upon international trade that were being taken by other Members.

12.105. Many Members, including India, had significantly improved their notification compliance, despite the difficulties in collecting and collating information as per notification requirements. However, India was disappointed to see that no major substantive changes had been made in the second version of the proposal, despite the detailed concerns expressed by Members at the Council's previous meeting, in April 2019.

12.106. Only minor changes seemed to have been made to the earlier version; the only noticeable changes related to the prospective application of the provisions of the discipline and enabling language to open the doors for making counter-notifications against developing countries, including LDCs, at the drop of a hat.

12.107. No changes had been made to the major and substantive part of the document, such as the proposed administrative measures and the process of surveillance.

12.108. India reiterated that this proposal did not factor in the actual difficulties being faced by Members in the area of achieving compliance with their notification requirements. Several developing countries were facing constraints in terms of human resources, institutional arrangements, database structures, infrastructure requirements, and financial resources. Given these facts, there would of course be difficulties, as well as delays, in collecting, collating, and preparing notifications.

12.109. In addition, several notification requirements involved interpretational issues. Hence, India believed that technical assistance from the Secretariat by itself, and for a short duration, would be insufficient to overcome these challenges. Moreover, given the limited resources of the Secretariat *vis-à-vis* Members' requirements, it would not by itself be able to ensure adherence to the strict notification timelines.

12.110. The proposal as it currently stood would not only impact negatively upon the existing capacity constraints of developing countries, including LDCs, limiting their capacity to meet their notification obligations, but would also even burden them with additional obligations. At the same time, the proposal was silent on a number of issues where there was a need for constant surveillance in terms of Members' compliance in meeting their obligations, particularly on the part of developed countries.

12.111. In summary, India would find it difficult to agree to any proposal that provided for penalties and administrative actions in case of default, rather than making an effort to understand the difficulties facing a large number of developing Members, given the breadth and length of notification requirements under the various WTO Agreements and Members' capacity constraints.

12.112. In India's view, what was required was not to assume wilful default, but rather to encourage those that had been able to update their notifications, despite the great difficulty in doing so, and at the same time to excuse those that had not been able to notify for various reasons, including capacity constraints.

12.113. India considered that understanding and empathy, rather than sanctions eroding equity and trust, were what was needed at present. Therefore, India strongly advocated for appropriate support to notify, which would encourage Members to improve upon their internal capacity to notify on time, instead of administrative actions.

12.114. The delegate of Israel thanked the co-sponsors of the revised proposal and gladly noted that it had incorporated some of the comments and suggestions expressed by Members at the CTG's previous meeting. Israel welcomed this constructive approach. One of the positive by-products of the proposal had been to draw attention to the need for all Members to intensify their efforts regarding compliance with their notification obligations.

12.115. Some of the changes that Israel considered to be positive related to the clarification of the retroactive treatment of notifications, as well as moving back the financial administrative measures. Israel believed that there was still room for improvement regarding the incentive to continue notifying once a Member had fallen under an administrative measure and was confident that Members were heading in the right direction. Israel looked forward to participating in further discussions and consultations on this matter.

12.116. The delegate of the Republic of Korea appreciated the two communications regarding transparency and notification, which were crucial elements for the WTO's functioning. Indeed, in order to make the WTO more relevant and useful, enhancing transparency and strengthening notification compliance were fundamental. Since the establishment of the WTO in 1995, Members had made continued efforts to enhance transparency and notification. Yet this issue still remained a big challenge, despite its importance and Members' interest in it. The severe imbalance in the level of notifications among Members called for a prompt and appropriate response.

12.117. At the CTG's April meeting, Korea had emphasized the need for a balanced approach, meaning that the WTO Membership needed to consider the necessity for notifications, as well as the challenges faced by some Members that lacked the capacity to fully implement their obligations. In

this regard, there were different perspectives between the two communications as well as contrasting opinions among Members.

12.118. Korea appreciated the efforts made by the co-sponsors of document JOB/CTG/14/Rev.2 to reflect the comments made by Members at the CTG's previous meeting, such as on amending the counter-notification part, for example. However, there still remained a need to further consider the feasibility of administrative measures. Korea was not yet fully convinced as to under what conditions any measures would be triggered.

12.119. Regarding the second communication, document JOB/CTG/15, Korea welcomed the work of highlighting some developing Members' reality by describing their lack of capacity. However, considering the necessity of transparency, Members had to focus more on how to strengthen Members' capacity through technical assistance from the Secretariat. If Members were to consider this matter seriously, they would see that it was time for all Members to take actions towards substantive progress, and not to step back and wait. Therefore, Korea suggested that Members could now channel this heightened interest in and attention to the issue of transparency and notifications into a constructive dialogue and in-depth discussion. In short, Korea believed that it would be helpful to hold an informal meeting among interested Members, including co-sponsors, in a cooperative and compromising spirit. To this end, Korea stood willing to participate actively and constructively in any further dialogue to facilitate this process.

12.120. The delegate of Chad, on behalf of the LDC Group, indicated that his Group did not question the good intentions behind this proposal. As a matter of principle, the LDCs considered that transparency was essential for the proper functioning of the MTS and of the WTO and favoured this idea insofar as it was and insofar as it remained beneficial to all.

12.121. As to the substance of the proposal, and based on discussions held between the LDC Group and certain co-sponsors, the LDCs continued to closely monitor the suggestions and efforts under way; they had also expressed their concerns in this regard. In their view, the issue of reform remained topical, and the LDCs wished to be involved in the debate in order to ensure a fair and equitable outcome for all its Members.

12.122. The LDCs were in a situation that did not yet allow them to fully and easily grasp the magnitude and accuracy of existing notification requirements. Therefore, they considered that new obligations, including sanctions, would impact heavily upon them. In their view, what was important for the WTO was to do more to help LDCs in the form, for example, of notification reminders, special assistance in identifying required notifications, and preparation and submission of notifications. The LDCs expressed concern over the proposal to set up a reminder mechanism with sanctions once a notification deadline had been passed.

12.123. The LDCs were of the view that this new iteration of the proposal opened interesting perspectives for them but considered that it was by and large insufficient *vis-à-vis* the difficulties that they encountered and the challenges that they faced.

12.124. The LDC Group favoured a positive approach to reform that would not paralyse them but that instead would strengthen inclusiveness and multilateralism in a context of transparency. The LDCs would pursue discussions with a view to achieving an outcome that best addressed these needs.

12.125. The delegate of China indicated that she would refer to both of the documents under this agenda item. Regarding document JOB/CTG/14/Rev.2, China appreciated the co-sponsors' efforts in continuing discussion with other Members and was pleased to see some improvements in the revised text. However, punitive measures, which had been strongly opposed by other Members, still remained in the revised proposal. Additionally, the revised document did not refer to the notification obligations under the Services and TRIPS Agreements. China believed that these obligations should also be an integral part of any discussion on enhancing transparency and strengthening notifications. In this vein, China requested further explanation on the new paragraph 9, including the meaning of "in accordance with the Agreement and understandings listed in paragraph 1", because only a couple of Agreements and understandings contained counter-notification provisions.

12.126. In addition, China believed that full account should be taken of the capacity constraints of developing Members, especially LDCs, as reflected in document JOB/CTG/15. China considered that the concerns and proposals set out in document JOB/CTG/15 deserved further discussion and full consideration. Therefore, further dialogue and consultations were needed so that the difficulties of developing Members could be better understood and addressed.

12.127. China also shared the concerns of other developing Members and, like others, it would do its utmost to fulfil the required notifications. Indeed, on 30 June 2019, China had submitted its industrial subsidies notifications, including with regard to its fisheries subsidies, within the relevant deadline. The preparation of such notifications had been difficult, but China had prepared them nevertheless.

12.128. As indicated in document JOB/CTG/15, developing Members might be failing to fully fulfil their notification obligations because of capacity constraints; however, the document also showed that developed Members were not performing perfectly either. The document contained a few examples of where developed Members had failed to fulfil their notification obligations. Therefore, to enhance transparency and strengthen notifications in the WTO, it was crucial for developed Members to play a leading role, while developing Members should also endeavour to do their best.

12.129. The delegate of Paraguay indicated that she would refer to both of the documents under this agenda item. With regard to the proposal on procedures to enhance transparency put forward by Argentina, Australia, Canada, Costa Rica, the European Union, Japan, New Zealand, Chinese Taipei, and the United States, she said that her authorities were still analysing the revised version and that the comments that she would make therefore be only preliminary. Paraguay welcomed the developments introduced in the document's current version but remained concerned about the differentiated treatment of domestic support notifications in agriculture, where backlogs were at their worst. An issue of particular concern was the reference to an update of document G/AG/2, for which a timeline had even been established, when the amendment or updating of this document was in fact still the subject of debate in the Committee on Agriculture, where consensus on this matter had not yet been reached.

12.130. In relation to the proposal entitled "An inclusive approach to transparency and notification requirements in the WTO", submitted by Cuba, India, Nigeria, South Africa, Uganda, and Zimbabwe, she indicated that her authorities were also analysing the proposal, but that, by way of preliminary comment, Paraguay was interested in working on *tariff simplification*, an element that, in its view, could contribute to enhancing the transparency and predictability of trade. Paraguay would provide further comments once her authorities had completed their review.

12.131. The delegate of Bangladesh associated his delegation with the statement made by Chad on behalf of the LDC Group and St Lucia on behalf of the ACP Group. Bangladesh believed that transparency was an essential pillar of good governance; however, it was not the only one. There were many ways to ensure transparency and the objective of transparency would not be served by having just a few notification templates. Different agreements had diverse notification provisions, and LDCs' severe technical capacity constraints, including their unique internal coordination challenges and capability vacuum, would not be addressed, necessarily, by providing a few customized training programmes. While Bangladesh deeply appreciated the ongoing efforts of the WTO Secretariat to provide technical support, Bangladesh believed that LDC capacity constraints had to date not been improved to the expected level. Therefore, it was necessary first to investigate why the existing technical assistance programmes on notification enhancement had not been fulfilling Members' expectations.

12.132. Without practically addressing the notification gaps, administrative or punitive measures by themselves would not ensure the much-desired level playing field for all. Every Member had to take responsibility in this regard. Without collective and affirmative action, Members might not connect to the true spirit of multilateralism. Therefore, Bangladesh encouraged Members to review the existing difficulties in the area of notifications and, where required, to simplify the relevant templates and procedures. Bangladesh looked forward to working with all Members to this end.

12.133. The delegate of Egypt shared the proponents' view of transparency being a cornerstone of the WTO and one of its main principles. However, Egypt believed that only a cooperative rather than a punitive approach could lead to a successful enhancement of transparency. Egypt also highlighted

that delays encountered by Members in fulfilling their notification obligations could sometimes be attributed solely to resource constraints, which were not limited to constraints in terms of human expertise, but included also financial and technological constraints, and institutional inefficiencies and poor coordination between different governmental agencies, especially on the subnational level and with regard to the aggregation of data. Therefore, the solution to such problems could not be simply reduced to technical assistance.

12.134. Egypt was of the view that any constructive discussion in this regard should start by a comprehensive assessment of the current notification obligations in all the WTO Agreements by the respective Committees to ensure that they were not unnecessarily complex or burdensome and to examine whether such notifications could be simplified in a manner that would enable Members easily to keep up with their obligations, as well as an assessment of the existing technical assistance provisions to ensure that they met the actual needs of developing countries and at the same time incentivized countries that had not been in full compliance with their notification requirements to bring their notifications up to date.

12.135. Egypt believed that care should be taken not to deviate from what Ministers had recognized in Marrakesh regarding "the need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade", and to avoid a situation where some Members were marginalized even further.

12.136. The delegate of Chile welcomed the revised proposal on transparency and reiterated Chile's commitment to transparency and notification obligations. Chile had always considered that the notification obligations in the various WTO Agreements had been undertaken by all Members at the establishment of the WTO. Notification obligations had been assumed on a voluntary basis and were an expression and a reflection of Members' compromise and commitments in the WTO. Therefore, for Chile, compliance was essential, and no one was questioning the low level of Members' compliance regarding notification obligations. This was a major challenge for the Organization that must be resolved. Chile also believed that the circumstances of some Members needed to be considered as not all Members were able to meet their notification obligations. In this regard, Chile supported technical assistance activities for those Members facing specific difficulties because of capacity constraints.

12.137. Chile also thanked the proponents for having included Members' observations and comments. The proposal had been improved upon over time; nevertheless, Chile considered that the issues of agriculture notifications and punitive measures needed to be revisited in a dialogue based on a new approach, some adjustments in the proposal, and much comprehension and understanding.

12.138. The delegate of Thailand indicated that he would address both submissions under this agenda item and thanked the proponents. He welcomed the urgency created in trying to address the important issue of transparency and notification requirements and reiterated Thailand's continued support for all efforts at enhancing transparency and notification records, which were crucial to the WTO's work. He thanked the proponents of JOB/CTG/14/Rev.2 for their constructive approach and improved submission, which had taken into account Members' concerns as expressed at previous meetings. Thailand believed that Members remained committed to fulfilling their transparency obligations. However, as indicated by the proponents of document JOB/CTG/15, many developing Members, especially LDCs, had legitimate capacity constraints that prevented them from submitting timely and complete notifications. Thailand therefore considered that further discussions were necessary in order to find ways to assess and properly address such constraints in addition to the technical assistance to be provided by the WTO Secretariat. Thailand looked forward to further engaging with the proponents and all interested Members on this issue.

12.139. The delegate of Indonesia thanked the proponents of both documents for their submissions. Indonesia believed that transparency was an important pillar of the MTS. However, Indonesia continued to have serious concerns over the revised proposal to enhance transparency and strengthen notifications contained in document JOB/CTG/14/Rev.2. It seemed to Indonesia that the proponents had not taken into consideration Members' comments from previous meetings, but had instead introduced only semantic changes, without substance, as had previously been highlighted by South Africa. Moreover, the revised proposal had still extended privileges for Members with AMS in Domestic Support equal to those that did not; it was therefore flawed in suggesting a "one-size--fits-all" notification system. It would also place an additional burden on developing

Members beyond the obligations set out in the WTO Agreements, especially by suggesting administrative sanctions. The suggested proposal would only result in alienating developing Members since it failed to address the developmental challenges faced by many of them.

12.140. Indonesia concurred with the viewpoint expressed in document JOB/CTG/15, supported by a broad range of Members, that what was required was an inclusive approach to transparency and notification requirements. This document highlighted many important aspects of the transparency issue that were lacking in the proposal set out in document JOB/CTG/14/Rev.2. In Indonesia's view, document JOB/CTG/15 therefore deserved Members' further consideration.

12.141. The delegate of Hong Kong, China thanked the proponents for their efforts in preparing their submissions under this agenda item. During the discussions Members had shared their respective concerns on the effective functioning of the WTO and had emphasized the crucial role in the MTS played by transparency.

12.142. On the first proposal (document JOB/CTG/14/Rev.2), she referred to the previous comments and questions made by her delegation at the previous meeting.[8] However, she indicated that the revised proposal seemed to address Members' concerns on non-compliance not caused by capacity constraints. In the revised version of the proposal, the co-proponents had elaborated on the assistance and capacity-building elements for Members with difficulties. To make such assistance and capacity-building meaningful to beneficiaries and to the system, the new paper from developing Members (document JOB/CTG/15) provided a clearer picture of some of the challenges that these Members encountered. Therefore, these documents established a good basis for discussion. The two documents also had common elements, including capacity-building, rationalization of notification requirements, and the common goal of improving notification performance.

12.143. After almost two years' consideration of the first proposal, Hong Kong, China considered that it might be a good time to reflect on the process of the discussions, particularly as many comments had been made at CTG formal meetings and then the proponents had taken months to revise their proposals for further comments at a subsequent CTG formal meeting. Hong Kong, China questioned if this was the most fruitful approach.

12.144. Her delegation joined the Republic of Korea in encouraging the proponents of the two papers, as well as all interested Members, to engage quickly in informal discussions. She also suggested to Members that the CTG Chair could consider holding informal consultations to encourage Members to discuss the details of the two papers in an interactive and results-oriented way with a view to agreeing on concrete steps to be taken at the Council's subsequent formal meeting.

12.145. With regard to the second paper, her authorities were still studying the details. However, on a preliminary basis, Hong Kong, China noted that the introductory part of the paper had mentioned activities that seemed to "increase transparency obligations under the guise of efficient rationalization of notification procedures and formats". One of the examples of such activities cited was Switzerland's proposal in the Committee on Rules of Origin (CRO) (document G/RO/W/182). Hong Kong, China, as a co-sponsor of the proposal on non-preferential rules of origin in question, considered that this might not be the case, particularly given that such a proposal, or the proposed template, was intended as a tool to facilitate the fulfilment of the existing notification requirement under the Agreement on Rules of Origin. Hong Kong, China looked forward to working with Members in the CRO to continue refining, understanding, and making the proposal work for all.

12.146. The delegate of Panama thanked the co-proponents for this revised version of their document on transparency. Transparency was of vital importance to Panama and Panama was interested in continuing bilateral or informal discussions with the proponents. He also thanked the co-sponsors of the new document for their hard work and indicated that his delegation would provide comments in due course.

12.147. The delegate of the European Union thanked Members for their comments and highlighted the unanimous recognition that transparency was fundamental to the WTO and its Members, and that notifications were a key pillar of transparency.

[8] Document G/C/M/134, paragraph 9.85.

12.148. He recalled that this proposal was a work in progress. Together with the views already collected through the proponents' informal engagement with Members, the comments received at this meeting were useful contributions that helped the proponents to better circumscribe what they particularly needed to further reflect upon in order for further progress to take place. The co-sponsors would consider these comments in their further deliberations.

12.149. With regard to the challenges faced by a number of developing countries, and particularly LDCs, when dealing with notifications, he indicated that the proposal already placed a strong emphasis on technical assistance and capacity-building. The application of administrative measures would even be deferred a year for developing and LDCs that had submitted information on the assistance and capacity-building that they required.

12.150. Some had indicated that technical assistance would not adequately meet the needs of developing countries, and that technical assistance was already available. Therefore, the proponents would like to hear more from those Members that had already sought such assistance with a view to better understanding their experience, and whether, and how, in their view, such assistance could better contribute to improving notification compliance. Some developing country Members, including LDCs, for example, had insisted upon the institutional and capacity constraints that they encountered, and human capacity constraints in particular. It was important to elaborate further on these issues. Situations were obviously diverse and varied from one Member to another. Situations might also evolve over time. Based on the factual information included in the Secretariat's report on notifications (G/L/223/Rev.26), there were areas where a large body of the Membership, including the LDCs, had notified; for instance, in certain areas under agriculture. However, in other areas Members' performance was irregular. While the EU considered that the specificities of each Member needed to be taken into account, they also considered that there was a need to deepen the discussion to better understand what realities stood behind the facts, including what could be learned from such experience in terms of success stories and remaining challenges. Beyond the issue of shortage of resources, there was also a need to consider how resources were allocated and mobilized, and the extent to which notifications were prioritized.

12.151. The co-sponsors stood ready to examine and discuss these issues further and encouraged Members to pursue this conversation informally with them in the coming weeks.

12.152. The delegate of Australia thanked Members for their comments regarding the allowance for DS1 agricultural notifications in the revised proposal. This included questions from Members on whether the allowance that had been made for DS1 notifications was too long, whether the DS1 notifications could be treated the same as other notifications, as well as the reference to document G/AG/2 on the current rules on agricultural notifications. The allowance that had been made for the proposal for DS1 was flexibility of an additional 2 year-period until administrative measures would apply. This flexibility would remain until an update of the agricultural notifications provided in document G/AG/2 could be achieved. These issues had been discussed as part of ongoing discussions of this proposal between its co-sponsors, and represented a compromise. He recalled that Australia, as well as other co-sponsors, had previously expressed its interest in equal treatment; however, it had also been pointed out that there were over 800 missing DS1 notifications and, by comparison, there were fewer than 100 missing notifications for each of the other required agricultural notifications. Australia would welcome any further views and input from Members on this issue as part of the ongoing discussions on this proposal.

12.2 An Inclusive Approach to Transparency and Notification Requirements in the WTO – Communication from Cuba, India, Nigeria, South Africa, Uganda, and Zimbabwe (JOB/GC/218, JOB/CTG/15, JOB/SERV/292, JOB/IP/33, JOB/DEV/58, JOB/AG/158)

12.153. The Chairperson informed the Council that, in a communication dated 27 June 2019, the delegations of Cuba, India, Nigeria, South Africa, Tunisia, Uganda, and Zimbabwe, had requested the Secretariat to circulate a submission on their behalf entitled "An Inclusive Approach to Transparency and Notification Requirements" (document JOB/CTG/15) and to include this item on the meeting's agenda. After the Airgram had been circulated, the African Group had requested the

Secretariat to issue a revision of document JOB/CTG/15 to include the African Group as a co-sponsor of the communication.[9]

12.154. The delegate of South Africa thanked the delegations of Cuba, India, Nigeria, South Africa, Tunisia, Uganda, and Zimbabwe, as co-sponsors together with South Africa of the communication "An Inclusive Approach to Transparency and Notification Requirements in the WTO". She said that transparency was one of the pillars of the MTS and was important for the functioning of the WTO. While its importance, and that of compliance with obligations, was understood, it was necessary to recognize that developing countries faced challenges in meeting their transparency obligations due to limited capacities and resources. For these reasons, a developmental and inclusive approach should be taken to transparency. The inability of many developing countries and LDCs to fulfil their notification obligations did not and should not equate to wilful neglect of their multilateral obligations. Rather, non-compliance could be attributed to other capacity factors, such as the database capabilities of Members being insufficient to gather complex data, including legislation and statistics, required for certain notifications. Notifications were also complex and required not only familiarity and training in respect of the WTO Agreements and obligations, but also the capacity to collect, validate, analyse, and present the information required. Much of the issue related to a lack of proper infrastructure.

12.155. The co-sponsors of the paper believed that a more cooperative approach was called for, whereby Members were incentivized to comply with their obligations; in this context, they found punitive approaches to be unhelpful. While there was a problem with notification non-compliance, a constructive and effective solution based on the nuancing of obligations in the context of a special and differential approach plus incentives was required. They also believed that such an approach would go a long way to building the trust that was so desperately needed in the Organization. The technical capacity and support provided by the WTO Secretariat was very important and was welcomed. However, there should also be an understanding that countries with chronic lack of capacity would still struggle to meet their multiple notification requirements and would require an improvement above all in institutional capacity. Punitive approaches to enforcing notification and transparency obligations were not acceptable. Any work in the notification area must support the ability of developing countries to address their difficulties through inclusive and mutually agreed approaches, such as through simplified notification formats. In some situations, consideration could also be given to prolonged time-frames. Technical assistance and capacity-building must still remain central components; however, technical assistance and capacity-building alone would not completely resolve the human resource and institutional limitations facing many developing countries. She emphasized that notifications could only be made by the concerned Member and that counter-notifications would not be considered valid. Neither the Secretariat nor any other WTO Member should have the right to notify information on behalf of another Member unless that possibility had been provided for in existing agreements. The co-sponsors believed that transparency should permeate all aspects of the function of the WTO and not be limited to notifications only. Their paper raised various issues, including the following: (i) that transparency was not limited to notifications but should also include how an organization like the WTO was run; and (ii) that it should underpin the day-to-day functions of the WTO, including its decision-making processes and the organization of various types of committee meetings, to ensure effective participation and an inclusive process.

