RESTRICTED

G/C/M/140

21 October 2021

(21-7967) Page: 1/92

Council for Trade in Goods

MINUTES OF THE MEETING OF THE COUNCIL FOR TRADE IN GOODS 8 AND 9 JULY 2021

CHAIRPERSON: HE MR LUNDEG PUREVSUREN

The meeting of the Council for Trade in Goods (CTG, or the Council) was convened by Airgram WTO/AIR/CTG/19; the proposed agenda for the meeting was circulated in document G/C/W/795. The meeting proceeded on the basis of the following modified agenda, as detailed below:

The Chairperson drew the Council's attention to the communications by Ambassador Dacio Castillo, Chairperson of the General Council, concerning the election of officers of the CTG's subsidiary bodies. He recalled that it had been foreseen to hold an informal meeting on this issue immediately prior to that day's formal meeting. However, in a communication of the previous day, dated 7 July 2021, Ambassador Castillo had noted that it had been brought to his attention that additional time would be required for consultations, and that, as a result, the issue of the appointment of officers would need to remain suspended. He indicated that this item would therefore be taken up again at the appropriate moment, for which reason he proposed to the Council that agenda item 40, "Appointment of Officers to the Subsidiary Bodies of the Council for Trade in Goods: Information from the Chair", be removed from the current meeting's agenda.

The Chairperson also observed that, given the long agenda, it would be preferable for Members to keep their interventions short, if possible. He invited those Members that were planning to submit longer written statements for incorporation into the meeting's minutes to expressly indicate their intention to do so when taking the floor. To ensure transparency in the preparation of the minutes, the Secretariat would only reflect what had been said at the meeting except in those cases where a Member had explicitly indicated that it was their intention to submit a longer statement in writing.

The delegate of Brazil requested that the items "United Kingdom – Safeguard Measures on Certain Steel Products" and "European Union – Safeguard Measures on Certain Steel Products" be included under "Other Business".

The delegate of Switzerland also requested that the item "United Kingdom – Safeguard Measures on Certain Steel Products" be included under "Other Business".

The delegate of Japan proposed the withdrawal of agenda item 34, "China – Customs Duties on Certain Integrated Circuits", since Japan had confirmed that the tariff at issue had been eliminated, as of 1 July 2021.

Finally, the Chairperson informed delegations that, under agenda item "Other Business", he would raise the matter of the date of the Council's next meeting.

The agenda was so agreed.

1 NOTIFICATION OF REGIONAL TRADE AGREEMENTS:

1.1. The Chairperson recalled that, under the working procedures agreed by the Committee on Regional Trade Agreements (CRTA) and following the adoption by the General Council of the Transparency Mechanism[1], the CTG was to be kept informed of Members' notifications of new regional trade agreements (RTAs). He informed the CTG that 11 RTAs had been notified to the CRTA, as followed:

(i) Partnership, Trade and Cooperation Agreement between the United Kingdom and Serbia, Goods (WT/REG455/N/1);

(ii) Partnership, Trade and Cooperation Agreement between the United Kingdom and Albania, Goods (WT/REG454/N/1);

(iii) Association Agreement between the United Kingdom and Jordan, Goods (WT/REG453/N/1);

(iv) Free Trade Agreement between the Republic of Korea and Central America, Goods (WT/REG452/N/1);

(v) Pacific Agreement on Closer Economic Relations Plus (Pacer Plus), Goods (WT/REG451/N/1);

(vi) Trade Agreement between Namibia and Zimbabwe, Goods (WT/REG450/N/1);

(vii) Partnership, Trade and Cooperation Agreement between the United Kingdom and Kosovo[2], Goods (WT/REG411/N/1/REV.1);

(viii) Economic Partnership Agreement between the United Kingdom and the CARIFORUM States, Goods (WT/REG420/N/1/ADD.1);

(ix) Interim Agreement establishing an Economic Partnership Agreement between the United Kingdom and Cameroon, Goods (WT/REG418/N/1/ADD.1);

(x) Economic Partnership Agreement between the United Kingdom and Kenya, Goods (WT/REG417/N/1/ADD.1);

(xi) Association Agreement between the European Union and Central America, Goods (WT/REG332/N/1/ADD.1).

1.2. The Council took note of the information provided.

2 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)

2.1. The Chairperson recalled that this item had been included in the agenda at the request of Chad, on behalf of the LDC Group.

2.2. The delegate of Bangladesh, speaking on behalf of the LDC Group, indicated the following:

2.3. The LDC Group has been arguing that the specific need for this proposal is very clear, that is, to correct a technical omission and nothing else. There is no need to change any rule. If the technical omission is corrected, the LDCs after graduation can find an equal policy space in the Agreement on Subsidies and Countervailing Measures (ASCM), like the Annex VII(b) countries, as long as their per capita GNI does not reach the threshold of USD 1,000 in constant 1990 US dollar terms for three consecutive years. The submission contained in document WT/GC/W/742-G/C/W/752 has

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

[2] Reference to Kosovo shall be understood to be in the context of the United Nations Security Council resolution 1244 (1999).

already received wide support, for which the LDC Group is grateful to all Members. Without further repeating the supportive arguments in detail, Bangladesh refers to its statement delivered on this issue, on behalf of the LDC Group, at the CTG's meeting of 31 March 2021.[3]

2.4. The LDC Group also appreciates the European Union's recent bilateral engagement. For its part, the LDC Group has provided its responses to the EU's queries. On the other hand, the LDC Group addressed questions to the EU during the CTG's meeting of 31 March 2021. The LDC Group looks forward to engaging further with the EU on this issue. The LDC Group also thanks the delegation of the United States for its queries, including on the justification of the present submission to correct a technical omission, and the availability of GNI per capita data for LDCs. At the CTG's meeting of 31 March 2021, the LDC Group answered these queries with explanations and examples; it also provided United Nations Department of Economic and Social Affairs (UNDESA) and World Bank data sources. The LDC Group is open to engage further with the United States if it has any additional queries or concerns.

2.5. In conclusion, the LDC Group requests the CTG to accept the current submission. Bangladesh, along with the LDC Group itself, stands ready to engage constructively with Members to this end.

2.6. The delegate of Nepal indicated the following:

2.7. Nepal wishes to associate itself with the statement delivered by Bangladesh, on behalf of the LDC Group. In addition, Nepal notes that the criteria set for eligibility of graduation cover human development, economic development, and economic risk factors. Meeting only two of these criteria allows countries to be eligible for graduation. It then becomes possible for a country to graduate without meeting the per capita income threshold. In this context, a graduated LDC may have a low level of GNP per capita and meet the eligibility requirements of Annex VII(b) of the ASCM. However, such a graduating Member may not benefit from the flexibility of export incentives as per the provision laid down in the Agreement because of its graduation, even if it meets the eligibility of the provision. This is an unfair situation arising from a lacuna in the WTO law that requires an adjustment to be made.

2.8. LDC graduation is a global target, set by global leaders collectively, and a target to be achieved on the basis of a common responsibility. Therefore, enabling and encouraging LDC graduation by extending maximum possible support to LDCs before and after their graduation, and doing so in a just manner, has become an urgent need to meet the global target of timely LDC graduation. The provision of the Agreement seems focused on the level of economic development, in particular GNP per capita. Therefore, this provision needs to be applied in a fair manner by allowing Members to enjoy the same level of benefits as others, even after their graduation, if they meet the criteria of incentives as per the provision and spirit of the Agreement.

2.9. The delegate of Turkey indicated the following:

2.10. Turkey thanks Chad for placing this proposal on the agenda of this meeting. Turkey's support for this proposal continues as stated at previous meetings of the CTG.

2.11. The delegate of Brazil indicated the following:

2.12. Brazil reiterates its support for the LDC proposal to amend Annex VII of the ASCM, to allow graduated LDCs whose GDP per capita remains below USD 1,000 to continue to live up to the rules of Article 27.2(a).

2.13. The delegate of the United States indicated the following:

2.14. The United States thanks Bangladesh for its comments. The United States has carefully reviewed Bangladesh's statement from the CTG's March meeting and would like to respond to several points, most importantly on the issue of data, which the United States wishes to emphasize is not a minor technical matter.

[3] G/C/M/139, paragraphs 8.2-8.5.

2.15. Indeed, the United States asks Bangladesh to put aside its insistence that this proposal would merely correct a technical omission and that it would not create a new S&D benefit for LDCs. These claims cannot be reconciled with the facts and do not help us to begin a constructive conversation. The criteria in Annex 7A and Annex 7B were deliberate choices. In addition, the proposal under consideration would clearly create an S&D benefit that does not exist today.

2.16. Turning to the issue of data, it is important to emphasize that this is not a minor technical matter. Rather, it is important to the US understanding and its thorough consideration of this proposal. In March, Bangladesh stated that "UNDESA regularly estimates the GNI per capita for all developing countries, including LDCs", and it provided a weblink. Bangladesh also stated that the "World Bank also regularly updates GNI per capita data for all LDCs in 2010 constant USD", and it again provided a weblink. Unfortunately, neither of these sources uses the methodology called for in this proposal, namely GNI per capita in constant 1990 US dollars, as calculated in accordance with the methodology set out in document G/SCM/38. The United States has attempted to follow those procedures to produce the necessary calculations and has consulted with the Secretariat in this regard; however, the United States has run into some challenges due to the missing data.

2.17. In light of this, the United States would like to ask the Secretariat of the Committee on Subsidies and Countervailing Measures (SCM Committee) to provide a table for Members showing the GNI per capita for all WTO Members, in accordance with the methodology set out in document G/SCM/38. The table should appear as it does in document G/SCM/110/Add.18, the annual Secretariat Note that updates GNI per capita for Members listed in Annex VII(b). It should provide GNI per capita at constant 1990 US dollars and current dollars for each Member for the most recent three years for which data is available. The United States asks the Secretariat of the SCM Committee to circulate the table to Members once it has been prepared. And the United States looks forward to reviewing it.

2.18. Finally, the United States would like to return to the issue of subsidy notifications. As the United States has stated in the past, the fact that many of the proponents have not notified their subsidy programmes, as per their WTO obligations, affects the US view of this proposal. Bangladesh, in particular, has citied capacity constraints as the reason it has never made its required notifications. However, this is not persuasive. The government of Bangladesh has provided detailed information on its subsidies to an international organization, but it was the United Nations, not the WTO. Bangladesh indicated to the UN that it provides cash incentives to promote exports for 35 different products, ranging from 2% to 20% of f.o.b. export value. In 2019, this amounted to USD 537 million as cash incentives to exporters. How can Bangladesh provide this information to the UN, but not to the WTO? What assurance can Bangladesh provide Members that it is committed to fulfilling its transparency obligations at the WTO, including with respect to the SCM Agreement?

2.19. The delegate of the European Union indicated the following:

2.20. The European Union would like to thank the LDC Group, and in particular Bangladesh, for their presentation and informal engagement. The European Union supports constructive initiatives to better integrate LDCs into the multilateral trading system. The EU encourages discussing this proposal – and any Special and Differential Treatment (SDT) proposal – on the basis of analysis that shows where specific problems lie. The European Union's views as expressed at previous meetings remain, and in particular that greater knowledge of the facts, especially regarding the use of export subsidies, would help to inform these discussions. Bearing in mind the opportunities for WTO technical assistance via the WTO Secretariat, and irrespective of the question of appropriate notifications, the European Union recalls its suggestion that the LDC Group make a presentation on how LDCs make use of export subsidies and how that helps their economic development. The European Union supports the request from the United States for support from the Secretariat on the data side. The European Union stands ready to engage in informal consultations with the LDC Group on this matter.

2.21. The delegate of India indicated the following:

2.22. India's delegation thanks the delegation of Chad for the inclusion of this item on the Council's agenda. India has supported this proposal in earlier meetings of the CTG. India's stance on this issue remains the same.

2.23. The delegate of Bangladesh indicated the following:

2.24. The LDC Group thanks those delegations that have spoken on this issue, and particularly those delegations that have supported its submission. In addition, the LDC Group thanks the European Union and the United States for their comments, as this is a discussion that the LDC Group would like to continue. Both the EU and the US have commented on the important issue of the use of export subsidies by LDCs and there are two points that should be clear. First, that it was the WTO Secretariat that calculates the GNI per capita, not the UN. Second, the use of export subsidies that the US and the EU have mentioned was a different issue that should not be a precondition for these discussions. This is not a subject relevant to this discussion, which aims to correct a technical omission and to create equal opportunities for LDCs after graduation as long as their GNI per capita does not reach the threshold of USD 1,000 in constant 1990 US dollar terms for three consecutive years.

2.25. The United States has also asked about the GNI calculation methodology issue in relation to the data sources provided at the CTG's meeting of 31 March 2021. The LDC Group clarifies that neither the UNDESA nor the World Bank updates the eligibility of Members listed in Annex VII(b) of the ASCM. Using the World Bank data, the WTO Secretariat calculates the GNI according to the methodology set out in Appendix 2 to document G/SCM/38. Since the only qualification for inclusion in the Annex VII(a) list is whether or not a Member is an LDC, the GNI per capita data for LDCs are not required in this context. Nevertheless, the Secretariat is regularly updating the eligibility of the Annex VII(b) countries, and the LDC Group appreciates the Secretariat's work in this regard. In addition, the LDC Group trusts that, when an LDC graduates from the LDC category, the WTO Secretariat can easily access the World Bank data in order to estimate the GNI per capita of that LDC in constant 1990 US dollar terms, as per the current practice.

2.26. The LDC Group looks forward to engaging further with the United States and the European Union on this issue.

2.27. The delegate of Chad indicated the following:

2.28. After the intervention by the delegate of Bangladesh, who expressed the position of the LDC Group, Chad wanted to reinforce what was said. The LDC Group's position has been on the table for some time now. The LDC Group was simply seeking to stress the essence of this proposal for which it sought a Decision at the General Council level. As had been noted by Bangladesh, what was important for the LDC Group was to ensure that the more favourable treatment provided for developing countries in the context of Annex VII(b) of the SCM Agreement was also applicable to LDCs if their GNI per capita did not exceed USD 1,000. Those LDCs that have graduated should be able to benefit from these benefits. The COVID-19 pandemic has exacerbated the already difficult situation in which most LDCs found themselves, making it difficult to graduate. And even those countries that were able to do so should be able to benefit. The proposal is not dogmatic, but rather is pragmatic. Chad hopes to be able to continue the discussions with a view to finding a solution. What is important to keep in mind is that graduated LDCs should not be worse off than developing countries in the context of the SCM Agreement. The LDC Group believes that this issue is derived from an omission and agrees to update the data. The situation in the LDCs is catastrophic. The GDP is expected to contract by 2.6% in 2020, and that figure is expected to be worse for 2021. LDC countries will know the worst economic performance over the past 30 years, where the majority of LDCs will see their GDP per capita be reduced. The number of people hit by extreme poverty in LDCs will grow to 32 million in 2020 and will probably increase again in 2021. Thus, the poverty rate will increase from 32.5% to 37.7% as a result of the crisis resulting from the COVID-19 pandemic. The LDC share in world trade was 1% and will probably decrease as a result of the health crisis. LDCs are in an extremely difficult situation and do not know what the future will bring. This is why the proposal underlines an issue that has to be corrected. The LDC Group calls upon Members to understand the situation in which they find themselves, especially those LDCs that will be graduating, and the difficulties that they will need to overcome. Chad agreed with the EU and the US and was ready to find the correct data on which the Secretariat could undertake the necessary work. The LDC Group calls on Members' understanding so that this pragmatic and realistic proposal can be considered favourably and approved by the General Council.

2.29. The Chairperson asked Chad to confirm that they could agree to a request to the Secretariat to update the data, as had been proposed by the United States.

2.30. The delegate of Chad indicated the following:

2.31. It would perhaps be better to ask the delegate of Bangladesh to respond to this specific issue but, in principle, Chad sees no problem in asking the Secretariat to undertake this work on the basis of the US proposal. Chad has no objection. However, Chad would prefer that Bangladesh to respond to the question, it being the focal point on this issue.

2.32. The delegate of Bangladesh indicated the following:

2.33. The Secretariat regularly updates these data for eligible countries under Annex VII(b) of the SCM Agreement, but the LDC Group is not sure of the objective of the US question. Earlier, Bangladesh had proposed two resources to respond to the question that had been raised by the United States at the Council's previous meeting concerning data for LDCs. The Secretariat had its own way of compiling such data based on the clearly defined method contained in the relevant Decision. Bangladesh understood that the only qualification in order to belong to Annex VII was whether the relevant Members were LDCs or not, and this is why the LDCs' GNI per capita were not required in this context. And this is why the Secretariat did not calculate it. Bangladesh understood that the Secretariat was doing its job and issuing the reports regularly, as provided for in the decisions.

2.34. The delegate of the United States indicated the following:

2.35. First, the United States would like to respond to Bangladesh's comments concerning subsidy notifications, where the stance by the proponents would not help to move forward this proposal. A fundamental aspect to this proposal is trust. Trust that Members who would receive this benefit are transparent and will take advantage of that benefit. Bangladesh has cited capacity constraints as the reason why many LDCs have never submitted a subsidy notification for over 25 years at this point, and the US would ask whether they are working with the Secretariat to overcome these challenges and provide these notifications. Second, on the US request to have information from the Secretariat, Bangladesh asks why these data would be needed. The US would like to reiterate the request and the helpfulness towards moving forward the discussions, and thanks Chad for their support in getting more information.

2.36. The delegate of Chad indicated the following:

2.37. Chad would like to thank the United States for its reaction on the explication that was provided by the focal point. Chad supports the views of Bangladesh. The LDC Group sees no inconvenience with having more transparency, and the US was right that trust has to be there. It would not be possible to move forward without trust, and this is why the LDC Group sees no inconvenience in having more transparency. The Secretariat already does some work in this area, but this does not bring too much light on the issue. If it is necessary to update the data to increase the visibility regarding what is happening with the question, the LDC Group has no objection. But the LDC Group needs to discuss what the orientation of the data will be, and how it would be collected, analysed, and interpreted. So, the LDC Group agrees to update the data as this will help to clarify the situation and perhaps help the discussions to evolve and move forward. The LDC Group is open and not closed on this issue. Together we will be able to find a solution. The COVID-19 pandemic has worsened the situation for LDCs, so even the Members that should be reclassified according to the UN calculations of last year have seen their economic situation worsen. The situation is difficult for LDCs and this has made it difficult for them to get out of the LDC category. Some flexibility from Members in this regard, including the US and EU, will help us to reach consensus. Chad thanks Members for the elements that have been provided and stands ready to keep working to find a mutually agreeable solution.

2.38. The Chairperson encouraged Members to keep engaging on this issue and recalled that notifications were an important component of the transparency function of the WTO. He fully understood the challenges faced by LDCs to notify, including lack of technical capacity and knowledge. He encouraged the LDC Group to continue talking to Members.

2.39. The Council took note of the statements made.

3 EUROPEAN UNION – REQUEST FOR A WAIVER EXTENSION – APPLICATION OF AUTONOMOUS PREFERENTIAL TREATMENT TO THE WESTERN BALKANS (G/C/W/794)

3.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union.

3.2. The delegate of the European Union indicated the following:

3.3. On 25 June 2021, the European Union submitted a request to extend the waiver for the application of autonomous preferential treatment to the Western Balkans, contained in document G/C/W/794. The waiver had been initially granted on 8 December 2000. It had been subsequently extended on three occasions through decisions of the General Council adopted in 2006, 2011, and 2016. In December 2016, the General Council adopted a decision to extend the waiver until 31 December 2021.

3.4. The request to extend the WTO waiver permitting autonomous trade preferences to the Western Balkans is justified considering the persistent difficult economic situation in the region, and that the preferential treatment to eligible products the European Union affords to these countries is intended to promote economic development in a manner consistent with the objectives of GATT 1994, and not to create barriers to the trade of other WTO Members. More details are set out in the request contained in document G/C/W/794. In light of these elements, the European Union therefore requests an extension of the waiver from the provisions of Article I:1 and Article XIII of the GATT 1994 for an additional five years, namely until 31 December 2026, as set out in document G/C/W/794. The European Union calls upon WTO Members to support this request.

3.5. The Council took note of the statement made and agreed to forward the draft decision to the General Council for adoption.

4 PROCEDURES TO ENHANCE TRANSPARENCY AND STRENGTHEN NOTIFICATION REQUIREMENTS UNDER WTO AGREEMENTS – ARGENTINA, AUSTRALIA, CANADA, COSTA RICA, THE EUROPEAN UNION, ISRAEL, JAPAN, NEW ZEALAND, THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU, THE UNITED KINGDOM, AND THE UNITED STATES (JOB/GC/204/REV.5-JOB/CTG/14/REV.5)

4.1. The Chairperson recalled that this item had been included in the agenda at the request of Argentina, Australia, Canada, Costa Rica, the European Union, Israel, Japan, New Zealand, Chinese Taipei, the United Kingdom, and the United States.

4.2. The delegate of the United States indicated the following:

4.3. On behalf of the co-sponsors, the United States appreciates the opportunity to update the Council on their efforts to advance the proposal on Procedures to Enhance Transparency and Strengthen Notification Requirements, which has been submitted to the Council as revised document JOB/CTG/14/Rev.5. The Council will recall that, at the CTG's meeting in May of this year, the co-sponsors committed to undertaking outreach to Members to learn more about their experiences with notifications, their needs with regard to submitting notifications, and their ideas on how the proposal could be improved. Since that time, the co-sponsors have worked hard to connect with Members and gather their input. Members have been exceptionally thoughtful and constructive in providing their feedback. The changes in this revision are aimed at being directly responsive to the needs and perspectives of Members and at crafting a proposal that benefits all.