12.156. Concerns had also been raised regarding the Ministerial Conference and how decisions were taken therein. Therefore, there was a need for a holistic approach to address all the limitations in the system. Transparency issues arose because some discussions took place in small committees, informal open-ended meetings, and Green Room meetings. Such practices limited the ability of developing country Members effectively to participate in important deliberations that affected their interests. Furthermore, transparency was not a concern only for developing countries. Some developed country Members did not comply with their notification obligations either, but for different reasons. For example, agriculture notification obligations in the context of final bound AMS commitments should be promptly notified. Developing countries had a much better notification record than major developed countries under GATS Article III.3. Concerns also remained around GATS Mode 4. In addition, Article 66.2 of the TRIPS Agreement was another area where more transparency could assist the promotion of technology transfer to LDC Members. The TRIPS Agreement had also established an obligation for Members to require patent applications to disclose the origin of biological resources and/or associated traditional knowledge, including Prior

[9] On 22 July 2019 a revised version of this document was issued to include Oman as a co-sponsor of the communication (see document JOB/CTG/15/Rev.2).

Informed Consent (PIC) and Access to Benefit Sharing (ABS). However, despite a long discussion in the TRIPS Council in Special Session, no outcome had been produced on this issue. In this context, it was not in developing countries' interests to expand their notification obligations beyond what already existed in the current Agreement.

12.157. Treaty obligations relative to the Marrakesh Agreement and its annexes must be performed in good faith. However, the obligation to comply could not be blind to the situation in which Members found themselves. If developing countries were unable to meet their current notification obligations, they could not be expected to meet even higher notification requirements in the future. The simplification of notification formats and longer time-frames to comply with notification periods could assist developing countries, and LDCs should not be subject to any notification except in areas where they might have an interest. Any work carried out on the issue should be focused on supporting and incentivizing developing countries to address their difficulties. Suggested punitive approaches would not resolve such capacity constraints and would target Members already unable to comply and who remained under financial administrative measures. While technical assistance and capacity-building might assist developing countries to meet their notification obligations, it could not be seen as a panacea since the capacity of developing countries to comply with notification obligations was linked to their level of economic development and access to resources. Therefore, existing notification obligations should be rationalized so that they were commensurate with Members' level of development. Developing countries and LDCs should not be expected to take on notification obligations that were beyond their capacities.

12.158. The delegate of India said that the paper highlighted that, while transparency was important for the functioning of the WTO, LDCs and developing countries had genuine capacity constraints in the areas of institutional requirements and human resources when trying to fulfil their notification obligations. Delays in notifying could not be attributed to wilful non-compliance. Therefore, instead of taking punitive measures the Organization needed instead to adopt an inclusive cooperative approach to incentivize LDCs and developing countries to comply with their notification obligations. Transparency permeated all areas of the WTO's work, including the decision-making processes and the conduct of Ministerial Conferences. Transparency, therefore, should be applied to all WTO work, including priorities and negotiations and deliberations in the various regular bodies. It was necessary to ensure transparent and inclusive processes that provided an opportunity for participation to all Members. Also, notification obligations could not be seen as being relevant only to certain areas relating to goods; instead, they should be applied holistically to all WTO Agreements. The paper highlighted that there were significant notification gaps in areas like agriculture, services, and TRIPS. Transparency needed to be strengthened and the constructive approach should be to recognize the genuine capacity constraints faced by LDCs and developing countries and to adopt a cooperative and inclusive approach to addressing them. The necessary elements of such an approach included technical assistance, simplification of notification requirements, and reducing the administrative and technical burden for small delegations. Such an approach would help transparency without the additional cost of reducing trust and deepening the divide among Members.

12.159. The delegate of Zimbabwe said that the second revision of document JOB/CTG/14 had not taken into account the comments made by many developing countries regarding their resource and institutional constraints. Such challenges could not be adequately addressed through the usual capacity-building programmes. The revision talked about additional notification obligations for developing countries, yet some developed countries had also failed to comply with their notification obligations. He questioned why notification obligations were being increased when Members were already failing to comply with their current notification obligations. Additionally, the revised paper introduced punitive administrative measures on Members that failed to comply. These would mostly affect developing countries and would therefore go beyond current WTO rules and be a reversal of the WTO principle of development. Proposed counter-notifications would also represent an additional obligation on Members because the process proposed would allow any number of counter-notifications from any Member, thus putting additional pressure on developing countries as a consequence of responding to questions regarding their trade policies. Finally, paragraph 4 of document JOB/CTG/14, regarding further questioning on issues relating to compliance during the Trade Policy Review, would likewise increase Members' obligations.

12.160. His delegation did not support document JOB/CTG/14/Rev.2, which disadvantaged developing countries and went against the core principle of development. Indeed, the paper had prompted his delegation to co-sponsor communication JOB/CTG/15/Rev.2 instead, which did take into account the capacity and resource constraints facing developing countries when attempting to

meet their notification obligations. It also acknowledged that the nature of those challenges was linked to a Member's level of development. In 1996, the Working Group on Notification Obligations and Procedures had discussed the resource and capacity constraints of developing countries, their increasing work load, the small size of delegations, and the complexity and technical nature of notifications, among other issues, and had noted the need for some additional forms of special and differential treatment for developing countries. The work of the Working Group should be revisited and carried forward based on the "Inclusive Approach to Transparency" paper. There were large gaps in terms of availability of resources, including human capital, between developed and developing countries, and developing countries needed special and differential treatment.

12.161. The current WTO notification requirements were complex, highly technical, and time-consuming. In certain cases, the data required was costly and difficult to collect and compile. Developing countries had previously raised their concerns over insufficient information and notification non-compliance on the part of some developed countries regarding agricultural final bound AMS, GATS Article III, GATS Mode 4, and Article 66.2 of TRIPS. This was empirical proof that all Members found it difficult to meet their transparency obligations and, therefore, that Members should be finding amicable means by which to resolve the problem of poor notification compliance. To the contrary, overly burdensome transparency requirements would only reduce current compliance levels still further. Members should instead be working towards simplifying the notification requirements for developing countries and supporting and incentivizing developing countries to address their challenges. In this regard, developing countries, LDCs, and Small and Vulnerable Economies (SVEs) should not be expected to take up notification obligations beyond their capacities. Furthermore, they should not be penalized for non-compliance with their notification obligations and their notification obligations should be commensurate with their level of development. In conclusion, Zimbabwe reiterated that any proposals should uphold the core value of development in the WTO.

12.162. The delegate of Nigeria said that it had co-sponsored document JOB/CTG/15 because it was in line with Nigeria's desire for a balanced approach to the issue of transparency and notifications. It shed light on the capacity issues undermining the ability of developing countries to comply with their notification obligations and it also drew attention to other areas where a lack of transparency was often deliberately ignored or overlooked in the WTO, which undermined the gains of developing countries from the international trading system. Those issues included complying with GATS Article III:3 obligations and a lack of transparency in the day-to-day functioning of the WTO, particularly as concerned the overlapping of meetings and the proliferation of informal negotiating meetings in which most developing countries were unable to participate because of resource constraints. There was also the issue of a lack of transparency in the conduct of Ministerial Conference negotiations.

12.163. In order to improve the overall benefits of the multilateral trading system for all, document JOB/CTG/15 had proposed that some issues regarding transparency that were of critical importance to developing countries should be addressed. These included the following: the need to enhance Mode 4 GATS Transparency; the need to concretize the implementation of paragraph 39 of the 18 December 2005 Ministerial Declaration that addressed the issue of disclosure of origin of biological resources and/or associated traditional knowledge in patent application; and the need to encourage annual notification of *ad valorem* equivalents of non-*ad valorem* tariffs, or the conversion of non-*ad valorem* tariffs to *ad valorem* tariffs in order to enhance transparency. The recommendations contained in the paper would guarantee a win-win outcome for all Members regardless of their respective level of development. The proponents were open to further discussions on the issue and called upon all Members to reject any attempt to introduce measures that sought to unduly punish any Member, especially developing countries, as a result of non-compliance with their notification obligations.

12.164. The delegate of Mauritius said that his country was pleased to co-sponsor document JOB/CTG/15. It also subscribed to the statement on transparency and notification that had been made on behalf of the ACP Group. Mauritius fully understood the importance of transparency and notification for the good functioning of any multilateral system, including the MTS. Mauritius had tried to meet its notification obligations at the WTO and it thanked the Secretariat for providing technical assistance to this end. However, this alone had not been enough as Mauritius continued to face considerable resource constraints as a small island developing state with limited means and a lack of human and financial resources. In such circumstances, adding new obligations beyond existing ones, or imposing any form of punitive administrative measures, would only be

counter-productive. Instead, Members should be considering how to simplify notification and other procedures for Members with limited capacity, while also continuing to provide more and tailor-made technical assistance and designing appropriate special and differential treatment (SDT) for such Members. It was also a fact that the delegations of many developing countries, in particular small island developing states, were small, and composed often of only one or at most two officials. Thus, the continued concurrent scheduling of meetings was putting such delegations at a huge disadvantage and, in the process, it undermined important aspects of transparency and inclusiveness. In the view of Mauritius, this was a matter that should be given equal and serious consideration. He emphasized also that transparency was a matter of importance to all Members and was multi-dimensional, thus requiring a cooperative, balanced, and holistic approach, as proposed in document JOB/CTG/15.

12.165. The delegate of Tunisia endorsed the statements made by South Africa, India, Zimbabwe, Nigeria, and Mauritius. His delegation was very pleased to be a co-proponent of document JOB/CTG/15. Tunisia believed that the issue of transparency and respect and compliance with notification requirements was essential for the smooth functioning of the WTO. For these reasons, Tunisia stood ready to work inclusively in a balanced and complementary way with other Members in order to enhance transparency, including in agriculture, as well as to ensure inclusiveness within the WTO. Tunisia remained open to further discussions and negotiations.

12.166. The delegate of the Russian Federation welcomed the engagement of Cuba, India, Nigeria, South Africa, Tunisia, Uganda, and Zimbabwe, in the ongoing discussion on the transparency issue. Transparency was one of the important elements for achieving a better functioning of the WTO as timely information played a key role in promoting Members' participation in global trade. Russia believed that enhancement of transparency in the most important areas of regulation, such as market access and rules of origin, would be beneficial to all Members regardless of their level of development. For this reason, Russia invited Members to work together in order to strike the right balance between their constraints and the improvement of the work of the WTO bodies. Russia believed that close cooperation and constructive dialogue would help to dispel the existing concerns on transparency and allow Members to find a mutually acceptable solution to this issue.

12.167. The delegate of Switzerland thanked the proponents for their contribution on the discussions on transparency at the WTO. Their paper had highlighted various challenges, due to resource constraints, faced by developing countries and LDCs in complying with their notification obligations. Nevertheless, Switzerland considered that transparency was key to conducting an effective monitoring of the WTO Agreements. The current situation suggested that there remained scope to improve transparency and compliance with notification obligations. However, there were also ways to improve transparency while considering Members' resource constraints and the complexity of certain notification obligations. The paper directly addressed the ongoing transparency initiative in non-preferential rules of origin as an example of how this could be achieved, although it was quoted in document JOB/CTG/15 as a source of concern. Switzerland considered it useful to recall and clarify certain points regarding the proposal put forward on rules of origin and indicated that, in developing its proposal, the proponents, together with other delegations, including from developing countries and LDCs, had taken into account the resource constraints and lack of capacity of some Members. As a result, the proposal had foreseen a notification template that kept the administrative burden to its minimum. In fact, Members having no non-preferential rules of origin in force, and related documentary requirements, would barely be required to tick three boxes to complete the template and comply with the notification. Furthermore, the template offered a simple way to get back in line with transparency obligations pursuant to Article 5 of the Agreement on Rules of Origin. To date, approximately 30 countries had not submitted the respective notification.

12.168. Nevertheless, if developing country Members faced difficulties in completing the template, they could request and would receive assistance from the Secretariat to help them to do so. Discussions were ongoing to ensure that all Members were comfortable with the proposal, including on aspects such as S&D treatment and technical assistance. Switzerland regretted that some Members saw the ROO only as a notification burden. The proposal addressed the information gaps that existed in the area of non-preferential rules of origin. In a world where rules of origin were becoming ever more important trade barriers, improving transparency would benefit all WTO Members. Small exporters in developing and least-developed countries wishing to integrate into global value chains would be the first beneficiaries, for whom simplified access to accurate and complete information was critical. Switzerland believed that Members should approach the Swiss proposal from a benefit-cost perspective and not only from a cost perspective. Members should

recognize the benefits of all of the notification requirements at the WTO because transparency constituted a public good that was indispensable for the good functioning of the multilateral trading system. Switzerland would continue to engage in the discussions with all Members with the aim of reaching common ground, preferably soon.

12.169. The delegate of Sri Lanka said that Sri Lanka associated itself with the proposal presented by South Africa on behalf of a group of developing countries and supported the proposals contained in document JOB/CTG/15. Issues of transparency and notification were important to all Members. Developing countries, such as Sri Lanka, were complying to the best of their abilities, noting that compliance was not easy because of the level of technical detail and complexity involved in the presentation of the notifications. Data revealed that both developed and developing countries were behind in their notifications. No WTO Member today was in full compliance with all their notification obligations. The proposal acknowledged that the issue of lack of capacity experienced by developing countries could not be overstated.

12.170. Notifications required staff to be very familiar with the entire range of WTO Agreements and to be confident dealing with highly technical aspects of those Agreements. They required institutional capacities that were often absent in many developing countries. Since notifications required the participation of several Ministries, not just the Trade Ministry, Members should have sufficient human resources to work on WTO matters. No amount of technical assistance workshops would solve the problem of notifications if there were simply too few persons assigned to oversee WTO matters. This issue of capacity had previously been highlighted by a working group on notification obligations and procedures. The latest proposal had eluded to that report and had flagged that "many developing countries had difficulty understanding the frequently complex and highly technical information demanded, and therefore faced a prohibitive task in providing complete responses to the notification requirements and formats".

12.171. Sri Lanka could not support any transparency and notification measures that went beyond existing obligations, with which Sri Lanka, like other developing countries, was already struggling. Instead, the notification issue should be dealt with in a more positive manner, where support and incentives were accorded to assist developing countries to notify, and special and differential treatment measures were provided so that the notification demands on developing countries would be less demanding. The discussion of paragraph 54 of the Report of the Working Group on Notification Obligations and Procedures had made a significant reference therein, which suggested that "simplified formats might be developed for the developing countries with more detailed information being provided to the Committees only when requested. In some situations, prolonged time-frames might be considered". Regarding the proposal presented by the United States on behalf of other Members, Sri Lanka wished to reiterate its statement from the Council's April meeting.[10] She said that Sri Lanka had intended to comment on the latest revised proposal at the current meeting; however, her delegation had seen no difference between the latest and the previous version of the proposal. The revised proposal still contained major additional notification obligations and therefore Members' rights and obligations in the Agreements were being altered. Sri Lanka found it difficult to support such positions and considered it unfortunate that the proponents had not taken into consideration the comments of many developing countries on its revised proposal made at the Council's previous meeting, which had highlighted the resource and institutional constraints of developing countries.

12.172. Sri Lanka considered that the approach of naming and shaming countries was highly problematic and had never before been seen in international bodies. Also, the differences in the second revision it considered to be cosmetic since both versions of the proposal contained two sets of punitive measures; indeed, only the order of these measures within the proposal had been changed in its second revision. Sri Lanka underscored that, if the intention in this regard had been to make the punitive measures more acceptable to developing country Members, it certainly would not succeed in doing so. The paragraph on counter-notifications had been removed but a new paragraph had nevertheless been added using different connotations, although the kind of action that the proposal aimed to develop was the same. The proposal would lead to a proliferation in counter-notifications where counter-notifications had not been provided for and would also create an opportunity for others to bring forward information challenging developing countries. Sri Lanka questioned the meaning of "in accordance with the Agreements and understandings" and asked to what degree developed countries were questioning developing countries' practices in respect of that.

[10] Document G/C/M/134, paragraph 9.91.

Sri Lanka considered that the effect such a paragraph could be the same as the proposal's previous formulation on counter-notifications. In other words, developing countries would be subject to immense pressure and questioned in committees regarding their trade practices.

12.173. The US proposal also increased notification obligations and particularly included the area of trade policy waivers. It suggested that the Secretariat would be given the added responsibility to compile the content of missing notifications, beyond normal practice and punitive administrative measures. The punitive measures would put a lot of developing countries in difficulty but would not be a mechanism that would trigger a reaction from developing countries. Her delegation also requested that the proponents clarify paragraph 2 of its revised proposal; in particular, was the proposal seeking to incorporate all of the pertinent conclusions and recommendations given that the revised text had suggested that the Working Group meet regularly and make recommendations to be presented to the CTG. Would the Working Group also be mandated to look at the comments and recommendations and conclusions already made in the past, in which the genuine difficulties and concerns of developing countries had been recognized. For Sri Lanka, this was a systemic concern.

12.174. The delegate of Costa Rica thanked the sponsors for document JOB/CTG/15, which demonstrated their interest in enhancing transparency in the work of the WTO. Transparency was a fundamental principle of the WTO that required urgent attention because the current level of compliance was too low and varied depending on the issue at hand and the Member concerned. What did not change, however, was the duty of each Member to comply with the same notification requirements. In this regard, the practical implementation of transparency must be universal and unequivocal; Members must all aspire to the same level of transparency and the greatest transparency possible. Also, Members must have at their disposal mechanisms to build capacity and generate responsibilities for the fulfilment of such commitments. It seemed that establishing grades, levels, or rationalization measures according to a level of development, could well become a significant impediment for WTO transparency. Costa Rica shared the sense of urgency that some Members felt regarding the need to enhance transparency in the regular work of the WTO. Without transparency, trust could not be built, and without trust, it would be very difficult to advance the process of negotiating the relevant reforms that the multilateral trading system still needed.

12.175. Costa Rica also had a proposal to put forward that neither generated nor increased the existing notification requirements for any Member. It was normal that Members had different points of view on the balance that should be struck between transparency and the availability of the human and financial resources needed to achieve it. Costa Rica had always considered that investing in transparency, even for a small country, was the greatest contribution it could make to keeping the multilateral trading system alive. As a developing Member, Costa Rica believed in constructive dialogue and in recognizing the divergent opinions among all WTO Members, especially among developing Member countries. This explained Costa Rica's perplexity over paragraph 2.7 of the document, where conclusions were being made about what developing Members could or could not accept in terms of transparency. Costa Rica believed that the discussion should be held without prejudice to possible outcomes and agreed that a lack of information was not an concern exclusive to developing Members, as there was much room for improvement also in the area of agricultural notifications, as indicated in the document submitted by Norway, document RD/AG/71, of 20 June 2019; indeed, this was a work in progress for most Members. Costa Rica fully agreed with the importance of enhancing transparency in terms of tariffs because non-*ad valorem* tariffs generated uncertainty and blocked access to markets. Indeed, Costa Rica had consistently defended that point in agricultural market access negotiations and, together with other Members, had supported the work on tariff simplification. Costa Rica was therefore pleased to see a proposal along these lines in paragraph 3.18 of document JOB/CTG/15.

12.176. Costa Rica also stood ready to work with the sponsors of document JOB/CTG/15 to enhance agricultural and market access notifications, especially with the largest players who, independently of their level of development, possessed the greatest potential to distort agricultural trade at the global level. Similarly, Costa Rica agreed with paragraph 4.1.4 on the importance of avoiding scheduling conflicts with the Committees under the CTG, an issue raised by Hong Kong, China in its communication that would be examined in greater detail under agenda item 34. In addition, there were several forums and meeting configurations at the WTO, and it was not always necessary or practical to produce minutes for each one. Having said that, it was important to devise a mechanism for tracking progress in discussions. For example, in agriculture, the Chairs of the negotiating group often presented written reports that were circulated under the JOB document symbol at times when the negotiations so required. That was an example of a good practice that could be replicated in

other negotiating areas, if it was not already the case. These and other suggestions could be assessed during specific discussions within the Trade Negotiations Committee.

12.177. The delegate of New Zealand thanked the proponents of document JOB/CTG/15 and signalled his intention to confine his comments to issues under the purview of the CTG. His delegation welcomed the fact that more Members were now contributing to the discussion on transparency. New Zealand saw value in pragmatic constructive discussions in subsidiary committees, such as the Committee on Rules of Origin (CRO) and the Committee on Market Access (CMA), on issues where scope for improvements had been identified. His delegation also echoed the comments made by Switzerland regarding the Rules of Origin paper (document G/RO/W/182), which New Zealand had co-sponsored. Such discussions should consider the challenges that developing Members confronted and the contributions to the discussions of many Members, both developing and developed, had been very valuable. As New Zealand had said in the recent CMA, these discussions could be helpful for seeing if there was scope to develop the existing systems of Members. In this way, transparency could be improved while mitigating the challenges of providing information. Sharing experiences could help and, in that context, his delegation had welcomed the recent TBT thematic session on transparency.

12.178. The delegate of Chad, on behalf of the LDC Group, thanked South Africa and all the co-authors of the draft communication. He agreed that there was common ground between the two draft communications on the need to consolidate and strengthen transparency and notification requirements. However, their approaches were different, and WTO Members needed to work to narrow those differences and achieve a consensual approach. This could be achieved collectively through mutual concessions. As underscored by South Africa, an approach based on collaboration and favouring incentives was not only necessary but was also useful for building mutual trust. It was clear that the communication had taken into account the question of transparency for the proper functioning of the WTO, as well as different dimensions of the issues dealt with at the WTO regarding notification requirements. Several LDCs already had to contend with administrative measures due to often difficult financial conditions, while trying to participate as best they could in WTO activities and on most trade-related issues. The LDC Group wished to ensure that the reform that had begun at the WTO would be based on the principle of transparency and respect for the balance between rights and duties of Members, fully taking into consideration the specificities of LDCs, which were the most vulnerable of countries. The LDC Group remained open to discussions and was ready to support any appropriate solutions.

12.179. The delegate of Egypt thanked the co-sponsors of document JOB/CTG/15 and welcomed their analysis, which had captured the essence of the challenges faced by developing countries in fulfilling their transparency and notification obligations, which ranged across human, financial, technological, and institutional challenges, and which, to overcome them, required more than just technical assistance. Egypt shared the co-sponsors' view that punitive measures were not the answer to enhance compliance with notification obligations, and that transparency was broader than just notifications, and also agreed with the proponents that imposing additional transparency requirements on developing countries currently struggling to keep up with the existing transparency requirements would be excessively burdensome and very unlikely to lead to the desired outcome of transparency enhancement. Egypt stood ready to engage constructively with all Members to build upon the ideas presented in the proposal with the final aim of enhancing all elements of transparency in the WTO's work.

12.180. The delegate of Ecuador thanked the proponents for their document, which provided a good balance to the discussion on transparency. Given the lack of capacity and resources of LDCs, Ecuador agreed that any initiative imposing additional obligations or punitive measures in the context of notification obligations would be counter-productive. Likewise, Ecuador did not support the proposal on counter-notifications except where they were included in the existing Agreements.

12.181. The delegate of Uruguay welcomed the document and thanked the sponsors for introducing it. He emphasized the apparently clear consensus among Members on the importance of improving the current situation relating to transparency. In that regard, Uruguay reiterated the importance of ensuring that any proposals put forward were effectively limited in scope to the notification obligations that were already in place within the WTO, and emphasized the need to seek creative solutions in order to reach an outcome that ensured full compliance with the transparency obligations by all Members, allowing those that so needed it also to develop the necessary capacities for that purpose.

12.182. The delegate of the Philippines welcomed the transparency proposals and papers on the table. The Philippines supported the statement delivered by Switzerland regarding the initiative to enhance transparency on non-preferential rules of origin and, as one of its co-sponsors, supported Members' efforts in increasing transparency in that area because doing so would directly benefit exporters from developing countries, such as the Philippines, to integrate into global value chains. Furthermore, as a developing country, the Philippines was of the view that Members should aim for a balance between ensuring substantial and timely compliance with notification obligations and awareness of the physical constraints that hindered such compliance, which in many cases could be alleviated by technical assistance and capacity-building. Her delegation saw value in sustaining a conversation on improving Members' compliance with notification obligations under the WTO Agreements and stood ready to engage in constructive dialogue with all Members on this issue.

12.183. The delegate of the European Union said that the debate on how to increase transparency in the WTO in general, and how to improve the transparency tool of notifications in particular, was an important debate. The EU agreed that notifications were not the only transparency issue to be considered, and the EU had also looked at how meetings could be better organized with a view to enhancing transparency. The communication by South Africa and other Members had asserted that the proposal on notifications by the EU and others had proposed increased notification obligations. The EU had repeatedly clarified that its proposal did not do that. It proposed ways to improve compliance with existing obligations but did not suggest changing current obligations. Regarding previous references to counter-notifications, paragraph 9 of the EU proposal simply said that the General Council could decide to encourage Members to raise the point if they considered that another Member had not met its notifications obligation. In the EU's view, this did not constitute a counter-notification. For example, Article 25 of the Subsidies Agreement set out all the obligations accruing to a Member that received a notification. The Member subject to the remark did not have to do anything in response and therefore there was no additional obligation. Several regional agreements had more significant obligations regarding counter-notification. For example, one stated that "each state party at the request of another state party, through the Secretariat, shall promptly provide information and respond to questions pertaining to an actual proposed measure in respect of whether or not the other state party was previously notified of that measure (Article 73 of the African Continental FTA). This was an example of an actual obligation that followed a request. He wanted to be clear that the EU proposal did not have any such additional notifications.

12.184. The EU was aware that making timely and complete notifications could be a challenge for countries with fewer administrative resources and capacity. This was why technical assistance and capacity-building played a central role in their proposal. The EU proposal clearly recognized that capacity constraints could be the reason for non-compliance of developing countries. It encouraged developing countries to make use of existing assistance possibilities, such as programmed trade-related technical assistance and *ad hoc* assistance. Their proposal envisaged giving more time to developing countries that needed assistance to submit their outstanding notifications before administrative measures would be applied; in other words, the EU had also considered "prolonged time-frames", as suggested in the past by South Africa and the other co-sponsors of the Communication by the Working Group. The proposal from the EU and co-sponsors asked the Working Group to assess, together with the ITTC, the contribution of WTO trade-related technical assistance to improving notification compliance. In other words, the EU was open to analysing whether existing WTO assistance was effective. EU experience had shown that preparing notifications could actually have a positive effect on capacity. The coordination required within and among various ministries and agencies contributed to better information-sharing and could increase policy coherence. Therefore, it seemed to be in every Member's self-interest to dedicate resources to its notifications, in contrast to just perceiving them as a burden imposed upon them by the WTO Agreements.

12.185. The EU furthered that the scope of the proposal was the goods-related notification obligations overseen by the CTG. This was because there was a well-documented track record of compliance problems in the area of trade in goods-related notifications, which was not necessarily the case in Services; however, that did not imply that the EU was against deepening the discussions on notifications also in other WTO relevant bodies, such as the Councils on Services and TRIPS. The EU looked forward to engaging with Members on these issues and, in particular, to examine why developing Members seemed to perform better in Services notifications, which did not necessarily require a lesser degree of institutional inter-ministry organization. It would be beneficial for the proponents to look at how things worked and how they could make specific improvements. The EU wished to thank the proponents of document JOB/CTG/15 and welcomed the opportunity to have a

debate on finding a solution to what Members considered to be a common problem. The EU looked forward to continuing discussions in the Council and in other committees and groups.

12.186. The delegate of the United States thanked South Africa and other co-sponsors for the paper on an "inclusive approach" to transparency and welcomed the engagement on the critical issue of improving Members' compliance with notification obligations.

12.187. It was clear that the United States, by its co-sponsorship of the revised proposal previously discussed under this agenda item, strongly supported addressing deficiencies and gaps in notifications in order to put the WTO on a path towards a more successful and sustainable future.

12.188. Members' compliance with notification obligations was poor at best, and frankly abysmal in many areas. This undermined the proper functioning of the WTO's work and created problems for traders and for other Members that relied on an understanding of one another's trading systems.

12.189. The new document noted that a deep understanding of WTO Agreements was necessary for compliance with WTO commitments, yet it was important to note that, in fact, transparency was a fundamental obligation for every Member. And being able to have a deep understanding of other Members' trading systems was also necessary for compliance with WTO commitments. It also suggested that the transparency proposal submitted by the United States and various co-sponsors would place added obligations on developing country Members. However, it was again important to note that the proposal from the US and others was simply calling for Members to fulfil their existing notification obligations, nothing more. It set no additional obligations on any Member. In fact, the proposal allowed more time for compliance before, for instance, the administrative measures might take effect, and also acknowledged differing Members' capacities. She also emphasized that there was more harm to other Members than to the country itself when it failed to meet notification requirements since the lack of information about a country's laws and regulations actual hindered trade.

12.190. The United States also noted that the proposal in document JOB/CTG/14/Rev.2 in fact took the elements outlined in the South Africa paper and implemented them. For instance, opportunities for capacity-building, flexibility of time-frames, potential simplification of format of notifications, were all elements that had been taken up in document JOB/CTG/14/Rev.2 that would be put into practice.

12.191. In conclusion, the United States stood ready and committed to work with Members on improving their capacity to implement notification obligations and believed that the proposal in document JOB/CTG/14/Rev.2 struck the necessary balance to do this. The US looked forward to working together with other Members to improve transparency and thereby also to improve the operation of the WTO.

12.192. The delegate of Chinese Taipei welcomed Members' contributions to the issue of transparency and thanked the co-sponsors of document JOB/CTG/15 for their paper, which highlighted that there was broad agreement that transparency was indeed important for the Organization. Her delegation was also pleased to see ongoing discussion in subsidiary committees, such as in the Committee on Rules of Origin, to improve the issue of notifications. Her delegation saw value in the way that the paper helped to simplify the notification format, provided clear information, and Chinese Taipei added its voice to the statement made by Switzerland in that regard. Transparency was essential for the future work and sustainability of the WTO and Chinese Taipei also recognized some of the challenges and difficulties raised by Members. Chinese Taipei believed that more dialogue would help to find a way forward and hoped to this end that there would be continuous and constructive discussions among Members to improve notification compliance and enhance transparency.

12.193. The delegate of Australia thanked Cuba, India, Nigeria, South Africa, Uganda, and Zimbabwe for their communication on the important issue of transparency and notifications. The paper raised a range of key issues, including the capacity constraints being faced by some developing country Members. In this regard, Australia had provided support to a number of WTO assistance mechanisms to ensure that Members were able to participate more effectively in the global trading system. The proposal from Australia and co-sponsors itself included assistance for Members to meet their WTO Membership obligations and it also encouraged those Members needing assistance to take

advantage of existing mechanisms. It was also worth noting that the needs of developing Members had been taken into consideration in the flexibilities written into many Agreements. Australia welcomed suggestions on ways in which it could support all Members, including developing Members, to improve compliance with notification obligations, while noting that this should not come at the cost of eroding Members' commitments to transparency on their trade policies. Having open access to information about other Members' trade policies was an important common good which underpinned the functioning of the WTO and provided a transparent and predictable trading environment for business.

12.194. The delegate of Canada thanked the co-sponsors for their contributions to the discussions on how Members could improve their compliance with their transparency obligations but raised concerns over the arguments that the proponents had made during their interventions. Regarding the arguments on counter-notifications, he noted that a significant proportion of the Annex 1A Agreements of the Marrakesh Agreement explicitly provided for such notifications. However, the sparse number of such notifications since 1995 refuted the argument that they were made at the "drop of a hat". Furthermore, Canada hoped that the proponents were not arguing that Members were not allowed to raise in Committees and Councils questions or issues of relevance to the implementation of the relevant agreements. For instance, some speakers had previously said that LDCs should only be required to submit those "tedious" notifications in areas of interest. It was unclear whether or not this would help the rate of compliance, but such a concept should be of concern to all Members. Canada believed that Members did not make notifications for their own interest; they were made in the interest of all other Members. As Canada had stated at the CTG's previous meeting, notifications were the lifeblood of the work of Committees and Councils and helped all Members to learn from one another. By not providing information on their respective trade policies, Members were only hurting the ability of the Organization to oversee and manage international trade. As had been noted by Hong Kong, China and Switzerland, some Members had seen the proposal on rules of origin mainly from a notification burden perspective, which was disappointing. The intention of the proposal was to facilitate trade through greater transparency, and Canada and other Members had worked hard to socialize the proposal and adapt it to take into account resource constraints and the lack of capacity of some Members. Canada would continue working with all Members to see the proposal adopted.

12.195. Canada was pleased that the co-sponsors had referenced the report of the Working Group on Notifications from 1996, as this was a comprehensive and substantive report on the situation in the early days of the WTO. It also included reflections and recommendations on what the Members and the Secretariat could do to support compliance with the different Agreement's notification obligations. In the section entitled "The Need of Some Developing Country Members for Assistance in Meeting their Notification Obligations", to which the co-sponsors had made some reference, the report also recorded some helpful recommendations that had been pursued. For instance, "the Group had agreed that the technical cooperation programmes of the WTO were a sound vehicle for assisting developing countries in meeting their notification obligations", and that the mentioned notification workshops and seminars should be "followed up and broadened." A review of the trade-related technical assistance cooperation database had revealed that the effort to support those developing countries needing notification assistance had indeed been followed-up and broadened.

12.196. Similarly, the report noted that, during the discussions of the Working Group, a formal proposal had been made by Chile and Norway that a practical handbook or manual should be developed to guide Members through the information required to complete their submissions. Based on that proposal, the Group had expanded the concept further, leading to the development of a five-part draft document. The notification handbooks prepared for the Working Group had laid out in an easy to follow format the various notification requirements and had also provided references back to the texts of the Agreements for Members to understand from where the obligation came. The opening paragraphs of the "Procedures to Enhance Transparency and Strengthen Notification Requirements Under WTO Agreements" clearly laid out that the Working Group would be asked to review and update those notification handbooks. Furthermore, efforts would be undertaken to assess the contribution of WTO trade-related technical assistance to improving notification compliance, and to consider both systemic and specific improvements that could help Members to improve their compliance with their notification obligations. Those were all important steps for Members to have taken as they worked to fulfil the obligations that they had all agreed to in respect of one another. Canada looked forward to continuing constructive discussions on finding ways to strengthen and modernize the Organizations' deliberative functions.

12.197. The delegate of Japan thanked the proponents of document JOB/CTG/15 for their communication raising developing countries' and LDCs' concerns and problems. She reiterated that notification was an obligation for Members under the WTO Agreement. The communication consisted of four elements: (i) consideration for developing countries, including the needs of capacity-building and flexibilities; (ii) developed countries' notification obligations; (iii) notification and capacity-building under the GATS and TRIPS Agreements; and (iv) scheduling of various committee meetings. Regarding consideration for developing countries, the proposal on transparency and notification requirements from Japan and others had already dealt with these issues by including references to capacity-building and additional flexibilities in the time-frame. Also, the simplification of the notification format would be an important topic, and the proponents welcomed engagement and discussion from developing Members in the relevant Councils and Committees. The increased transparency of notification in the area of non-preferential rules of origin was a good example of the simplification of the format, without requiring any new obligation.

12.198. Regarding administrative measures, Japan wished to emphasize that it was a last resort and should only be triggered when a Member persistently failed to comply with its obligations under the WTO Agreement. Since the WTO's establishment, lots of opportunities for technical assistance and capacity-building had been provided to developing Members. But it was unfortunate that in some committees there had been no request for technical assistance on certain WTO Agreements for many years. The reason for this was unclear, but document JOB/CTG/15 emphasized the challenge of capacity constraints. Even so, clear answers were required from proponents as to why no requests had been made in certain committees. The transparency proposal set out in document JOB/CTG/14 covered developed countries' obligations by providing stricter rules than did the communication in document JOB/CTG/15. For example, developed country Members that failed to comply with their notification obligations would be subject to administrative measures immediately after the relevant deadlines had passed. Finally, the scheduling of committee meetings was also important and should be discussed separately. Japan believed that its transparency proposal tried to address many of the concerns and elements contained in the communication in document JOB/CTG/15, and her delegation wished to further discuss the question of how Members could work together on improving transparency in a collaborative and constructive manner.

12.199. The delegate of Sri Lanka said that technical assistance from the Secretariat would not resolve all the difficulties encountered by developing countries when attempting to comply with their notification obligations. For example, there was a great deal of transfer of officers within various administrations and this itself resulted in a need for continual retraining; in turn, this resulted in ministries and focal points struggling to get the necessary data as officers needed to be trained and educated on the type of information to be provided and on the necessity of providing it. With specific regard to the proposal on non-preferential rules of origin, Sri Lanka was not questioning the provision itself but rather how to properly prepare a compilation of non-preferential rules. In Sri Lanka's case, these rules were adopted by different Chambers of Commerce and had to be collated into a national compilation, which itself had become a mammoth task. Yet in the absence of a national compendium, dealing with more than 9,000 HS Codes, it would be impossible to notify these rules to the WTO. While the proponents might consider their proposal to be a less cumbersome approach, from the developing countries' point of view it was a huge exercise that had to be carried out at a national level.

12.200. The delegate of India thanked all speakers for their constructive comments and contributions to the debate. The key motivation for the submission was to highlight the need for an inclusive, cooperative, and developmental approach to transparency. Some Members seemed to suggest that notification gaps stemmed from wilful non-compliance and advocated punitive measures. The co-sponsors believed that such an approach would be counterproductive as it would ignore the reality of the developing world and further deepen divergence on the issue. All Members acknowledged the importance of transparency for the functioning of the WTO, but it was equally important to understand and recognize the capacity and resource constraints and inherent difficulties being faced by LDCs and developing countries in complying with burdensome notification requirements. The Working Group on Notification Obligations and Procedures, in its report of 1996, clearly identified some of the inherent difficulties developing countries faced in fulfilling their notification obligations. Understanding the frequently complex and highly technical information required under a number of notifications could itself be difficult, and there were also constraints in terms of institutional arrangements and resources. Accordingly, the Working Group had suggested a simplification of the notification format, to establish technical assistance, to prolong the time-frames for notification compliance, and to develop suitable notification systems and structures

in developing countries, including LDCs. India considered that it was now necessary to review and assess how much effort had been made in that direction over the years rather than suggesting punitive and administrative measures.

12.201. There had been a suggestion by some Members that the Secretariat should issue counter-notifications on behalf of other Members. This would go against the spirit of the Marrakesh Agreement and a Member-driven Organization like the WTO. The Secretariat provided technical assistance to Members but notifying on behalf of Members went beyond the mandate of the WTO Agreements. It was also important to understand that transparency was by no means only a developing country concern. Some developed countries were also not complying with their notification obligations. For example, there were significant delays in notifying the final bound commitments under the Agreement on Agriculture or the record of notification under GATS Article 33. For example, there was almost complete non-compliance with the requirements of Article 66.2 of the TRIPS Agreement, and delays in considering disclosure requirements under the TRIPS. On the one hand, transparency was referred to as a public good and the life blood of the Organization, but on the other, GATS Article III:3 notifications were withheld while Members hid behind the language and interpretation of the word and phrases calling for these notifications. In addition, further transparency could not be limited to notifications alone, but should also include issues regarding the functioning of the WTO. Transparency should be reflected in the day-to-day functioning of the WTO and in its decision-making processes. Similarly, there was a need for an holistic approach to addressing concerns relating to non-transparent, non-inclusive decision-making processes at Ministerial Conferences. The paper from South Africa and others had explained the complexity of the issue in detail and addressed many of the issues that had been raised in the debate.

12.202. The WTO should focus on creating a suitable eco-system for strengthening Members' capacity and ability in this area. In the WTO, faith and trust were important to creating a cooperative atmosphere. In this regard, any proposal to improve notification obligations based on punitive measures, as had been suggested by some Members, would definitely be counterproductive and would serve only to deepen current divisions. Instead, Members needed to work sincerely on strengthening compliance through capacity-building and the simplification of notification formats. Members also needed to promote a true spirit of transparency by appropriately applying the intention and purpose of the WTO Agreements. The co-sponsors would continue to look into the solutions proposed by Members and would request additional information on elements of the paper, as necessary; they would also welcome further suggestions from Members and looked forward to future interactions bilaterally and in other formats.

12.203. The delegate of South Africa thanked Members for their comments and suggestions and for their engagement with the proposal contained in document JOB/CTG/15. The paper emphasized the need for compliance and recognized the importance of transparency in notifications. However, it also emphasized the need to give due consideration to the capacity constraints that were facing many Members. The co-sponsors also agreed that notifications and transparency were important in terms of achieving a clearer understanding of Members' implementation of their commitments in the WTO; they were likewise important for predictability in global trade. However, the transparency and notification issue could not be looked at in isolation in view of the capacity constraints of developing Members that had also been raised in the paper. The co-sponsors reiterated their view that a cooperative, development-oriented, and holistic approach would assist the WTO to address its current challenges more effectively than a punitive approach. The co-sponsors looked forward to further engagement with Members on the proposal and already welcomed some of the suggestions that had been made by Hong Kong, China and Singapore on looking for a way forward in terms of further informal consultations with the proponents of the other paper under discussion under this agenda item.

12.204. The co-sponsors of document JOB/CTG/15 had also noted that Members had identified points of commonality that existed between the two papers. However, they also noted that there was a difference in approach, with document JOB/CTG/15 proposing a more cooperative, development-oriented, and inclusive approach, and document JOB/CTG/14/Rev.2 proposing a more punitive approach. There was a need to further engage on some of the issues where there were differences and the co-sponsors welcomed further engagement in this regard to see if a way forward could be found. Their paper had emphasized that technical assistance made a contribution but that technical assistance in capacity-building alone would not resolve the challenges of a number of systemic issues. Indeed, a number of developing countries had emphasized the challenges that

existed, and it was important to look at those issues to see if there could be a strengthening of the assistance provided in order that such assistance dealt with the causes rather than only the symptoms of why Members were unable to comply with their notification obligations.

12.205. The co-sponsors wished to emphasize that compliance with notification obligations was not just a matter of ticking the boxes. It involved collecting information, sometimes complex information, and also analysing it. Furthermore, it involved collecting data from a number of institutions and agencies within Government. In short, it was a complicated process that sometimes went beyond the capacities of Members. The Organization needed to recognize this fact and to engage in the discussion with a view to finding a constructive approach that would assist the Organization to function more effectively. The co-sponsors wished to engage further with Members on these issues and would welcome any additional suggestions or comments from Members with a view to further enhancing and strengthening the paper.

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

12.207. 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 27 June 2019, the delegations of 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, Argentina had requested to be added as a co-sponsor of this agenda item.

13.2. The delegate of Uruguay indicated that his delegation regretted having to bring again this item back to the attention of the Goods Council in light of the difficulties encountered in reaching an understanding with the European Union with a view to resolving the issue. Uruguay reiterated that, following a process that was patently non-transparent, and despite the opposition of many WTO Members, the European Union had decided to register the term "Danbo" as a protected geographical indication for Denmark. At the trade level, the creation of unnecessary obstacles to the marketing of this type of cheese in the European Union and its possible extension to third markets through trade agreements was a matter of great concern to Uruguay as a major producer and exporter of "Danbo" cheese worldwide. In addition, it should be noted that "Danbo" cheese had its own CODEX standard that regulated its production and labelling: the CODEX STAN 264 standard, approved in 1966 and updated several times, with the participation and acceptance of the European Union itself and its Member States, section 7 of which made it quite clear that "Danbo" was a generic term used to refer to a type of cheese that could be produced in different locations, on condition that the requirements stipulated by that standard were met.

13.3. At the systemic level, it was worrying that an important Member of the WTO should choose not to take these standards into consideration, standards which were widely accepted among the Membership, calling into question the multilateral efforts made in CODEX to achieve regulatory harmonization at the international level. Uruguay reiterated that the name "Danbo" was a generic term which might not be appropriated and registered as a geographical indication, or had any limitations placed on its use. Accordingly, attempts to claim ownership of this term and to limit its use not only affected the trade in this product, but also set a dangerous precedent. Uruguay also rejected the EU position that this was an intellectual property issue that should not be dealt with in this forum, and pointed out that the rule under which these rights were granted was correctly notified by the European Union to the TBT Committee on 18 November 2013, under the document symbol G/TBT/N/EU/139, including elements relating to labelling and relevant international standards.

13.4. In view of the foregoing, Uruguay once again urged the European Union to provide appropriate responses to the concerns of Members and to reconsider its measure in order to avoid creating unnecessary restrictions on trade, taking due account of the substance of the international standards of CODEX. Uruguay also requested that it be kept informed of the status of the process under way for the registration of the term "Havarti" as a protected geographical indication for the benefit of Denmark. Uruguay would be closely following developments in this area.

13.5. The delegate of the United States said that the United States was concerned about the EU's process of registering common cheese names, for which there were international standards, as protected geographical indications (PGI). The US had repeatedly expressed its concern with the registration of the name "Danbo" as a PGI, with a complete disregard for the international standard in Codex. Furthermore, the US felt that the application under consideration for the name "Havarti" also lacked transparency, particularly considering the existing Codex standard for Havarti. The US reiterated its view that the EU's consultation process with regard to these registrations was unsatisfactory. Moreover, their interventions in this Council and in the TBT Committee had not resulted in any additional clarity. In particular, the US continued to seek to understand how the Commission considered the existing Codex standards for both "Danbo" and "Havarti", and was also concerned about many of the proposed amendments that the EU had made to the underlying regulation, which had been notified to the TBT Committee in August 2018.

13.6. Those amendments exacerbated rather than alleviated existing US concerns. Shifting authority from the Commission to EU 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 granted for filing a reasoned basis in support of an opposition to register a GI. The US said that, despite numerous attempts to obtain answers to their questions and concerns, including through written comments and questions in this Council and the TBT Committee, the EU had repeatedly avoided providing answers. The US wished to redouble its objection to the EU granting GI protection for Havarti because there was an international Codex Alimentarius standard for Havarti, which Codex members, including the EU, had reconfirmed in 2007, 2008, and 2010.