4.4. The United States would like to take this opportunity to acknowledge and thank the co-sponsors, Argentina, Australia, Canada, Costa Rica, the European Union, Israel, Japan, New Zealand, Chinese Taipei, and the United Kingdom, for the work that they have put in to improve upon and advocate for this proposal. The United States thinks that the Council will agree that this revision is very different from the last; it is clearer, more concise, and includes a number of significant changes that reflect ideas shared during outreach. The co-sponsors thank Members for their willing engagement and for sharing these good ideas.

4.5. The United States would like to highlight some of the key changes incorporated into this version. Significantly, financial penalties have been completely removed as an element of

administrative measures. This change is a response to the concerns the co-sponsors heard from many Members regarding the punitive nature of financial penalties. To be clear, the goal of the proposal is not to punish Members, but rather to incentivize notification compliance for the better functioning of the WTO as a whole. It is the hope of the co-sponsors that this revision better reflects this aim.

4.6. In another significant change, the role of the Working Group on Notification Obligations has been expanded to include a number of specific opportunities for process improvements and other actions that would help Members to comply with their notification obligations. For example, the Working Group could consider the benefits of simplified notification formats, updated reporting requirements, additional training and workshops at the committee level, the use of new digital tools, the creation of automatic reminder emails, having a dedicated page on the WTO website for notifications-related training materials, and other areas for potential improvements. The changes in this section are aimed at furthering inclusivity and responding directly to Members' needs.

4.7. The co-sponsors have also added a multi-year transition period between the time the decision is adopted and when administrative measures begin to apply. This allows the Working Group to move swiftly and decisively in making recommendations for changes that could be instituted before administrative measures would ever kick in. The revision also suggests changes to the Trade Policy Reviews to include a specific focus on Members' compliance with notification obligations, while also encouraging Members to use information compiled for their Trade Policy Reviews (TPRs) in submitting their own notifications.

4.8. The section on technical assistance and capacity-building has been reordered and simplified. With this revision, any Member may request assistance from the Secretariat and capacity-building support to meet its notification obligations, and in doing so will gain an additional year of time in which to submit a notification before administrative measures would apply. This is an acknowledgement that there can be many reasons for a Member to be late on its notifications.

4.9. Beyond entirely removing the financial penalties from the proposal, the co-sponsors have taken further steps to make the administrative measures more proportionate. For example, the co-sponsors have moved the administrative measure regarding opportunities to preside over WTO bodies from Phase 1 to Phase 2. The co-sponsors have also added a clause by which Members can request exemption from Phase 2 measures by appealing to the relevant committee. As before, the LDC Members continue to be fully exempt from administrative measures provided they request assistance and keep Members informed of their status.

4.10. In addition, a new footnote was added to clarify the non-retroactive nature of the proposal. Notifications which were due before the proposal takes effect will not be subject to administrative measures any sooner than one year after the transition period ends, in line with all other notifications. Significantly, the transition period would apply equally to all notifications, meaning that no particular notification would be carved out or granted extra time. Rather, all notifications would be subject to administrative measures after the same amount of time following the relevant notification deadline.

4.11. The aim of the co-sponsors has always been to encourage the timely submission of notifications, which is not only critical to restoring the WTO's negotiating function and reaffirming the Organization's core principles, but also has practical benefits for the entire WTO Membership. The co-sponsors feel strongly that the revisions that the United States has described can do just that.

4.12. The co-sponsors believe that the updated proposal now strikes the right balance between incentives and administrative measures that can lead to improved compliance and greater transparency. And the co-sponsors welcome Members' reactions to this updated proposal. As Members advance towards the Ministerial meeting, the co-sponsors would welcome Members' support for this initiative to reinforce transparency as a core of principle for the effective functioning of the WTO.

4.13. The delegate of the European Union indicated the following:

4.14. The European Union fully supports the introduction by the United States and takes from previous debates that views converge around the fact that transparency is crucial. However, the facts show that the level of compliance with notification requirements can be improved. This proposal recognizes the difficulties that Members are facing in complying fully with the notification requirements and provides practical tools to help Members provide timely notifications. The current revision takes account of the comments and concerns expressed by Members and includes meaningful changes as laid out by the United States.

4.15. Admittedly, improving on notifications will require efforts from all Members. The co-sponsors have shown, including through this revision, that they too are willing to do their part; all notifications are now subject to the same treatment. The co-sponsors are mindful that Members need time and appropriate flexibilities to improve. This is why the revised proposal includes transition periods and provides for various opportunities for Members facing challenges in notifying, as well as specific flexibilities for LDCs. The proposal also provides for an in-depth review and possible improvement of the existing tools and opportunities at Members' disposal to submit the relevant notifications.

4.16. Therefore, the European Union believes that this updated proposal now provides the right means to reach Members' collective objective of improving transparency. The European Union looks forward to engaging with Members on that basis.

4.17. The delegate of the United Kingdom indicated the following:

4.18. The United Kingdom remains committed to improving transparency as part of the wider WTO reform debate. Working collaboratively with the Membership on the notification proposal is key to this. The United Kingdom thanks Members for their constructive contributions during outreach in recent months, which co-sponsors have been careful to reflect in this new revision. The UK hopes that Members can now feel encouraged to sponsor the proposal in recognition of the tangible benefits which improved notification compliance can bring to businesses and the multilateral system. The co-sponsors have ensured that this revision does not disadvantage LDCs and developing countries with capacity constraints, and that technical assistance and capacity-building remain integral to it.

4.19. The co-sponsors do, of course, remain open to any additional feedback and engagement to enhance the proposal further, particularly from developing Members. The United Kingdom welcomes the positive direction in which the proposal is moving and looks forward to progressing with it further.

4.20. The delegate of Argentina indicated the following:

4.21. Argentina would like to add its voice to the statements that have been made by other co-sponsors and underline a few points. Argentina believes that the entire Membership, without exception, agrees that the upcoming WTO Ministerial Conference should be the place where Members reaffirm, at the highest level, and with specific outcomes, the principles, objectives, and relevance of the Organization, and the centrality of a rules-based multilateral trading system. Argentina considers that the draft decision on Procedures to Enhance Transparency and Strengthen Notification Requirements is a significant contribution to this end because it will allow Members to reaffirm their commitment to working together to ensure the multilateral trading system's proper functioning, given Members' belief that a predictable, transparent, non-discriminatory, and open global trading system is essential for a broad-based, sustainable, and inclusive economic recovery.

4.22. Transparency with respect to Members' trade measures is critically important and allows the entire Membership and other Members individually, to make decisions collectively based on accurate and timely information. As Members will have seen, the draft text has taken on board virtually all the suggestions and concerns raised by different Members, and its balance has changed significantly. While administrative measures remain in place against failure to submit notifications within the applicable deadlines, this new version recognizes the difficulties that some Members are facing in complying fully with the notification requirements and places emphasis on technical assistance and capacity-building, thus improving the system as a whole.

4.23. For these reasons, as well as for the reasons expressed by other co-sponsors of this proposal, Argentina invites all Members to consider supporting this proposal as Members move towards MC12.

4.24. The delegate of Japan indicated the following:

4.25. This revision reflects substantial comments and feedback received from Members to date. The co-sponsors expect that the revised proposal is basically acceptable to Members that recognize a need for improving notification compliance and enhancing transparency. The co-sponsors especially hope that the future work done by the Working Group on Notification Obligations and Procedures, as included in the revised proposal, will help Members' efforts to improve their notification compliance. The co-sponsors would like to stress that it is fundamental for the functioning of the WTO to receive notifications properly from Members. The co-sponsors believe that the support of all Members for this proposal will help towards restoring the WTO's functions. Therefore, Japan, with other co-sponsors, is hoping to see wider support for this proposal.

4.26. The delegate of Chinese Taipei indicated the following:

4.27. As the United States has explained, Members will note that this latest version, as circulated in document JOB/CTG/14/Rev.5, has included significant changes in many areas that reflect comments heard in this Council. While the common objective remains the same, the co-sponsors are of the view that this updated version now strikes a better balance between the notification obligations and the incentive for improving compliance in the case of genuine capacity constraints.

4.28. Chinese Taipei wishes to briefly share its own perspective on this revised version. Firstly, Chinese Taipei recognizes that capacity constraints, or any other legitimate difficulties faced by Members in meeting their obligations under the current notification requirements, will be addressed before administrative measures begin to apply. The revised version of the proposal therefore instructs the Working Group on Notification Obligations and Procedures to identify the systemic problems that relate to notification compliance and to come up with its recommendations in this regard within two years. Those recommendations could lead to specific improvements, such as adopting simplified notification formats, rationalizing notification deadlines, or introducing new digital tools, all with a view to helping Members in the area of compliance. While the Working Group is engaged in the process of reviewing notification challenges, no administrative measures will be applied before 2025 or 2026. Therefore, if this proposal is adopted by 2021, it will give Members a further three to four years to adjust before the administrative measures come into force. Chinese Taipei would encourage Members in the meantime to use this period to thoroughly review the relevant notification requirements, and to seek the necessary technical assistance to overcome all the difficulties.

4.29. Secondly, Chinese Taipei appreciates the view shared among co-sponsors that any Member, regardless of its development level, may encounter difficulties in fulfilling specific notification requirements. The scope of paragraph 9 of the revised version of the proposal is thus broadened by replacing "developing country Member" with "a Member". Such revision would allow any Member one additional year to prepare its notification before administrative measures kicked in when assistance regarding notification-related capacity-building is being requested.

4.30. Thirdly, in the revised proposal, the financial penalty has been removed. Chinese Taipei and the other co-sponsors did not want this measure to become an impediment to gaining Members' broader support. With this revision, therefore, Chinese Taipei and the other co-sponsors are hoping that Members will view administrative measures simply as a mild reminder to reaffirm the existing notification commitments to which all Members agreed when they acceded to the WTO.

4.31. Finally, Chinese Taipei remains fully committed to the work of enhancing transparency and improving notification compliance. Chinese Taipei firmly believes that Members' collective efforts and constructive engagement in relation to this proposal will pave the way to improving one of the WTO's key functions.

4.32. The delegate of New Zealand indicated the following:

4.33. New Zealand welcomes the statements made by co-sponsors and continues to support and this proposal as a means of improving transparency and notifications as a fundamental part of the WTO's work. New Zealand would like to acknowledge the efforts of Members in engaging and updating the proposal, as previously laid out by the United States. As other co-sponsors have outlined, the revised proposal seeks to address the concerns and comments Members have raised

in past CTG meetings. In particular, the proposal seeks to identify areas where further guidance and assistance may be required to assist Members with meeting their existing notification requirements under respective WTO Agreements. New Zealand invites Members to consider these changes with a view to making constructive and meaningful progress.

4.34. The delegate of Costa Rica indicated the following:

4.35. Costa Rica considers transparency to be a fundamental principle and a public good for the proper functioning of the multilateral trading system. This is a matter of individual responsibility and collective commitment given that, without timely access to information, the WTO's monitoring and negotiating functions are weakened, and the risk of trade conflicts and frictions grows. The WTO is performing a task which, performed otherwise, would be available to just a few. Hence the value of strengthening these mechanisms and ensuring proper compliance.

4.36. The revised proposal has undergone many changes that have already been well explained by previous delegations. That said, Costa Rica considers it relevant to highlight the wide recognition of the difficulties that Members could face in meeting their notification requirements, and the importance given to technical assistance, cooperation, and building national notification capacities. In this connection, the proposal offers appropriate incentives for enhancing the role and efficiency of assistance and support for building the Secretariat's capacity, reinforced by a procedure for reviewing and updating notifications through the Working Group on Notifications.

4.37. Costa Rica cannot overemphasize the revised proposal's significant changes in the area of administrative measures, as well as the revised treatment of notifications on agriculture. In this regard, the co-sponsors have taken note of the comments and constructive feedback that they received on the proposal during the many consultations held.

4.38. In conclusion, Costa Rica urges all Members to support the proposal, and to help to improve it further, so that it becomes a tool for effectively strengthening the WTO's transparency pillar.

4.39. The delegate of Israel indicated the following:

4.40. Transparency is of critical importance to the system's overall functioning and appears to be a matter of common interest to practically all WTO Members. The proposal's latest revision, which is substantial, considers many of the concerns raised by Members during previous discussions. Israel urges all Members to consider supporting it. For its part, Israel stands ready to continue its close collaboration with the proposal's current co-sponsors and those Members interested in joining them as co-sponsors.

4.41. The delegate of Australia indicated the following:

4.42. Australia remains steadfastly committed to working with other WTO Members to achieve greater transparency as part of WTO reform and to reinforce the WTO's monitoring function. Fundamentally, all WTO Members have an obligation to notify consistent with their commitments. Australia will continue working with the other co-sponsors of this proposal to address chronically low compliance rates for notifications in balanced, practical, and effective ways. Australia welcomes the proposal's latest revision and urges other WTO Members to consider co-sponsoring it.

4.43. The delegate of Canada indicated the following:

4.44. Canada wishes to highlight Chinese Taipei's comments concerning paragraph 3 of the updated proposal. Canada has gone through the minutes of past meetings, and one of the threads that runs throughout is the call to take the time to go through a comprehensive review of notification requirements with a view to finding ways to improve, simplify, and find new ways for Members to provide the information required of them under the WTO Agreements. In addition, a number of delegates over the years have mentioned the notification requirements as being a fundamental element or pillar of the multilateral trading system. In Canada's view, what the co-sponsors have done is try to highlight this effort, including in relation to the specific elements in paragraph 3 of the proposal, which provide a forum to examine those issues, and an avenue to reach out to committees to see what they have done in recent years to improve their notification procedures. Members can then come up with recommendations that we can all support to ensure that all are able to fulfil their

notification requirements, including helping Capital-based staff to understand and receive assistance on what is required under the agreements, as well as training for delegates here in Geneva to help them supply that information onward to the Secretariat.

4.45. The delegate of Brazil indicated the following:

4.46. Brazil thanked the co-sponsors for their revised version of the proposal on transparency and notifications, as well as for the constructive engagement in the discussions. It will continue to be analysed by the Brazilian government.

4.47. The delegate of Singapore indicated the following:

4.48. Singapore is pleased to announce that it became a co-sponsor of the fifth revision of this proposal. Singapore has long placed importance on the role played by notifications to the WTO to improve the transparency of Members' trade regimes and facilitate trade, and Singapore believes that this proposal will contribute to those aims. The proposal's fifth revision, which contains significant amendments, strikes the right balance between providing technical assistance to help Members meet their notification obligations, and incentivizing them to do so. In particular, Singapore welcomes the enhanced attention given to technical assistance and capacity-building, particularly in the enhanced and improved paragraph 3. Singapore looks forward to working with all Members to make progress on this proposal.

4.49. The delegate of the Republic of Korea indicated the following:

4.50. The Republic of Korea appreciates the proponents' efforts to enhance transparency at the WTO. Indeed, Korea shares the common belief of the WTO Membership that transparency is vital as it contributes to creating and maintaining a stable and predictable environment for trade, especially during the COVID-19 pandemic. Furthermore, it is the duty of each Member to enhance transparency by fulfilling its notification obligations under the various WTO Agreements. Therefore, Korea welcomes this proposal and supports its main thrust.

4.51. The Republic of Korea also recognizes the co-sponsors' efforts to strike the right balance between the imperative need to enhance transparency through strengthened disciplines and the need to address the difficulties certain Members face in complying fully with their notification requirements, including by removing the proposed financial measures on the assessed annual contribution of the Member concerned. Notification is without doubt important, but the administrative means to facilitate that should be proportionate. In this regard, Korea welcomes this positive move and looks forward to seeing an early consensus on this subject.

4.52. The delegate of Paraguay indicated the following:

4.53. Paraguay thanks the proponents of this document's latest revision. Paraguay also welcomes the many positive changes that definitely improve the proposed text and move it towards a better and more balanced path that could lead to the consensus needed for its adoption. All the changes introduced are currently being studied in Capital but, as a preliminary comment, Paraguay would like to note a key element among those changes, namely the equal treatment of all notifications, which Paraguay has been calling for from the outset with respect to this proposed text. Paraguay also notes the elimination of financial penalties as another demonstration of flexibility that is moving the proposal in the right direction. Paraguay will continue engaging with the proponents, both within and outside the Council, with a view to presenting some additional ideas to improve the proposed text and to enable it to continue moving towards its possible adoption at the next Ministerial Conference.

4.54. The delegate of Colombia indicated the following:

4.55. Colombia would like to thank the proponents for updating this document, as well as the introduction by the United States and the other co-sponsors. The changes introduced are very positive. The new proposed text is definitely more balanced, and Colombia believes that it has the basic elements to enable Members to reach the consensus needed for its adoption. Colombia stands fully ready to participate in, and contribute to, the discussions needed to reach such a consensus.

4.56. The delegate of Uruguay indicated the following:

4.57. Uruguay thanks the co-sponsors for submitting a fifth revision of this proposed text and for the explanations provided through bilateral channels. Uruguay wishes to acknowledge the improvements over previous versions included in the proposed text, in particular the removal of the unequal treatment for DS:1 notifications in agriculture and the monetary penalties from the list of Phase 2 administrative measures.

4.58. Uruguay has conveyed its views on some of these points to the proponents where, in its opinion, more work and some additional adjustments might be required in order to have a proposed text with the right balance and tone to ensure its agreement at the multilateral level. Uruguay hopes to continue constructive exchanges on this issue with the proponents, but also with the rest of the Membership, with a view to achieving concrete and balanced results aimed at genuinely improving transparency in the WTO and ensuring compliance by all Members.

4.59. The delegate of Switzerland indicated the following:

4.60. Switzerland thanks the co-sponsors for this substantially revised version. Previous iterations of the proposal contained a financial sanction that appeared to be counterproductive in fulfilling the objective of improving compliance with notification obligations. In this fifth revision, Switzerland appreciates and thank the co-sponsors for the removal of the financial sanctions.

4.61. At the same time, Switzerland wishes to reiterate the importance of transparency. Respecting our notification obligations is a prerequisite to an effective monitoring of each other's trade policies, a key pillar of the WTO. At present, there is room to improve the rate of compliance with notification obligations. Pursuant to this objective, the current proposal offers a pragmatic and effective mechanism. Enhancing transparency in the broad sense would also contribute to rebuilding trust between Members. Switzerland would like to express its support for this revised version and stands ready to co-sponsor the proposal.

4.62. The delegate of Indonesia indicated the following:

4.63. Indonesia thanks the proponents for the proposal's latest revision and appreciates their efforts to increase transparency and notification compliance in the WTO. Indonesia underlines the importance of transparency as one of the main pillars, and as one of the fundamental norms, of the multilateral trading system. Transparency provides Members with equal access to information on prevailing laws, regulations, measures, and policies that effectively regulate our practice of international trade.

4.64. Indonesia would like to refer to its statement from the CTG's 2020 meeting, in which Indonesia expressed its concern that administrative and punitive measures would in all likelihood discourage the participation in the multilateral trading system of Members from developing countries and least developed countries.[4] Without prejudice to the intended aim of the significant changes in the revised proposal, Indonesia would like to seek further clarification from the proponents regarding the following elements in its latest version.

4.65. First, how effective and relevant is it to the effort of improving a Member's notification compliance that this forum designates a Member as a "WTO Member with Notification Delay"? And how effective and relevant is it to the effort of improving a Member's notification compliance that the speaking order of a Member with a notification delay be relegated to the position of lowest priority?

4.66. Second, Indonesia recognizes that there is an existing and annually updated WTO factual report concerning the status of notifications of Members. Furthermore, there exists a mechanism, namely the meetings of the Trade Policy Review Body (TPRB), specifically to discuss and review a Member's notification compliance. How do the initiatives in the proposal complement, or feed into, these existing mechanisms?

[4] G/C/M/137, paragraphs 7.88-7.90.

4.67. Third, the proposal to limit the rights of a Member with notification delay to receive responses to its enquiries and questions posed to Members being reviewed under the TPR Mechanism (TPRM) is inconsistent with the Rules of Procedure of the TPRB established under paragraph C of the TPRM, where Members under review are obliged to respond to all written questions as long as the questions have been submitted or received within the TPRM's prescribed deadlines. How then do the proponents foresee the implementation of the proposed initiative to discriminate the provision of responses?

4.68. Fourth, on the point of not allowing a Member with a notification delay to run for the chairpersonship of the various WTO bodies, it is Indonesia's view that all WTO Members have similar rights and opportunities to nominate their representatives as chairpersons or presiding members of the various WTO bodies. With that understanding, how then do the proponents see the proposal's possible threat and damage to the noble cause of inclusiveness in Members' participation in the multilateral trading system?

4.69. Fifth, how has this proposal addressed the prevailing major challenges faced by developing countries and LDC Members in enhancing their timely fulfilment of their transparency obligations? On this point, Indonesia notes that capacity constraints have been the major root cause of delays in notifications for many developing countries and LDCs, especially where there is a limited transition time.

4.70. Nevertheless, Indonesia welcomes the previous discussions and the constructive suggestions that encourage Members to improve their notification compliance through increased utilization of technology and other meaningful resources. Indonesia considers that such suggestions could surely provide possible solutions, but only once the capacity challenges faced by many Members have been tackled, including through taking advantage of the technology interface in order to simplify notification procedures.

4.71. Further discussion with related stakeholders in Indonesia is currently taking place. Therefore, at present, Indonesia is not in a position to support this proposal. Indonesia also reserves its right to provide additional comments on the proposal once its internal consultations have been completed.

4.72. The delegate of Chile indicated the following:

4.73. Chile thanks the co-sponsors, who have done something that was missing at the WTO: they have demonstrated a capacity to listen. And this is a prerequisite for any multilateral forum. Members must learn how to listen to people, to peoples, to delegations, and to positions, and Members need to find ways to accommodate those positions so that multilateralism can bear fruit. It took time for that listening to happen, but they did. Chile wishes to congratulate WTO colleagues in this respect, especially those from Costa Rica, Argentina, and the United States, as well as those of all the other co-sponsors. Further to these congratulatory remarks, Chile also recalls that this house is having a hard time reaching results. Therefore, Members need to move towards outcomes with flexibility. In the case of the current proposal, the proponents have shown great flexibility. For this reason, Chile is delighted to add its voice as co-sponsor to the proposal.

4.74. The delegate of Chad, speaking on behalf of the LDC Group, indicated the following:

4.75. Regarding the procedures to enhance transparency and strengthen notification requirements under WTO Agreements, Chad would like to begin by thanking the United States and the co-sponsors for presenting this revised text on matters relating, overall, to WTO reform, and specifically to transparency and notification obligations.

4.76. Given the very nature of WTO negotiations, the LDC Group thinks that the aspects of transparency and notification requirements must take into account the development dimension, as well as the implementation capacity among developing countries, and the LDCs in particular. In terms of compliance with notification obligations, the LDC Group insists on the fact that the particularities of LDCs must be taken into account, especially their institutional and infrastructure constraints. And these difficulties are now only worsened by the pandemic, as Members know.

4.77. Therefore, LDCs are particularly concerned about the uncertainties and risks posed in the context of our efforts to integrate our countries into the world trading system, especially given that

the additional constraints are incompatible with our level of capacity. For these reasons, Chad considers that the proposal on transparency and notification obligations should not lead to punitive measures for LDCs. Rather, Members should provide further support to our countries in order to bolster our notification capacities. And the WTO can provide additional support in terms of assisting LDCs to identify those notifications that are required of them so as to allow for a fuller compliance among LDCs with our notification obligations. And Chad does consider that, yes, it is possible to improve the WTO system without calling into question the balance of rights and obligations among Members.

4.78. Chad welcomes the fact that this revised text by the United States does not include fines or punitive measures but seeks rather to offer incentives. Chad considers this to be a positive development. Chad also sees that the role of the Working Group on Notifications is expanded, and also that there are other notable changes, particularly as concerns the capacity-building proposal, based on Members' capacity, as well as technical assistance. All of these are encouraging developments, if still insufficient.

4.79. Regarding the broader picture of WTO reform, Chad considers that any reform that is envisaged in the operation of the WTO must take into account the development dimension, as well as the need to grant special and differentiated treatment that is effective for LDCs, given that LDCs face significant institutional and infrastructure constraints, particularly in terms of human, financial, and technological resources. During this crisis LDCs have seen, for example, that the cost of IT services has grown greatly, making it difficult for LDCs to enjoy any of its potential trade benefits.

4.80. Again, for our development and our integration into global trade, LDCs need greater equity between our economies. For this reason, the LDC Group will always defend the multilateral trading system as well as a robust WTO. LDCs represent only 1% of global trade and they must be in a position to benefit from the concrete support of WTO Members in the drafting of global trade rules, and also on the ground, in terms of capacity-building for exports in order to build a multilateral trading system that is truly inclusive and leads to positive outcomes for all.

4.81. LDC countries aspire to accelerate their economic and social development through trade in order to overcome the poverty that affects a significant proportion of our populations. To this end, the LDC Group needs a WTO that is fit for purpose. For LDCs, this means a WTO where Members ensure that the texts comprising its agreements help us to graduate and benefit from the necessary flexibility until we are on a path to sustainable development. In this regard, transparency, too, is necessary for mutual trust. And LDCs do not want a double standard when it comes to transparency.

4.82. In conclusion, Members of the LDC Group have already consulted with Capitals on this revised text and are awaiting instructions from them. We remain open to continue this discussion with the proponents.

4.83. The delegate of Norway indicated the following:

4.84. Norway wishes to be added to the list of co-sponsors of this important proposal. A rules-based global trading system without transparency and openness concerning domestic legislation and procedures will quickly become outdated; furthermore, it will not create the predictability that is of crucial importance to cross-border trade. In this context, Norway expresses its appreciation to the co-sponsors for running an open and inclusive process leading to the proposal's current revision. In addition, Norway encourages all other Members to support and join as co-sponsors of this important proposal.

4.85. The delegate of the Philippines indicated the following:

4.86. Transparency is invaluable to the proper functioning of the rules-based multilateral trading system. Therefore, the Philippines understands the importance of improving Members' compliance with the basic notification obligations under the WTO Agreements, and the Philippines is looking with interest at the revised proposal contained in document JOB/CTG/14/Rev.5. In particular, the Philippines notes the revisions in the proposal's latest version and welcomes, among other changes, the removal of financial penalties. The Philippines also notes the flexibilities on implementation, those afforded to Members that request technical assistance, and the proposed technical and institutional improvements to the notification exercise. The Philippines continues to study the

evolving proposal and has transmitted its fifth revision to Capital for further consideration. Again, the Philippines thanks the proponents for their flexibility and for their continued commitment to engaging with other Members in this regard.

4.87. The delegate of Bangladesh indicated the following:

4.88. Bangladesh aligns itself with the statement that was delivered by Chad on behalf of the LDC Group. Bangladesh thanks the United States and other co-sponsors for their submission and presentation. Bangladesh has spoken on this issue at previous CTG meetings and has also engaged in an exchange of opinions during several informal meetings with Members. Bangladesh believes that transparency is an essential pillar of the multilateral trading system and that there are many ways to ensure transparency, whereas the existence of only a few notification templates cannot do so.

4.89. Bangladesh welcomes this submission's fifth revision and, in particular, thanks the proponents for recognizing the difficulties of some Members, and their capacity constraints, in complying with their notification requirements. Bangladesh has earlier pointed out that notification provisions under different WTO Agreements are diverse in nature, and that the capability of LDCs to notify is severely constrained by a lack of technical capacity and unique internal coordination challenges. The same is the case for the list of Agreements and Understandings that the co-sponsors mention under paragraph 1 of the draft decision.

4.90. Bangladesh refers to the commitment made in the Marrakesh Agreement, in Article XI:2 of the GATT, that LDCs "… will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities". The same has also been guaranteed in paragraph 1 of the Uruguay Round Ministers' Decision on Measures in Favour of Least Developed Countries. The LDCs are not to be forced to act beyond their capacity and limitations.

4.91. Bangladesh sincerely thanks the proponents for suggesting technical assistance for those Members experiencing difficulties regarding their notifications. Similarly, the ongoing efforts of the WTO Secretariat to provide technical support and customized training are deeply appreciated. However, the reason why these initiatives cannot already improve the situation to an expected level must be investigated. In this regard, Bangladesh believes that administrative measures alone will not improve the situation without also practically addressing the gaps in capacity and the domestic coordination challenges of some Members. Bangladesh looks forward to continuing its work with other Members on this issue.

4.92. The delegate of the Russian Federation indicated the following:

4.93. The Russian Federation would like to thank the proponents for their update. The Russian Federation supports the need for improving transparency at the WTO and underscores the importance of timely notifications. Russia shares the opinion that arrangements on the improvement of notification disciplines could significantly contribute to the efficiency of the WTO's monitoring function. And Russia stands ready to discuss this issue in a constructive manner.

4.94. As to the current proposal, the Russian Federation sees possibilities to find common ground in respect of the text. The key prerequisite for success, in Russia's view, is to further balance out the proposal. First, the Russian Federation believes that exclusion of the Phase 2 element of an additional charge to the annual contribution makes the text more agreeable to Members. This is definitely a step in the right direction. Second, work undertaken on enhancing the notification disciplines must be accompanied by collective efforts to facilitate, where possible, the work of a Member's authorities on preparing those notifications; for example, the clearer the requirement as to notification subject, object, and format, the fewer violations of the notification disciplines there will be. Fewer requirements in the notification itself would also have a positive influence. In this regard, the TBT and SPS notifications serve as good examples. The WTO Membership should also further improve its assistance to developing country and LDC Members in the area of notifications. There is potential for enhancing the Secretariat's role in this regard.

4.95. Russia observes that some of these ideas are already incorporated into the current draft; however, Russia considers that they could be elaborated upon still further. To this end, Russia stands

ready to work on the text with the proponents of the proposal. In conclusion, the Russian Federation notes that the transparency issue in general has become an area of work that is even more important in light of the rapidly changing market access conditions against the background of the pandemic. There are already various proposals on the table. Russia believes that their consolidation could be helpful in terms of shaping the scope of further work on transparency in this area in the short and middle term.

4.96. The delegate of Pakistan indicated the following:

4.97. Pakistan thanks the co-sponsors for the revised document and emphasizes that it takes its own notification obligations seriously. Pakistan believes that transparency is a fundamental pillar of the WTO, which brings predictability to trade. However, Pakistan is still unsure about the likely impact of the current proposal. The problems for developing countries are compounded by severe capacity constraints in the form of a lack of technical training of staff, a lack of institutional capacity, and insufficient human resources. Current transparency requirements are often cumbersome, detailed, and not commensurate with the capacities of developing countries, which is the reason for the low compliance rate. Pakistan considers that many countries, including some of the developed countries, find it difficult to comply with their notification obligations. While all Members endeavour to submit all notifications in a complete and timely manner, there is no WTO Member, developed or developing, whose notifications are always up to date, at all times, and in all committees. This points to a fundamental flaw in the requirements themselves which is the root of the problem.

4.98. In this regard, Pakistan reiterates its view that administrative and punitive measures would not lead to an optimal resolution and would risk rather to be counter-productive because such an approach fails to address the root causes of notification non-compliance. Pakistan therefore does not support such an approach. Instead, Members should look to simplify procedures, and look for an approach that, while recognizing the above-mentioned problems being faced by developing countries, provides support to such Members to strengthen their capacity and overcome the problems being faced by them.

4.99. The delegate of Mexico indicated the following:

4.100. Mexico thanks the proponents for the revised submission. Mexico's authorities in Capital are still evaluating the changes in the revised document; nevertheless, Mexico would provisionally like to welcome the changes with respect to differentiation in notifications and the elimination of financial penalties. Similarly, while Mexico agrees that there is a need to examine formats and other tools to improve Members' notification compliance, Mexico still has concerns about the manner in which the revision of document G/AG/2 has been presented, as the language used could prejudge the outcome of a possible revision. Overall, Mexico welcomes the changes made in this fifth revision, which Mexico believes is moving in the right direction by placing more emphasis on incentives and balancing those against proposed penalties. Mexico urges the proponents to continue to listen to Members' suggestions and concerns, as is the case in this version, so as to steer this proposal towards reaching a consensus among the Membership.

4.101. The delegate of India indicated the following:

4.102. India appreciates the efforts made by the United States and other co-sponsors of the fifth revision of this proposal on transparency. However, India finds that the inherent principle of the proposal remains the same. India finds it difficult to agree to any proposal that provides for administrative actions and penalties in the case of default in submitting notifications rather than making an effort to understand the capacity constraints and other legitimate difficulties faced by a large number of developing-country Members in meeting their notification obligations under the WTO Agreements. What is required is not to assume a wilful default but to encourage those Members that are able to update their notifications despite difficulties faced, and to assist those that have not been able to do so because of various reasons, including capacity constraints. Although the fifth revision refers to certain solutions in this direction it fails to address the problem at its root. Therefore, India would once again reiterate that, instead of administrative actions and penalties, appropriate support to notify is what will encourage Members in improving their internal capacity to fulfil their notification obligations.

4.103. The delegate of China indicated the following:

4.104. China thanks the proponents for providing this updated proposal and notes that the financial and punitive approach has been removed from this revision, and some transition period has been added in the updated proposal. In China's view, this is positive. Nevertheless, China considers that the proposal needs further discussion. China is not in a position to support punitive measures that would deprive a WTO Member of its legitimate rights.

4.105. The delegate of the United States indicated the following:

4.106. The United States recognizes those Members that have announced their co-sponsorship of this proposal during the course of the meeting, namely Singapore, Switzerland, Chile, and Norway. The United States is grateful for their support and looks forward to receiving the support of other Members.

4.107. The Council took note of the statements made.

TRADE CONCERNS: AGENDA ITEMS 5-37

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

5.1. The Chairperson recalled that this item had been included in the agenda at the request of Argentina and Uruguay.

5.2. The delegate of Argentina indicated the following:

5.3. As Argentina has stated on previous occasions, its concern refers specifically to the use of the term "Danbo" as a protected geographical indication, but it has broader, systemic implications, insofar as it has a negative impact on harmonization and standardization efforts within the framework of the Codex Alimentarius, undermining the predictability and consistency that international trade rules should have as a key factor in guiding the decision-making processes of Argentina's producers.

5.4. Indeed, the recognition and registration of the term Danbo as a protected geographical indication in favour of Denmark in the EU did not give due consideration to the Codex Alimentarius international reference standard for Danbo cheese, "CODEX STAN 264 1966", which was last revised by that international body in 2008. Under this standard, Danbo is established as the generic name for the product and, for labelling purposes, the name of the product is Danbo and the product's country of origin must be indicated. In other words, the Codex Alimentarius clearly did not regulate a geographical indication, but rather regulated the generic name of a product that is produced globally, and not only in Denmark, under that term.

5.5. The protection of the name in any place other than Denmark, which the EU has done, constitutes an undue restriction on international trade in Danbo cheese, when it is produced in a place other than Denmark, as it does not take into account that the international reference standard specifies it as the common name of the product. This is why no country should appropriate that name. Therefore, given that the Codex Alimentarius is the international reference standard for the Agreement on Technical Barriers to Trade for the identity and quality of this product, no country that bases its technical regulation on the Codex Alimentarius standard should encounter constraints to trade due to a misappropriation of the term.

5.6. The delegate of Uruguay indicated the following:

5.7. Uruguay regrets having to include this item on the agenda again and wishes to refer to its previous statements[5], reaffirming its concern about the European Union's decision to register the term "Danbo" as a protected geographical indication, despite the objections raised by many Members. Uruguay would like to provide some background on how the name emerged. Danbo cheese

[5] See, for example, document G/C/M/139, paragraphs 14.2-14.3.

is a semi-hard, light-coloured cheese made from cow's milk, of the so-called washed rind variety, which was included in the standard by Codex. The technique for making this type of cheese was developed by Rasmus Nielsen, a Dane, at the end of the 19th century. Until the middle of the 20th century, this cheese was known as a steppe type cheese, or "Steppeost" in Danish. It was not until the 1950s that the term "Danbo" came into use, when Denmark registered it under that name in Annex B to the Stresa Convention (this annex allows production in other countries) and drew up a national standard for it. It was Denmark itself, together with the FAO, which, from the 1960s onwards, promoted Danbo cheese production throughout the world through various technical cooperation programmes. It was thanks to this cooperation and others that Uruguay modernized its dairy industry and incorporated Danbo cheese-making techniques, becoming a net exporter of dairy products from the 1970s onwards.

5.8. In 1966, standard 264 was adopted in the Codex Alimentarius, establishing the characteristics, production methods, and labelling of this type of cheese. This standard has been modified several times, the last significant modification being in 2008, with the approval and participation of the European Union and its member States. For almost half a century, any producer that complied with the Codex 264 standard could manufacture Danbo cheese, insofar as Article 7.2 of the standard, in relation to labelling, states that, "the country of origin (which means the country of manufacture, not the country in which the name originated) shall be declared". It is therefore Uruguay's understanding that the term Danbo is a generic term, referring to a production process set out in a Codex standard, irrespective of where the term originated.

5.9. This is why Uruguay considers that the registration by the EU of the term Danbo as a protected geographical indication (which is not related to any known geographical region) constitutes the *de facto* establishment of a monopoly over a generic term, in contravention of an international standard that the EU itself approved. For this reason, notwithstanding the time that has passed, Uruguay maintains its trade concern.

5.10. The delegate of New Zealand indicated the following:

5.11. New Zealand sees a conflict between positions the EU has taken in standard-setting bodies and the actions they have taken to restrict labelling within the EU of products produced using those standards by producers outside of Denmark. This does not relate solely to grounds for granting or denying IP protection; it also relates to the importance of legal consistency, upholding internationally agreed standards, and not frustrating legitimate expectations of businesses operating within those standards. New Zealand remains concerned that the European Commission has chosen to register the terms "Danbo" and "Havarti", despite there being a Codex standard in which the European Commission and Denmark both acknowledged that "the country-of-origin statement preserves its generic nature". Such actions will negatively affect producers outside of Denmark that have invested with the legitimate expectations that they could use the standard. The EU's approach to registering cheese names for which there are existing Codex standards disregards the integrity of the standards-setting system that promotes reliability and consistency in international trade rules, which New Zealand would expect the EU to support.

5.12. The delegate of the European Union indicated the following:

5.13. The EU position on this issue remains as expressed in previous meetings and the EU therefore refers to its previous statements.[6] The EU has consistently said that the fact that a GI name is subject to a specific Codex Alimentarius standard, or that it is listed in Annex B to the Stresa Convention, does not imply that the name should be considered as a common or generic term. Generic status in the EU can only be assessed with regard to the perception of the consumers in the EU territory. In the EU, the relevant public is comprised mainly of the reasonably well-informed members of the public and/or customers who may purchase the product or a like product.

5.14. Regulation (EU) No. 1151/2012 on quality schemes for agricultural products and foodstuffs, as well as subsequent delegated and implementing acts, were notified to the WTO under the TBT Agreement as they contain provisions relevant to the TBT Agreement (for example, provisions relating to technical standards, definitions, and labelling issues). Nevertheless, even if intellectual property rights (in particular, elements relating to the substantive protection of geographical indications) are part of the notified measures, those are not relevant for TBT purposes. The EU

[6] See, for example, document G/C/M/139, paragraphs 14.8-14.9.

maintains that the issues under discussion belong to the very essence of the registration of products' names as geographical indications, and that this aspect strictly concerns intellectual property rights.

5.15. The Council took note of the statements made.

6 EUROPEAN UNION – IMPLEMENTATION OF NON-TARIFF BARRIERS ON AGRICULTURAL PRODUCTS – REQUEST FROM ARGENTINA, AUSTRALIA, BRAZIL, CANADA, COLOMBIA, COSTA RICA, DOMINICAN REPUBLIC, ECUADOR, HONDURAS, JAMAICA, PANAMA, PARAGUAY, PERU, THE UNITED STATES, AND URUGUAY (G/C/W/767/REV.1)

6.1. The Chairperson recalled that this item had been included in the agenda at the request of Argentina, Australia, Brazil, Canada, Colombia, Costa Rica, Dominican Republic, Ecuador, Honduras, Jamaica, Panama, Paraguay, Peru, the United States, and Uruguay.

6.2. The delegate of Paraguay indicated the following:

6.3. Paraguay would like to thank the European Union for the recent bilateral meetings held to address some of Paraguay's concerns on this matter and hopes that these can lead to constructive solutions in the future. Paraguay regrets, however, that since this item was first placed on the agenda a couple years ago, no significant progress has been made to date to enable it to be removed from the agenda. Paraguay also regrets that this meeting is taking place within a few days of the meeting of the Committee on Sanitary and Phytosanitary Measures, where Paraguay, together with other Members, raised specific questions to the EU, in document G/SPS/GEN/1926, which was sent to the EU on 23 June 2021. Several of the replies to the questions raised could help Members to gain a significantly better understanding of several elements in the non-tariff barriers that the European Union is implementing, especially regarding the proliferation of almost 2,000 emergency authorizations granted by EU member States since implementation of its new regulations began in November 2017.

6.4. Some of the main arguments that have been put forward by the EU in these discussions are as follows: (i) that the prohibition of the use of certain substances and its subsequent modification of maximum residue levels (MRLs) to the limit of detection are necessary to protect consumers and/or the environment; and (ii) that European producers cannot be put at a disadvantage vis-à-vis competitors, and therefore anyone wishing to export to the European Union must adhere to EU standards. Paraguay would like to refer once again to the extensive flexibilities that are granted to European producers to continue using substances not permitted within the EU, via the emergency authorization mechanism, which are often renewed over and over again, becoming a *de facto* authorization allowing them to continue to use them. This is separate to the consideration of consumer health or damage to the environment, which are constantly cited as factors that cannot be compromised and therefore cannot be subject to flexibilities such as longer transition periods.

6.5. In addition, European producers receive billions of dollars in subsidies to adapt and comply with these standards. This is a luxury that several Members cannot afford, not only because they do not have extensive Aggregate Measurement of Support (AMS) rights, but also because they do not have the fiscal resources to allow them to do so. Therefore, Paraguay wonders who these producers are who are at a disadvantage? Paraguay once again stresses the need for discussions aimed at finding constructive solutions to the common challenges that Members have been facing since July 2019.

6.6. The delegate of Costa Rica indicated the following:

6.7. Costa Rica is a co-sponsor of this agenda item and of the joint communication in document G/C/W/767 and its revision, as previously submitted to this Council. This item has the highest number of co-sponsors of all the items on this Council's agenda. It also brings together the largest number of concerns raised in the TBT and SPS Committees. It is a concern that has been supported by some 90 Members, of which the vast majority are developing and least developed countries. We are talking about a matter that affects production systems and food security worldwide. Therefore, in Costa Rica's view, it is a matter of the utmost importance.

6.8. Costa Rica continues to have multiple concerns regarding the scientific soundness of the EU's MRL assessments, and what, in Costa Rica's view, is a hazard-based approach, rather than one

based on risk. The reduction of MRLs without sufficient scientific evidence restricts access to critical substances for agricultural production, particularly in countries with a tropical climate, such as Costa Rica. Moreover, this generates additional costs and increases the risk of pests emerging and having an impact on production and export capacity. The multiple concerns relating to this issue have been raised repeatedly in the context of an ever-growing number of concerns put forward in the Committee on Sanitary and Phytosanitary Measures, in the Committee on Technical Barriers to Trade, and since June 2019, in this Council.