13.7. The European Council's own Decision on the EU's accession to the Codex Alimentarius Commission affirmed that "Codex standards have acquired increased legal relevance by virtue of the reference made to Codex in the WTO Agreements and the presumption of conformity which is conferred on national measures when they are based on such standards". The EU and its member States had also supported and agreed to the Codex Committee for Milk and Milk Products' Individual Cheese standards, which contained labelling provisions under section 7 that preserved the generic nature and use of the names of those cheeses. The US reminded the EU that no WTO Agreement was superior to another and that the EU's assertion that it was following procedures under other agreements did not mean that it could disregard TBT commitments to uphold international standards.

13.8. The US asked if the Commission's view of the legal relevance of Codex standards had changed since the publication of the Council Decision. Any EU decision to move forward in granting GI protection to Havarti would raise serious questions about the views of Denmark and the EU Commission regarding the relevance of Codex. The US encouraged Denmark to meet their respective WTO TBT obligations by considering the international Codex standard for Havarti and taking comments into consideration prior to finalizing the Havarti measure. The US further encouraged the EU to consider withdrawing or amending the Havarti GI application, for example by considering a less trade restrictive option to providing GI protection for Danish Havarti as a compound term while continuing to allow producers outside of Denmark to use Havarti for cheese produced in accordance with the Codex standard. The US had understood from previous meetings that the EU would prefer to discuss the issue in a GI-focused forum. The US disagreed. It was a TBT matter, and therefore an absolutely relevant matter for discussion in the CTG. The EU had correctly notified its quality schemes regulation under the TBT Agreement precisely because there were TBT implications, such as the labelling elements and relevant international standards.

13.9. The delegate of Argentina reiterated that registration of the term "Danbo" as a protected geographical indication, demonstrated that the EU was not using Codex Standard 264 "as the basis" for Implementing Regulation 2017/1901. Argentina urged the EU once again to review the measure, not only in view of its impact on the specific trade in that type of cheese but also, and in particular, in view of its impact upon the international harmonization work under the Codex Alimentarius, which was work to which the EU itself was contributing.

13.10. The delegate of New Zealand said that New Zealand remained concerned that the European Commission had chosen to register the term "Danbo" despite having previously agreed to a Codex standard in which the European Commission and Denmark had both acknowledged 'the country of origin statement preserves its generic nature'. Such actions would negatively affect producers outside Denmark that had invested with the legitimate expectation that they could use the standard.

These actions showed disregard for the integrity of the standards setting system that promoted reliability and consistency in international trade rules, which New Zealand would have expected the EU to support. Additionally, any suggestion that the term "Havarti" should be registered only amplified New Zealand's concern by providing a further example of the integrity of the Codex standard being disregarded.

13.11. The delegate of Australia noted that the Australian dairy industry was one of a number of international stakeholders that had objected to the protection of "Havarti" in the EU. Australia continued to have concerns about decisions to grant cheese GIs that were also a Codex standard for cheese. It was important to continue to support the integrity of international standards and to maintain access to common names when making decisions on GIs.

13.12. 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 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 only be assessed based on the perception of consumers in the EU territory.

13.13. Regarding the EU internal procedures on the assessment of the application for granting protection to the term "Havarti" as a Geographical Indication, these had not yet been finalized. Regulation (EU)1151/2012 on geographical indications, as well as subsequent delegated and implementing regulations, had been notified to the WTO under the TBT Agreement because they contained provisions relevant for the purposes of the TBT Agreement and, in particular, provisions relating to technical standards, definitions, and labelling issues. However, even if intellectual property rights issues were part of the notification measures, they were not relevant for TBT purposes, particularly those elements relating to the substantive protection of geographical indications. The EU considered that, concerning TBT notifications of regulations that might include intellectual property issues, such as geographical indications, only those aspects relating to technical regulations, definitions, and labelling would be relevant for the purposes of the TBT Agreement and these should be discussed through TBT channels.

13.14. The EU understood that some of the comments that had been made related to the generic character of the name and that this was typically part of the registration process of a geographical indication. The examination of a generic character was part of the "grounds for refusal" of a geographical indication, just like a "grounds for refusal" in the case of trademarks. Likewise, the US had made a number of comments about how the geographical indication registration process worked in the EU. The EU stood ready to discuss all these matters, although the issue was very much about the registration process of a GI and these were typically issues that pertained to the remit of the TRIPS Council. Therefore, the EU stood ready to engage in discussions in that context.

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

13.16. The Council so agreed.

14 EGYPT – MANUFACTURER REGISTRATION SYSTEM – REQUEST FROM THE EUROPEAN UNION AND THE RUSSIAN FEDERATION

14.1. The Chairperson informed the Council that, in communications dated 26 and 27 June 2019, the delegations of the Russian Federation and the European Union, respectively, had requested the Secretariat to include this issue on the agenda.

14.2. The delegate of the European Union said that the EU was seriously concerned by Egypt's procedures on compulsory registration of foreign companies and pre-shipment inspections, as established by three Egyptian Ministerial Decrees (No. 991/2015, No. 43/2016, and No. 44/2019), as they created a considerable administrative and economic burden. The EU was greatly concerned to learn about Egypt's decision to extend the mandatory registration requirements to new product categories through Decree No. 44/2019 of 15 January 2019. The EU maintained the serious concerns that it had expressed in its written comments to Egypt as well as in previous meetings of the TBT Committee and the CTG. The EU urged Egypt to suspend the application of the measures

and to review them in light of the principles and obligations laid down in WTO law. The EU also invited Egypt to consider improvements to the implementation of the decrees, as suggested in previous exchanges. The EU would continue to engage with Egypt multilaterally and bilaterally in order to have this main trade barrier affecting EU exporters abolished or modified in the near future.

14.3. The delegate of the Russian Federation expressed the deep concerns of the Russian Federation over Egypt's existing registration regime of manufacturers, which created unnecessary and discriminative obstacles for Russian exporters. It seemed that the requirements were applied in respect of exporters and exported products into the territory of Egypt only. In some cases, the Egyptian authorities had delayed the procedures without any feedback or explanation. Russian exporters could not obtain permits for exports for two years. The Russian Federation understood the necessity of registration as a type of conformity assessment procedure. However, considering the approaches applied by Egypt, they questioned the scope of the products subject to registration as that scope was similar to the scope of products manufactured in Egypt itself. Moreover, Egyptian legislation did not lay down provisions regarding maximum periods for consideration of applications on registration of exporters. Such a situation created unpredictability and additional obstacles for exporters.

14.4. The Russian Federation also questioned the list of documents required for registration and did so for a number of reasons: some of the documents did not relate to product safety; some were related to confidential information, such as the list of other countries to where the manufacturer exported their products; and information regarding trademarks, consumers, and so on. In this regard, the Russian Federation required Egypt to revise the legislation and to eliminate discriminative and burdensome approaches to imported products. They also requested Egypt to provide a copy of the legislation mentioned during their bilateral meetings, regulating the registration regime for national manufacturers and clarifying all the procedures.

14.5. The delegate of Brazil shared the concerns raised under this item by other Members. The manufacturer registration system had severely affected many Brazilian exporters, especially in the fields of ceramics, tableware, food, and cosmetics. The measures established by the Egyptian decrees not only represented unjustified hurdles to Brazil's bilateral trade with Egypt, they also failed to comply with Article 2.2 of the TBT Agreement. Brazil had repeatedly tried, both in Geneva and in Cairo, to engage with the Egyptian authorities in this regard. Unfortunately, their bilateral efforts to address the issue had not yielded any results. Thus, Brazil urged Egypt to engage in discussions in good faith in order to find concrete solutions to this issue.

14.6. The delegate of Egypt thanked the European Union and the Russian Federation for their interest in this issue and for their fruitful bilateral consultations. Egypt believed that such communications and exchanges were crucial to resolving any misunderstandings. She also extended her appreciation to the delegation of Brazil for its intervention. Egypt underscored, as it had done at the most recent TBT Committee meeting, that a detailed analysis of Egypt's imports under the HS Chapters that contained tariff lines subject to Decree No. 43 vividly demonstrated that the decree in fact did not restrict trade. Nevertheless, in line with their efforts to respond to the concerns expressed by a number of Egypt's trading partners, a new committee had been established in Egypt's Ministry of Trade and Industry with the mandate of reviewing all pending applications to accelerate the finalization of the registration process. In addition, the newly established committee would incorporate an appeal mechanism for companies whose registration applications had been rejected. Egypt renewed its call upon Members with specific problems or concerns to provide them with the details so that these could be communicated to the new committee.

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

14.8. The Council so agreed.

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

15.1. The Chairperson informed the Council that, in a communication dated 26 June 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 recalled that the Russian Federation had repeatedly raised the issue of Mongolia's application of quantitative restrictions and prohibitions on importation of certain agricultural products, including wheat flour and liquid milk, at different multilateral and bilateral fora. However, Mongolia had failed to provide a proper justification for its quantitative restrictions and prohibitions. In February 2019, Mongolia had claimed that quantitative restrictions on the importation of certain agricultural products, including wheat flour and liquid milk, had been established in preparation for the implementation of the Law on the Enrichment of Food Products. Mongolia had also explained that the Law had been adopted because food products needed to be enriched with iron, zinc, and vitamins B and D. It had also said that monitoring through quota was a temporary measure until the end of 2019 (when the Law on the Enrichment of Food Products would enter into force). The Russian Federation was seeking further clarification on the rationale for using a quantitative quota regime to ensure that imported food products contained iron, zinc, and vitamins B and D. The Russian Federation also noted that the quota regime had been established in 2013, whereas the Law on the Enrichment of Food Products had been adopted in 2018. Furthermore, the new explanation provided by Mongolia contradicted its previous statements explaining the reasoning behind the measure at issue.

15.3. During the most recent meeting of the Committee on Agriculture, Mongolia had stated that the importation of liquid milk would not be allowed in 2019 due to the fact that in January 2018 there had been no applications for quota shares from importers. Thereby, Mongolia had introduced a de facto prohibition on imports of liquid milk for the whole of year 2019. The Russian Federation was of the view that the lack of importers' applications for quota shares at one point in time could not in any way be considered a proper justification for the introduction of an import prohibition. The Russian Federation believed that Mongolia's measures were inconsistent with its obligations under the WTO Agreements, Article XI of the GATT 1994 and Article 4.2 of the Agreement on Agriculture in particular, as well as Mongolia's accession commitments under paragraph 20 of the Working Party Report. The Russian Federation urged Mongolia promptly to take all necessary steps to bring its legislation and measures into conformity with the relevant WTO provisions.

15.4. The delegate of Mongolia said that, regarding wheat flour, the decision by the Ministry of Food, Agriculture, and Light Industry, to allocate quotas was publicly available. Regarding liquid milk, although the invitation to apply for imports had been announced, no applications had been received, and Mongolia did not consider that such a situation amounted to a prohibition. Furthermore, these circumstances had been explained to the Russian Federation during the meeting of the Bilateral Inter-Governmental Working Group on Agriculture on 28 May 2019. Mongolia had informed Members of the necessity for the measure in connection with the Law on Food Security as well as the Law on the Enrichment of Food Products at previous meetings of the CTG and other Committees. Mongolia considered that the measure was fully justifiable under Article XX(b) and Article XI:2(b) of the GATT. The measure was not applied in an arbitrary manner and did not discriminate between suppliers; in addition, both domestically produced and imported products were monitored through the measure.

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 RUSSIAN FEDERATION AND THE UNITED STATES

16.1. The Chairperson informed the Council that, in communications dated 26 and 27 June 2019, the delegations of the Russian Federation and the United States, respectively, had requested the Secretariat to include this issue on the agenda.

16.2. The representative of the United States reiterated US concerns about market access for motor vehicles resulting from Viet Nam's Decree 116 and Circular 3. The measures imposed burdensome certification and testing requirements, which were continuing to disrupt auto trade with Viet Nam. The US welcomed the Prime Minister's announcement in October 2018 that he would be directing the Ministry of Transport to revise the onerous lot-by-lot testing requirements of Decree 116 and to revert instead to testing a representative sample of each imported vehicle type. Following his

directive, the US understood that the Ministry of Transport was conducting an assessment study of Decree 116 and Circular 3, including with respect to lot-by-lot testing requirements. The US would appreciate any updates that Viet Nam could provide about when the assessment would be completed, and when Viet Nam planned to develop new regulations to revise lot-by-lot testing requirements, including a timeline and opportunities for consultation with stakeholders.

16.3. The delegate of the Russian Federation shared the concerns regarding Viet Nam's registration of automobiles and thanked Viet Nam for the detailed explanation of the measure and the trade statistics that they had provided bilaterally. The Russian Federation had taken into consideration that imports had increased compared to the period before entry into force of the measure, but that registration was conducted after customs clearance procedures; this created unnecessary obstacles for market access and generated high costs for manufacturers attempting to comply with all the requirements. The Russian Federation recommended that Viet Nam revise the regulation because there were alternative measures to fulfil the legitimate objectives referred to by Viet Nam under the TBT Agreement and under other commitments at the WTO.

16.4. The delegate of the European Union shared the concerns expressed by the US and the Russian Federation about Vietnamese Decree 116/2017 and again requested Viet Nam to suspend the application of the Decree and to consider the comments made by WTO Members in different fora. The EU also requested that any implementing measure be notified to the WTO when still in draft form. The EU also requested that Viet Nam involve all stakeholders, including importers of foreign cars, in all consultations that developed legislation further. The EU requested an update on how Viet Nam had considered the concerns expressed by several WTO Members on the measure.

16.5. The delegate of Mexico said that Mexico was also closely following the matter.

16.6. The delegate of Viet Nam reiterated that the intention of Decree 116 was to ensure human safety, to improve compliance, to strengthen environmental protection, and to uphold consumers' rights based on the principle of healthy competition. In that spirit, the requirements put forth by the measure, notably the lot-by-lot inspection and the Vehicle Type Approval, were for legitimate public policy purposes and were not discriminatory. Viet Nam had recognized the difficulties for companies posed by the implementation of the Decree and had held many meetings and consultations at the highest levels of Government since the Decree had entered into force with a view to facilitating trade while maintaining the objective of safeguarding public interests. Following lower than average year-on-year imports during the first half of the year, car imports had picked up in the second half of 2018 and the upward trend was continuing. In the first half of 2019, automobile imports had reached a new record of 78 thousand units, surpassing 51 thousand units for the same period of 2017, the year before Decree 116 had entered into force. This marked a 53% growth. Consultations with importers had further helped to explain that it had just taken some time for them to get acquainted with Decree 116's requirements and to successfully adjust to them. The actual costs of compliance were not as high as the complaints had indicated. From the consumer's perspective, the safety and quality of imported automobiles had been enhanced as the lot-by-lot testing had helped to expose a number of inferior shipments, which had failed to meet certain technical conditions, which might otherwise have been passed unchecked. Regarding the Russian Federation's concern over the registration of automobiles in Viet Nam, his delegation would discuss this issue with them on a bilateral basis.

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

16.8. 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 27 June 2019, the delegation of the United States had requested the Secretariat to include this issue on the agenda of this meeting.

17.2. The delegate 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. The US remained concerned that the broad scope of these compulsory new quality parameters might be excessively trade restrictive.

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. In response to the US inquiry, China had noted that it did not intend to notify these new measures to the TBT Committee. Furthermore, in May 2018, China had announced, and implemented the following day, 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 scrap materials, and which expressly banned such imports. In totality, these measures outrightly banned or effectively banned imports of scrap materials.

17.5. To be clear, scrap materials were firstly separated from the waste stream for recycling as a raw material and secondly were saleable items traded within a distinct global marketplace (meaning, they had an underlying economic value). These qualities made the classification of scrap materials as "waste" inaccurate.

17.6. Her delegation had observed that these barriers 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.

17.7. China's vast share of the global secondary processing market, combined with its abrupt implementation of these measures, had forced recyclers in the US and elsewhere that could not locate alternative processing facilities to dispose of or incinerate otherwise valuable recyclable commodities. This artificial shortfall in global processing capacity, which could take several years to develop from the ground up, had caused the decline, and in many cases, collapse, of US municipal recycling programmes. As the world's largest processor of scrap materials, China's implementation of these measures had had an immediate, deleterious, and potentially lasting impact upon global recycling networks.

17.8. The United States requested that China provide detail on how China had determined that its measures were necessary, particularly given how abruptly the measures had been implemented. Furthermore, these restrictions were detrimental to Members' shared environment. As a result of China's measures, and consequently the additional pressure on capacity in smaller, less developed economies, an increased volume of scrap materials was at greater risk of going into landfills or other less desirable waste channels and becoming marine litter.

17.9. While China had asserted that the solution to its import policies laid in affected countries adjusting their domestic recycling processes to meet China's import parameters, her delegation wished to underscore that 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.

17.10. Finally, China's continued refusal to notify its new technical measures consistent with its obligations under the TBT Agreement, as well as its arbitrary and abrupt halt of pre-shipment inspection in the US, had heightened US concerns over the intent of these actions. The US requested China to immediately halt implementation of these measures and to revise them, in a manner

consistent with existing international standards for trade in scrap materials, which provided a global framework for transparent and environmentally sound trade in scrap materials.

17.11. The delegate of New Zealand noted that her authorities acknowledged and supported the right of all WTO Members to regulate in order to achieve legitimate domestic health and environmental objectives. Furthermore, New Zealand applauded China's stated proactive policy objectives in relation to sustainable development and encouraged valid actions to limit harmful environmental impacts from contaminated waste inside China's border.

17.12. New Zealand in no way sought to question China's right to regulate to protect its environment. However, New Zealand continued to have an interest in this measure and a specific concern that vanadium slag was included in China's catalogue of banned imports under this measure. New Zealand reiterated its view that vanadium slag was a purposefully produced co-product, with a purposeful end-use in the production of specific forms of steel. It was not a waste product and so should not fall under measures for solid waste. She recalled that China was the largest global producer of vanadium slag, with approximately 500,000 tonnes of annual production generated as a co-product from steel mills.

17.13. New Zealand would appreciate receiving clarification from China on how it had ensured that the rules that applied to foreign products were no less favourable than those accorded to domestic products. Her delegation was also interested to hear a further explanation from China about how it had ensured that the import ban on vanadium slag was not more trade restrictive than necessary to achieve China's environmental and health protection objectives.

17.14. The delegate of the Dominican Republic shared the concerns raised by the US. It was important that Members observed the notification procedures early enough in order to strengthen the transparency of the multilateral trading system, particularly when those measures could have considerable trade impacts and bring systemic risks. The Dominican Republic did not question the right of Members to protect their environment. However, in doing so, they had to respect the integrity of the rules, and especially those on non-discriminatory treatment between imported and domestic products.

17.15. The delegate of Australia said that his authorities appreciated the importance of environmental protection and China's efforts to reduce pollution. However, Australia reiterated its concerns regarding China's implementation of a range of measures on waste and scrap imports, which appeared to be more trade restrictive than necessary to achieve China's desired objectives. Trade in secondary and recyclable materials was a key component to achieving global environmental outcomes. A range of materials impacted by China's measures were valuable inputs to recycling supply chains rather than waste. Trade in these products allowed for the recovery of materials which might otherwise end up in landfill or in oceans.

17.16. Australia urged China to reconsider the measures and to engage with its trading partners to improve and develop trade facilitative standards for trade in recyclables. This included standards which met policy objectives while also allowing for trade in recyclable materials, promotion of the recovery of resources, and global environmental outcomes.

17.17. The representative of Canada noted that his delegation continued to share the concerns of the US and reiterated the comments on China's restrictions in respect of solid waste that it had made in earlier CTG and Committee meetings. Canada did not dispute China's goal of limiting the harmful environmental impact resulting from contaminated waste material. However, Canada noted that high quality scrap products were a valuable raw material for Chinese customers involved in various manufacturing sectors. Canada continued to encourage China to ensure that any trade measure it took would be the least-trade restrictive possible while respecting its objective to limit harmful environmental impacts.

17.18. The delegate of the European Union stated that, in the context of the regular EU-China Dialogues, the EU had submitted questions to China on a number of issues, via a letter dated 25 July 2018, including detailed questions on the recent Chinese measures on waste. To date, China had not responded to the questions on waste or on any other issue. The EU once again asked China to respond to its questions as soon as possible. The EU looked forward to working with China on

addressing the issue of trade in waste in the most environmentally and economically efficient way possible, and in full transparency.

17.19. The delegate of China stated that solid waste had inherent pollutant attributes, which differentiated it from other goods. China had suffered pollution from the solid waste imported from other countries for decades. China, as a developing country, faced great challenges in addressing environmental pollution. It was imperative to implement measures to limit the negative effects of solid waste.

17.20. From a worldwide perspective, the dangers of solid waste had been acknowledged by almost all countries. According to the Basel Convention, and other internationally accepted principles, every Member was obliged to handle and to dispose properly of its domestically-produced solid waste. For a long time, China had suffered the consequences of imported solid waste while exporting enterprises in other countries had enjoyed enormous economic benefits. China hoped that those exporting countries could now actively shoulder their international responsibilities, rather than expecting others to do it for them.

17.21. Regarding notification obligations, China had notified Quantitative Restrictions for the period 2016 to 2018 and 2018 to 2020 to the Market Access Committee. China would further notify other measures as required by the WTO Agreements. Regarding the EU's questions raised bilaterally, Capital looked forward to continuing its discussions through these bilateral channels.

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

17.23. 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 27 June 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 of this meeting.

18.2. The delegate of Australia noted that his delegation's long-standing concerns regarding India's quantitative restrictions (QRs) on certain pulses were well known. These concerns were held by a large group of developed and developing WTO Members alike.

18.3. Australia had continued to engage with India on this issue bilaterally and in a number of different WTO Committees. As noted by his delegation at the most recent meeting of the Committee on Agriculture, it was difficult to know how to keep India engaged on this matter. Australia had asked India to identify the WTO basis for its QRs and to explain how they were 'temporary' measures, noting that they had been in place for nearly two years. India had failed to provide any substantive response on the WTO-consistency of its QRs. In response to previous questions on this issue, India had stated that its QRs on pulses were ' … temporary and extension or removal of these quantitative restrictions will be based on domestic demand-supply situations'.

18.4. Australia noted that recent Government of India estimates for pulse production in 2018-2019 were almost 10% lower than last year, and were similar to levels in 2016-2017, when India had introduced QRs. A reduction in production and lower buffer stocks had now placed upward pressure on the prices of some pulses, yet the QRs had remained.

18.5. Australia also reminded Members that their concerns were not solely regarding QRs. At the February meeting of the Committee on Agriculture, Australia had co-sponsored a Canada-US counter-notification, which had demonstrated their broader concerns, particularly over India's Market Price Support (MPS) measures for pulses. The counter-notification had clearly demonstrated how India was providing MPS well in excess of its *de minimis* limits for a range of pulses. This WTO-inconsistent MPS, combined with QRs and high tariffs, were having a detrimental impact on the global pulses trade and on consumers in developing and developed countries.