6.9. While Costa Rica agrees with the EU's goal of supporting the global transition to more sustainable world agri-food systems, Costa Rica is of the view that the fulfilment of this goal must be based on building solutions designed and implemented through dialogue mechanisms and multilateral cooperation frameworks. Costa Rica is concerned that forcing change, even through well-intentioned initiatives, further aggravates the problems that we are already facing and repeatedly discussing in this Council. Costa Rica is also concerned that the costs of the adjustment being proposed will fall on the producers, exporters, and the most vulnerable population groups of developing countries, and that there will be severe consequences for global food security.

6.10. Aware of the crucial historical moment brought about by the COVID-19 pandemic, Costa Rica submitted, together with 38 other Members, a communication to the European Union (document G/SPS/GEN/1778/Rev.3) requesting it, in consideration of the present exceptional circumstances, to interrupt its regulatory process and suspend the implementation of the reduction of MRLs for critical substances for agricultural production. Costa Rica is disappointed that the EU communicated in the SPS Committee that it would proceed with its processes for reducing MRLs, despite the potential impact that this would have on the production systems of its most vulnerable trading partners. Costa Rica urges the EU once again to listen to the legitimate concerns of dozens of WTO Members and establish a mechanism for dialogue and evaluation of its policies on MRLs that takes into consideration and effectively addresses Members' systemic and trade-related concerns.

6.11. The delegate of Colombia indicated the following:

6.12. Colombia would like to thank the EU and its delegates in Geneva for their continued interest in and willingness to discuss this issue. Colombia is also grateful to the EU for the revised explanatory document on the procedure for setting MRLs in the European Union. However, Colombia regrets that, since this item was first placed on the agenda, no progress has been made to date on the substance that would be significant enough to allow this item to be removed from the agenda.

6.13. Colombia has focused its previous comments on the process to determine MRLs. It has stated that the process is discriminatory in terms of selecting the substances to be reviewed, allowing the involvement of stakeholders, establishing criteria such as the form of consumption of a food product, and disregarding the different geographical and climatic conditions of countries, especially in tropical areas. Colombia has also questioned the scientific basis for making such determinations and, in particular, the precautionary application of new MRLs in the absence of any negative information on their effects. On this occasion, Colombia wishes to reiterate all of these arguments as well as its previous statements.

6.14. In order to move forward and make progress in the discussions, Colombia's statement will focus on this occasion on the area of derogations, exceptions, or flexibilities existing in the EU to address the above-mentioned problems. In fact, in addition to the problems of the procedure for adopting MRLs, Colombia finds that the exceptional measures allowing producers to continue using certain products and substances also appear to be discriminatory. There is a very user-friendly exceptional measure with a very wide scope reserved for domestic producers, known as an "emergency authorization", and an increasingly limited exceptional measure available to countries exporting to the EU, known as "import tolerances". And there is a glaring difference between the two exceptional measures, despite the fact that they are "emergency" or "tolerance" situations that basically address the same situations or problems. In fact, the reasons for granting exceptions to producers inside the EU are exactly the same as those put forward in minute detail from our countries: the prevalence of an uncontrollable pest; the absence of effective alternatives; and the possibility of establishing mitigation measures. Yet, exceptions are always granted to domestic producers but almost never to foreign producers, and less and less frequently.

6.15. The procedure for granting an emergency authorization is quick and simple. It is based on a very lax review by the authorities, with many applications containing insufficient or no information and leaving many blanks or gaps. This review is requested by the users of the plant protection product, and not by the producing laboratory. Colombia also notes that in many cases authorizations have been renewed several times, even indefinitely. Moreover, the control system for such products appears to be circulated after the exception has been granted. It is curious that this procedure is also carried out separately from consideration of consumer health or damage to the environment, despite these being constantly cited as factors that cannot be compromised or even subject to minor flexibilities, such as longer transition periods.

6.16. The procedure for an import tolerance, on the other hand, is extremely difficult and is becoming stricter over time. Despite being based on the same factual arguments and conditions, the system for deciding on who can apply, and what has to be shown or proven, is radically different. The same is true for its time-frame and the control system that is applicable. The numbers speak for themselves: in the European Union, European producers have been granted 1,934 emergency authorizations in the four years since the regulation was issued. In contrast, only 61 import tolerances have been granted to foreign producers since 2017 during the same time-period, and only 16 for producers from developing countries. Colombia reiterates that WTO rules do not permit any less favourable treatment of imports from other WTO Members than the treatment accorded to domestic products. Foreign producers cannot be put at a disadvantage *vis-à-vis* competitors. Therefore, an exceptional measure should be equivalent, which is one of Colombia's requests.

6.17. In summary, Colombia considers that ensuring a level playing field has several dimensions. On the one hand, the rules governing the setting of MRLs for products should be equivalent, yet they do not appear to be. Colombia recalls that a case in point is that of banana peel treated with imazalil being considered hazardous, while orange peel treated with imazalil is considered non-hazardous. On the other hand, the exceptional measures provide enormous scope for some producers and pose serious challenges for others. Lastly, some producers have a tremendous ability to subsidize to adapt, while others do not. All this is against an inherent background of geographical differences where the proximity to the tropics means that there is a higher prevalence of pests than in temperate zones. Once again, Colombia stresses the need for the establishment of a structured and comprehensive plurilateral dialogue mechanism, in parallel to bilateral discussions, in order to seek constructive and substantive solutions to this uneven playing field.

6.18. The delegate of Ecuador indicated the following:

6.19. As stated on numerous occasions, Ecuador continues to support raising this trade concern, in particular because the European Union has not taken into account the specific production features of the different regions of the world. It has also proposed banning the use of critical tools for pest control, without considering that what works in Europe may not be appropriate in other climates and regions.

6.20. Ecuador would also emphasize that the implementation of the proposed measures includes inadequate transition periods: the EU's suggestion to seek alternative tools is difficult to implement because of limited access to information on replacement substances and on the implementation of alternative treatments. Plant protection ensures food quality. Taking unilateral measures that restrict such protection without conclusive scientific evidence and with short notice amounts in practice to creating non-tariff barriers to trade in agricultural products, when today, more than ever, there is a need to encourage trade as part of global efforts towards post-pandemic economic recovery. Based on the foregoing, Ecuador refers to its previous statements on the subject[7] and once again urges the European Union: (i) not to adopt restrictive measures without conclusive scientific evidence; (ii) to observe the globally recognized international standards on human, plant and animal health protection; (iii) to comply with the requirements established in the WTO SPS Agreement to take a risk assessment approach to any measure; and (iv) to consider suspending the ongoing implementation of measures to reduce MRLs and maintain the levels recommended by the Codex Alimentarius; that is, to grant the necessary adjustment period – of at least 36 months – in cases where the reduction of MRLs is shown to be essential. Lastly, Ecuador associates itself with the concerns raised by the delegations of Paraguay and Colombia with regard to emergency authorizations.

[7] See, for example, document G/C/M/139, paragraphs 16.28-16.30.

6.21. The delegate of Brazil indicated the following:

6.22. Brazil's co-sponsorship of this agenda item stems from its understanding that the EU's position in relation to the definition of maximum residue limits puts at risk the balance established in the SPS Agreement between the principle of protection of life and human and animal health and the guarantee that the market access conditions negotiated multilaterally are not undermined by unjustified non-tariff measures. This balance rests on the scientific principle, enshrined in the SPS Agreement and materialized through risk analysis, which must guide the adoption of sanitary or phytosanitary measures. When prohibitions based on the hazard approach and/or recourse to Article 5.7 of the SPS Agreement become the norm, despite technical advice from renowned institutions, the balance tilts towards protectionism. This condition of imbalance cannot last.

6.23. This issue is not merely technical or legal, as European policy implies concrete risks to the maintenance of safe and efficient production systems in various regions of the world. It prevents access to pest control instruments that threaten the viability of food production, and discourages scientific research, which would allow access to new chemical and biological technologies to combat these pests. Currently, it is fashionable to draw attention to the risk that climate change may lead to the introduction of new pests, especially in areas of temperate agriculture. Without underestimating this risk, it is imperative to remember that tropical countries such as Brazil have always faced these SPS risks, and the success or failure of agricultural activity depends on access to these technologies.

6.24. In the case of Brazil, the sustainability of several crops is at risk, such as soybeans, citrus fruits, coffee, wheat, bananas, and papayas, which are a source of income and nutrients for a very significant percentage of the Brazilian and world population. The introduction of these technologies has also led to more sustainable agricultural production in several countries, as it has made it possible to use new practices, such as the no-till system. It is undisputable that production has become more sustainable, since no-tillage prevents soil erosion, reduces water losses through evaporation, increases the level of organic matter in the soil, reduces the use of fossil fuels with machinery and equipment, and provides a better balance of microbiological properties in soils. It is an essential mechanism in the increase in production from increased productivity, and not from the expansion of the planted area, or from deforestation.

6.25. It is worrying that, 25 years after its adoption, the interpretation given to the SPS Agreement differs from the purposes that guided the negotiations during the Uruguay Round. It is also worrying that Members have to bring debates of this nature to the CTG in a context in which Brazil has been following with concern legislation projects that try to create new non-tariff trade barriers under the guise of environmental protection measures.

6.26. In addition, Brazil is extremely concerned about the publication by the EU of more than 2,600 emergency authorizations by its member States of substances under review since 2017. Many of these requests present the same arguments as delegations from other Members on the SPS and TBT Committees; others simply do not offer any justification, and yet were approved. In this context, Brazil believes that the EU's treatment of countries requesting longer transition periods or exceptions to pesticide MRL decreases ("Import Tolerances") is clearly discriminatory and incompatible with WTO rules.

6.27. The delegate of Panama indicated the following:

6.28. Like the delegations that have already taken the floor, Panama wishes to reiterate its concern regarding the measures adopted by the European Union. The repeated inclusion of this item on the agenda is not a mere procedural issue; the Members co-sponsoring this trade concern are reiterating their call because no replies have been forthcoming. Panama understands that Members of this Organization have every right to take whatever measures are deemed necessary to protect the environment and sanitary and phytosanitary health. However, the same products that are the subject of this concern, prohibited for imports, are permitted for European Union producers under emergency authorizations. This is at odds with the justification the EU has repeatedly given in this and other forums, especially those relating to the need to protect its consumers. The European Union's measures are more trade restrictive than necessary. And our farmers find it difficult to operate in a less than transparent regulatory environment. Therefore, Panama urges the European Union to adhere to the provisions of the SPS Agreement and to its obligations as a Member of the

WTO, and to engage with the co-sponsors of this trade concern in an open dialogue to address our concerns.

6.29. The delegate of Uruguay indicated the following:

6.30. As Members all know, trade in agricultural products continues to be the most protected and distorted at the global level, and this is due to different measures and policies, including in the area of tariffs and non-tariffs. In particular, the European Union's non-tariff policies and measures affecting trade in agricultural products have led to the accumulation, on the agenda of various WTO bodies, of a large and growing number of specific trade concerns by various Members. In this regard, Uruguay wishes to reiterate its trade and systemic concern regarding the European Union's use of a hazard-based approach, rather than full risk assessments, in its regulatory decisions linked to sanitary and phytosanitary matters. Uruguay would like to make it clear that any determination of maximum residue limits, particularly when it deviates from internationally accepted standards and harmonization efforts in multilateral forums such as the Codex, must be based on a full scientific risk assessment and conclusive scientific evidence. This is essential to maintain the effective balance that must exist between the right of Members to pursue their legitimate objectives and the need to avoid creating unnecessary barriers to trade.

6.31. Uruguay agrees with other Members that the issue of emergency authorizations to use unapproved active substances in general, or for certain specific uses, which are granted by EU member States to their domestic producers, should be discussed in more depth. Uruguay notes that this element could lead to uncertainty regarding the consistency of the policies adopted at the domestic level by the member States of the European Union aimed at health protection at Community level, as well as to unclear trade-related situations that could be discriminatory vis-à-vis third parties.

6.32. Furthermore, Uruguay wishes to reiterate its concern about persisting uncertainties over the approach, definition, and implementation of the new EU regulations on veterinary drugs, particularly regarding the requirements that will be imposed on exporting third countries in the future. In this regard, Uruguay would like to stress that any measures should be based on international standards, or on conclusive scientific evidence; that the specific circumstances of different countries, including the prevalence of diseases and regulations in force to address antimicrobial resistance, should be taken into account; and that transition periods should be provided that are appropriate to the individual situations in productive sectors and product marketing requirements.

6.33. Uruguay emphasizes once again that it is the special responsibility of the largest importers of agricultural products to consider the impact that their regulatory approaches and determinations might have on developing and least developed countries, whose economies are largely based on the production and trade in agricultural and agro-industrial products, and through which they make an invaluable contribution to global food security, particularly when such approaches lack sufficient scientific justification. In this regard, Uruguay once again urges the European Union to reconsider its regulatory approach in order to avoid the unjustified proliferation of barriers to international trade in agricultural products and the serious social and economic consequences of such an approach on other Members, especially developing and least developed countries, for which the European Union market is of key importance.

6.34. The delegate of Argentina indicated the following:

6.35. Despite the length of time that has elapsed since the issue was first raised, all of the concerns, proposals and requests contained in document G/C/W/767/Rev.1 very much still remain. Far from improving, the situation regarding the implementation of non-tariff barriers on agricultural products by the European Union continues to worsen, with a growing number of Members from all regions expressing their concerns not only in the CTG, but also in the TBT and SPS Committees. Despite this, Members have yet to receive satisfactory replies to questions about the measures implemented by the European Union that effectively prohibit the use of a number of substances required for safe and sustainable agricultural production, which have been assessed and authorized for use by many WTO Members. These measures disproportionately affect trade in agricultural products and undermine harmonization and standard-setting efforts at the multilateral level. Argentina therefore finds itself obliged to reiterate its request to the EU to provide additional and clear information on the applicable transition periods for MRLs and on the process and timelines for setting import

tolerances for active substances that have not been reauthorized by the EU, as well as its request that this process be transparent, predictable and commercially viable and include a risk assessment, taking into account techniques developed for this purpose by the relevant international organizations. To conclude, Argentina would like to thank Paraguay, Colombia, and others, for having introduced the element concerning the emergency authorizations and the double standard that is being implemented.

6.36. The delegate of Australia indicated the following:

6.37. As a co-sponsor of this paper, Australia again highlights its ongoing concerns in relation to the EU's non-tariff barriers on agricultural products, including agricultural chemical regulations and policy and the potential negative impact on farmers and trade. This includes concerns about elements of the EU's Farm-to-Fork Strategy. Australia has also previously raised its concerns, along with other Members, about the EU's risk assessment and import tolerance-setting policies in this Council, as well as the TBT and SPS Committees. Australia raised or supported a number of specific trade concerns against the EU, including at the most recent SPS and TBT Committee meetings. This shows the strong level of interest in the EU's unnecessary and unjustified measures and concerns of a broad cross-section of Members. It is clear that these concerns are uniformly based on the EU's transparency and impediments to predictability for exporters. While Australia recognizes the right of WTO Members to regulate agricultural and other chemicals in a manner that protects animal, plant and human health, and the environment, Members are also bound by WTO obligations, particularly in relation to undertaking science-based risk assessments and ensuring that measures are no more trade-restrictive than necessary. Australia is a strong supporter of robust, risk and science-based regulations of agricultural chemicals.

6.38. Australia questions the EU's approach to the approval and renewal of plant protection product authorizations and import tolerance limits that relies primarily on hazard-based assessment. In doing so, it is unclear how the EU hazard-based assessment is consistent with internationally agreed risk assessment standards for import tolerances. Australia continues to seek clarification on how the EU determines threats to consumers of treated produce, and would welcome discussion on the risk assessments that underpin EU decisions on import tolerances. Australia also seeks greater clarity from the EU on how hazards of a substance are differentiated in terms of the substance use in a production system compared with presence in consumed produce.

6.39. In the last decade, the EU ban of many active constituents on the basis of their hazardous properties, and the subsequent reduced availability of plant protection products (PPPs), has significantly contributed to the increasing number of emergency authorizations granted under Article 53 of Regulation (EC) No. 1107/2009. Australia notes that, since 2011, there has been a considerable increase in the number of these authorizations, many of which are for non-approved PPPs. The use of emergency authorizations and the setting of related temporary MRLs to allow the supply and consumption of treated produce can lead to trade imbalances that are not in line with WTO standards and obligations. Australia is concerned that the establishment of MRLs under emergency authorization does not apply equally to imported produce. Australia would welcome more details on the process of emergency authorization and establishment of temporary MRLs. Australia is looking for the EU to substantially engage on these long-running issues with Australia and other Members.

6.40. The delegate of the United States indicated the following:

6.41. The United States continues to be concerned about the EU's implementation of non-tariff barriers on agricultural products. Increasingly, the EU is developing rigid polices with extraterritorial implications that force third countries to adopt European production practices to continue trade with the EU or to abandon trade with the EU. The EU continues to lower many MRLs to trade-restrictive levels without clear scientific justification or measurable benefit to human health. The EU's hazard-based approach to pesticide regulation may lead to trade barriers that threaten the security of global food systems. The United States recalls its concerns on these matters as set out in documents G/SPS/N/GEN/1858, G/SPS/N/GEN/1802, G/SPS/N/GEN/1749, and G/SPS/N/GEN/1750, as presented to the SPS Committee.

6.42. The United States notes that pesticides are an important component in integrated pest management (IPM) programmes. Unnecessarily removing tools such as active ingredients and

modes of action can actually increase the development of resistance to pesticides, which adds an additional challenge for agricultural producers and threatens biodiversity. The United States also reiterates its previous concerns that the EU enforces newly reduced MRLs at the point of production for domestic goods, but at the point of importation for imported goods. This causes trade inefficiencies and disruptions for products destined for the EU market, depending on when a newly reduced MRL is enforced, and results in both an inconsistent application of the SPS measure and an unfair advantage for EU producers, especially for products with long shelf lives.

6.43. The United States remains concerned with the politicization of EU pesticides polices, particularly as evidenced in the EU's Farm-to-Fork Strategy, Biodiversity Strategy, and the Pesticide REFIT. Furthermore, it appears as though the European Union is following a similar approach through its new veterinary drug legislation, which could prohibit producers from using, for growth promotion, antimicrobials that are not considered medically important. Animal species, pathogens causing diseases, health management practices, antimicrobial access, availability of alternative treatments, and antimicrobial susceptibility profiles vary by country, and the United States is concerned that the EU is not adequately or appropriately considering the health of animals within this new policy, especially in cases where alternative treatments are not available in an exporting country. In this regard, the United States recalls its concerns, as raised in document G/SPS/N/GEN/1811, that these prescriptive restrictions will apply to foreign producers shipping animals and animal products to the EU. The EU has also not clarified how risk assessment will be used to inform its import polices.

6.44. The United States urges the European Union to consider the needs of agricultural producers, and both recognize and respect the level of protection provided by national regulatory systems, which are at least as equivalent to the EU's level of protection, as the EU works to implement its own system.

6.45. The delegate of Canada indicated the following:

6.46. As it has been noted in previous interventions on this subject, most recently at the June and November 2020 Council meetings, Canada emphasizes the need for transparency and predictability in international trade. In accordance with the WTO Agreements, Canada continues to recognize Members' right to adopt measures to achieve legitimate objectives and to apply the food safety measures deemed necessary to protect human health. However, such measures must be implemented in a transparent manner that does not unjustifiably restrict international trade. The communication highlights Members' shared need for greater transparency and predictability around the European Union's approach to approving and renewing plant protection product authorizations, as well as Members' shared concerns about the impact this approach is having on trade in food.

6.47. Canada acknowledges the European Union's recent efforts to clarify the process for establishing import tolerances. In particular, Canada thanks the EU for hosting seminars with third countries and stakeholders in January; Canada appreciated the information shared and the opportunity to participate and ask questions. Canada shares the European Union's ambitions related to health, safety, and environmental protection with a view of making the agriculture sector more sustainable and adaptable. That said, for this to work in practice, such frameworks must be predictable and based on thorough scientific analysis and risk assessments that reflect the specific realities at the national and regional levels.

6.48. Canada is pleased that the European Union intends to conduct risk assessments for all import tolerance requests and that such requests will be impartially reviewed in accordance with internationally-accepted risk assessment principles and EU legislation. While Canada recognizes that the European Union has a process for import tolerances, Canada also requests that the EU consider maintaining MRLs for substances that do not pose unacceptable dietary risks. Along with minimizing disruptions to trade, this would eliminate the need for import tolerance requests for some substances. Canada also urges the European Union to take into account the timelines necessary for practical decision-making by farmers and producers, as well as the time and effort required to bring products to market, particularly in the global trade context.

6.49. In addition, Canada understands that environmental considerations with a global reach will be included as a factor in future assessments of import tolerances. However, Canada would note that including environmental considerations as part of the import tolerance assessment does not

align with relevant international guidance. Consequently, Canada looks forward to receiving further information from the European Union as to the scientific justification for including environmental considerations in the import tolerance assessment process for pesticides, as they are established for the protection of human health from food safety risk. In closing, Canada hopes that reiterating our concerns to the CTG serves as a clear indication of the importance that Canada, and many WTO Members, attribute to seeking enhanced transparency and predictability for trade.

6.50. The delegate of India indicated the following:

6.51. India echoes the concerns raised by other Members relating to the implementation of non-tariff barriers on agricultural products by the European Union that effectively prohibit the use of a number of substances that are required for safe and sustainable agricultural production, and that have been assessed and authorized for use by many WTO Members. In this context, India would like to reiterate its trade and systemic concerns on this issue. This EU hazard-based measure is significantly impacting trade from developing countries, including India. It also lacks transparency, hindering predictability for exporters. India would urge the European Union to avoid such unnecessary barriers to trade, and to find a mutually acceptable solution to this issue, through dialogue with Members, as soon as possible.

6.52. The delegate of Guatemala indicated the following:

6.53. Guatemala remains concerned about this issue. Guatemala reiterates its comments from previous meetings, as well as the comments just made by other Members. In this regard, Guatemala must establish a dialogue with the European Union in order to find real solutions to this issue. For a number of months, Guatemala has been requesting such a dialogue but the answer from the European Union has always been in the negative. The level of Guatemala's concern continues to increase since we are being treated differently from European agricultural producers in terms of the granting of emergency measures, as previously mentioned by Paraguay and Colombia.

6.54. The delegate of Chile indicated the following:

6.55. Chile once again adds its voice to the concerns that, for a long time now, have been posed on this matter and regarding which it is clear that the European Union has been unable to provide a satisfactory answer. Chile has always considered that multilateral standards must be applied broadly, by consensus, and in a manner that is justified. Once again, Chile reiterates its concern that multilateral standards are not being followed. In this case, if the EU wishes to depart from the Codex Alimentarius, which sets limits and standards that are observed internationally and accepted by all participants in the international community, the European Union can do so. However, they must be able to explain their rationale; they must explain why they are going beyond an international standard, in particular in relation to a matter that has been on the CTG's agenda for far too long. Indeed, Chile's concerns continue to multiply, and they have been reiterated on many occasions; they are not new concerns. However, the explanations put forward by the EU have remained the same; Chile has not heard anything new. Such a situation may be understood, to a certain degree, as being all part of the multilateral ritual; nevertheless, Chile would also like to receive news of some progress.

6.56. In addition, Chile takes note of the 2,600 emergency authorizations cited earlier by other delegations, which is a figure that we must continue to monitor. And this may mean that there is a different treatment applied for trading partners outside the European Union *vis-à-vis* the standard applied for producers within the EU. In other words, there is a double standard for national producers, which is unusual and therefore surprising coming from the EU. Indeed, Chile has generally a very high regard for the commitment to multilateralism demonstrated by the EU and its member States, and the EU's effectiveness in this regard, notably in terms of EU compliance with international standards, including those of the WTO. In conclusion, Chile considers that it would certainly be very surprising and disappointing if Members were to discover that there is a clear double standard that applies differently for producers in the EU member States when compared to producers in other countries. Given that the majority of the trading partners of EU member States are outside the EU itself, Chile wishes to hear an honest and reasoned explanation and justification of the EU's policy in this regard.

6.57. The delegate of the European Union indicated the following:

6.58. The European Union takes due note of the concerns expressed by WTO Members. The European Union provided a detailed reply to these concerns in previous CTG meetings. The EU therefore refers to its previous statements, notably its statement delivered at the meeting of November 2020.[8] That statement remains unchanged and is valid in its entirety.

6.59. The European Union is the biggest importer of agri-food products in the world. The EU has developed a highly trusted, transparent, and predictable system, based on a high level of consumer health protection, to which some other countries defer in the absence of their own national MRLs. The European Union has an open market. Its high level of consumer protection has never been an impediment to the import of agricultural commodities, including from the Members raising this concern, whose large exports of agricultural products to the European Union during these five years have remained stable. The European Union provides technical assistance to developing countries and LDCs, directly or through other international organizations, such as FAO, to support a smooth transition towards new products or production systems. The EU remains committed to continuing an open dialogue on its policies and measures and stands ready to further engage with our trading partners.

6.60. Finally, on the eve of the UN Food Systems Summit, the European Union believes that Members have a shared interest in making our food systems sustainable by tackling the issue of toxic active substances and by protecting our citizens' health with appropriate measures.

6.61. The Council took note of the statements made.

7 EUROPEAN UNION – PROPOSED MODIFICATION OF TRQ COMMITMENTS: SYSTEMIC CONCERNS – REQUEST FROM BRAZIL, CHINA, AND URUGUAY

7.1. The Chairperson recalled that this item had been included in the agenda at the request of Brazil, China, and Uruguay.

7.2. The delegate of Brazil indicated the following:

7.3. Initially, Brazil would like to register that it expects that the decreasing number of Members sponsoring these agenda items is a consequence of a review from the part of the European Union and the United Kingdom of their negotiating stance. Although the EU-UK trade agreement has resolved the concern relating to the risk of the bilateral trade occupying the quotas which are the object of the "apportionment", Brazil considers that little has been made to remedy the fact that all Members will be worse off in terms of access to EU-27 markets due to the unilateral reduction of quota volumes. British quotas, established in order to maintain the previously established total volume of EU-28 quotas, cannot be considered as a compensation by the EU-27, nor are enough by themselves to guarantee access to the British market.

7.4. As a new WTO Member that traces the origin of its participation in the multilateral trading system through the fact that it was an original contracting party of the GATT in 1947, UK quotas should at least respect the Uruguay Round minimum access criteria. The reference to the Uruguay Round is relevant to this case, as it is on such basis that the United Kingdom seeks to establish its right to consolidate large Final Bound Total Aggregate Measurement of Support (FBTAMS). However, contrary to that, the UK seeks to move away from the Uruguay Round with regard to the volume of its TRQs. The UK also seems to ignore it when it chooses the most favourable quinquennium in terms of exchange rate to convert euros to pounds sterling, both in relation to the FBTAMS that it claims and to the tariffs it seeks to consolidate.

7.5. Regarding only its FBTAMS, the choice of the period 2015-2019 instead of 1986-1988 will yield additional rights to grant distortive and environmentally harmful domestic support of nearly GBP 1 billion. Brazil would also like to register its systemic concern over the decision by the UK and the EU to conclude negotiations that possibly involve Brazilian negotiating rights, despite following the negotiations with Brazil on these TRQs. In this sense, Brazil invites the United Kingdom and the European Union to rethink their negotiating posture; to recognize that there is a deterioration in the

[8] Document G/C/M/139, paragraphs 16.52-16.53.

condition of access to their markets; to understand that applied tariffs are irrelevant for trade negotiations; and to accept that the offer of offsets, as determined by Article XXVIII of the GATT, must form part of a possible agreement in this case.

7.6. The delegate of Uruguay indicated the following:

7.7. Uruguay would once again like to reiterate its position and trade and systemic concerns expressed previously in this and other forums on the issue of modifications of concessions in the form of European Union tariff rate quotas under Article XXVIII of the GATT. Despite existing fundamental disagreements, Uruguay has been a committed and constructive participant in this process from the outset, taking into account the relevance and sensitivity of WTO bound market access conditions and concessions by important trading partners, such as the European Union, in key products for a small developing country whose economy is largely dependent on its agricultural exports. This is why Uruguay has adjusted its demands with a view to achieving the balance needed to ensure moderate but tangible results, taking into account the context and scope of these negotiations. Uruguay reaffirms its willingness to work constructively with the European Union to find appropriate solutions in this context, and recalls the importance for the multilateral trading system of this matter being resolved within the framework of substantive bilateral negotiations, in accordance with WTO rules.

7.8. Uruguay recognizes that the Trade and Cooperation Agreement between the European Union and the United Kingdom has provided greater clarity on the form that the trade relationship between the two partners will take, including with respect to the reciprocal use of WTO bound *erga omnes* TRQs. While this commitment, together with the clarifications provided in the subsequent notifications of the European Union and the United Kingdom, are all positive, Uruguay reiterates that it would like to see this commitment reflected in the Schedules of Concessions of both Members in the WTO for greater legal certainty. Lastly, Uruguay would once again like to raise the issue linked to domestic support. In this regard, the European Union and the United Kingdom indicated in their joint letter of 11 October 2017 that the committed AMS levels for the EU-28 would be shared on the basis of an objective methodology. In its communication in document G/SECRET/42/Add.3, dated 22 December 2020, the EU stated that it would revert to Members in due course on this topic. In this regard, Uruguay would like to receive updates on when and how the European Union plans to adjust downwards its final bound AMS entitlements in its Schedule of Concessions, in line with the announcements made.

7.9. The delegate of China indicated the following:

7.10. China welcomes and appreciates the recent bilateral discussions and consultations with the European Union on the TRQ issue. China looks forward to continuing to work together with the EU to reach mutually satisfactory results as soon as possible.

7.11. The delegate of New Zealand, addressing agenda items 7 and 8, indicated the following:

7.12. It is regrettable that New Zealand is obliged to intervene yet again under this item to raise the concerns that it has been consistently voicing for more than three years now about the proposed treatment of the EU-UK WTO quotas following the United Kingdom's departure from the European Union at the start of the year. New Zealand has continued to engage actively with both the European Union and the United Kingdom to seek a satisfactory resolution to this issue. With the European Union – although New Zealand does not accept the EU's rationale for, or approach to, the modifications it has sought to make to its WTO TRQ commitments – New Zealand appreciates the pragmatic approach that has been evident in the EU's engagement over recent months and its efforts to find practical solutions to address New Zealand's concerns. New Zealand can see a path ahead and is committed to continuing its efforts together to agree on practical solutions that can work for all. Unfortunately, this is not yet the case with the United Kingdom. In these circumstances, New Zealand therefore urges the UK to redouble its efforts to work together to take the kind of practical steps required to address the serious issues resulting from the loss of bound WTO access that the UK's current proposed modifications would cause.

7.13. As New Zealand has indicated previously, this is not just a "technical issue". Rather, it is having, for New Zealand, a real and significant commercial impact. This includes the fact that New Zealand exporters are not currently able to utilize their bound UK quota access into Northern Ireland.

New Zealand appreciates the advice that it has received from the relevant UK agencies indicating that they are working strenuously to resolve this issue. With the effects of this denial of access growing more acute by the week, however, New Zealand calls upon the UK to confirm that this access will be promptly restored, and that the current unsatisfactory situation will not be allowed to drag on further. New Zealand also remains concerned about several other aspects of the UK's draft WTO Goods Schedule. These include the UK's very substantial claim to trade-distorting AMS; a similarly substantial claim, on 685 products, to use of the special agricultural safeguard; and the proposed application of "minimum entry price" and "Meursing Table" market management systems not reflected in the UK's global tariff regime.

7.14. New Zealand also looks forward to receiving clear indications from the United Kingdom and the European Union as to when they plan to submit the necessary notifications to reflect the understanding outlined in the EU-UK Trade and Cooperation Agreement that each Party (UK and EU) is precluded from using the other's WTO MFN TRQs. New Zealand, for its part, remains committed to pursuing engagement on the above issues in order to arrive at practical solutions to address its concerns in a way that reflects a proper honouring of these EU/UK bound WTO commitments.

7.15. The delegate of Canada indicated the following:

7.16. Canada continues to have concerns regarding the United Kingdom and the European Union's approach to apportioning the EU-28's TRQs and has made these concerns clear to the UK and the EU through multilateral and bilateral discussions. While these concerns remain, Canada notes the EU and UK's willingness to discuss these issues. Canada looks forward to continuing these discussions with the UK and the EU during bilateral Article XXVIII negotiations.

7.17. The delegate of Paraguay, addressing agenda items 7 and 8, indicated the following:

7.18. Paraguay would once again like to reiterate its systemic concern regarding the approach taken to TRQ distribution and the establishment of a broad AMS for the United Kingdom, without, so far, an equivalent reduction in EU political space. Paraguay refers to its previous statement on this issue[9] and requests that it be included in the minutes in full, as follows:

7.19. While Paraguay welcomes the fact that the EU and the UK have reached an agreement and that they have mutually excluded each other from *erga omnes* quotas according to their MA:1 notifications, Paraguay agrees with other colleagues that this should be reflected in their Schedules of Concessions. Paraguay also reiterates its concerns as expressed on previous occasions.[10]

7.20. The delegate of India indicated the following:

7.21. India had already expressed its concerns, both in writing and during formal consultations with the European Union under Article XXVII. India has also made it clear how the present methodology and threshold years taken into account by them for the apportionment of TRQs adversely affect Members' rights. India expects that the European Union will provide reasonable opportunities to all WTO Members, including India, to exercise their rights under the WTO Agreements. India also expects the EU to take into account the concerns that it has raised. India looks forward to further fruitful negotiations with the EU.

7.22. The delegate of Mexico indicated the following:

7.23. Mexico would like to echo the concerns that were expressed today and would like to place on record its systemic concern in relation to agenda items 7 and 8 concerning the TRQs and the methodology that was used for their apportionment, as well as the lack of clarity on the AMS that the UK is proposing to establish without an equivalent reduction by the EU-27. Therefore, Mexico would like to refer to the statements it has previously delivered in the CTG and at meetings of other Committees in which these issues have been discussed.[11]

[9] Document G/C/M/139, paragraphs 18.20-18.21.
[10] Document G/C/M/138, paragraph 21.38.
[11] See, for example, document G/C/M/139, paragraphs 18.16-18.17.

7.24. The delegate of Chile indicated the following:

7.25. Chile would like to reiterate its well-known position on this issue as well as its systemic concern.

7.26. The delegate of the European Union indicated the following:

7.27. The European Union is pleased to report that good progress has been achieved so far. Negotiations have been finalized with eight partners, with five agreements formally signed and the others going through domestic validation procedures. Negotiations with a further two trade partners are close to finalization. The EU has addressed the concerns of many WTO Members regarding the UK's access to the *erga omnes*/MFN TRQs by putting in place the appropriate legislation, which precludes the UK from qualifying for imports under these quotas. The relevant legislation has now been fully notified to the WTO. The EU thanks a significant number of other WTO Members for their active engagement and readiness to find practical and mutually satisfactory solutions. The EU remains fully committed to continuing these negotiations and consultations, and to bringing them to a successful close in the coming months. The EU would also like to reassure Members that it intends to formally submit its revised EU-27 Schedule of commitments for certification including the reduced/apportioned AMS in due course once these TRQ negotiations are finalized.

7.28. The Council took note of the statements made.

8 UNITED KINGDOM – DRAFT GOODS SCHEDULE AND PROPOSED UK TRQ COMMITMENTS: SYSTEMIC CONCERNS – REQUEST FROM BRAZIL, CHINA, THE RUSSIAN FEDERATION, AND URUGUAY

8.1. The Chairperson recalled that this item had been included in the agenda at the request of Brazil, China, the Russian Federation, and Uruguay.

8.2. The delegate of Uruguay indicated the following:

8.3. As a co-sponsor of this agenda item, Uruguay wishes to once again reiterate its position on the following points: (i) the claim of the United Kingdom to have a bound total AMS warrants analysis and discussion by Members; (ii) it would not seem appropriate for the United Kingdom to attempt to replicate the rights to invoke the special agricultural safeguards (SSG), under Article 5 of the Agreement on Agriculture, for all products and under the same criteria and conditions as set out in the European Union's Schedule; (iii) the proposal to introduce one currency conversion in the draft Schedule of Concessions based on the average daily exchange rate in the 2015–2019 period also raises concerns. First, given its ability to generate bound tariffs and particularly high levels of AMS entitlements, higher than those that would result from considering other representative periods (in particular 1986-1988, used as a basis in the Uruguay Round negotiations). And second, given its factual linkage with the ongoing Article XXVIII process. Regarding this process, Uruguay hopes that this will be settled through substantive bilateral negotiations between the Members concerned and the United Kingdom, enabling the latter to have an independent Schedule of Concessions formally established in the WTO, while at the same time safeguarding the rights of the other Members concerned. In this regard, Uruguay hopes that the United Kingdom will, in due course, give due consideration to the points raised by Uruguay and provide a reply as soon as possible that is conducive to making progress in our negotiations and reaching a mutually satisfactory agreement, taking into account the specific interests of the two parties involved.

8.4. The delegate of China indicated the following:

8.5. China's concerns and requests on this issue remain unchanged. China encourages the United Kingdom to take full consideration of the comments and requests raised by Members both at WTO meetings and in bilateral consultations. China looks forward to working together with the UK to make progress on this issue.

8.6. The delegate of the Russian Federation indicated the following:

8.7. The Russian Federation would like to reiterate its statement made during the previous meetings of the Committee on Market Access and the Council for Trade in Goods.[12] The Russian Federation is still worried about the TRQ apportionment methodology and the AMS. The Russian Federation notes that Article XXVIII of the GATT, as well as the Agreement on Agriculture, does not provide the possibility to amend Members' AMS commitments. The Russian Federation also continues to be significantly concerned about the United Kingdom's approach to TRQ renegotiations. The Russian Federation stresses the impossibility of concluding negotiations without an agreement on compensation to be provided by the UK. As for the currency conversions, the Russian Federation is troubled by their potential impact on the general level of concessions, which may result in substantive changes to the UK's current WTO concessions. The Russian Federation looks forward to further consultations with the United Kingdom to resolve these issues.

8.8. The delegate of Australia indicated the following:

8.9. Australia appreciates the constructive and pragmatic engagement from the United Kingdom on the Brexit TRQ splits before the end of the transition period in late 2020. Australia has reached in-principle agreement with the UK on revised TRQ splits and is working with the UK to finalize and implement the overall agreement. Beyond the TRQ splits, Australia continues to be concerned that the multilateral issues raised by a range of WTO Members regarding the UK's initial rectification remain unaddressed. Australia considers that the UK's draft Goods Schedule, circulated on 24 July 2018, contains substantive changes to the UK's current WTO concessions, including the UK's FBTAMS entitlement, and SSG entitlements. Australia does not believe that the UK should have automatic rights to an AMS entitlement without some multilateral scrutiny in the WTO and potential subsequent changes. Australia is concerned with the UK's inclusion of an AMS entitlement of GBP 4.95 billion, and it is worth noting that the EU has still not formally proposed any corresponding reductions to its AMS entitlement. The UK needs to find a multilateral solution to this issue and demonstrate to other Members that its expected future domestic support programmes will not unduly distort global agricultural trade. Australia calls upon the UK to reassure Members that the UK is a strong advocate for domestic support reform, to help show that it will be part of the solution, even if it has such a large initial AMS entitlement. Australia suggests that the UK engage in small group meetings with interested Members in Geneva to help resolve these matters to allow subsequent certification of the UK's Goods Schedule.

8.10. The delegate of Canada indicated the following:

8.11. As noted under agenda item 7, Canada continues to have concerns with the apportionment methodology used by the United Kingdom and the European Union. Canada also notes its concern over the new annual domestic support commitment claimed by the UK. While these concerns remain, Canada notes the UK's willingness to discuss its new domestic support commitment as well as its proposed TRQ volumes. Canada looks forward to continuing discussions on these issues.

8.12. The delegate of India indicated the following:

8.13. India echoes the concerns raised by Members today. India had already expressed its concerns, both in writing and during formal consultations with the United Kingdom. India has also made it clear to the United Kingdom how the present methodology and the threshold years, taken into account by the United Kingdom for apportionment of TRQs and some other provisions in its Schedule, adversely affect Members' rights. India expects that the United Kingdom will provide reasonable opportunities to all WTO Members, including India, to exercise its rights under the WTO Agreements and to take into account the concerns raised. India looks forward to fruitful negotiations with the United Kingdom.

8.14. The delegate of the United Kingdom indicated the following:

8.15. The United Kingdom reiterates that it is strongly committed to continuing to work closely with WTO Members in discussions on the UK's Schedule, including through the process under Article XXVIII of the GATT. It remains the UK's aim to conclude these discussions successfully in the

[12] Document G/C/M/139, paragraphs 19.8-19.9.

coming months. Since the Council's previous meeting, the United Kingdom is pleased to have made good progress with resolving several Members' questions and concerns relating to the UK Goods Schedule. The UK thanks those who have engaged constructively with us to facilitate this. On the statements relating to AMS, SSGs, and currency conversion, in the interests of time, the UK would like to refer Members to its statement made at the Council's previous meeting, which describes the UK position and still stands.[13] The UK is committed to continuing bilateral dialogue towards resolution of the concerns voiced by Members today.

8.16. The Council took note of the statements made.

9 INDIA – CAUSTIC SODA QUALITY CONTROL ORDER – REQUEST FROM THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

9.1. The Chairperson recalled that this item had been included in the agenda at the request of Chinese Taipei.

9.2. The delegate of Chinese Taipei indicated the following:

9.3. The Indian Ministry of Chemicals and Fertilizers issued a Quality Control Order on Caustic Soda on the 3 April 2018 (notified as document G/TBT/N/IND/69, on 7 December 2017). Chinese Taipei's companies applied for the compulsory certification scheme for imported caustic soda with the Bureau of Indian Standards (BIS) in August 2019. BIS officials finished the on-site factory inspection in December 2019. Samples of the product have also passed analysis by the authorized Indian laboratory. The caustic soda produced by Chinese Taipei's companies was in compliance with the technical specifications defined in the relevant Indian Standards, IS 252:2013. In August 2020, the BIS forwarded the application to the Ministry of Chemicals and Fertilizers to invite further comments. On the 2 June of this year, Chinese Taipei's companies were informed by the BIS that it was not possible to further process the licence applications. This was based on a directive from the Department of Chemicals and Petrochemicals (DOCP) under the Ministry of Chemicals and Fertilizers, which had decided not to grant any further licences for caustic soda.

9.4. The value of Chinese Taipei's caustic soda exports to India amounted to about USD 4 million in 2017. At that time, Chinese Taipei was ranked 20th among the countries importing to India, so these trade barriers have had a major negative effect. Chinese Taipei would appreciate it if India could clarify the reasons why Chinese Taipei's applications were not accepted. In fact, Chinese Taipei's companies' applications are fully compliant with the provisions of India's regulations and Chinese Taipei's products adhere totally to the technical specifications as defined in the relevant Indian Standards. Thus, as far as Chinese Taipei is concerned, our applications should be permitted.

9.5. Furthermore, the BIS's decision does not comply with the relevant provisions of either the GATT or the TBT Agreement. In this regard, granting licences to Indian producers while refusing the same treatment to foreign manufacturers is, in Chinese Taipei's view, inconsistent with the provisions of the national treatment obligations under GATT Article III and Article 2.1 of the TBT Agreement. In fact, refusing to grant licences to foreign manufacturers by applying the relevant Indian Standards in a manner that is more trade-restrictive than necessary constitutes an unnecessary obstacle to international trade and is inconsistent with the provisions of Article 2.2 of the TBT Agreement. Moreover, prohibiting the granting of licences to foreign manufacturers amounts effectively to imposing a quantitative restriction on the imports of caustic soda into India, and is also not compatible with Article XI of the GATT.