18.6. Australia called upon India to provide the WTO-basis for these measures or, failing that, to remove the QRs immediately. His delegation also asked that India seriously consider the impact of these measures on other Members, particularly developing Members, and the impact that these measures might have in the future when India would predictably become again a net-importer of pulses.

18.7. On the matter of transparency and advance notice, given the size and importance of India's pulse market to the global industry, and the importance of imported pulses to Indians in times of low production, India would benefit just as much as other Members by being as transparent as possible and by providing prompt forewarning to Members as to when it was implementing or removing these types of measures. Australia suspected that India would also like the same courtesy extended to it from its trading partners in the same situation.

18.8. The delegate of the Russian Federation once again expressed concerns over India's policy on the import of yellow peas. In November 2017, the Government of India had increased the import tariffs on yellow peas by up to 50%. In addition to these measures, on 25 April 2018, India had introduced quantitative restrictions on imports of yellow peas. This quota had been extended until 30 September 2018. From September 2018 until March 2019, India had also applied restrictions of imports of dried peas. And in late March 2019, India had issued a notification establishing a new quota of 1050 metric tonnes for the period from 2019 until March 2020.

18.9. The Russian Federation wished to highlight that, as a result of India's use of this measure by India, imports of yellow peas had dropped significantly over the previous two years. The Russian Federation was of the view that quantitative restrictions as well as import prohibitions were not a trade policy instrument that could be applied by WTO Members without proper justification. This was why the Russian Federation requested India to bring these measures into conformity with WTO rules.

18.10. The Russian Federation also wished to raise the issue of the social welfare surcharge. This surcharge had been introduced in early 2018 as a means of fundraising for educational purposes. The surcharge rate had been set at 10% on most imported products and this surcharge only applied to imported products. According to its schedule of concessions, India was not allowed to apply any other duty or charge, and the Russian Federation requested further clarification in this regard. In addition, they wished to engage in further bilateral consultations with India on this issue.

18.11. The delegate of Canada noted that Canada had been the Member most negatively affected by India's measures to limit the import of pulses over the previous two years. These measures went against the fundamental principles of both the GATT and the WTO Agreement on Agriculture on the elimination of quantitative restrictions. Despite numerous requests at the CTG and in other WTO Committees, India had yet to provide the GATT or WTO justification for these measures. Canada was very concerned over this lack of transparency and the imposition of these measures without explanation. Canada once again asked India to comply with its WTO obligations and to repeal these restrictions.

18.12. The delegate of the European Union shared the concerns expressed by other Members over India's pulse policy, in particular regarding the application of quantitative import restrictions and sudden increases in import duties. Her delegation was also concerned about the effect of these measures on the pulse crop markets. For further details, the EU referred to its interventions in the meetings of the Committee on Agriculture in 2018 and 2019.[11]

18.13. The representative of the United States noted that her delegation remained concerned that India had undertaken a number of trade-distorting policies in relation to various pulses since 2017. These had included, but were not limited to, domestic support policies, multiple increases in tariff rates, and the application of quantitative import restrictions. Since August 2017, the Government of India had set annual import quotas for several types of pulses, including pigeon peas, mung beans, black gram lentils, and peas. These were products for which India's WTO commitments prescribed a simple bound rate tariff with no allowance for a tariff-rate quota. Most recently, in March 2019, India's Ministry of Commerce and Industry had issued notifications restricting imports of mung beans, peas, black gram lentil, and pigeon peas in the Indian fiscal year 2019-2020.

[11] See document G/C/M/131, paragraph 8.5; document G/C/M/132, paragraph 22.13; document G/C/M/133, paragraph 27.4; and document G/C/M/134, paragraph 18.12.

18.14. In response to previous questions on this topic, India had stated that such quantitative restrictions were temporary, although restrictions on some of these products had been in effect for nearly two years. Indian imports of pulses classified under HS 0713 had fallen from $4 billion in 2016 to $1.1 billion in 2018, representing a 74% decrease in only two years. At the April 2019 CTG meeting, India had explained that the decision to impose the quota had been based on the domestic supply and demand situation of pulses in India. The United States had requested more details from India on how the supply and demand situation was assessed and how the decision was made to set the level of quantitative restriction for each pulse. What circumstance or conditions would result in India removing these restrictions?

18.15. Once again, the United States requested an explanation from India concerning its use of quantitative restrictions for pulse imports and how these measures complied with India's WTO commitments.

18.16. The representative of Ukraine echoed the concerns of Members regarding India's restrictive policy on certain pulses. These concerns had already been expressed by Ukraine on several occasions. It was important from a systemic point of view to develop a clearer understanding of the objectives of the multiple increases in tariff rates, the QRs, and the import limiting licensing arrangements that India had imposed. Ukraine called upon India to comply with its transparency obligations and to bring its trade-distorting policies into conformity with WTO rules.

18.17. The delegate of New Zealand reiterated her delegation's concern with India's apparent implementation of a QR in contravention of the rules set out in the WTO Agreement. Like other Members, her delegation encouraged India to bring its measures into conformity with the WTO framework.

18.18. The delegate of India noted that the issues raised today had been raised in recent meetings of the Committee on Import Licensing, the Committee on Market Access, and in the previous meeting of the CTG. For the sake of an efficient utilization of time, his delegation would not repeat its comments on this issue delivered on previous occasions.

18.19. Briefly, India wished to inform Members that India was the largest producer as well as consumer of pulses. As had been mentioned on earlier occasions, the decision to impose quotas was based on the domestic demand and supply situation of pulses in India. He reiterated that these measures were intended to alleviate the distress caused to small and marginal farmers by the influx of cheap imported pulses and the consequent impact on their food and livelihood security.

18.20. These measures were temporary and the extension or removal of these QRs would be based on the domestic demand and supply situations. India was constantly reviewing these measures. At previous meetings, India had informed Members of the changes in its wholesale price index (WPI) on pulses.

18.21. On the issue of any additional quota for imports of peas during the financial year 2018-2019, his delegation wished to inform Members that, despite the quota under the QR, substantial imports had been allowed on account of Court orders. Against the quota allocation of just 6 lakh metric tonnes for pulses in 2018-2019, actual imports had been more than three times that quota.

18.22. Furthermore, in the present financial year, tariff quotas had been announced and the relevant procedure had also been laid down by the Directorate-General of Foreign Trade. The government had been regularly reviewing the market situation of pulses, owing to which the quota of pulses had been increased from 6,00,000 lakh metric tonnes in 2018-2019 to 6,50,000 lakh metric tonnes for the financial year 2019-2020. The quota for 2019-2020 had been recently further increased by 2 lakh metric tonnes taking the total to 8.5 lakh metric tonnes.

18.23. Certain additional issues had been raised by Members in the recent meeting of the Committee on Agriculture, and India had provided its responses to those queries. Regarding the query on the specific WTO provisions under which India had imposed its temporary measures, his delegation would revert back to the matter at a later date. India would address any further query on this issue in the appropriate Committee and bilaterally.

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

18.25. 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 27 June 2019, the delegations of the European Union, Japan, and Chinese Taipei, respectively, had requested the Secretariat to include this issue on the agenda of this meeting.

19.2. The delegate of the European Union thanked China for its engagement both bilaterally and in other contexts such as the GAMS meeting. China had shared with other Members some technical information following the transposition towards tariff heading 8542 under the Harmonized System 2017 (HS2017) nomenclature. Unfortunately, the information provided so far had not alleviated her delegation's concerns. These concerns had been raised in a variety of WTO meetings.

19.3. Her delegation encouraged China to address these concerns as soon as possible, especially given the advanced stage of tariff reductions on these products.

19.4. If China did not wish to modify its HS2017 classification at this stage, one alternative could be to give a sign of its commitment to the ITA by accelerating the phasing-in of its tariff reductions on these products.

19.5. The delegate of Japan thanked China for providing an explanation in response to Japan's questions. However, her delegation continued to have concerns, like other Members, regarding China's application of tariffs that were higher than the bound levels contained in China's Schedule of Concessions. Regarding the IGBT-IPM (semi-conductor products), her delegation appreciated China's explanation but still found it unconvincing and requested that China swiftly withdraw the tariffs on the IGBT-IPM. Japan was also closely monitoring China's commitment to abolish customs duties in July 2021 on all relevant items in line with the staging commitments set out under the ITA-II.

19.6. The delegate of Chinese Taipei shared the views of the other co-sponsors of this agenda item. Her delegation wished to thank China for its explanations. This had been a long-standing issue, as other co-sponsors had indicated. Since 1 January 2017, China had raised tariffs on four tariff lines in its tariff schedule, which was in the HS2017 nomenclature. China had imposed tariffs on multi-component integrated circuit products at a rate that was higher than its current WTO duty-free bound rate. Thus, this measure undermined the commercial interests of Chinese Taipei's industry. Therefore, Chinese Taipei urged China to immediately eliminate the tariffs on the MCO products at issue.

19.7. The delegate of Switzerland shared the concerns expressed by previous speakers. The HS transposition was a technical process, which should not modify the concessions that had been granted. Switzerland invited China to remedy this situation promptly and to comply with its commitments.

19.8. The delegate 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. This was an issue that the United States had previously raised in this Council as well as the Committee on Market Access and the ITA Committee. In line with the General Council Decision on HS transpositions, her delegation continued to assert that the scope of China's concessions had changed substantially, and the value of the concession had been impaired, in that these semiconductor products, which had been duty-free for over a decade, were now facing duties.

19.9. The delegate of China said that China had responded to similar comments on this item in previous meetings of this Council as well as the Market Access Committee and the ITA Committee. Also, China had conducted a number of bilateral consultations with interested Members, and all the written questions that China had received had likewise been responded to in writing.

19.10. She wished to reiterate that the method China had used for the transposition was suggested by the WTO documents, which was fully consistent with WTO rules on HS2017 transposition. The ITA expansion negotiations had concluded through very hard and intensive work by all relevant

Members. In this process, China had made great contributions to the negotiation and believed that a balanced outcome had been reached. China did not think that there were reasons at this moment to ask China to expedite its tariff reductions. China had always seriously undertaken its tariff reduction commitments. Since 1 July 2019, China had implemented its fourth tariff cut on ITA expansion products. The duty rates on MCO products had been further reduced to 1.3%, 1.4%, and 3.3%, respectively. China would continue to fulfil its commitments and all duties on MCO products would be eliminated by July 2021, as scheduled.

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

19.12. 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 THE UNITED STATES

20.1. The Chairperson informed the Council that, in a communication dated 27 June 2019, the delegation of the United States had requested the Secretariat to include this issue on the agenda of this meeting.

20.2. The delegate of the United States regretted that her delegation had to again raise concerns with the EU's policies on geographical indications and traditional terms for wine; and specifically, the pending applications of the United States for traditional terms. Her delegation had been raising concerns about these policies and the associated regulations for almost twenty years. The EU's persistent failure to provide any information left her delegation with no choice but to raise these concerns once again.

20.3. At several recent TBT Committee meetings, in this Council, and in the EU's recent response to US comments, the EU had said that the pending applications for traditional terms were still under consideration, but that it could not provide a precise timeline for approval. The United States wished to know why the EU was unable to provide any estimate or to say where the US applications were in the process.

20.4. The United States had been previously told that the cause for the delay was that the EU was working on revisions to the relevant regulations. Those revisions had now been adopted. And it was curious that, while the EU had had the opportunity during the review and revision of those measures to include timelines and greater transparency with regard to traditional terms, it had chosen not to do so even though it had seen fit to provide some timelines and transparency for geographical indications. Why the difference? Why had the EU apparently made no effort to ensure that delays on the approval of traditional terms would not continue? Her delegation also wished the EU to clarify whether and, if so, how, the processing of these applications would change following the recent Parliamentary elections, including whether responsibility for processing applications would be transitioned to a new agency within the European Commission.

20.5. The US also wished the EU to provide some transparency on the status of other applications, so that the US could evaluate how its own applications compared. Her delegation did not understand why the EU seemed unable or unwilling to provide transparency regarding the applications that had been lodged, or to provide greater predictability through timelines for traditional terms. Now that the new rules had entered into force, the United States once again requested the EU to move expeditiously to approve US applications so that this longstanding item could be removed from the CTG's agenda.

20.6. The delegate of New Zealand thanked the United States for placing this item on the agenda. New Zealand recognized that Members had the right to protect their consumers from deceptive practices in line with their obligations under the WTO. Nevertheless, New Zealand requested the European Union to take into consideration Members' concerns about the scope and application of its system for traditional terms, as well as transparency, process, and timelines relating to applications by third countries that wished to use traditional terms in the EU.

20.7. The delegate of Brazil stated that her delegation echoed the concerns expressed by the United States under this agenda item.

20.8. The delegate of Argentina stated that, rather than repeating the arguments that it had made at the CTG's previous meeting, Argentina wished instead to express the hope that the recent agreement reached between Mercosur and the EU would lead to an early recognition of the traditional terms "Reserva" and "Gran Reserva", so that European consumers could find these Argentine wines on the shelves of their local supplier.

20.9. The delegate 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.

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

20.11. 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 27 June 2019, the delegation of Japan had requested the Secretariat to include this issue on the agenda of this meeting.

21.2. The delegate of Japan noted that, as mentioned at previous meetings of this Council, her delegation believed that there was a possibility that this draft law included overly stringent export regulations that went beyond the scope of the international export management regime and were inconsistent with GATT Article XI on quantitative restrictions. Also, regarding the National Development and Reform Commission's export control mechanism, which would soon be released by the Chinese government, Japan wished to express its concerns over its scope, and about the details of the restrictions and the relationship with the export control law that it would entail. In this regard, Japan requested China to provide concrete answers.

21.3. Japan welcomed China's explanation at the last meeting that the scope of the covered products and the measures were moderate, and that China had no intention of using such measures to restrict normal trade. At the same time, considering the importance of the kinds of detailed regulations the law brought into force, and how these would be administered, Japan would continue to monitor the situation closely. Also, as mentioned at the CTG's previous meeting[12], Japan thought that the provisions on countermeasures constituted unilateral export control measures that did not have national security as their objective, and that, as a result, these measures should be withdrawn.

21.4. At the CTG's previous meeting, China had explained that the draft law was under legislative review and that there was no deadline on promulgation or implementation as yet. Also, the public comments would be incorporated into the draft law or considered in the further supporting regulations and rules. In this respect, Japan requested China to provide updates on the situation, and to disclose the schedule in a transparent manner, including with regard to detailed enforcement regulations, while ensuring that there would be a sufficient grace period for the law's implementation.

21.5. The delegate of the Republic of Korea was also of the view that the purpose and implementation of export control measures should be consistent with relevant WTO rules, and in this regard, Korea voiced its concerns over the draft of the new export control law. For example, the purpose of the export control law, as stated in Article 1, remained vague because concepts such as development interests could imply a wide variety of meanings. Also, the scope of export controls

[12] Document G/C/M/134, paragraphs 21.2-21.3.

prescribed in Article 2 seemed broad and uncertain. Korea was concerned that such ambiguity might open the door for unpredictable and excessive trade restrictions.

21.6. The delegate of the European Union said that her delegation had submitted written comments during the consultation period in July 2017 and had been raising questions on China's draft export control law for over a year. While her delegation acknowledged that the draft law could consolidate China's export control system, it recalled that strategic export controls derived from international obligations and commitments. Against this background, certain provisions of the draft law required further clarification as regarded their alignment with international security standards and their conformity with multilateral WTO trade rules. The EU again requested China to provide the explanation that it had already requested at previous CTG meetings, as well as an indication of when the draft law would be finalized.

21.7. The delegate of China noted that this issue had been on the CTG's agenda for quite some time, and that her delegation had given responses to all the questions raised in previous meetings in order to address the concerns of other Members. In the interests of time, she would not repeat all those responses, but instead would highlight some of the principles in China's export control draft law, as followed: (1) China attached great importance to creating a non-discriminatory and transparent business environment; (2) the measures China was proposing would be consistent with WTO rules; (3) all market entities, including foreign companies, would be treated in a fair and equitable manner; and (4) the purpose of the draft law was to fulfil international obligations and to safeguard national security, and not to restrict normal trade.

21.8. Therefore, China sincerely hoped that other Members would not use their logic and practice to misjudge China's intention on the export control law. Regarding the current state of play, on 1 May 2019, the State Council had listed an export control draft law to be submitted to the National Congress for review. The next steps depended on the outcome of that review.

21.9. The Chairperson thanked delegations for their interventions and 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 that Council that, in a communication dated 27 June 2019, the delegation of China had requested the Secretariat to include this issue on the agenda of this meeting.

22.2. The delegate of China reiterated her delegation's concerns regarding the US Federal Communication Commission (FCC) announcement, published on the Federal Register of 2 May 2018, which was intended to prohibit the use of Universal Service Funds to purchase communication equipment and services identified as posing a national security risk to communications networks or the supply chain.

22.3. China noted that the deadline for solicitation on the proposed rule was July 2018 and that her delegation had been informed by the US delegation at the previous CTG meeting that no further steps had been taken. Her delegation wished to know the current state of play.

22.4. China also believed that the FCC's prohibitive proposal would limit the choice of commercial purchase on telephone, broadband, and medical care service providers. China requested the US to ensure that the whole process would be WTO consistent, especially with regard to WTO obligations on transparency and MFN treatment. If the proposed rule constituted a nationality-based discriminatory treatment in law or in practice, or if any security risk assessment had been made on the basis of assumptions without recourse to facts and evidence, it would definitely violate WTO rules and cause uncertainty and unpredictability for businesses.

22.5. The delegate of the United States noted that, as explained each time that China had placed this item on the CTG's agenda, this issue was a matter of national security for the United States. Her delegation had provided an explanation of the FCC's fully transparent rule-making process and

had also pointed Members to the FCC's website for further updates and information. Beyond this, she saw no scope for discussing the issue in this Council.

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

22.7. The Council so agreed.

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

23.1. The Chairperson informed that Council that, in a communication dated 27 June 2019, China had requested the Secretariat to include this issue on the agenda of this meeting.

23.2. The delegate of China expressed serious concern over Australia's prohibition on China's equipment from Australian 5G rollout and thanked Australia for its responses to China's questions. China had gone through the responses and was disappointed by their lack of substance. For example, the reply had given detailed information on Australia's Telecommunication Sector Security Reforms (the TSSR), which had referred other amendments made in 2017.

23.3. However, China's main concern was that Australia had never published any relevant official documents regarding any prohibition on China's enterprises. Unfortunately, there had been no reply on this point in the responses received from Australia. China had questioned the sequence of the TSSR, and Australia's prohibition on China's enterprises, but no reply had been provided by Australia. China had noted that the prohibition had come earlier than the implementation of the TSSR and had asked Australia about the criteria for prohibition and whether there were any other Members' companies that had also been prohibited. There had come no reply to these questions either. China would carefully study further the responses from Australia, which China had appreciated even if their quality had been disappointing.

23.4. Therefore, China continued to have concerns on this issue. China believed that Australia's measures lacked clarity and sufficient evidence, and that there were no laws and regulations, thus violating WTO rules on transparency and due process. Meanwhile, Australia's measures also constituted a breach of WTO rules by only targeting specific Chinese vendors and depriving Chinese equipment of access opportunities to the Australian market. The measures were inconsistent with the WTO MFN principle and the provisions regarding the elimination of quantitative restrictions.

23.5. Worse still, in 2019 the scope of Australia's restrictive measures had expanded beyond 5G. The Government of Australia had introduced additional unreasonable requirements for ICT equipment suppliers from China on maintaining and operating the existing 4G network. It had also put pressure on Australia's operators in a manner that was neither transparent nor open. New restrictions included prohibiting existing 4G networks operated by China's suppliers from transferring data sent by 5G base stations, as well as preventing the maintenance staff of China's suppliers from entering into 4G and 5G co-location base stations to maintain 4G equipment. These measures seriously affected the commercial interests of China's suppliers and also those of Australia's operators, such as Optus, VHA, and TPG.

23.6. This was an era of information technology where risks could not be limited by national borders. Isolation would never address the challenge of risk. Certain of Australia's measures, such as a country-specific approach and discriminatory measures, would instead serve only to block normal commercial activities and destroy the level playing field. China expressed its serious concerns over the measures taken by Australia and reserved its right to take all necessary legitimate actions.

23.7. The delegate of Australia noted China's latest statement on this issue and also China's detailed set of written questions seeking further explanations and clarification regarding Australia's position on 5G networks, which China had provided to Australia shortly before the CTG's previous meeting. For its part, Australia had provided China with a substantive response to those questions. Nevertheless, Australia wished to reiterate that its position on 5G networks was fully WTO consistent and that it welcomed the opportunity to continue to engage constructively with China on this important issue for both countries.

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

23.9. The Council so agreed.

24 UNITED STATES - MEASURES REGARDING MARKET ACCESS PROHIBITION FOR ICT PRODUCTS – REQUEST FROM CHINA

24.1. The Chairperson informed the Committee that, in a communication dated 27 June 2019, the delegation of China had requested the Secretariat to include this issue on the agenda of this meeting.

24.2. The delegate of China noted that, on 15 May 2019, the US had issued an Executive Order on Securing the Information and Communications Technology and Services Supply Chain, which prohibited US companies from buying or using telecommunications equipment and services provided by enterprises deemed to be national security threats. China wished to register its deep concern on this issue and noted that it opposed the overgeneralization of the term "national security". China firmly believed that national security should never be used as an excuse to adopt a policy of trade protectionism.

24.3. The measures mentioned above were targeting ICT products and related service supply chains. As Members were aware, ICT relevant productions and services had the highest share in global trade, with the longest and most sophisticated global value chain. According to WTO statistics, office and telecom products accounted for 15% of world exports of manufactured goods in 2017, and telecommunications, computer and information services accounted for 10% of world service exports. The global value chain of ICT connected the whole world, driving technology innovation and promoting the development of the digital economy. The consequence of any improper interference in any link in this global value chain would be amplified continuously on the whole chain through a butterfly effect. This in turn would cause uncertainty and a domino effect on the global economy and the security of the supply chain. And if that were to happen, no WTO Member could avoid it, including the US. This was also the reason why governments and businesses all over the world were closely scrutinizing the development of this US proposed measure.

24.4. China also wished to emphasize the importance of information security. At the same time, China opposed an overgeneralized approach and believed that security measures on the commercial use of ICT should be applied based on the following principles: (1) technology should be treated in a non-discriminatory manner; (2) measures should not constitute unnecessary restrictions on commercial sale opportunities for foreign suppliers of ICT products or services; and (3) if any measure had to be taken, it should be of limited scope and should strictly follow international norms and principles of non-discrimination. Furthermore, no conditions or restrictions should be set based on nationality for purchase, sale, or use of ICT products or services. China wished to remind the US government of the importance of consistency with WTO rules when formulating its rules and regulations, especially concerning WTO obligations on transparency, MFN treatment, and elimination of Quantitative Restrictions.

24.5. The delegate of the United States stated that her delegation did not believe that the WTO's Council for Trade in Goods was the appropriate forum to discuss issues of national security.

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

24.7. The Council so agreed.

25 UNITED STATES – EXPORT CONTROL MEASURES FOR ICT PRODUCTS – REQUEST FROM CHINA

25.1. The Chairperson informed the Committee that, in a communication dated 27 June 2019, the delegation of China had requested the Secretariat to include this issue on the agenda of this meeting.

25.2. The delegate of China noted that the United States had recently placed many Chinese companies onto its export control "Entity List". China believed that this measure violated Article I and Article XI of the GATT. China wished to express its deep concern over this issue and its strong opposition to this abuse of export control measures.

25.3. At the press conference of the Osaka G20 Summit closing session, positive signals had been sent from the highest level of the US Government to lift the export control measures on the Chinese company, Huawei. China was expecting early follow-up concrete actions from the US in this regard.

25.4. In today's world, against the background of economic globalization, every link in the global supply chain interacted with every other link, connecting seamlessly so as to operate at high speed. High-tech was a field where countries shared many common interests and had broad prospects for cooperation. Therefore, while countries on the high-end of the global value chain enjoyed the greatest benefits, with their advantages, they also bore the greatest responsibility for the overall stability of the global value chain. And if such a country abused its dominant position in the global value chain, it would surely hurt all, including ultimately itself.

25.5. China hoped that the US would give substantial answers and responses to its questions and comments because the concerns that it had raised on this and previous issues were all relevant to trade. The issue was one of fair competition and a level playing field, the importance of which the US had itself always emphasized.

25.6. The delegate of the United States stated that her delegation did not believe that the WTO's Council for Trade in Goods was the appropriate forum to discuss issues of national security.

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

25.8. The Council so agreed.

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

26.1. The Chairperson informed the Council that, in a communication dated 26 June 2019, the delegation of the Russian Federation had requested the Secretariat to include this issue on the agenda of this meeting.

26.2. The delegate of the Russian Federation reiterated her delegation's concerns, which had been previously expressed during recent meetings of the Committee on TBT and the CTG and which had likewise been conveyed in document G/TBT/GEN/263.

26.3. She noted that the EU's proposed classification of cobalt as a carcinogen category for all possible routes of exposure was not based on any scientific data. It had been recognized internationally by industry that scientific data supported the classification of cobalt metal as carcinogenic by inhalation only. In the TBT Committee, the EU had mentioned that the European Chemical Agency (ECHA) had received new information justifying the 'all possible routes of exposure' proposal; however, it had thus far been unable to substantiate this claim by demonstrating this new information. Her delegation noted that the opinion of the ECHA Risk Assessment Committee (RAC) had not been based on science and could not be considered as conclusive.

26.4. The Russian Federation was also concerned about the discussion inside the global industry that EU member States might request some product groups to be exempt from this measure due to their critical importance. The Russian Federation wanted to point out that, if such an approach were in fact to be implemented, it would be inconsistent with the TBT Agreement.

26.5. In addition, the Russian Federation was somewhat confused by the EU statement made during the previous meeting of the TBT Committee, when it had said that the classification of cobalt metal would be applied with a generic concentration limit of 0.1%, rather than a specific concentration limit, despite the fact that the documents notified under G/TBT/N/EU/629 had laid down explicit provisions regarding interim application of the generic concentration limit only.

26.6. For this reason, the Russian Federation requested the EU to clarify the contradictions between its previously made statements and the information laid down in the draft amendments to the EU's Regulations on Classification, Labelling, and Packaging of Substances and Mixtures (CLP Regulations), on the one hand, and the statement made during the previous meeting of the TBT Committee, on the other.

26.7. Moreover, the Russian Federation was confused by the lack of transparency pertaining to the adoption of this classification, because there was no information available regarding the results of the expert consultations that had taken place on 1 July 2019. For this reason, the Russian Federation requested the EU to provide documents, decisions, comments, and information concerning these consultations for its detailed consideration.

26.8. The delegate of Canada noted the concerns raised by the Russian Federation over the EU's changes to its CLP Regulations. Canada again expressed its concern over the potential impact on trade in products that contained titanium dioxide or cobalt and the process that the EU had followed to arrive at the proposed amendments to the CLP Regulations. Changing the classification of titanium dioxide and cobalt under these 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. Cobalt, for instance, was present in small amounts in nickel. Canada exported $1.1 billion in various types of nickel to the EU in 2017, representing 29% of Canada's total nickel exports. As a result, any fluctuations in the EU's demand for nickel or downstream products, such as stainless steel, would have very significant implications for Canada's nickel industry.

26.9. Canada wished to receive from the EU an explanation of the next steps in its process to consider the proposed changes, including any relevant timelines. Canada also requested an explanation from the EU of how products that contained titanium dioxide or cobalt would be treated under the entire EU regulatory framework as a result of this proposal. Furthermore, Canada suggested that the EU conduct a Better Regulation Impact Assessment in order to ascertain the full range of economic and health and safety impacts that might result from this proposal.

26.10. The delegate of the European Union noted that her delegation had had a number of bilateral exchanges with Members on this issue, including with the Russian Federation.

26.11. Titanium dioxide and cobalt had been included in the 2018 Adaptation to Technical and Scientific Progress (ATP), amending the CLP Regulation. Several discussions on the classification of cobalt and TiO2 and the classification of mixtures containing TiO2 had taken place in the relevant expert groups. The Commission would continue the discussion (provisionally scheduled for July 2019) in the framework of the expert groups before deciding upon the adoption of a Commission Delegated Regulation.

26.12. The proposal to classify cobalt as carcinogen for all routes of exposure was based on the scientific opinion of the RAC of the ECHA, as well as on the comments received from member States and stakeholders. This opinion was 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 document containing all the relevant scientific information on which the opinion was based were publicly available on the website of the ECHA. The RAC of the ECHA had taken all available data into account in its scientific assessment, including the information submitted during the public consultation period. A review of an RAC opinion was only possible if new scientific information became available.

26.13. The EU wished to reassure the CTG that all comments sent by WTO Members in the context of the EU notification had been and would be duly taken into account by the Commission and member States in the decision-making process, in accordance with the TBT Agreement.

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

26.15. The Council so agreed.

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

27.1. The Chairperson informed the Council that, in a communication dated 27 June 2019, the delegation of China had requested the Secretariat to include this issue on the agenda of this meeting.

27.2. The delegate of China expressed disappointment at having to continue to raise its concerns regarding the refusal by the US Transportation Security Administration (TSA) of applications by Chinese enterprises for TSA certification. Although China had repeatedly raised the matter in

different fora of the WTO, their concerns had still not been addressed and no convincing reply had been received to date. Instead, Chinese applicants had only received an informal email which had informed them that their application had been refused without at the same time providing them with any detailed reasons or explanations. In this regard, China was of the view that the TSA had failed to follow the principles of Article 5.2.2 of the TBT Agreement, which in this case required them to inform Chinese companies of the certification results in a precise and complete manner, and to provide them with an opportunity to make corrections.

27.3. Besides, China was of the understanding that the US had not notified any WTO body of its TSA Certification requirements, including the TBT Committee. At this present CTG meeting, as at previous meetings, the United States, as a proponent of transparency and notifications, had emphasized how important it was that Members fulfilled their notification obligations. China urged the US to play a leading role in this regard by fulfilling its own notification obligations. China added that, although TSA Certification might not be a technical regulation for market access, it had already become a *de facto* "must" for the market access of civil aviation security equipment, and an arbitrary refusal to certify the products of this type from other Members would also create serious market access barriers for normal commercial products.

27.4. China's civil aviation security equipment had received TSA certification in the early years and had then sold well all over the world. And no client had ever raised any security concern. As the US had refused to accept China's application for further TSA certification, China requested the US to provide detailed explanations, as required under the TBT Agreement, as to why it refused to accept China's certification applications. In short, China urged the US to treat enterprises and products in an equal manner, observing national treatment and MFN treatment principles, and eliminating technical barriers to trade as soon as possible to ensure fair competition and a level playing field.

27.5. She further emphasized that China's issue raised here was one of fair competition, a level playing field, market access for commercial products, and non-discrimination as required by the WTO. At the same time, she urged the United States to meet the requirements of the TBT Agreement.

27.6. The representative of the United States stated that her delegation did not believe that the CTG was the appropriate forum to discuss issues of national security.

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

27.8. The Council so agreed.

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

28.1. The Chairperson informed the Council that, in a communication dated 27 June 2019, the delegation of the European Union had requested the Secretariat to include this issue on the agenda of this meeting.

28.2. The delegate of the European Union said that her delegation's concerns remained because the Russian Federation persisted in its policy of import substitution and localization of production through measures whose intention appeared to be to disadvantage the access of foreign products to the Russian market, and which raised significant questions regarding their consistency with WTO rules. The EU wished to enquire about the seven issues to which they had already referred at previous Council meetings, namely:

(i) Since the introduction of the mandatory certification for cement in March 2016, EU exports had been practically blocked. In addition, a non-notified mandatory standard prescribing testing at the border had been introduced. The EU requested the Russian Federation to modify the technical regulation and standard so that they be based on proportionate, non-discriminatory requirements which would then allow for a resumption of the cement trade between the EU and Russia;

(ii) the requirement of "good manufacturing practice" (GMP) certificates for pharmaceuticals, which had not been notified to the WTO, remained an important

obstacle to pharmaceutical imports into the Russian Federation. The EU requested a general revision of GMP certification schemes to align them with best international practice and to set a level playing field for locally produced and foreign medicines;

(iii) the EU remained concerned by the ban on fishery products from Estonia for alleged SPS reasons, which had been in place since June 2015. The ban was not properly justified. At the CTG's previous meeting, the Russian Federation had referred to contacts with the Estonian authorities aimed at resuming trade. Indeed, the EU requested that this unjustified ban be lifted;

(iv) in the summer of 2018, the Russian Federation had passed a law putting in place an excise duty regime that was more onerous for imported than for domestic quality wines. The EU welcomed proposals from the Ministry of Finance on the modification of the excise taxes on wine, as submitted for discussion to the Duma. Her delegation would be grateful for an update on when it was foreseen that the new rules would enter into force;

(v) a series of measures had been in place since 2015 to restrict access by importing foreign companies to purchases of Russian State-Owned Enterprises (SOEs). Her delegation was referring here to specific procedures only affecting SOE purchases of foreign products in the context of large investment projects, such as: lists of goods that could not be bought abroad without the authorization of the Commission on Import Substitution; a 15% price preference for domestic goods, services, or works in tenders organized by SOEs; and a need for governmental approval for purchases and leasing of imported planes, vessels, and oil drilling platforms. This was a separate issue from government procurement, namely when governmental agencies, which might include SOEs, purchased products for governmental purposes. When SOEs acted in a commercial capacity, GATT and GATS rules applied and the government procurement exception did not. The EU requested a comprehensive revision of the Russian Federation's measures affecting purchases by SOEs when acting in a commercial capacity so as to ensure that the WTO rule of national treatment was complied with fully;

(vi) the ban on the export of raw hides and skins, which had been extended on numerous occasions. In its latest notification of Quantitative Restrictions, Russia had referred to GATT Article XXI as a justification for the export ban in question. The EU had asked the Russian Federation the following: (a) why hides and skins were critical for defence procurement; (b) what was the volume of hides and skins necessary for defence procurement; and (c) what was the volume of domestic production actually subject to the export ban; and

(vii) the Russian Government had introduced temporary quantitative restrictions on the export of birch logs from Russia outside of the Eurasian Economic Union until end-June 2019. The EU would welcome an update and strongly hoped that the measure had not been and would not be extended.

28.3. The delegate of Ukraine shared the concerns raised by the EU and wished to draw Members' attention to the transit restrictions imposed by the Russian Federation. The Russian Government's Resolution No. 460-25 of 18 April 2019 had prohibited, *inter alia*, the importation into the Russian Federation of certain agricultural and industrial goods, if the country of origin of such goods was Ukrainian, or if such goods had been in transit through the territory of Ukraine. The list of banned products included paper, cardboard, clothing, wire, pipe products, and machinery. It was worth mentioning that the resolution had also introduced a ban on the export of goods to Ukraine for 14 commodity items of fuel and energy products, as set out in Annex 2, and special permission requirements for 27 commodity items of fuel and energy products, as set out in Annex 3.

28.4. If one examined closely the 2018 statistical data, the exports of specified items by other countries to the Russian Federation via Ukraine was eleven times greater than Ukrainian exports of these products to the Russian Federation. Therefore, these restrictions seemed primarily to target products originating in other WTO Members. Therefore, Ukraine urged the Russian Federation to fully comply with its WTO commitments in order to ensure predictable conditions for trade and to remove unjustifiable bans and discriminatory barriers.

28.5. The delegate of the United States said that her delegation continued to be concerned about Russia's good manufacturing practice certificates for pharmaceuticals. At the April CTG meeting, Russia had recognized the importance of the WTO's transparency and notification requirements and had described them as an integral part of the WTO.

28.6. However, despite repeated requests from Members, Russia had still not notified to the WTO the changes to its GMP rules, nor offered any explanation to Members of its failure to do so. Her delegation had heard from US industry that there had been some improvements in the process. However, further changes were still necessary to ensure that imports had a level playing field and that Russian citizens had access to the full array of pharmaceutical products. Specifically, the United States urged Russia to do the following: (i) to improve the Corrective and Preventative Actions process; (ii) to use a risk-management approach to inspector assessments; (iii) to rely on international standards; and (iv) to harmonize inspection across the Eurasian Economic Union.

28.7. The United States also wished to follow up on an issue raised at the April 2019 meeting of the CTG, namely Russia's discriminatory excise taxes on wine. In April, the delegate of the Russian Federation had explained that the Ministry of Finance was preparing amendments to the Tax Code to align the excise tax rates for imported and domestic wines. The United States requested the Russian Federation to provide an update on that process and to inform Members of any timeline established for introducing the amendments to the Tax Code in the Duma.

28.8. The United States also wished to bring to the attention of this Council a new issue that had been raising significant concerns among its companies, namely Russia's new labelling law, or "track and trace" as it was sometimes called. Based on information received by her authorities, the measure currently impacted a select number of industry sectors; however, Russia planned for the system to cover virtually all spheres by 2024. Russia had asserted that the system was needed primarily to combat counterfeiting and smuggling, both of which were laudable goals. However, her delegation's concerns focussed on the implementation of the system.

28.9. Other trading partners had raised their concerns over this new regime in other Committees, but the potential for the labelling regime to disrupt trade made it central to the work of this Council. Her delegation would provide Russia with questions in writing, but the US concerns focussed on the lack of infrastructure and procedural information available to ensure an efficient and fair implementation of the new regime, and also about the risk of disclosure and/or misuse of the sensitive data collected under this new regime. The differential treatment of domestic manufacturers and importers could raise national treatment and trading rights concerns. Additionally, US stakeholders were concerned that the Government would use the system arbitrarily to halt sales of imports, which was a concern based on real experience. Again, the United States did not oppose the objective of combatting counterfeit and smuggled goods; however, it did ask that the Government provide a 2-3 year transition period to ensure that the system worked properly and efficiently and that, during that time, the Government work with interested stakeholders to consider less trade restrictive alternatives to such a system.

28.10. The United States, like the EU, had raised concerns about restrictions and obligations placed on Russia's SOEs' purchasing decisions in this Council and in other WTO Committees. Her delegation continued to review amendments to Federal Law No. 44 as well as its subsidiary legislation. In general, the United States remained very concerned that they were yet another example of Russia rejecting the open trading system of the WTO in favour of the discredited policies of import substitution. The United States looked forward to Russia's explanation.

28.11. The United States was also concerned by Russia's ban on exports of raw hides. Her delegation continued to seek an explanation of how a measure that had been in place since 2014 could be considered temporary. As noted before, by prohibiting exports, Russia had depressed domestic prices and encouraged consumption of the domestic product to the detriment of imports and the world trading system.

28.12. Finally, at the CTG's previous meeting, the United States had echoed concerns about the temporary ban on the export of birch logs. The measure was supposed to have been lifted on 30 June 2019. She requested the delegate from the Russian Federation to provide the Council with an update on the rules governing the export of birch logs.

28.13. The delegate of the Russian Federation noted that that GMP-certification was used in many WTO Members, including the EU. Rules and legislation for GMP-certification had been elaborated in a non-discriminative manner regarding foreign producers of pharmaceutical products.

28.14. The State Institute of Pharmaceutical Products and Good Practices was constantly cooperating with the World Health Organization (WHO), Pharmaceutical Inspection Cooperation Scheme (PIC/S), Medicines and Healthcare Products Regulatory Agency, and other international organizations. Her delegation emphasized that in 2016 the WHO had assessed the Russian national regulatory system with regard to the circulation of medicinal products. The results of the assessment relating to the Russian GMP-certification procedure was that it complied with the relevant international practices to ensure the quality of medicine and protection of Russian health and life as indicated in the WHO's guidelines. In addition, the State Institute and the Ministry of Industry and Trade had applied for pre-accession to PIC/S in August 2017. In September 2018, the Russian Federation had submitted a report on the regulatory system in the Russian Federation and the Eurasian Economic Union. The Russian Federation would apply for accession to PIC/S in July 2019.

28.15. The Russian Federation had also conducted regular work with the Association of European Business, which had also confirmed the absence of problems and discrimination in Russia's procedures. In this regard, her delegation wished to draw attention to the amendments that had been elaborated specifically at the request of foreign manufacturers to facilitate the registration of medicinal products by allowing GMP certification and registration to be conducted in parallel.

28.16. Regarding the SPS ban on fish products from Estonia, the Russian Federation informed the Council that exports from one Estonian establishment had been allowed as a result of the inspection, and that work was ongoing to assess the possibility of allowing exports from other Estonian establishments. The competent authorities from both countries were cooperating in order to determine the corrective measures that were necessary and to plan any further inspections, if required.

28.17. She confirmed, once again, the Russian Federation's readiness to settle this issue and to resume fishery exports.

28.18. In respect of wine taxation, she informed the Council that the Russian Federation expected to adopt legislation amending the Tax Code, which would align excise rates for wines, by end-2019. The EU had already been provided with the draft law.

28.19. As for the Russian Federation Government Resolution No. 925, her delegation drew the EU's attention to paragraph 8 of this Resolution, which clearly stated that priority should be given to Russian products only after full consideration had been given to the requirements of the GATT. Therefore, in respect of procurement for commercial purposes, both Russian and foreign products were treated equally.

28.20. In respect of export restrictions on raw hides and skins, her delegation emphasized that this measure had been introduced with the purpose of assuring the implementation of State defence procurement. The export prohibition on raw skins and hides was to be suspended on 1 September 2019.

28.21. As for quantity restrictions on the export of birch logs, the measure had been suspended on 30 June 2019. Currently, birch logs were exported from the Russian territory without any restriction.

28.22. Regarding Ukraine's concern over transit restrictions, the Russian Federation did not believe that the Council was the appropriate forum to hold a discussion on security measures.

28.23. Regarding US concerns over labelling requirements, she referred to her delegation's statement delivered at the last TBT Committee.

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

28.25. The Council so agreed.

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

29.1. The Chairperson informed the Council that, in a communication dated 26 June 2019, the delegation of the Russian Federation had requested the Secretariat to include this issue on the agenda of this meeting.

29.2. The delegate of the Russian Federation said that her delegation remained concerned about the trade regime applied by Croatia to certain oil products from the Russian Federation. During previous meetings of this Council, the EU delegation had mentioned that a revision of the current legislation was ongoing. The Russian Federation deeply regretted that no legal act eliminating the discrimination in respect of oil products originating in Russia had been adopted or published since that statement. The Russian Federation requested the EU to provide information about the exact dates and state of play of the development or adoption of the relevant legislation, and also to provide the draft documents.

29.3. The delegate of the European Union confirmed that the revision process of the measure was still ongoing. Her delegation expected that the next steps leading to a revised measure, which would be fully consistent with WTO rules, would be made available shortly. The European Union would inform the CTG of these developments.

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

29.5. The Council so agreed.

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

30.1. The Chairperson informed Members that, in a communication dated 27 June 2019, Malaysia had requested the Secretariat to include this issue again on the agenda of this meeting. The Chairperson also reminded delegations that, at the beginning of the meeting, Colombia had requested to be included as a co-sponsor of this agenda item.

30.2. The delegate of Malaysia expressed concerns regarding the publication of the Commission Delegated Regulation EU 2019/807, of 13 March 2019, supplementing Directive EU 2018/2001 of the European Parliament and Council concerning the determination of high indirect land-use change-risk feedstock, for which a significant expansion of the production area into land with high carbon stock had been observed, and the certification of low indirect land-use change-risk biofuels, bioliquids, and biomass fuels. The delegated regulation had been published in the Official Journal of the European Union on 21 May 2019 and had entered into force on the twentieth day following the date of its publication. Malaysia had appreciated the European Union's willingness to engage in open discussion and dialogue to exchange facts, information, and views. Her delegation had previously raised its concern relating to the delegated regulation in the TBT Committee. However, Malaysia now considered that the continued bilateral engagement with the European Union with the aim of finding a mutually beneficial and mutually acceptable way forward had not resulted in a fair treatment for palm oil produced in Malaysia. In Malaysia's view, the delegated regulation was inconsistent with the MFN provisions of GATT Article I and National Treatment on Internal Taxation and Regulation of GATT Article III. Malaysia observed that the delegated regulation had singled out palm oil as a high indirect land-use change-risk feedstock, while the other major oil crops, namely, rapeseed oil, soybean oil, and sunflower oil, had been categorized as low indirect land-use change-risk feedstock. Malaysia also noted that high indirect land-use change (ILUC) risk feedstock would not be taken into consideration for contributing towards the renewable energy targets of the European Union and would not be eligible for financial support under EU Directive 2018/2001. Malaysia considered that the delegated regulation went against the principle of free trade by distorting the pricing system, and also that the disguised restriction was an arbitrary and unjustifiable discrimination which created unnecessary obstacles and was more trade restrictive and burdensome than necessary on international trade in palm oil and its products.

30.3. Malaysia urged the European Union to provide an equitable treatment across all oil crop biofuels and bioliquids in line with the principle of non-discrimination, which stipulated that a Member shall not discriminate between "like" products from different trading partners. Malaysia recognized

the importance of protecting the environment and the conservation of biodiversity and emphasized its commitment to combat climate change and global warming. Malaysia continued to maintain 55.3% of its land area under forest cover, which exceeded its commitment to retain at least 50% pledged at the Rio Earth Summit in 1992, and which Malaysia believed was far higher than the forest cover in most large countries of the European Union, including France, Germany, Italy, and the United Kingdom.