9.6. Chinese Taipei urges India, therefore, to accelerate the procedures for granting approval to Chinese Taipei's companies. In addition, Chinese Taipei would urge the BIS not to decline any licence applications simply on the basis of the domestic production capacity in India or for the purpose of self-sufficiency. The decision to grant licences to Chinese Taipei's companies must be based exclusively on India's regulations and must comply with the provisions under GATT and the TBT Agreement.

[13] G/C/M/139, paragraphs 19.15-19.18.

9.7. The delegate of India indicated the following:

9.8. India's delegation would like to inform Chinese Taipei that India has taken note of the concern it has raised, as responded to in the TBT Committee, and that this concern has been forwarded to Capital for examination.

9.9. The Council took note of the statements made.

10 INDIA – IMPORT POLICY ON TYRES – REQUEST FROM THE EUROPEAN UNION, INDONESIA, AND THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

10.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union, Indonesia, and Chinese Taipei.

10.2. The delegate of Chinese Taipei indicated the following:

10.3. The Directorate General of Foreign Trade (DGFT) of the Indian Ministry of Commerce and Industry announced on 12 June 2020 that a restrictive import measure had been imposed on new pneumatic tyres (Notification No. 12/2015-2020). The product list included tyres for motor cars, buses, lorries, motorcycles and bicycles. As a result, importers must apply to the DGFT for a licence or special approval before importing those items. Chinese Taipei's industry association has informed Chinese Taipei that several exporters have encountered difficulties in light of this new measure. In June 2020, the applications of Indian importers applying for import licences from the DGFT were delayed and not approved until December of that year. This delay in issuing import licences has severely affected Chinese Taipei's exports to India and resulted in a 70% decrease in 2020 compared to the same period in 2019.

10.4. Furthermore, it appears that import licences are now issued by India only for certain kinds of pneumatic tyres that are not produced domestically. This constitutes a ban on tyre imports, which is not compatible with WTO rules concerning quantitative restrictions. As a direct impact of these trade-restrictive policies, Chinese Taipei's companies have suffered substantial trade losses, possibly adding up to hundreds of millions of US dollars, as well as other significant adverse effects on the companies themselves. Given the serious effects, Chinese Taipei urges India to implement its policy in line with the regulations as set out under the Agreement on Import Licensing Procedures and Article XI of the GATT. In particular, non-automatic licensing procedures should be implemented in a transparent and predictable manner. They should not have either trade-restrictive or trade-distortive effects on imports additional to those caused by the imposition of restrictions.

10.5. The delegate of the European Union indicated the following:

10.6. The European Union would like to reiterate its concerns as raised in various WTO committees, namely the Committees on Import Licensing, Market Access, and Trade-Related Investment Measures (TRIMs), regarding the licensing regime for importation of pneumatic tyres for motor cars, buses, lorries, motor scooters and motorcycles introduced by India under Notification No. 12/2015-2020 on "Amendment in Import Policy of Tyres" of 12 June 2020. To the EU's knowledge, India has not yet fulfilled its notification obligations under Article 1.4 and Article 5 of the Import Licensing Agreement. India has not indicated the measure that is implemented through the licensing procedure, nor the duration of the latter.

10.7. The EU continues to be concerned about the effect of this measure on the import of tyres, which has become highly restricted since June 2020. Only a limited number of licences have been granted to EU tyre manufacturers and these themselves are limited in duration, quantities, and types of tyres. The EU would like to recall the requirements of Article 3.2 of the Import Licensing Agreement according to which non-automatic import licensing shall not have trade restrictive or distortive effect on imports additional to those caused by the imposition of the restriction. The EU would also urge India once again to reconsider any implicit or explicit quantitative or other restrictions on the import of replacement tyres (for example, end-user principle) that could run contrary to WTO requirements, especially to ensure that its measures are not discriminating in favour of local tyre manufacturers.

10.8. The delegate of Indonesia indicated the following:

10.9. India has imposed an import restriction on certain types of tyre. These import restriction provisions were issued shortly after India had banned the importation of tyre products for a period of six months, in Notification No. 12/2015-2020, dated 12 June 2020, regarding its Amendment in Import Policy of Tyres. These policies have had an impact on Indonesia's exports and disrupted the flow of goods to India. At the same time, India has also imposed royalty or marking fees for tyre products with IS markings. Indonesia remains concerned that the imposition of marking fees is burdensome and has become an unnecessary obstacle to trade. In addition, the imposition of marking fees has no legitimate justification, with no clear relation to the protection of human health, safety or the prevention of deceptive practices. Indonesia is of the view that these policies are not in conformity with the principle of non-discrimination as set out in Article 2.1 of the TBT Agreement. Indonesia is looking forward to India's response on this issue and requests India to review the policy to ensure its compliance with the principle of non-discrimination.

10.10. The delegate of the Republic of Korea indicated the following:

10.11. The Republic of Korea has expressed its concern in previous meetings about India's import policy on tyres as adopted in June 2020. According to Article 3.2 of the Agreement on Import Licensing Procedures, non-automatic licensing shall not have trade-restrictive or trade-distortive effects on imports additional to those caused by the imposition of the restriction. However, the policy is restricting trade by substantially banning the import of tyres, which is not consistent with the WTO rules, such as Article 3.2 of the Agreement of Import Licensing Procedures. Once again, Korea urges India to operate its policy on tyres in a transparent way and in accordance with the relevant WTO rules so that it does not constitute a barrier to free trade.

10.12. The delegate of India indicated the following:

10.13. The non-automatic licensing requirements are administered in a manner consistent with the rules of the WTO Agreement on Import Licensing Procedures, including with respect to the time-frames for the granting of import licences. This is being administered in a fair and equitable manner and a number of licences have been granted after approval by the Exim Facilitation Committee (EFC). The measure has been taken keeping in view, in particular, the quality issues. In pursuance of non-automatic licensing, the procedure examines the applications received and grants licences based on the comments of the concerned administrative ministries or based on the criteria laid down for the purpose. In the case of tyres imports, the Committee has granted licences in almost all cases after examination of the applications. India has notified this measure to the Committee on Import Licensing in document G/LIC/N/2/IND/12.

10.14. The Council took note of the statements made.

11 SRI LANKA - IMPORT BAN ON PALM OIL - REQUEST FROM INDONESIA

11.1. The Chairperson recalled that this item had been included in the agenda at the request of Indonesia.

11.2. The delegate of Indonesia indicated the following:

11.3. Indonesia would like to draw Members' attention to its specific trade concern regarding Sri Lanka's measures on palm oil import prohibition. Indonesia wishes to inform the Council that the Government of Sri Lanka, through its Department of Imports and Exports Control, issued Operating Instructions 08/2021, dated 5 April 2021, to suspend temporarily the importation of items specified in Annex A of the operating instruction, that is, certain palm oil products in 8-digit HS code under HS heading 15.11 (1511.10.00; 1511.90.00; 1511.90.10; 1511.90.20; 1511.90.30; 1511.90.90). The suspension of palm oil has had a direct and immediate impact on Indonesia's palm oil exportation to Sri Lanka.

11.4. This trade concern has previously been raised at the most recent meetings of the Committee on Import Licensing and the Committee on Market Access. The response delivered orally by the delegation of Sri Lanka in the Committee on Market Access has not addressed Indonesia's concerns. As for certain explanations from the delegation of Sri Lanka regarding its SPS, TBT, and import

licensing measures, Indonesia is of the view that Sri Lanka could not establish a correlation between these measures and its current import prohibition measure. In addition, Indonesia experienced difficulties in understanding the rationale behind the importation ban, given that no information was provided either in the operating instructions or in the delegation of Sri Lanka's explanation. Furthermore, Indonesia understands that the importation ban is being applied temporarily, as indicated in the operating instruction, yet Indonesia did not find any further information that indicated any application time-frame. An unclear time-frame application might cause unpredictability for Indonesia's exporters trying to run their businesses. Lastly, Indonesia understands that Sri Lanka has not yet notified the importation ban to the relevant committees.

11.5. At the outset, Indonesia observed that Sri Lanka's importation ban on palm oil might be contrary to its commitments under various provisions of the WTO Agreements, including Article XI:1 of the GATT 1994, requiring Members to eliminate any quantitative restriction on importation and exportation. Indonesia is also aware that Sri Lanka imposed SPS, TBT, and import licensing measures, as mentioned earlier. However, Indonesia questioned the consistency of these measures in relation to the relevant agreements, including the SPS measures, which should be based on international standards and scientific evidence, as well as on the principle of non-discrimination. In term of import licensing measures, Indonesia's view is that non-automatic licensing should not create any restriction and disruption to trade. In this regard, Indonesia requests Sri Lanka to provide a detailed explanation on the rationale behind the measure, including the application time-frame, and its potential notification submission; in addition, Indonesia seeks further information concerning (i) the transparency compliance of the measures (to the best of Indonesia's knowledge, Sri Lanka has not submitted a WTO QR notification of its ban on the importation of palm oil); (ii) how the import prohibitions are administered (specifically on the implementation time-frame); and (iii) the scientific evidence and compliance with the non-discrimination principle as referred to in Article 2.3 of the SPS Agreement. Indonesia stands ready to discuss these matters with Sri Lanka with a view to their resolution.

11.6. The delegate of Malaysia indicated the following:

11.7. Malaysia shares the concerns raised by Indonesia regarding the palm oil import ban imposed by Sri Lanka. Malaysia has also raised similar concerns at the April meeting of the Committee on Market Access. Malaysia is disappointed that Sri Lanka has yet to provide any satisfactory responses to its concerns, specifically on the notification and timeline for the measures imposed. In addition, Malaysia is still waiting for Sri Lanka to share with Malaysia the statement it delivered at the Committee on Market Access. Malaysia continues to maintain its concern, based on Article XI of the GATT – General Elimination of Quantitative Restrictions. A WTO Member should not impose a ban or restriction other than duties or other charges on any product imported from, or exported to, other countries. Although Article XI of the GATT does allow prohibitions or restrictions in some cases, such prohibitions or restrictions must be temporary and applied to prevent critical shortages of foodstuffs, necessary to the application of certain standards or regulations, or otherwise allowable under this provision. Malaysia is also concerned by the fact that the measure has not been notified to the WTO. WTO Members are bound to ensure that trade measures are administered in a non-discriminatory manner and any changes must be notified in advance to the respective committees. Therefore, Malaysia calls upon Sri Lanka to comply with its WTO obligations and to uphold the principle of transparency, which is the bedrock of this Organization. Malaysia will continue to monitor this issue and hopes to work closely with Sri Lanka to find a mutually acceptable resolution to it.

11.8. The delegate of Colombia indicated the following:

11.9. Colombia wishes to express its interest in this issue and its concern regarding Sri Lanka's measures to restrict imports of palm oil, which Colombia had already raised in the Committee on Market Access. Colombia is a producer and exporter of palm oil, palm oil products, and palm oil biofuels. The global market dynamics of these products have a direct impact on its exports. On this specific matter, the "Operating Instructions" issued by the Sri Lankan Government, through which imports of palm oil have been suspended or restricted, are of particular concern. Colombia notes that Sri Lanka has not notified these measures to the WTO, meaning that Members have a limited knowledge of their scope and form of implementation. In this regard, Colombia requests Sri Lanka to clarify the reasons for this ban on imports, the policy objectives pursued, and justification for the measures, and the authorities responsible for their administration.

11.10. The delegate of Sri Lanka indicated the following:

11.11. At the outset, Sri Lanka wishes to thank Indonesia, Malaysia, and Colombia for their continued interest in this issue. It also wishes to inform the Council that the information provided by Sri Lanka at various committees is still valid with regard to the concerns expressed by Indonesia. Sri Lanka has introduced a trade policy measure by imposing a ban on crude palm oil under HS subheading 1511.10.00, palm oil imported in packing of 210L and below, under code 1511.90.20, and the palm oil products other than refined, bleached, and deodorized (RBD) palm oil, falling under code 1511.90.90. All other palm oil products, namely, palm stearin under code 1511.90.10, crude palm olein under code 1511.90.30, and RBD palm oil, falling under code 1511.90.90, have not been banned and can be imported after obtaining a licence with a fee of 0.4% of c.i.f. value. The main palm oil product imported into Sri Lanka is crude palm olein, falling under code 1511.90.30, and this single product accounts for about 75% of total importation of palm oil products into Sri Lanka. This product is not banned; it is under licence. Sri Lanka also imports significant quantities of RBD oil; this product is not banned either and can also be imported under licence. Therefore, Sri Lanka has not closed the import gates to these major palm oil products.

11.12. As per Sri Lanka's national statistics, the two main products that are subject to this ban, namely, crude palm oil under code 1511.10.00, and palm oil imported in packing of 210L and below, under code 1511.90.20, account for about 7% to 15% of Sri Lanka's total imports of palm oil products. Therefore, the actual impact of the ban is insignificant when the total importation of palm oil products is considered. That said, it is important to evaluate what prompted Sri Lanka to introduce a ban over a few products, with insignificant import values, while the gates remain open for the major palm oil products. Sri Lanka amply justified the main reasons behind this ban during its previous interventions at various committees. This is purely an SPS measure relating to aflatoxin and mycotoxin, which are carcinogenic materials. The Sri Lanka Standard Institute (SLSI) has already adopted standards for palm oil products, which have been notified to the WTO.

11.13. It is important to note that crude palm oil is actually not intended for human consumption because it contains heavy metals and mycotoxin. The only product that is intended for human consumption is RBD palm oil, which Sri Lanka has not banned. For decades, Sri Lanka has had quite relaxed procedures with regard to the importation of all edible oils, as a result of which the market was flooded with adulterated and contaminated oils, coming from various countries. Sri Lanka's authorities have observed that certain business entities, including importers, have engaged in numerous unethical practices to release cooking oils that were not fit for human consumption. Even crude oil has been adulterated and released to the market under claims that it had been refined and hence was fit for human consumption. Against this backdrop, Sri Lanka was compelled to adopt certain measures to curtail age-old unethical practices, including adulteration. Ultimately, it is the responsibility of the Government to guarantee that Sri Lanka's consumers consume non-toxic food, including cooking oil. And Sri Lanka knows that it will not be easy to establish consumer confidence in this regard. The authorities of Indonesia have already contacted the focal points in Sri Lanka, namely, the SLSI, and the Department of Commerce of Sri Lanka, which is the coordinating authority. This Sri Lanka mission is following up on this matter with Sri Lanka's aforementioned authorities. Sri Lanka will update the Council on this matter once it has heard back from Capital.

11.14. The Council took note of the statements made.

12 INDIA – INDIAN STANDARDS AND IMPORT RESTRICTION IN THE AUTOMOTIVE SECTOR (QUALITY CONTROL ORDERS): WHEEL RIMS, SAFETY GLASS, HELMET - REQUEST FROM INDONESIA

12.1. The Chairperson recalled that this item had been included in the agenda at the request of Indonesia.

12.2. The delegate of Indonesia indicated the following:

12.3. Indonesia thanks India for notifying the draft of its Automobile Wheel Rims (Quality Control), Order 2020, on 25 May 2020, to the TBT Committee and WTO Members, through document G/TBT/N/IND/147. Under these measures, wheel rims must conform to the IS 16192, and must bear India Standard Marking under the licence form of the BIS. Indonesia raised this concern at the previous meeting of the TBT Committee; however, Indonesia is yet to receive substantive

responses from India. According to India's notification, this order shall enter into force on 1 October 2020, yet India has not made any addendum to the notification regarding the stipulations of the regulation. Indonesia seeks clarification regarding the status of the regulation's implementation. Indonesia is of the view that the regulation has impacted upon and become a trade barrier for exporters, as there is no clarity regarding the mechanism of the regulation. Therefore, Indonesia requests India to postpone the regulation or to provide a sufficient transition time to allow industries to comply with it.

12.4. Indonesia remains concerned that the conformity assessment procedure as required in the document is more restrictive than necessary. The procedure includes audit and certification that can only be carried out by the BIS, and which requires a factory visit as part of the scheme. Indonesia regrets that India has not taken into account the current pandemic situation that has made factory visits impossible due to the travel bans and social distancing policy. Therefore, Indonesia urges India to consider the use of remote assessment in conducting a factory visit, or any other relaxation policy, as a means to facilitate trade and minimize technical barriers to trade, particularly in this difficult time. Indonesia also encourages India to recognize and accept conformity assessment results performed by accredited conformity assessment bodies outside India under the framework of the International Accreditation Forum (IAF) and International Laboratory Accreditation Cooperation (ILAC). Indonesia is also aware that, according to the mandatory implementation of IS 16192, India requires all manufactures of automobile wheel rims to implement the International Center for Automotive Technology (ICAT) Standard prior to entering India's market. Therefore, Indonesia would like to ask clarification from India regarding the implementation of the ICAT standards once this regulation comes into force. Indonesia remains concerned over this potentially duplicative conformity assessment procedure. Hence, Indonesia requests India to harmonize both of these requirements under a single conformity assessment procedure.

12.5. The delegate of India indicated the following:

12.6. India has taken note of Indonesia's concern, which has been forwarded to Capital for appropriate action.

12.7. The Council took note of the statements made.

13 INDIA - PLAIN COPIER PAPER QUALITY ORDER 2020 - REQUEST FROM INDONESIA

13.1. The Chairperson recalled that this item had been included in the agenda at the request of Indonesia.

13.2. The delegate of Indonesia indicated the following:

13.3. Indonesia seeks clarification regarding the provisions set out in the Plain Copier Paper (Quality Control) Order 2020. The certification shall be carried out only by the Bureau of Indian Standards (BIS), based on the Conformity Assessment Regulation 2018 through the Scheme 1 of Schedule II, which shall require a factory visit, sampling and testing of the product, as well as licensing procedures. Indonesia regrets that India has ignored the current pandemic situation that has made factory visits impossible due to the travel bans and social distancing policy. Therefore, Indonesia urges India to consider the use of remote assessment in conducting factory visits, or any other relaxation policy, as a means to facilitate trade and minimize technical barriers to trade, particularly in this difficult time.

13.4. Indonesia would like to reiterate that the regulation in question has had an impact upon and become a trade barrier for exporters, as there is no clarity regarding the mechanism of the regulation. Therefore, Indonesia requests India to postpone this regulation or to provide sufficient transition time to allow industries to comply with it. Indonesia also urges India to adopt the available international standard as a basis for its testing method. Indonesia is also aware that India, through its Ministry of Commerce and Industry, had published the mandatory implementation of Plain Copier Paper (Quality Control) Order 2020 on 5 June 2020. This regulation will come into force six months after the date of its publication, namely 5 December 2020. In this regard, Indonesia reminds India to notify this technical regulation to the TBT Committee, and likewise to notify the addenda of the notification discussed under the previous agenda item.

13.5. The delegate of India indicated the following:

13.6. India's has taken note of Indonesia's concern, which will be forwarded to Capital for appropriate action.

13.7. The Council took note of the statements made.

14 INDIA – RESTRICTIONS ON IMPORTS OF CERTAIN PULSES – REQUEST FROM AUSTRALIA, CANADA, THE EUROPEAN UNION, THE RUSSIAN FEDERATION, AND THE UNITED STATES (G/C/W/791)

14.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia, Canada, the European Union, the Russian Federation, and the United States.

14.2. The delegate of Australia indicated the following:

14.3. Australia's concerns with India's restrictive measures on pulses' imports, particularly India's quantitative restrictions (QRs), are well known to all Members. While Australia welcomes India's temporary suspension of the renewed QRs for mung beans (Moong), pigeon peas (Tur), and black gram (Urad), until 31 October 2021, this does not address Australia's underlying concerns and its continued request that the QRs be permanently removed. Australia has previously said in this Council and other WTO committees that it believes that India is using these WTO-inconsistent measures as an ongoing means to flexibly manage imports in response to changing domestic circumstances. Australia understands that the temporary suspension of the QRs and the imposition of domestic stock limits for all pulses until 31 October 2021 is to address concerns about inflation in pulse prices, which reinforces Australia's concerns about how India is using the QRs. Australia also notes that, at the same time, India recently continued to increase the minimum support prices for a range of pulses.

14.4. Pulses are not a "small" commodity for India, neither by tonnage nor the value produced and consumed, nor with respect to trade. Therefore, India's measures matter in the global pulses market. India's current suite of measures on pulses, including significant and increasing levels of market price support, high tariffs, and QRs, continue to negatively impact the stability and predictability of the global pulses market, to the detriment of all producers and consumers, including those in India. A well-functioning, transparent, predictable and stable global trading system remains fundamental to global economic stability for the benefit of all Members. Australia also notes that India has also recently signed agreements with Myanmar and Malawi and renewed an existing agreement with Mozambique for pulse imports for a five-year period. Australia is interested in understanding how these fit within India's restrictive regime for pulse imports and how they are consistent with the WTO's Most-Favoured-Nation principle.

14.5. In addition to the formal questions that Australia, along with a number of other Members, submitted to India for the previous Council meeting, the same Members submitted further questions for the most recent meeting of the Committee on Agriculture. Unfortunately, India did not answer all of Australia's questions or address its concerns. It is important that India provides detailed answers to explain the market and other conditions behind its decision and explain how they are WTO-consistent. While the WTO Agreements contain exceptions, the onus is on the Member implementing the measure to explain how such exceptions may apply. Finally, Australia again asks India to clearly explain the status of restrictions on the importation of yellow peas for the fiscal year 2021-2022. India did not provide confirmation in the recent Committee on Agriculture meeting, but instead stated that a minimum import price requirement and port restrictions remained in place. As previously requested, India needs to explain how these measures are WTO-consistent and explain the policy rationale for these two specific requirements. Australia requests that India respond to Australia's questions and permanently remove the QRs.