30.4. She also reminded Members that, under the Paris Agreement, Malaysia had committed its ambitious Nationally Determined Commitment (NDC) to reduce emissions intensity of GDP by 45% by 2030 relative to the emissions intensity of GDP in 2005. Malaysia was pleased to share that it was on track to achieve its NDC by 2030. In March 2019, the Government of Malaysia had agreed with the new policy on ensuring that Malaysian palm oil was cultivated in a sustainable manner. The measures included the following: to cap the oil palm cultivated area to 6.5 million hectares; to put a stop on conversion of permanent forest reserved area; to halt planting of oil palm in the new peatland area and further strengthen regulations with regard to existing oil palm cultivated on peat; and to make available oil palm plantation maps for public access and to demonstrate further transparency in the supply chain. Malaysia emphasized that the national oil palm industry was committed to producing palm oil in accordance with sustainable principles and criteria under the Malaysian Sustainable Palm Oil (MSPO) certification scheme, which would be implemented on a mandatory basis by 31 December 2019. In this context, Malaysia urged the European Union 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 remained open for discussion and to work together with the European Union for the recognition of the MSPO certification scheme under Directive EU 2018/2001. Malaysia remained fully committed to negotiating in a sincere and constructive manner to ensure non-discriminatory treatment for palm oil products and to prevent unnecessary barriers on the market access of palm oil products into the European Union. Malaysia looked forward to a positive response from the European Union in this regard.

30.5. The delegate of Indonesia thanked Malaysia for including this agenda item and echoed the sentiments earlier expressed by Malaysia. Indonesia recalled its statements made at the CTG's previous meeting and reflected in document G/TBT/W/641, where Indonesia had continued to express its serious concerns over the EU amendment to Directive EU 2009/28 EC. Indonesia noted that the European Union had insisted that the issue was not within the purview of the TBT Committee, even though, in Indonesia's view, the shape and features of the measure indicated otherwise. Indonesia believed that the EU assertion that the measure did not create a ban or otherwise single out any specific biofuel did not mean that the measure could not be qualified as falling under the TBT Agreement. The indirect land-use change-risk criteria as it had been regulated in the delegated act was unilateral and scientifically flawed. The calculations on emission numbers and formulations were inappropriate as they had never been communicated and verified. Moreover, the standard content cut-off date of 2008 for land convention was unfair because the deforestation that had taken place for other vegetable oils had begun long before the development of palm oil plantations. Indonesia was of the view that the criteria released by the European Union were more trade restrictive than necessary, created discrimination, and ultimately limited and banned market access for palm oil-based biofuels. Indonesia also believed that the measure undermined its ongoing efforts to meet the Sustainable Development Goals (SDG) 2030. Indonesia's national commitment covered first and foremost the preservation of sustainable palm oil production and, in particular, its efforts towards poverty alleviation as guaranteed by the Marrakesh Agreement and the SDGs itself. Indonesia emphasized its strong opposition to the Renewable Energy Directive II and its delegated act and urged the European Union to withdraw any measures that were not constructive to trade development and not supportive of Members' efforts to achieve the ultimate objective of the sustainable development goals.

30.6. The delegate of Colombia recalled that, at the beginning of the meeting, Colombia had requested to be included as a co-sponsor of this agenda item. Colombia appreciated the intention of the European Union to adopt a public policy aimed at protecting the environment through the promotion of the use of energy from renewable sources. However, Colombia also expressed its concern that the implementation of the EU environmental policy, and EU Directive 2018/2001 and its delegated implementing act in particular, should be implemented in a non-discriminatory manner, not more trade restrictive than necessary, and that it not subsequently become an unnecessary obstacle and disguised barrier to trade. Colombia recognized that EU Directive 2018/2001 and its delegated act established that, from 2021, first generation biofuels would count as renewable energy

in the transport sector only up to a quota of 7%, and that it further established that first generation biofuels with a high risk of causing ILUC shall have their contribution to the renewable energy quota gradually reduced to 0% by 2030. In Colombia's view, these provisions were inconsistent with the national treatment and MFN obligations set out in Article III.4 and Article I.1 of the GATT 1994.

30.7. Colombia considered that, although there were internationally validated methodologies for measuring the environmental impacts of productive activities, such as the Life Cycle Assessment (LCA) or the Carbon Footprint (CF), it was surprising that the EU had decided to use the ILUC methodology, which according to Colombia had no valid or internationally recognized scientific basis for the conduct of such analyses and assessments in their implementation phase. With regard to the classification of certain biofuels as of high ILUC risk, Colombia also believed that the considerations were not technically appropriate, taking into account that the following: (i) that the deforestation associated with these products was not high in all producing countries; and (ii) that there were countries, such as Colombia, that had land available to increase the cultivable agricultural area without deforestation. Furthermore, Colombia observed that products such as soy and rapeseed, shown by international studies to have a higher contribution to deforestation, were not considered as of high ILUC risk. In Colombia's view, this situation was not only discriminatory under Article I and Article III of the GATT 1994, but might even, in environmental terms, benefit the producers of those goods that had already caused deforestation, owing to the fact that, under the methodology and baseline proposed by the EU in the delegated act, they would not register an excessive increase in their production.

30.8. Colombia believed that the delegated act may be considered as a technical regulation under the WTO's rules, since it established mandatory characteristics for biofuels relating to the raw materials used for their production. Colombia also noted that the European standard established certain risk criteria for each crop and that, according to the sources used, it may be concluded that the cultivation of palm oil would be excluded from the very outset because of its excessive growth, without the presentation of any indicators to ensure that the classification criteria were appropriate and applied in the same manner to other crops used in the production of biofuels. Even if Colombia recognized the legitimate objectives of the EU directive, it considered that such a measure had also other objectives.

30.9. Concerning the certification mechanism, Colombia understood that the delegated act stated that biofuels may only be certified as of low-risk if they met a number of criteria, including scale of production. For Colombia, the definition used for small-scale producers (smallholders), who were defined as "farmers independently conducting an agricultural activity on a holding with an agricultural area of less than two hectares for which they hold ownership or lease rights", not only caused considerable concern but had no technical or scientific basis and substantially diverged from the standards used by international organizations such as the Roundtable on Sustainable Palm Oil (RSPO) and the FAO. Colombia reiterated that this measure constituted *de facto* discrimination under the terms of Articles I and III of the GATT 1994; it discriminated between like products of different origin by favouring EU products and products of other origins to the detriment of palm oil derived products, such as those exported by Colombia. In this context, Colombia questioned the manner in which the Directive and the delegated act established that a raw material may be of high ILUC risk, on the basis of indicators, criteria, and definitions that *de facto* discriminated and that excluded *prima facie* products such as soy or rapeseed. The European Union's measures were currently affecting Colombia, a country which had zero deforestation associated with the production of palm oil, and were also putting at risk 170,000 jobs and Colombia's third largest export to the European Union. Colombia looked forward to the EU's responses.

30.10. The delegate of Honduras shared the concerns raised by Malaysia and other Members regarding the EU Directive on renewable energy. Honduras respected the legitimate right of WTO Members to adopt public measures aimed at the protection of the environment provided that such measures were compatible with the WTO Agreements and did not restrict trade more than necessary. Honduras believed that the elimination of palm oil-based biofuels by 2030 would have a negative impact on its economy since, for Honduras, palm oil was an agro-industry of great importance, generating thousands of permanent jobs and supporting a large number of smallholder farmers. In Honduras, palm production was controlled and carried out under conditions that protected the tropical rainforests and the sector had grown considerably with minimal or marginal impact on the environment. In that regard, Honduras associated itself with the concerns expressed by Malaysia and other Members and urged the European Union to take those concerns into consideration in its decision-making process.

30.11. The delegate of Ecuador expressed her delegation's continuing interest in this topic. According to Ecuador, the directive established standards that were specific for biofuels, bioliquids, and biomass fuels produced by forest and food crops to mitigate emissions caused by ILUC. Ecuador believed that the methodology and criteria established for certification had been decided upon unilaterally because they had not been properly discussed, they had not been endorsed at the international level, and they had not been the subject of any agreement or multilateral negotiation, particularly with the Members that supplied these commodities. Furthermore, Ecuador believed that the criteria established directly affected palm oil and not fuels produced from other kinds of vegetable oils, such as rapeseed and sunflower seed, which ran contrary to the obligations under Article 2.1 of the TBT Agreement and Article I:1 of the GATT 1994. In her delegation's view, given that the proposed measures favoured vegetable oils produced in the European Union, they also ran contrary to the obligations on national treatment prescribed in Article 2.1 of the TBT Agreement and in Article III:4 of the GATT 1994.

30.12. Ecuador also found that, although there was no specific prohibition on the import of fuels based on palm oil in the European Union, the directive disincentivized EU Members from importing these products for their use as biofuels. Ecuador highlighted the progress that it had made in meeting its national targets for the mitigation of climate change, and that it was currently one of the world leaders in the implementation of policies, measures, and initiatives to reduce deforestation. Furthermore, Ecuador ranked second in the implementation of results-based payments in terms of deforestation and forest damage and believed that these achievements under its international commitments should be considered whenever establishing any kind of restrictions. Finally, Ecuador pointed to the socioeconomic impact that these unilateral measures could have in the palm sector in Ecuador, which was made up of 51% family-based and peasant farmers with less than 10 hectares of production. Ecuador recognized the European Union's legitimate climate targets; however, it believed that any environmental measure should be framed in terms that were compliant with the multilateral trading system so as not to be arbitrarily discriminatory or unnecessarily restrictive to international trade. Ecuador called upon the European Union to reconsider its proposed measure with regard to ILUC because there already existed precepts that had been agreed upon internationally with regard to deforestation, greenhouse gas emissions (GHGE), and climate change. Ecuador reiterated that measures adopted by Members should not constitute unnecessary barriers to trade, particularly when there were binding targets agreed upon internationally to measure the effectiveness of countries in terms of their protection of the environment.

30.13. The delegate of Guatemala emphasized that, as a palm oil producer, Guatemala wished to associate itself with other Members' concerns over the negative repercussions of this measure, which discouraged the use of palm oil compared to other vegetable oils produced in the biofuel sector in the European Union. Guatemala recognized the importance of sustainable production and believed that it was not possible to condemn palm oil altogether in the global production of vegetable oils, thereby discriminating against it. The industry in Guatemala continued to work hard to maintain sustainable production and to comply with the SDGs.

30.14. The delegate of the European Union explained that the revision of the Renewable Energy Directive (RED) had been discussed in various fora at the WTO, as well as in a number of bilateral meetings among experts. The EU was aware of the position expressed by Malaysia and the other Members that had taken the floor on the recast of the renewable energy directive and on the identification of biofuels at high-risk of contributing to ILUC. The EU recalled that the Second Renewable Energy Directive did not aim at import restrictions, but rather at promoting sustainable renewable energies and at reducing the carbon footprint of the transport sector. She further noted that the Second Renewable Energy Directive did not set a ban on any specific biofuel; rather, it established rules on the calculations for the achievement of the EU renewable energy targets, including in the transport sector. She confirmed that the EU market remained open to palm oil, in the biofuel sector as in other sectors; indeed, EU imports of palm oil in 2018 had actually increased in volume, and no specific restriction was in place. The EU remained available for discussions on this issue through the appropriate bilateral channels.

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

30.16. The Council so agreed.

31 EUROPEAN UNION – MEDICAL DEVICE REGULATION AND IN VITRO DIAGNOSTIC MEDICAL DEVICES REGULATION – REQUEST FROM THE UNITED STATES

31.1. The Chairperson informed Members that, in a communication dated 27 June 2019, the United States had requested the Secretariat to include this issue on the agenda of this meeting.

31.2. The delegate of the United States expressed her delegation's support for the development and enforcement of a well-defined medical device regulatory system which assured the safety and performance of all medical devices. However, the United States had serious concerns regarding the implementation of the EU's Medical Device Regulation (MDR) and the In Vitro Diagnostic Medical Devices Regulation (IVDR) and the US industry was worried about patient access to life saving and life improving medical technologies as well as their continued access to the EU's 125 billion medical device market, 20 billion of which were supplied by US products.

31.3. The US noted that the implementation of these two regulations was critically behind schedule and that US national industry had two particular concerns. First, there was an insufficient number of testing facilities, known as Notified Bodies (NBs), to perform certification activities under the two regulations. And, second, the EU had drafted an insufficient number of the implementing acts needed to provide details about how industry could ensure that their products complied with the new product standards. The US appreciated that the Commission had previously indicated that 20 NBs might be designated by the end of 2019 and that these NBs had increased their capacity by 25 to 50%. In the US view, this projection actually made their point that the complexity of the evaluations had also increased dramatically, the number of files requiring re-certification was almost ten times the annual number, and each file required roughly six months to evaluate. The US believed that the Commission's projected NBs by the end of 2019 would not have nearly enough capacity to meet demand. In their view, the grace period of allowing products certified under the current MDR to be marketed was helpful. However, whole classes of products did not meet the regulation's criteria for eligibility and many companies could not find NBs to evaluate their products under this previous regulation. The US reported that the NBs were already gearing up for the MDR and were turning away companies. Likewise, finalizing essential implementing acts by the end of the year was too late.

31.4. The US emphasized that companies must now know what they needed to do to comply with these regulations and that the Commission was not providing sufficient lead time for companies to prepare their documentation, let alone time for the NBs to evaluate those documents, by the May 2020 deadline for the MDR. Therefore, the US urged the EU to make important changes to allow the system to function. Nor was this the view of the United States alone; other trading partners, and even some EU member States, had also expressed their concerns over the challenges in the implementation due to the lack of certification capacity and the absence of many implementing acts. Therefore, the US urged the EU to take the necessary steps to provide more time for the MDR to be fully implemented to enable patients to continue to receive the medical devices they needed.

31.5. The delegate of Canada noted that, like the US, Canadian industry stakeholders had expressed concerns that the EU MDR could pose a possible barrier to trade, especially because of the delays and uncertainty surrounding medical device regulation implementation. Canada asked the EU about any information available on next steps.

31.6. The delegate of the Republic of Korea shared the concerns about the EU's MDR and IVDR that had been raised by the United States. Korea believed that, despite the tightening of regulations, not enough information had been given on how the relevant evaluation procedures would be conducted. In Korea's view, this would make it difficult for companies to anticipate and prepare for the implementation of the EU's measures. The limited number of Notified Bodies designated to issue CE-Marking under MDR was especially concerning to Korea, as companies worried that it would lead to delays and difficulties when obtaining CE markings. Therefore, Korea requested the EU to address these concerns in a timely manner and also to provide more information on its measures.

31.7. The delegate of the European Union replied that the new MDR and IVDR would enter into force in March 2020 and May 2022, respectively. These regulations aimed at ensuring the general safety and performance of medical devices and keeping up with technological progress. As indicated at the most recent meeting of the TBT Committee, the EU was aware that meeting the deadlines of the regulations would be challenging for the stakeholders involved and that the timely availability of

an appropriate number of Notified Bodies was important. That said, the EU had informed Members that implementation was progressing well and that the regulations foresaw transition mechanisms, such as the possibility for manufacturers to continue to place products on the market under old Directive certificates until May 2024. The EU was therefore fully committed to introducing the new system without delay in order to ensure a higher level of patient protection.

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

31.9. The Council so agreed.

32 TUNISIA – IMPORT RESTRICTION MEASURES – REQUEST FROM THE EUROPEAN UNION

32.1. The Chairperson informed Members that, in a communication dated 27 June 2019, the European Union had requested the Secretariat to include this issue on the agenda of this meeting.

32.2. The delegate of the European Union provided details of the measures at stake as the item had been placed on the Council's agenda for the first time. She stated that, on 29 November 2018, Tunisia had taken the decision to enforce new import restrictive measures on a wide number of products. The EU had noticed that Tunisia had de facto established a system of non-automatic import licences for many products for consumption. The Tunisian importation regime was based on four categories: (i) free import; (ii) import based on technical specifications, whereby the importer had to comply with certain provisions and get an authorization for all future imports of the same product; (iii) importation based on prior authorization necessary for each consignment based on criteria that were not always transparent and depended on the nature of the goods and the Ministry involved; and (iv) prohibited products.

32.3. The EU further noted that the decision of the Trade Ministry had extended the scope of products in category (iii) while technical specifications had apparently been in preparation. In the EU's view, import authorizations should in theory be guided by technical specifications but these had not yet been defined. In fact, the Ministry of Trade in Tunisia evaluated and decided on importation requests literally on a case-by-case basis in the absence of objective criteria. Moreover, quantitative restrictions were also applied. Additionally, the list of products concerned included many agricultural and agri-food products, textiles and clothing, cosmetics, leather products, shoes, toys, and electrical goods. The products affected represented roughly 4% of total EU exports to Tunisia. The EU highlighted that these de facto non-automatic import licences had not been notified to the WTO and appeared to run contrary to WTO provisions and, in particular, Article XI:1 of the GATT and Article 4.2 of the Agreement on Agriculture, where appropriate.

32.4. Regarding the way the measure was administered, the EU considered that the provisions of the WTO Import Licensing Agreement would apply and had raised the matter in the last Import Licensing Committee meeting accordingly. Regarding the potential informal conditions to be imposed on importers for obtaining an import licence, for example by reducing the quantity imported, the EU considered that these would not only be incompatible with GATT Article XI and the Import Licensing Agreement, but also in violation of Article X:1 and X:2 of the GATT regarding the publication of measures of general application. The EU therefore urged Tunisia to repeal these measures as rapidly as possible.

32.5. The delegate of China thanked the EU for raising this issue and shared the same concerns. According to China, the measures that had been published by the Department of Commerce of Tunisia in November 2018 had covered a large number of products exported from China to Tunisia. China hoped that the mentioned measures would not increase burdens on business, nor create barriers to Chinese exports to the Tunisian market. China was still assessing the impact of the measures and might revert to this issue in future meetings.

32.6. The delegate of Tunisia thanked the EU and China for placing this item on the agenda. Tunisia informed Members that, eight months since the measures had entered into force, the Tunisian authorities had assessed these measures and were currently studying the idea of repealing them. Tunisia would inform WTO Members in due course of the exact date when these measures would be repealed.

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

32.8. The Council so agreed.

33 ANGOLA – IMPORT RESTRICTING PRACTICES - STATEMENT BY THE UNITED STATES

33.1. The Chairperson informed the Council that, in a communication dated 27 June 2019, the delegation of the United States had requested the Secretariat to include this item on the agenda of this meeting.

33.2. The delegate of the United States raised her delegation's concerns over Angola's Presidential Decree No. 23/19, issued on 14 January 2019. It was the understanding of the US that the decree had been intended to restrict Angola's imports with the goal of increasing its domestic economic development. The decree had specifically targeted 54 products, mainly agricultural goods, and could potentially target more in the future. Currently, there were reports of import bans in place on pork, maize flour, and diapers, using Decree No. 23/19 as justification. Import bans were prohibited under GATT Article XXI. The US was concerned that these actions could discourage overseas companies from doing business in Angola and could also compromise Angola's relationships with key trade partners. The US asked Angola's officials to please explain how they planned to bring the decree and its implementation into accordance with WTO rules. They also urged the Angolan government to request technical assistance from the WTO Secretariat, if necessary, in notifying any trade measures taken under Presidential Decree No. 23/19. The US would continue to raise this issue in the CTG and other standing Committees, as necessary, until Angola's import bans had been lifted and its national treatment obligations were once again being respected.

33.3. The delegate of the European Union said that the EU was supportive of Angola's intention to diversify its economy and to develop its domestic industry. Nevertheless, the EU also shared the concerns expressed by the United States. Decree No. 23/19 seemed to protect domestic industries in a manner that was not compatible with WTO rules and that could prove detrimental to foreign investments in Angola. The EU urged Angola to review the relevant measures in order to ensure compliance with WTO rules.

33.4. The delegate of Brazil shared the concerns of the US over Angola's Presidential Decree No. 23/19. The decree had specifically targeted 54 products, affecting important Brazilian agricultural exports of goods, such as maize, poultry, and pork. Brazil had been following the implementation of Angola's policy of import substitution with great concern. Indeed, since mid-2008, Brazilian exporters had been facing significant trade losses due to the restrictions that had been imposed by the Angolan government. Brazil had expressed its concerns to Angola's representatives in a bilateral meeting in June 2019, explaining that the import bans were not in accordance with Articles 1.2 and 3.2 of the Agreement on Import Licensing Procedures, Article 4 of the Agreement on Agriculture, and Articles IX and XXI of GATT. Brazil encouraged the Angolan government to revise the measures as soon as possible.

33.5. The delegate of Canada said that Canadian agriculture stakeholders had raised questions about Angola's Presidential Decree No. 23/19, more specifically on its potential inconsistencies with Angola's international trade obligations. Canada shared some of the concerns raised by the US and encouraged Angola to ensure that the measure was consistent with its WTO obligations, in particular the elimination of quantitative import restrictions and import prohibitions, as well as national treatment. Canada also encouraged Angola to comply with its WTO notification requirements and notify the decree, as well as any measures taken under the decree, to the appropriate WTO Committees, including to clarify the scope of the measure and the HS codes of the products covered.

33.6. The delegate of the Russian Federation shared the US concerns regarding Angola's trade restrictive measures. The Russian Federation noted that the import bans that had been applied by Angola were inconsistent with Article XI of the GATT. The Russian Federation urged Angola to bring these measures into conformity with the WTO Agreement and to lift the import bans on agricultural products.

33.7. The delegate of Angola said that the decree had not imposed any restrictions on the importation of products, notwithstanding that Angola had operated according to WTO rules regarding

the mechanism of non-automatic licensing in the import of selected products. Firstly, the Decree disciplined the rules of the commercial chain of goods, meaning that it defined the various producers, wholesalers, retailers, and consumers, having the right to import, since in the past the retailer and the consumer were part of the chain of importers which Angola considered was not correct. Secondly, the Decree determined that priority should be given to the purchase of products of national origin, when those products were intended for public institutions. And thirdly, Angola anticipated applying the temporary measure of effective quantitative restriction only in 2022, and that, before applying the measure, there would be an investigative study process and other procedures carried out as per the WTO rules. Economic diversification was important in order to increase economic resilience as well as to enable LDCs to participate meaningfully in global value chains and in the international trading system. Angola was preparing the notification of Decree No. 23/19 and it reaffirmed that imports were proceeding in the normal way. Angola warned of the need for proper structural transformation so that LDCs could positively reduce import dependence and mitigate their impact on the Balance of Payments, thereby reducing the gap between developed and least developed countries. Angola had already sent the matter to Capital and they had proposed to continue bilateral consultations with the United States.

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

33.9. The Council so agreed.

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

34.1. The Chairperson informed Members that, in a communication dated 27 June 2019, the delegation of Hong Kong, China had requested the Secretariat to include this issue on the agenda of this meeting. Likewise, Hong Kong, China had requested the Secretariat to distribute a Room Document, which had been made available to Members electronically by the Secretariat.[13] The Chairperson also reminded Members that, on 18 June 2019, informal consultations had been held on how to improve the work of the Council and its subsidiary bodies. During those consultations, delegations had shared interesting and important ideas, including those reflected in the Room Document of Hong Kong, China. Similarly, during the informal consultations, the delegation of Singapore had distributed its own Room Document[14] on best practices followed in other Committees, inviting the Council to reflect upon which of these practices could eventually be implemented in its subsidiary bodies. The Chairperson clarified that, since delegations would surely make reference to these ideas and suggestions in their interventions under this agenda item, he did not consider it necessary to make a more detailed summary of the informal consultations.