14.6. The delegate of the Russian Federation indicated the following:

14.7. The Russian Federation reiterates its long-standing concern over India's pulses import policy and urges India to stop applying restrictive measures on imports of yellow peas. From 2018 to 2021, India has been progressively restricting the access of pulses to its market through measures that India has been calling "temporary" throughout these four years. In 2020, exports of yellow peas

from Russia into India have declined by a factor of 174 compared to the volume exported in 2017. The urgent problem now is the fact that, as of 7 July 2021, India has still not published an official notification about the rules for importation of yellow peas for the financial year 2021-2022, as well as the import volumes allowed for this period. Russia urges India to notify its policy on the import of yellow peas for 2021-2022 as early as possible. The absence of timely information causes disruptions in trade flows and a growing unpredictability in markets.

14.8. At the Committee on Agriculture held on 18 June 2021, India stated that its minimum import price requirement and ports of entry restriction remain applicable in the current fiscal year. There are no clear legal grounds justifying India's measures on imports of pulses, and India's previous vision about the causal link between the protection of public morals, human, plant or animal life or health and import restrictions on yellow peas hardly makes sense. The Russian Federation insists that India should eliminate its minimum import price requirement, lift its ports of entry restrictions, and allow unrestricted imports of yellow peas into its market in accordance with India's WTO obligations.

14.9. The delegate of the United States indicated the following:

14.10. The United States has repeatedly stated its concerns with India's use of domestic support policies, multiple increases in tariff rates, and the application of quantitative import restrictions for pulses including pigeon peas, mung beans, black gram lentils, and peas. US concerns remain unchanged. On 15 May 2021, India's Ministry of Commerce and Industry issued Notification S.O. 1858(E), amending the import policy and temporarily removing QRs for select pulses until 31 October 2021. The United States requests that India explain why only those specific pulses were selected for the temporary removal of QRs and why the remaining pulses are still subject to restrictions. Furthermore, the United States notes that India has still not responded to its written questions submitted on 19 March 2021. When can the United States expect to receive a response from India? Once again, the United States requests that India confirm that the allegedly "temporary" QRs will not be renewed once their current terms expire at the end of this Indian fiscal year.

14.11. The delegate of the European Union indicated the following:

14.12. The European Union reiterates its concerns over the lack of engagement from India on this question. The EU urges India to provide additional explanations as to how such a ban is necessary for the "protection of public morals", as India indicated at the Council's previous meeting. The EU urges India to provide written answers to the questions set out in document G/C/W/791. The EU also calls upon India to provide detailed clarifications regarding how its measures comply with WTO rules.

14.13. The delegate of Canada indicated the following:

14.14. India's QRs on dried peas expired on 31 March 2021. However, since then, dried peas are effectively banned from import, as they are still listed by India as a restricted product with no quota publication. Canada is disappointed that India continues its trade restrictive measures on dried peas and other pulses. This situation has been ongoing for more than three years. It is difficult for Canada to see how India can still be claiming these measures to be temporary. As the largest supplier of pulses to India, Canada has been the WTO Member most negatively affected by India's measures to limit the import of pulses. Pulses are an important source of protein for many Indian consumers and Canada is a high quality and reliable supplier.

14.15. Canada asks for India to promptly clarify the situation as to why dried peas are still restricted from import, why no quota on dried peas has been available since 31 March 2021, and when Canadian dried peas will be again eligible to be imported into India. Canada continues to question the legal interpretation provided by India to justify its trade restrictive measures on dried peas. Canada is also further concerned with the establishment of stock limits on all pulses announced by India on 2 July. This new restrictive measure could have a negative effect on Canadian pulse farmers. Canada asks for India to clarify why this measure was put in place and what effect India anticipates it will have on its trade in pulses. To conclude, Canada calls for India to immediately and expeditiously review its trade restrictive measures put in place on dried peas and other pulses, and to implement alternative, WTO-consistent policy options that promote a predictable and transparent import regime for pulses.

14.16. The delegate of Ukraine indicated the following:

14.17. Ukraine wishes to support the request from Australia, Canada, the European Union, and the United States, and to reaffirm its concerns over India's pulses policy. Such continuing QRs on imports imposed by India for about four years, along with other trade-distorting policies in relation to various pulses, have created uncertainty for exporters and negatively affected the international pulse crop markets. As India has not provided sufficient responses to Members' questions at previous meetings of this Council, nor in the Committee on Agriculture and the Committee on Market Access, and has continued or renewed its QRs on imports of certain pulses, it appears that such measures violate the requirements of Article XI of the GATT and Article 4 of the Agreement on Agriculture. Therefore, Ukraine calls upon India to change its unfair pulses policy and eliminate its import restrictive measures in order to guarantee predictable trade opportunities to access India's pulses market. Additionally, Ukraine would like to receive further clarifications on the replies given by India in the context of the review process of the Committee on Agriculture concerning the general exceptions in Article XX of the GATT 1994.

14.18. The delegate of India indicated the following:

14.19. This issue has also being raised in various other forums besides the CTG, namely the Committee on Agriculture, the Committee on Import Licensing, and the Committee on Market Access. India would like to refer Members to the responses given in these bodies. India would like to reiterate that the objective of this measure is to cater to the food and livelihood security of small and marginal farmers. India has been regularly reviewing this measure based on the market situation of pulses, owing to which the quota of pulses has been increased from time to time. Apart from these increases in quotas from time to time, the Government of India, through DGFT Notification S.O. 1858(E), dated 15 May 2021, has withdrawn restrictions on the import of Tur/Pigeon Peas (Cajanus Cajan), Moong, and Urad, by revising their import policy from "Restricted" to "Free", with effect from 15 May 2021, which will be in effect until 31 October 2021.

14.20. The Council took note of the statements made.

15 CHINA – EXPORT CONTROL LAW – REQUEST FROM THE EUROPEAN UNION AND JAPAN

15.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union and Japan.

15.2. The delegate of Japan indicated the following:

15.3. Japan continues to have concerns over China's Export Control Law, which entered into force in December 2020. As Japan has stated in past Council meetings, and taking into consideration the objective of the law to safeguard national interests, Japan reiterates its concerns regarding the following three points: (i) there may be the possibility that the scope of the products has been set out excessively broadly; (ii) there may be cases that require unnecessary disclosure of technological information during classification and end-user or usage investigations; and (iii) the provisions on countermeasures for discriminatory export regulation by other countries are maintained in the law. Japan believes that the aforementioned export restrictions stipulated in this law may constitute an overly stringent export regulation or be unnecessary restrictions in light of the international export control regime. Therefore, they may equate to export restrictions prohibited under Article XI of the GATT and, in consequence, be inconsistent with the WTO Agreements.

15.4. Japan wishes to reiterate the following two points from previous Council meetings: (i) Japan is concerned by the fact that the draft regulations on rare earths, published in January 2021, mention a plan to set out strategic reserves; Japan believes that this plan may mean that there is a possibility that China may introduce controls on exports of rare earth-related products, in accordance with the aforementioned Export Control Law, despite the fact that natural resources should be categorized as products beyond the scope of the international export control regime; and (ii) regarding the "Unreliable Entities List" and export prohibition list based on the external trade law, Japan is concerned that the relationship between the entities list in the Export Control Law and the items covered under the law and the technology list is also unclear. Japan understands that China explained at the CTG's previous meeting that it is still drafting the supporting regulations and control lists of the Export Control Law, and also that China explained that it would communicate with the

relevant Members and provide updates in due course. Japan will continue to observe the details of the regulations on implementing the law and hopes that the above-mentioned concerns will be resolved accordingly in the final draft of the regulations. In addition, Japan is of the view that countermeasure provisions should be removed from the law. Japan requests China to provide information on the detailed regulations and their timeline with full transparency and while providing ample time for their consideration.

15.5. The delegate of the European Union indicated the following:

15.6. The European Union is closely following developments regarding China's new Export Control Law, which took effect on 1 December 2020. While recognizing that the Chinese Export Control Law consolidates China's non-proliferation commitments and export controls, the EU still has the following four major concerns regarding the law.

15.7. First, the EU has a major concern regarding the law's extra-territorial application, because the law contains a new provision with extraterritorial application determining consequences to foreign individuals and organizations outside of China violating the law and endangering the national security and interests of China (Article 44), which is not in line with internationally agreed export control standards.

15.8. Second, the EU has a major concern regarding the law's rules on deemed exports and re-exports, because the law appears to provide for controls to apply to transactions within China (Article 2.3). In this regard, the EU places great importance on the non-discriminatory treatment of EU companies in China (for example, their Chinese subsidiaries), and is concerned that the concept of deemed exports, which goes beyond the internationally agreed export controls standards, might lead to an unequal treatment that has adverse effects on the activities of EU companies in China (for example, research and development activities). Furthermore, the law foresees controls on re-transfer or re-exports (Articles 16 and 45), but it is unclear whether the obligation not to re-export items without the prior consent of the Chinese authorities also applies to foreign products that contain controlled items obtained from China as components. The previous draft included an explicit provision in this regard in case the controlled items exceeded a certain threshold, and it would be useful to confirm that such is not the case under the current re-export provision.

15.9. Third, the EU has a major concern regarding the law's objectives and scope of controls, because the law names "national security and interests" as a prime objective, next to "non-proliferation and other international obligations"; and even though the law does not reference "development interests", "industrial competence", or "technological development" as control principles anymore (as previous drafts did), the EU is concerned that Article 1 ("national security and interests") as well as Article 3 ("national security and coordination" of "security and development") contain vague language and are still reflecting objectives other than the stated international security obligations and commitments. The EU recalls that the objectives and scope of export controls should be in line with international obligations and multilateral commitments. The EU would therefore welcome a clarification in this regard, as well as on the intended application and specification of other related provisions that could lead to legal uncertainty for economic operators. That is, for example, on: application of control parameters ("national security" and "development", Articles 1, 3, and 13; "terrorist purposes", Article 12); scope of controls ("temporary controls", Article 9) and related control lists; understanding of exporters' obligations in this regard ("is or should be aware", Article 12); scope of investigations by the authorities (in case of "suspected violations", Article 28); and information restrictions (prohibited for reasons of national security, Article 32).

15.10. Fourth, the EU has a major concern regarding the law's retaliation clause. Article 48 provides for "reciprocal measures by the Chinese Governments where the abuse of export control measures by any country or region endangers its national security and interests". This provision is not in line with international export control standards. The EU will place great importance on any secondary legislation and would welcome receiving clarifications and specifications regarding the application of such provisions.

15.11. The delegate of the United States indicated the following:

15.12. The United States has been closely following this issue, including how China implements its new Export Control Law, which went into effect late last year. The United States is concerned that the law gives the Chinese government new rationales to impose terms on transactions among firms and within various partnerships in China, as well as on exports and offshore transactions. It also allows Chinese authorities to temporarily impose export controls on goods not on a control list. This law exists in the context of China's history of controlling the export of commodities, such as coke, fluorspar, and rare earth elements, and using *ad hoc* restrictions to create commercial and political pressures on its major trading partners. The United States will continue to watch this issue closely.

15.13. The delegate of Australia indicated the following:

15.14. Australia notes the statements by Japan and the European Union in relation to China's Export Control Law. Australia was pleased to make a submission to the Chinese Government in relation to this law in August 2020 as part of a public consultation process. Australia appreciated China's consultation with interested parties ahead of the adoption of this law. Australia's submission welcomed efforts to codify the regulatory framework for defence export controls. Australia's concerns primarily relate to the broad scope of the law. Australia encourages China to provide greater clarity in relation to key elements of the law, including its jurisdiction, the scope of its administrator powers, and confirmation that the law is consistent with China's international commitments, including under WTO rules and the China–Australia Free Trade Agreement (ChAFTA). Australia urges China to take account of the concerns of foreign businesses and Members in the implementation of this law and related measures. Australia looks forward to continuing to work closely with China.

15.15. The delegate of China indicated the following:

15.16. China would like to thank Japan, the European Union, the United States, and Australia, for their interest and comments on this issue. At this moment, China is still drafting the supporting regulations on the Export Control Law. China will keep the relevant Members updated on this issue in due course.

15.17. The Council took note of the statements made.

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

16.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union.

16.2. The delegate of the European Union indicated the following:

16.3. The European Union would like to reiterate its concerns with regard to the registration of companies exporting to Egypt under Decrees No. 991/2015, No. 43/2016, and No. 44/2019. The registration procedure at issue constitutes a considerable obstacle to trade and imposes unnecessary administrative burden and blocks or substantially delays EU exports. The European Union therefore continues to question the measure and Egypt's justification for this mandatory registration of EU companies. The European Union notes with concern that most of the pending registration cases known to the EU have still not been successfully processed. Some sectors (like ceramic tiles) continue being disproportionately affected by the discretionary application of Decree No. 43. Moreover, the European Union would like to highlight the structural problems relating to Decree No. 43/2016, such as the lack of transparency in the registration process, the lack of clear deadlines for processing requests, the lack of a clear appeal procedure, and the high level of discretion in the granting of registrations. The European Union calls upon Egypt to terminate the measure and looks forward to working with Egypt so that EU concerns are addressed.

16.4. The delegate of Turkey indicated the following:

16.5. Turkey will refrain from repeating the points raised previously in this Council and at the TBT Committee; nevertheless, Turkey's concerns are still ongoing regarding Egypt's manufacturer registration system. Despite all the concerns and questions from Members in previous meetings, the

structural problems relating to this Decree and its implementation still continue. The system lacks transparency and hence leads to unpredictability, arbitrariness, and additional costs. Turkish exporters continue to report long delays in the registration process and face difficulties in obtaining information about their pending registration requests. In this respect, Turkey wishes to reiterate that it could still not get clear information on the evaluation criteria for the applications to Egypt's General Organization of Export and Import Control (GOEIC), the steps to be taken for a smooth registration, and the time limits for the completion of the registration, if any. Therefore, Turkey wishes to reiterate its expectation that Egypt will review this measure in light of its obligations in the WTO Agreements and with a view to ensuring its implementation in full transparency.

16.6. The delegate of Egypt indicated the following:

16.7. Egypt would like to refer to its previous statements in the CTG[14] as well as the TBT and Market Access Committees. As to the questions raised by the European Union in relation to the TBT Agreement, Egypt is following up on these with Capital in order to receive written replies. Finally, Egypt renews its call for interested delegations to reach out at the level of Geneva missions or Capitals regarding specific problems that companies are facing so that Egypt can revert to them with concrete feedback.

16.8. The Council took note of the statements made.

17 INDONESIA – IMPORT AND EXPORT RESTRICTING POLICIES AND PRACTICES – REQUEST FROM THE EUROPEAN UNION, JAPAN, NEW ZEALAND, AND THE UNITED STATES

17.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union, Japan, New Zealand, and the United States.

17.2. The delegate of the European Union indicated the following:

17.3. This is a long-standing agenda item, and it is of deep concern to the European Union that no real progress could so far be registered. Rather, the number and scope of Indonesia's restrictions seems to have further expanded over time, with a negative impact on trade flows, and this at a time when growth and economic integration are under major stress due to the pandemic. Integration in global value chains will be key for economic recovery. To achieve this, a country cannot rely only on promoting exports. It also needs to be open to increasing imports and to creating a trade and investment-friendly climate. The European Union had welcomed the adoption by Indonesia of the Omnibus Law on Job Creation, which could be a game-changer for facilitating investment. However, the European Union notes with concern that several burdensome and opaque requirements remain in place, preventing the trade and investment facilitation effects of the Omnibus Law from materializing.

17.4. The European Union is also deeply concerned about the alleged plans of Indonesia's Ministry of Industry to reduce imports into Indonesia by 25-30%. In this respect, the European Union is concerned by the use of a range of measures, including expanding the mandatory use of Indonesian national "SNI" standards and the further promulgation of cumbersome import licensing procedures. In particular, the European Union reiterates its serious preoccupation over Indonesia's burdensome and lengthy SPS import authorization procedures, its complex rules on halal labelling, and its restrictive import licensing requirements for an increasingly broad range of goods (foodstuffs, textiles, footwear, and electronics, to name just a few). These procedures, rules, and requirements *de facto* hinder access to the Indonesian market for a variety of EU products and hamper bilateral trade and investment relations.

17.5. The list is long, but to give just one example, Regulation No. 77 of 2019 of the Ministry of Trade "Regarding the Provisions on the Imports of Textiles and Textile Products" aims at preventing the importation of a significant number of textiles and textile products by means of an extremely complex import licensing scheme. Since January 2020, those products can only be imported to meet the processing needs of domestic producers and small or mid-sized industries. This constitutes a clear *de facto* ban on the import of finished carpets and rugs and the European Union fails to see any justification for it other than outright protectionism. This legislation has still not been notified,

[14] G/C/M/139, paragraphs 26.10-26.11.

despite the European Union's repeated reminders, including at the Council's previous meeting, and affects EU operators in the sector very negatively. Accordingly, the European Union urges Indonesia to reduce the high number of trade barriers that have been affecting EU trade flows for too long and to refrain from issuing new ones. The European Union also reiterates its call on Indonesia to ensure that all relevant measures are notified to the WTO in order to allow Members to comment on them.

17.6. The delegate of New Zealand indicated the following:

17.7. New Zealand echoes the concerns raised by the European Union. New Zealand believes that Indonesia's restrictions on agricultural imports undermine core WTO principles. New Zealand is particularly concerned about the inconsistent issuance of import licences. Delays in import licences last year prevented commercially meaningful access for New Zealand horticultural products to the Indonesian market for a significant proportion of New Zealand's export season. Delays in the processing of applications this year reduce the commercial certainty exporters have in this market. Therefore, New Zealand looks forward to the timely issuance of commercially meaningful import licences to allow trade to flow freely for the remainder of this season. In addition, New Zealand requests an update from Indonesia on how the issues previously experienced will be addressed.

17.8. The delegate of Japan indicated the following:

17.9. As Japan has stated in this Council and in the TRIMs Committee, it continues to have concerns over Indonesia's local content requirement measures in some areas and their consistency with WTO Agreements. These measures include a measure for 4G LTE mobile devices and TV apparatuses, as well as measures in the retail sector. Japan is carefully watching the progress of Indonesia's comprehensive reviews on LCR measures and would also like to ask Indonesia to explain the process and content of the reviews in a transparent manner.

17.10. While all the issues have unfortunately not yet been resolved, Japan would like on this occasion to refer only to the current situation. Japan has noted that, once again, trade restrictive measures that appear to be inconsistent with Article XI:1 of the GATT have been increasing. For example, since the import registration and approval system had been adopted for imports of textile products in October 2019, and air conditioners in August 2020, respectively, imports of both have dramatically decreased. Moreover, when the import licences for steel products were issued, in accordance with the Minister of Trade Regulation No. 3 of 2020, the Minister of Industry Regulation No. 4 of 2021 stipulated that the authority takes into account the national supply-demand balance when deciding whether or not to issue a Technical Consideration for API-U. Since then, the actual approved quantities of both API-U and API-P have decreased, effectively meaning that import restrictive measures have been implemented *de facto*.

17.11. Furthermore, on textile products, it was truly regrettable that the safeguard measure on carpets was introduced on 17 February 2021, even though Japan had called upon Indonesia to reconsider this measure during a meeting of the Safeguards Committee, as well as the consultation on Article XIX:2 of GATT. Japan questions Indonesia's action of imposing a high duty amounting to 150 to 200% without considering the negative impact of the introduction of its aforementioned import registration measures. Japan believes that this measure does not fall within the scope of "to the extent and for such time as may be necessary to prevent or remedy such injury," as stipulated in Article XIX of the GATT. Japan is concerned by Indonesia's introduction of increased trade restrictive measures, which are questionable in terms of their WTO consistency. Japan is preparing written questions for Indonesia after receiving Indonesia's request for Japan to do so in the TRIMs and Import Licensing Committees. Japan urges Indonesia to explain the background to the introduction of such measures as well as their legitimacy in terms of their WTO consistency. Japan also urges Indonesia to withdraw these measures immediately.

17.12. The delegate of the United States indicated the following:

17.13. This Council is well aware of the breadth of concerns that the United States has with Indonesia's trade and investment regime. In the interest of time, the United States will not restate all of them at this meeting, but the United States nevertheless notes its continued concerns with the items previously raised at this Council, including over Indonesia's pervasive use of local content requirements, and its consideration of import duties on electronically transmitted software and digital goods. On this occasion, the United States would like to focus its remarks on Indonesia's

continued application of tariffs at the border on a category of ICT products that appear to exceed its WTO bound tariff commitments. For example, Indonesia has a duty-free tariff commitment for all products that are classified under tariff subheading 8517.62. However, US and Indonesian traders report that a 10% duty is being levied for certain products in this tariff category. The United States has raised this issue repeatedly with Indonesia over the past year and a half, including in the Market Access and ITA Committees, as well as bilaterally. Unfortunately, Indonesia has yet to provide a substantive response to our concerns.

17.14. The United States has also submitted written questions to Indonesia through the ITA Committee, asking for clarification of how Indonesia's treatment of these products is consistent with its WTO bound commitments. The United States requests that Indonesia provide written responses to these questions expeditiously. The United States understands that US companies have also engaged the Indonesian government directly on this issue, seeking clarification of Indonesia's application of these tariffs. Despite their efforts, they too have yet to receive a satisfactory response from Indonesia. In addition to calling into question Indonesia's bound commitments, the United States believes that these policies are to Indonesia's own detriment as they limit access for Indonesian consumers and firms to important high-tech products that form the backbone of the digital economy. The United States is hopeful that by raising this issue again today it can help to pave the path for greater engagement and move us towards its expeditious resolution. The United States thanks the Indonesian delegation in advance for its engagement.