34.2. The delegate of Hong Kong, China recalled that, at the Council's previous meeting, her delegation had added this item as a platform to focus attention on small steps to improve the functioning of the CTG and its subsidiary bodies. She clarified that this was not a proposal of Hong Kong, China but rather a collection of ideas from Members having an interest in exploring the potential for improvement under the existing framework. Hong Kong, China recognized that, thanks to the Chair's informal consultations in early June 2019, Members had already engaged in very constructive exchanges. While some ideas would need further discussion, others could be adopted quickly to facilitate Members' participation at meetings.

34.3. The room document that Hong Kong, China had circulated under this item contained two ideas for the consideration of Members, namely, the annotated agenda and the year plan of meetings. Hong Kong, China noted that both practices had already been tested in certain committees and believed that wider adoption of these practices by the CTG and its subsidiary bodies would benefit Members even more. She explained that, with regard to the annotated agenda, and as elaborated in the room document, it would help Members to understand new items and do the necessary research in preparation for a meeting. For reoccurring items, especially for those discussed in other committees, an annotated agenda could enable Members to be updated on how issues had developed since the Council's previous meeting. In her delegation's view, this would be particularly helpful to small delegations that might not be able to cover the meetings of all committees. As for timing, she suggested that the circulation of the annotated agenda two weeks prior to the Council's meeting would be useful to many delegations, although it was for Members to decide their view on this. As

[13] Document RD/CTG/9.
[14] Document RD/CTG/8.

for the yearly plan of meetings, Hong Kong, China observed that some WTO Committees had been issuing tentative meeting dates for the year ahead to facilitate planning for participation by delegations and Capitals. A more comprehensive year plan could also enable the Secretariat to avoid meeting clashes and to explore coordination between related meetings and workshops in order to facilitate the participation of Capital-based experts. Hong Kong, China suggested that, if Members had no objection, the Secretariat could start working on these ideas after the summer break, and in this regard, she also invited Members to share other ideas relevant to the functioning of the CTG and its subsidiary bodies.

34.4. The delegate of Singapore thanked Hong Kong, China for introducing this agenda item, and also for highlighting some of the ideas that had been raised at the CTG's informal meeting of 18 June 2019. Singapore was supportive of having a more detailed annotated agenda and for having an annual calendar of meetings. Singapore was also open to discussing additional ideas on how to improve the functioning of the CTG and its committees. It was precisely to aid such discussions that Singapore had tabled a discussion paper on Good Practices in the TBT Committee (document RD/CTG/8) for discussion at the 18 June informal CTG meeting. The intention of Singapore's paper had been to encourage a discussion on whether the practices and tools used in the TBT Committee might also be useful for other CTG subsidiary bodies as well. She explained that the TBT Committee fixed its calendar of meetings for the year well in advance, and also used an annotated agenda, which highlighted whether a trade concern was being raised for the first time or whether it was a recurring agenda item. Singapore welcomed Members' preliminary views on the paper and looked forward to further discussion at the CTG's next informal meeting. Singapore had also co-sponsored the EU's proposal on Procedural Guidelines for WTO Councils and Committees Addressing Trade Concerns and believed that the proposal contained pragmatic suggestions that would allow delegations to participate in WTO meetings more effectively.

34.5. The delegate of the European Union thanked the Chair and Hong Kong, China for keeping Members focussed on the task of improving the functioning of the CTG and its subsidiary bodies. The EU also thanked the delegation of Singapore for the useful paper on TBT good practices. As had been indicated in the informal consultations organized by the Chair, the EU welcomed practical suggestions on how to facilitate work in the regular bodies of the WTO, such as the ideas set out in the communication of Hong Kong, China. According to the EU, annotated agendas were an existing practice in several committees and could be very useful for preparing meetings, particularly where Members faced resource constraints. An annual calendar of meetings was also a straightforward good practice that the EU would encourage for all regular WTO bodies. As indicated under this agenda item at the Council's previous meeting, and as previously mentioned by Singapore, the EU had been working with numerous interested Members on a proposal for guidelines applicable to WTO bodies dealing with trade concerns, such as the CTG and most of its subsidiary bodies. The EU observed that the two long days of discussions at this meeting had once again illustrated that, while Members put a lot of effort into raising and responding to trade concerns, progress in resolving them remained rather slow. The proposal contained several improvements on how Members prepared for and organized meetings in general, as well as guidelines on how to consider trade concerns more effectively. The EU informed Members that the proposal, co-sponsored by ten Members, had been circulated to Members on 5 July 2019 and would be on the agenda of the General Council on 23 July 2019.[15] The EU looked forward to a discussion of the proposal in that context.

34.6. The delegate of New Zealand thanked Hong Kong, China and Singapore for their efforts to stimulate this useful discussion and for the ideas that they had generated. New Zealand confirmed its co-sponsorship of the paper "Procedural Guidelines for WTO Councils and Committees Addressing Trade Concerns", which had been explained by the EU. New Zealand saw this proposal as setting out tangible, practical, and pragmatic improvements to committee functioning and looked forward to engaging with Members on this matter.

34.7. The delegate of Switzerland thanked Hong Kong, China for sharing its thoughts and ideas. Switzerland believed that the ideas that had been presented in the paper deserved careful consideration, particularly in light of the increasing number and duration of meetings and the resource constraints of many delegations. Accordingly, Switzerland could support the ideas presented in the paper, namely: the circulation of an annotated agenda prior to each CTG meeting, and an annual plan of meetings for the CTG and its subsidiary bodies. Switzerland believed that these were simple, effective, and cost-free measures. He also highlighted that Switzerland was a

[15] Document WT/GC/W/777.

co-sponsor of the EU paper on specific trade concerns that had been mentioned by other delegations. Furthermore, and in a similar spirit of unburdening the agenda and meetings of the CTG, as well as other WTO bodies, and to complement other proposals, such as that of the EU, Switzerland, together with a group of interested Members, was itself working on an opportunity to establish a new tool at the WTO to support Members in finding mutually agreeable solutions to their trade concerns, in particular those trade concerns that had been raised repeatedly in the committees.

34.8. The delegate of Norway thanked Hong Kong, China for its room document on a better functioning of the CTG and its subsidiary bodies. Norway supported the idea of an annotated agenda for the CTG and an annual plan of meetings for the CTG and its subsidiary bodies. Norway looked forward to discussing these and other constructive ideas for improving the functioning of the WTO. In addition, Norway expressed its support for the EU's ideas regarding how to deal with specific trade concerns, as reflected in a recent proposal to the General Council, and Norway was also among the co-sponsors of this proposal.

34.9. The delegate of South Africa took note of the room document circulated by Hong Kong, China and said that South Africa saw value in taking small steps to improve specific functions of the CTG, like the agenda and the plan of meetings, as mentioned in the discussion paper. However, South Africa did not see how the CTG could discuss the better functioning of the work of its subsidiary bodies given that they had mandates and rules of procedures that had been negotiated together with the functioning of the WTO system. In South Africa's view, the CTG could not agree on an open-ended mandate to alter these procedures. Each committee would have to establish a need, then enter into negotiations to alter its rules of procedure based on its mandate and the provisions of the relevant Agreements. South Africa noted that Hong Kong, China's document was only a discussion document calling for more views and suggestions. South Africa was open to informal discussions with Hong Kong, China. However, South Africa noted that it would be helpful if Hong Kong, China could give them a sense of the outcome of these discussions that they envisaged. South Africa was of the view that any proposal on improvements in the functioning of the CTG should be specific and should not be made in an open-ended manner that would alter the rights and obligations of Members. South Africa emphasized that it had to be made clear to Members, in writing, what the CTG would take on board and implement in September, as Hong Kong, China had suggested.

34.10. The delegate of Panama thanked the Chairman and Hong Kong, China for their initiative for taking steps to improve the functioning of the CTG. As mentioned by previous speakers, Panama confirmed its co-sponsorship to the EU document, aimed at resolving trade concerns, as a contribution to the better functioning of the multilateral trading system. Panama stated that the document would be submitted to the General Council. Nevertheless, Panama stood ready to discuss the document with any interested Members also before the General Council meeting.

34.11. The delegate of Australia appreciated the need to work together so that the CTG remained a relevant, constructive, and focused forum for the multilateral trading system. In Australia's view, the two suggestions put forward proposing an annotated agenda for the CTG and an annual plan of meetings were concrete ideas that could enhance the functioning of the CTG. Australia looked forward to further discussions of this issue.

34.12. The delegate of Paraguay thanked the delegation of Hong Kong, China for its statement. Paraguay believed that improving the functioning of the various WTO Committees was a task that Members must undertake, and that the adoption of annotated agendas was a good first step towards ensuring a better follow-up to meetings, in particular those dealing with specific trade concerns. However, Paraguay drew Members' attention to the proliferation of different initiatives with the same objectives in different areas. To avoid a duplication of effort, Paraguay believed that it would make sense to discuss how and where these discussions could be centralized.

34.13. The delegate of Japan welcomed Hong Kong, China's initiative. As stated at the Council's previous informal meeting, Japan believed that the earlier circulation of an annotated agenda before a CTG meeting was useful to facilitate discussions at the meetings and it should be utilized swiftly based on the existing practices of some subsidiary bodies. Japan believed that, in practice, if an agenda item was also discussed at another relevant body, it was desirable that the reference document number of the other body be included in the annotation. Also, the timing of circulation needed to be sufficiently early to allow for close consideration. Japan also shared Hong Kong, China's view that the preparation of an annual plan was helpful and was a possible change that could improve the work of the CTG and its subsidiary committees. Japan believed that it would be desirable for the

annual plan to be first prepared for CTG meetings and then included in other Council meetings, such as the Council for Trade in Services, the Council for TRIPs, and the DSB meetings.

34.14. The delegate of the United States requested that any ideas regarding any changes in the operation of the CTG be put forward formally and in writing so that they could be sent back to Capital for consideration.

34.15. The delegate of Argentina considered that the two suggestions put forward by Hong Kong, China were a good beginning from which to improve the functioning of the CTG and its subsidiary bodies. Argentina fully agreed with Hong Kong, China that an annual plan of meetings should be tentative and should not curtail any flexibilities required by circumstances.

34.16. The delegate of Canada recognized from Members' discussions that there was a lot of trepidation around introducing changes to the system. In his delegation's view, one aspect that had to be considered, or at least kept in mind, was that Members were looking for improvements or ways to make the system and the Committees work more efficiently and more substantively, to allow for more substantive exchanges between Members in the CTG, and to allow for more transparency and more exchanges on trade policies. With respect to the two specific items that had been identified in Hong Kong, China's paper, particularly on the annual plan of meetings, Canada did not consider that Members needed a decision on this particular aspect, as it was up to the Secretariat. He did not recall the TBT Committee or the SPS Committee, or any other committees, making any specific decision in that regard. It was rather the Secretariat on its own volition that had decided that it was a good idea and a good practice to set out an indicative list of timing. In his view, this was part of the proposal that the EU had made and did not require a specific decision from Members to do this. In terms of the annotated agenda, Canada believed that there might be a need to discuss this issue further, but again he did not see the need for a decision. In Canada's view, if Members felt that they needed to explain the issues that they were raising, then why not. For example, there was one issue on the meeting's agenda concerning oil, which the Russian Federation had raised with the European Union, and he did not know what it was about. Therefore, in the event of a new item, to have some background information up-front could be useful, especially for Members' preparations for meetings. In respect of the comment made by South Africa, Canada shared the view that the procedures that the committees themselves implemented were discussed within the committees; however, he recognized that it was the CTG that had the mandate over those committees, and it was also the CTG that approved the rules of procedures for them. Therefore, Canada reminded Members that they had a role to play in the CTG with regard to at least providing some advice to the CTG's subsidiary committees.

34.17. The delegate of India agreed with Canada that these were broader issues. On the annual plan for the subsidiary committees, he agreed that it was up to the Secretariat to provide such a plan if it was comfortable with this idea, and that probably no separate decision was required. As far as the annotated agenda was concerned, India suggested looking into the genesis of the issues that were coming to the CTG. Most of these issues had already been addressed in the various committees, whether it be the Committee on Market Access, or the TBT Committee, or the SPS Committee, and some of those issues were then flowing into the CTG. Whether there was a need for an annotated agenda in cases where these issues had already been discussed in those committees, India believed that this had to be seen in a broader perspective to understand the need for such an effort and again directing it to the various different committees because different committees operated in different situations and had different mandates. India agreed that the CTG could direct the different committees, but with care because the portfolios of the various committees were distinct. India therefore called for more discussion on these points and waited for feedback from its Capital.

34.18. The delegate of Hong Kong, China thanked Members for their comments and clarified that the proposal was not about asking Members to agree on something. Regarding the year plan, the proposal was just administrative if the Secretariat could do something to facilitate this without requiring a decision by Members. Regarding the annotated agenda, she explained that the room document had only referred to the annotated agenda for the CTG and not for its subsidiary bodies. She said that, if the CTG found it useful, then it could encourage subsidiary bodies to consider the same practice. As mentioned by Singapore, where there were good practices in one committee, Members could just encourage other committees to consider adopting the same practice. She concluded that Members did not need to take any decisions.

34.19. The Chairperson thanked delegations for their interventions and especially for the interest shown in the better functioning of the Council and its subsidiary bodies. He highlighted that the exercise that had taken place confirmed the trust that Members placed in the multilateral trading system and in the role of the different bodies of the WTO as fora for understanding the trade policies of other Members and for presenting the various trade concerns relating to the implementation of the WTO Agreements, in particular those relating to trade in goods. He recognized that, as set out by several delegations, there was an interest in continuing to discuss this matter further, and he expressed his willingness to do so informally. He was also pleased to note that the working methodology used by Members was one in which they moved forward on elements of agreement while leaving for further discussion those issues where divergent views persisted. In his view, this was the best way to build consensus. He proposed that the Council take note of the statements made and that, if delegations requested him to do so, he would call for further informal consultations on this matter after the summer break.

34.20. The Council so agreed.

35 WORK PROGRAMME ON ELECTRONIC COMMERCE

35.1. 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.

35.2. The Chairperson also recalled that at the last meeting, the delegate of Chad, as Coordinator of the LDC Group, had invited the four WTO bodies, including this Council, to look into the costs and benefits of electronic commerce for LDCs when evaluating the Ministerial Decision at the end of the year. In that regard, the delegate of Chad had expressed the interest of LDCs in evaluating the opportunities offered by electronic commerce for companies, consumers, and their economies. Based on the technological difficulties identified by the LDCs, but at the same time recognizing the potential of electronic commerce, the LDC Group had announced that it intended to hold a workshop on the subject.

35.3. Finally, the Chairperson reminded Members that, in accordance with the mandate contained in the aforementioned Ministerial Decision, the last report of the CTG to the General Council before the next Ministerial Conference must be presented during the next meeting of the CTG at the end of July 2019. For this purpose, the Chairperson would submit a factual report to the General Council under his own responsibility. However, since the MC12 Ministerial Meeting would no longer take place in December of 2019, but in June 2020, he asked for Members' opinion about whether this Council should also inform the General Council about its work at its meeting of December 2019.

35.4. The delegate of China, pursuant to the mandate of the Work Programme on Electronic Commerce, shared some examples on E-Commerce which demonstrated how E-Commerce was helping to promote industrial development and international trade in goods contributing to inclusive and sustainable growth, rural development, and poverty reduction. China informed Members that these cases had also been shared at the CTS meeting on 27 June. Considering the time restraints, she requested the Secretariat to refer to China's statements made at the June 2019 CTS meeting.[16]

35.5. The delegate of Mali indicated that a lot of internal discussions had taken place on this issue in the African and LDC Groups. Mali indicated that no one challenged the benefits of electronic commerce and Members were all aware of what needed to be done and what benefits electronic commerce could bring to LDCs and in terms of their integration into world trade. She indicated that, despite the various Ministerial Decisions on this issue that had mandated Members to examine this issue based on the reports made by the Chairs of the various Councils, several meetings had been

[16] Document S/C/M/139, paragraphs 3.2-3.9 and 3.38-3.43.

held and no specific outcome had yet been achieved. Reference was also made to the report by the Ambassador of Singapore in which it had been highlighted that there had been no progress due to a lack of consensus. She considered that the same conclusion would be made at the next General Council meeting in July, which would provide another opportunity to state that there was no mandate for electronic commerce. Mali was therefore surprised that an issue like E-Commerce, for which there was no mandate, was making so much progress in the context of the discussions that were taking place among some Members, while at the same time the Doha Development Agenda was not being applied, the Hong Kong Ministerial Decision was not being implemented, and a lot of other decisions were likewise not moving forward. In addition, the precondition for E-Commerce, which was the transfer of technology, had not yet been realized. Mali recognized that everybody should integrate E-Commerce and reported that, with the support of UNCTAD, it had begun a preliminary phase of evaluating what steps Mali should take to integrate E-Commerce. However, it was premature for Mali to enter into negotiations when a proper diagnosis of the situation had not yet been carried out. Mali believed that Members were skipping certain steps and that they needed to go slowly. Mali also emphasized that developed countries needed to fulfil their own obligations in terms of transfer of technology and technical assistance, as these were prerequisites for the 1998 Work Programme; however, no one was applying these. Mali recognized that Members would like to make progress but that they needed to integrate all these elements first.

35.6. The delegate of New Zealand thanked China for sharing their experiences both in this Council and in the CTS and reiterated its strong desire to continue discussions within the WTO on E-Commerce. New Zealand believed that it had never been more important to demonstrate that the WTO could respond to contemporary trading realities, including through discussing E-Commerce in various forums throughout the Organization. Being a small and isolated economy at the far end of the world, New Zealand knew the difference that it could make to have this connection to help sustainable and inclusive growth.

35.7. The Chairperson recognized that this was an important matter for all Members. He therefore encouraged delegations to keep-up their interest in this matter and to continue their discussions on E-Commerce. Likewise, he reiterated his willingness to support any delegation in any action that they might consider useful. He thanked delegations for their interventions and proposed that the Council take note of the statements made. He also reminded Members that he would prepare a factual report, under his own responsibility, to the General Council at its next meeting, as well as at its meeting in December, before the next Ministerial Conference.

35.8. The Council so agreed.

36 OTHER BUSINESS

36.1 Japan – Export Control Measures on Materials Essential for Semiconductors and Displays

36.1. The representative of the Republic of Korea raised the issue of Japan's export control measures on materials essential to the production of semiconductors and displays towards Korea. She stated that, on 1 July 2019, Japan had announced its plans to tighten export controls on three Japanese materials which Korean semiconductor companies heavily depended upon, namely: fluorinated polyimides; resists; and hydrogen fluoride. According to Korea, Japan had only cited a 'damage of trust' as the reason behind its actions, without elaborating on the basis of the measure vis-à-vis WTO norms. Korea reported that, beginning 4 July 2018, Japanese exporters of such materials had been required to apply for export licences each time that they shipped these materials to Korea. Korea was the sole target of these export control measures, and Japan was also reviewing whether it should change Korea's white list status under Japan's export control law, which could result in an even greater tightening of regulations on exports to Korea.

36.2. Korea emphasized that there were no provisions in the WTO Agreements that allowed a Member to take export control measures against another Member due to a 'damage of trust' between the countries concerned. Korea worried that Japan's motivation behind its trade restrictive measures might end up jeopardizing the spirit of free and fair trade that the WTO Members endeavoured to protect. In Korea's view, if a Member planned to take trade restrictive measures it should offer a detailed explanation of the reason and necessity for such measures, and such explanation should be made in a transparent and predictable manner. Korea recognized that Japan itself had acted as a

strong advocate of such transparency and predictability at the G20 Summit in Osaka in June 2019. Japan, as the G20 Chair, had taken a leading role in the adoption of the Osaka Declaration, at the level of G20 leaders, which called for a "free, fair, non-discriminatory, predictable, and stable trade environment". Therefore, Korea was taken by surprise when, two days later, Japan had unexpectedly announced its plans for stricter export control measures, and when these measures had been directed at a single country. Korea could not help but point out that, while Japan had repeatedly emphasized the importance of "free, fair, non-discriminatory, predictable, and stable trade", Japan's actual actions introduced measures that were unpredictable and unstable, not to mention falling short of free, fair, and non-discriminatory. Korea also emphasized that Japan's actions were not only damaging to Korean industries but would also disrupt the stability of the global value chain and have negative effects on Japanese companies as well. The materials on which Japan had imposed export control measures were vital for semiconductors and displays, which were major industries in Korea. Semiconductors and displays from Korea were also used worldwide for the production of various electronic products. Korea emphasized that Japan's measures would impede a critical link in this global system and would have negative ripple effects throughout the entire world economy. Korea found it surprising that Japan would resort to such a measure where the whole world, including the companies of both countries, might suffer the consequences. Korea believed that the Japanese measures would have negative effects on the multilateral trading system that all Members cherished, in contradiction of Japan's prior claims of being an avid supporter of free and fair trade, and detrimental to the growth and development not only of Korean firms, but of enterprises all around the world, including the companies of Japan itself. For these reasons, Korea strongly requested that Japan withdraw its measures.

36.3. The representative of Japan responded that the measure referred to by Korea was not a trade embargo but an operational review necessary for the proper implementation of Japan's export control system based on national security concerns, and he explained that a review of export controls was conducted by every country, including Korea. Thus, Japan considered it irrelevant to say that such a review went against free trade or the principles adopted at the G20 Summit in Osaka. Furthermore, in his delegation's view, the measure taken by Japan simply reverted to the existing simplified procedures applied to Korea to the usual procedures. Japan observed that the three items in question were already subject to the International Regulatory Framework; therefore, they were fully consistent with the WTO Agreement.

36.4. The delegate of the Republic of Korea, rather than making a long counter-argument, reiterated the principle and spirit of free and fair trade. Korea could not ignore the fact that Japan's measures would have negative effects on the multilateral trading system. In her delegation's view, Japan's measures would impair not only Korean industries but also global value chains as a whole, including Japanese companies. Korea again requested Japan to reconsider and withdraw its trade distorting measures.

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

36.6. The Council so agreed.

36.2 Optimization of the CTG Work in Line with the Practice of the General Council

36.7. The Chairperson asked Members whether in their opinion it was appropriate, with a view to optimizing the work of the Council and the use of its time, that the Council adopt the practice of the General Council to limit speakers' interventions to a maximum of five minutes per delegation, and seven minutes when the speaker took the floor on behalf of a group of Members.

36.8. The delegate of India asked the Chairperson to clarify whether the proposed time-limit of five minutes would also apply when Members discussed a new proposal, such as the transparency proposal, or only when they discussed specific trade concerns.

36.9. The delegate of South Africa, in addition to India's question, noted that it would be important to make a distinction between those trade concerns that were raised for the first time in the Council, and those that were repeated for a number of times when considering how much time to allow for discussions.

36.10. The delegate of the United States thanked the Chairperson for the suggestion and said that she would submit it to her Capital for reaction.

36.11. The Chairperson thanked delegations for their interventions and proposed that the Council take note of the statements made. He also indicated that, if Members so requested, he would conduct informal consultations on this issue ahead of the Council's next formal meeting.

36.12. The Council took note of the statements made.

36.3 Date of the Next Meeting

36.13. The Chairperson informed delegations that the next meeting of the Council was scheduled to take place on 14 and 15 November 2019. The agenda would close on 1 November 2019, at 4.30 pm.

36.14. 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).

36.15. The Council so agreed.

36.16. The meeting was closed.