17.15. The delegate of Norway indicated the following:

17.16. Norway wishes to express its support for the concerns raised over Indonesia's system of import licences. As Norway has mentioned in this Council before, Norway's experience is that the Indonesian system of import quotas for seafood represents a restriction for exports of Norwegian seafood to Indonesia. And it has been the experience of Norway's seafood exporters, for a number of years, that the limited number of quotas and the lack of transparency in the process for granting them makes the framework for trade in Indonesia unpredictable. Norway looks forward to a continued dialogue with Indonesia on this issue.

17.17. The delegate of Indonesia indicated the following:

17.18. Indonesia wishes to convey to Members that provisions for the importation of animals and animal products are considered with a risk assessment, according to Article 5 of the SPS Agreement. Indonesia has also said that a harmonization process is being carried out for meat imports and horticultural imports with the issuance of Minister of Agriculture Regulation No. 42/2019 concerning Importation of Meat and Offal Carcasses into the territory of the Republic of Indonesia and Minister of Agriculture Regulation No. 39/2019 concerning Recommendations for the Import of Horticultural Products, which has been revised in Minister of Agriculture Regulation No. 2/2020.

17.19. For the import process, Indonesia requires an approval procedure for the entry of imported goods into Indonesian territory, due to the COVID-19 pandemic; Indonesia has communicated with the EU member States bilaterally concerning some delays in the approval process. Furthermore, Indonesia suggests that each EU member State report on the progress of the import approval procedure to the EU representative in Geneva in order that there are no misunderstandings in this matter. Indonesia thanks the European Union for raising the concern regarding the import licensing requirements on textile and textile products, including the import provisions on footwear, electronics, and bicycles/tricycles, and also the importation requirements on alcohol beverages, which have been submitted through document G/LIC/Q/IDN/43. Currently, Indonesia is still coordinating among several government agencies in preparing written replies to the European Union's questions regarding the aforementioned concerns.

17.20. Regarding certain port of destination requirements, according to the Regulation of the Minister of Trade Regulation No. 68/2020, the Government of Indonesia intends to administer a surveillance of incoming goods, which can be optimally carried out in accordance with the standards of the specified port of destination. Regarding import verification provisions, Indonesia must ensure that certain incoming goods meet the requirements, both in quantity and quality. Regarding the import plan obligation, Indonesia requires the data in order to project the future utilization of import approvals. Regarding the importation of alcohol beverages, Indonesia found no barriers to EU alcohol beverages products entering Indonesia's market. From January until April 2021, Indonesia has

issued 13 import approvals on alcohol beverages originating from several countries, including the European Union. Indonesia considers that the utilization of import approvals relating to alcohol beverages, whether originating in the European Union or not, is based on business-to-business decisions from the business entities/importers concerned.

17.21. Regarding Japan's concerns on Minister of Trade Regulation No. 68/2020, the Government of Indonesia does not prohibit any imports from Japan. Indonesia has administered import permits on air conditioners to ensure the business meets the import requirement as well as consumer protection on after sales. Japan's import approvals were delayed because the Government of Indonesia needed time for issuing the said import approvals. Those aforementioned issues have been solved since the import approval (PI) was issued. Indonesia committed to implementing the recommendations and rulings of the Dispute Settlement Body (DSB) in DS477/478. This commitment is demonstrated and proven by the various adjustments that have been made. First, Indonesia has enacted Law No. 11/2020 on Job Creation. All articles in the relevant laws that were found to be inconsistent with the WTO's rules have been amended and are no longer in place. With respect to the horticulture import regime, Indonesia would like to highlight that the necessary adjustments have also been made in the relevant regulations of the Ministry of Agriculture and the Ministry of Trade in order to make them consistent with WTO rules. Indonesia is open to receive any further enquiry from New Zealand on the technicalities of the differences in market access horticultural products into Indonesia from New Zealand.

17.22. The imposition of a safeguard measure on the importation of carpets and other textile floor coverings has come into effect with the issuance of Minister of Finance's Regulation No. 10/PMK.010/2021. The imposition of a safeguard measure effectively began on 17 February 2021. The safeguard measure is valid for three years, with the specific tariff being liberalized and decreasing each year. Exclusions are given to developing countries that have a *de minimis* import share in accordance with Article 9 of the WTO Agreement on Safeguards. Indonesia has notified the implementation of a safeguard measure through notification 12.1(c), which was circulated by the WTO Secretariat on 17 February 2021. Indonesia believes that the imposition of a safeguard measure on the importation of carpets and other textile floor coverings has complied with the principles, rules, and procedures stipulated in the WTO Safeguards Agreement and has been carried out objectively and transparently. The results of the investigation carried out by the Authority have found that there has been a threat of serious injury to the applicant caused by a surge in imports, so that the implementation of a safeguard measure has been carried out to facilitate a structural adjustment to the applicant's industry to avoid deeper injury. Allegations concerning the imposition of import duties on textile products of 150 to 200% cannot be proven by Japan. Indonesia had explained to Japan the safeguard measure in question in its bilateral consultations with Japan.

17.23. Indonesia thanks the European Union for its continued interest in the issue of the Halal Product Assurance Law No. 33/2014. Indonesia is mindful of its transparency obligations as mandated in the TBT Agreement. Therefore, Indonesia has notified the Government Regulation No. 39/2021 on the Implementation of Halal Product Assurances in document G/TBT/N/IDN/131/Add.1. Indonesia reconfirms the regulation to revoke Government Regulation No. 31/2019 in order to implement the mandate of the Indonesia Omnibus Law. Indonesia wishes to convey that there are phases or stages to the implementation of its mandatory halal certification; for food and beverage products, the implementation of its mandatory halal certification will be effective on 17 October 2024, while for non-food and beverage products, it will be effective on 17 October 2026. Furthermore, Indonesia provides a transition provision, as mentioned in Article 169 of Government Regulation No. 39/2021, to accommodate stakeholders and industries that had obtained halal certification based on previous mechanisms, as follows: all forms of cooperation with foreign halal certification bodies and accreditation agencies in other countries that were carried out before this government regulation was introduced remain in effect until the period of cooperation ends; and foreign halal certificates recognized by the Indonesian Ulema Council (MUI) before this government regulation was introduced remain valid until the expiration of the validity period of the foreign Halal Certificate. Indonesia would like to reiterate its openness to international cooperation on its Halal Assurance System based on the principle of mutual recognition and mutual acceptance, in accordance with international regulations and practices.

17.24. Regarding localization measures, as Indonesia conveyed in the TRIMs Committee and during its Trade Policy Review, the localization measures in question have been put in place only in relation to government procurement, or policies that involve fulfilling the need to maintain the welfare and life necessities of the entire Indonesian population, or policies that involve state-managed strategic

resources. Furthermore, Indonesia wishes to reiterate that it does not have any plan to revise the localization requirements in the near future. Nevertheless, as an investment destination, Indonesia will always view its investment regulations from the perspective of facilitating investment and enhancing the business climate.

17.25. Indonesia is giving its most serious attention to the imposition of import duty tariffs on several information technology products, as raised by the United States. Indonesia reaffirms its statements delivered at the ITA Committee meetings of 31 October 2019 and 30 October 2020, and at the meetings of the Committee on Market Access of 11 November 2019, 8 June 2020, and 12 November 2020, whereby the Government of Indonesia continues to be committed to complying with and respecting every WTO Agreement, including Indonesia's commitment to the ITA. Furthermore, Indonesia has no intention of taking any action beyond its obligations under the ITA. On this issue, Indonesia is open to further communication with the European Union, Japan, the United States, and other WTO Members.

17.26. The Government of Indonesia has clarified in the Committee on Customs Valuation that it does not consider the verification as a PSI activity. The verification is not only carried out in the country of origin of goods (exporting country), but also applies domestically in Indonesia's Free Trade Zone area. Overall, the verification provisions also apply to export, import, and even domestic inter-island trade. The verification applies to the documentation and technical aspects of certain products and is conducted to fulfil the duty and responsibility of the Government of Indonesia towards its people to preserve Indonesia's health, safety, the environment, public morals, as well as the national security and national interest. Regarding the current legislation, the verification or technical surveillance activity by a surveyor does not substitute or diminish the authority of Customs to conduct customs inspections. The result of verification or technical surveillance submitted by the importer is not used by Customs in determining the classification of goods; rather, it is attached as supplementary documents in an import declaration. And it may serve as one reference based on which Customs Officers may release the consignee at the destination port. Therefore, the technical verification could help to expedite the importation process by avoiding the possibility of illegal importation in the context of discrepancies between the import and technical documents. Hence, this procedure considerably reduces dwelling time.

17.27. The Council took note of the statements made.

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

18.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union and the United States.

18.2. The delegate of the European Union indicated the following:

18.3. The Russian Federation continues to openly develop and apply a policy of import substitution and of forced localization of production, which is contrary to the spirit and often to the letter of its WTO commitments. Such policy is the source of numerous trade irritants affecting EU products. At this Council's previous meeting, the European Union referred to six specific measures. Unfortunately, the EU must refer to all six again on this occasion. The European Union had referred in some detail to the proposal to increase the so-called "recycling fee" for certain categories of vehicles, including by as much as a six-fold increase in the case of certain categories of vehicles (semi-trailers), and by up to two to three times for road construction equipment and certain agricultural machinery. The EU makes the following requests to Russia: to suspend the planned increase of the recycling fee; to conduct a fact-based evaluation of the recycling market for vehicles so as to inform future decisions on the level of the recycling fee; and to ensure that measures supporting demand provide the same advantages to domestic and imported products. The European Union also asks Russia to inform Members about the state of play of the planned increases for the different categories of vehicles.

18.4. At this Council's previous meetings, the European Union had voiced its concern regarding Decree No. 2013, adopted on 3 December 2020, establishing quotas for foreign products in procurement by state-owned enterprises (SOEs) and by some unspecified private entities. This decree lists 250 lines of customs nomenclature on which quotas for Russian products were established. These quotas reach a prohibitive 90% level. This is manifestly a trade-restricting

practice and its compatibility with WTO rules is highly questionable. On 23 June 2021, EVP Dombrovskis sent a letter to the Minister of Economic Development of the Russian Federation, asking that the situation be remedied. Should no acceptable compromise be found quickly, the European Union reserves its right to take all appropriate actions, including by seeking redress before the WTO, through dispute settlement proceedings.

18.5. The European Union regrets that it continues to be necessary to refer to the blockage of EU exports of cement to Russia, effective since 2016. The Russian Federation announced in 2019 that it would remedy the situation in the form an amendment to the standard, but such amendment has so far not materialized. As previously stated, the European Union considers the amendment to the Federal Law "on protecting consumer rights", which makes the pre-installation of Russian software mandatory in a number of consumer electronic devices, to be a potentially discriminatory measure. The European Union requests that this amendment be notified in accordance with the TBT Agreement. The measure could contravene WTO national treatment provisions concerning goods, as well as Russia's WTO commitments for certain services.

18.6. The European Union repeats its request that Russia notify Federal Law No. 468, "on Viticulture and Winemaking". The European Union regrets that Russia refuses to do so. By way of a reminder to this Council, the law introduced many new requirements for the placing of wine products on the Russian market; therefore, it must be notified to the WTO in accordance with the TBT Agreement. Furthermore, this law uses European geographical indications as definitions for certain categories of wine, like Champagne, Cahors, or Cognac, and the implementation of this law is unclear. The European Union urges that amendments to the law, currently in preparation, eliminate its concerns. The European Union would welcome clarifications as to when these amendments can be expected to be adopted.

18.7. The European Union renews its concerns about the announced introduction of an export ban on timber, starting from 1 January 2022. The European Union once again urges Russia to explain how such an export ban and related measures may be compatible with the WTO's rules, and to notify any corresponding draft legislation. In conclusion, the European Union continues, overall, to call upon Russia to ensure that its measures fully conform to WTO rules and to abandon its policy of import substitution and localization.

18.8. The delegate of the United States indicated the following:

18.9. The United States joins the European Union in again raising its concerns about Russia's restrictive trade practices. As the United States has noted at previous meetings of this Council, Russia continues to implement policies and adopt rules that contradict the foundational principles of this Organization, particularly building a non-discriminatory, level playing field. Concerning preferential treatment for Russian goods, and as the United States has previously laid out in great detail, Russia has adopted a number of laws and subsidiary measures that dictate purchasing decisions for state-owned enterprises (SOEs) in favour of Russian goods. The estimates vary, but sources within Russia have suggested that the Russian State controls around 70% of the economy. Government mandates for certain companies to consult with a government Commission on purchases of certain imports, requirements that SOEs give a 15-30% price preference to certain Russian goods, and requirements that certain SOEs purchase a minimum quota of domestically-produced products (among others), appear to be at odds with Russia's commitments in joining this Organization that purchases and sales would be made "in accordance with commercial considerations" which "afford enterprises of other WTO Members adequate opportunity in conformity with customary business practice, to compete for participation in such purchases or sales." The United States has raised this concern many times in this Council and continues to wait for an adequate answer from the Russian Federation as to how these measures comport with its WTO obligations.

18.10. The United States is watching carefully Russia's potential expansion of its market control to "critical information infrastructure". There are press reports that the measure may be phased in, depending on the supply of Russian equipment, suggesting that this measure is yet another tool to limit imports. In addition, the draft Government Resolution approving the requirements for software and equipment used in critical information infrastructure refers to "attached requirements" and "attached procedures", but the United States is not able to find those documents. The United States requests that the Russian delegate direct it to where the US might find those requirements and

procedures. The United States also asks if the Russian delegate could provide any further information on this measure.

18.11. The United States also follows the European Union in expressing concern about the software pre-installation law that has been in force since April of this year. Here again, the Russian government is trying to dictate consumer choice by requiring the installation of certain Russian software, instead of leaving that commercial decision to the individual consumer. The United States has raised concerns about this measure in the most recent meeting of the Council for Trade in Services, and repeats its request made at that meeting that Russia share the proposed amendments to the regulations governing the pre-installation mandate.

18.12. With regard to Russia's mandatory labelling or "track and trace" regime, as the United States has said before, it supports efforts to combat counterfeit goods. Like the European Union, the United States is concerned about the proportionality of this measure, and whether such a costly and burdensome labelling regime is really needed for all products. The United States remains concerned about the potential for significant supply chain disruptions at the border and about unequal access to the machinery and the technological systems of the regime. The United States is also watching how the regime is being implemented by the Eurasian Economic Union (EEU) and urges all members of the EEU to ensure that the regime's implementation does not erect barriers to imports.

18.13. The United States also joins the European Union in raising a concern about Russia's recycling fee, in particular about its true purpose. From a practical standpoint, there appears to be little evidence that the law has actually contributed to the recycling industry or in removing old vehicles from the road. It has, however, contributed to increased prices for imports and protection for the domestic industry. The United States requests the delegate from the Russian Federation to provide updates on their government's plans. Finally, the United States reminds Russia of the importance of meeting its transparency obligations. As noted by the European Union, the United States urges Russia to notify its measures regarding wine, along with any additional measures issued by the Eurasian Economic Commission. The United States also urges Russia to respond to questions submitted in the subsidiary committees, specifically two sets of written questions posed in the TRIMs Committee in documents G/TRIMS/Q/RUS/8 and G/TRIMS/Q/RUS/10.

18.14. The delegate of Australia indicated the following:

18.15. Australia thanks the Russian government and industry for its recent engagements on this issue. Australia would like to reiterate its concerns with Russia's Federal Law No. 468 of 27 December 2019 on wine making and wine growing in the Russian Federation, which Australia has outlined at previous meetings of this Council and the TBT Committee. This Federal Law poses several barriers to the importation of wine into Russia that have imposed a more onerous compliance burden, which, coupled with the short timelines for the law's implementation and subsequent amendments, are of concern to the Australian wine industry and have created ongoing uncertainty. Australia requests the Russian Federation to ensure its wine-related measures are no more trade restrictive than necessary and that there is a sufficient advance notice and transition period. While Australia notes that the value of Australian wine exports to the Russian Federation has slightly increased since the implementation of the Law, Australia does not agree with Russia's argument that this means that Australia's wine exports to Russia have been unaffected.

18.16. Additionally, Australia notes several obligations within the Federal Law that are inconsistent with EEU Technical Regulation No. 047/2018, "On safety of alcohol products". Australia understands that the implementation of the technical regulation has been postponed to allow harmonization work with the Russian Law. Australia requests the Russian Federation to provide an update on this harmonization work, including providing an indication of when this technical regulation is expected to be implemented. Australia requests that an adequate transition time be put in place for the implementation of the revised technical regulations in order to provide sufficient time for businesses to adjust to the new requirements. Lastly, while the Federal Law entered into force on 26 June 2020, Russia has yet to notify the WTO of its implementation. Accordingly, Australia requests Russia to notify the Federal Law to the WTO as soon as possible.

18.17. The delegate of the Russian Federation indicated the following:

18.18. In respect of the increase in the recycling fee for vehicles, the Russian Federation notes that this fee is applied to both domestic and imported products; the fee is the same in both cases. Moreover, WTO rules do not prohibit the establishment of fees providing that they comply with the WTO principles of national treatment and non-discrimination. Regarding SOEs procurement, the Russian Federation would like to point out that this regulation develops previous acts under Federal Law No. 223-FZ, "On the Procurement of Goods, Works, Services by Certain Types of Legal Entities", and Federal Law No. 488-FZ, "On the Industrial Policy of the Russian Federation", which clearly stipulate that this regulation is to be applied in accordance with the international obligations of the Russian Federation. The Russian Federation would also like to note that this regulation does not cover private entities. As for cement certification, the Russian Federation notes that the relevant amendments are still being discussed among the responsible authorities. The Russian Federation will inform WTO Members of these amendments once they have been prepared and adopted.

18.19. Regarding the pre-installation of software, as stated previously on numerous occasions, Russia maintains its position that the measure in question does not fall under the scope of the Agreement on Technical Barriers to Trade and cannot be considered as a technical regulation. The amendments to the Federal Law "On Consumer Rights Protection" do not set requirements for product characteristics or production methods. Thus, a requirement on pre-installation of certain Russian software products on technically complex products does not correspond to the definition of technical regulation set forth in Annex 1 to the Agreement on Technical Barriers to Trade. Moreover, the measure in question cannot be considered discriminatory since it does not mandate a replacement or de-installation of any foreign software programmes.

18.20. Concerning the Wine Law, the Russian Federation took note of the statements made by the delegations of the European Union, the United States, Australia, and Argentina. The statements in question will be sent to the relevant Russian authorities for their consideration. Russia refers to its previous statements on this subject in the relevant WTO working bodies. In addition, the Russian Federation would like to highlight the following points. The Federal Law on Winemaking and Winegrowing entered into force on 26 June 2020. The Law is intended to develop and improve Russia's internal wine market; it sets requirements both for domestic and foreign winemakers irrespective of their origin. The provisions of the Federal Law are elaborated taking into account the obligations of the Russian Federation in the WTO and other international organizations. And despite the concerns that have been raised over the Federal Law, statistics show that imports of wine into the territory of the Russian Federation have not substantially declined. As for the TRIPS Agreement, the Russian Federation stresses that this law does not cover intellectual property rights; nor does it establish a legal environment for their protection. In the Russian Federation intellectual property rights are registered and protected under the Civil Code of Russia that is based *inter alia* on Russia's obligations under the TRIPS Agreement.

18.21. Regarding the timber export regulation, the Russian Federation notes that the final design of the regulation is currently being developed but that it is intended to combat illegal exports of timber. As previously noted, the Russian Federation is carefully studying the practice of other WTO Members in this area. Furthermore, the Russian Federation believes that it will be able to ensure the compliance of the measure with the WTO's rules.

18.22. The Council took note of the statements made.

19 KINGDOM OF SAUDI ARABIA, KINGDOM OF BAHRAIN, THE UNITED ARAB EMIRATES, THE STATE OF KUWAIT, OMAN, AND QATAR – SELECTIVE TAX ON CERTAIN IMPORTED PRODUCTS – REQUEST FROM THE EUROPEAN UNION, JAPAN, SWITZERLAND, AND THE UNITED STATES (G/C/W/792)

19.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union, Japan, Switzerland, and the United States.

19.2. The delegate of the United States indicated the following:

19.3. The United States, the European Union, Japan, and Switzerland circulated questions on 17 March 2021 to each of the member State governments of the Cooperation Council for the Arab

States of the Gulf (GCC) regarding their implementation of the selective tax on carbonated soft drinks, malt beverages, energy drinks, sports drinks, and other sweetened beverages. We have not yet received written responses to those questions and ask these Members to indicate today when those responses will be provided. We look forward to their written responses as well as continued engagement with GCC member State governments – and private sector stakeholders – regarding the transparency and application of this tax. Timely engagement with interested trading partner governments and private industry stakeholders on the concerns noted is critical.

19.4. The delegate of the European Union indicated the following:

19.5. The European Union wishes to thank the GCC countries for the constructive meeting held following the discussion that took place at the Council's meeting of 31 March 2021. That said, the European Union maintains its serious concerns, as voiced in the CTG, the Market Access Committee, as well as in bilateral contacts with the GCC countries in relation to the GCC "Treaty on Excise Tax" of December 2016. The European Union urgently requests, therefore, that the GCC finalize the reform of the "Treaty on Excise Tax" and equalize the taxation of energy drinks with other soft drinks. The European Union would also like to underline the call for providing immediate relief for industry until the ongoing GCC excise taxation revision takes effect. In this regard, the European Union calls for the exemption of all zero sugar beverages from the tax and harmonizing the tax rate at 50% for energy drinks and all other categories of sugar-sweetened beverages subject to the tax. The European Union looks forward to continued engagement and further clarification from the GCC countries in response to the written questions that were circulated ahead of the CTG's meeting of 31 March 2021, and the meeting of the Committee on Market Access of 29 April 2021.

19.6. The delegate of Japan indicated the following:

19.7. Japan has been expressing its concerns over the issue of the selective tax on carbonated soft drinks introduced by certain GCC members since 2019. Since the Council's previous meeting, Japan notes that there have been Capital-based and Geneva-based communications between the GCC members and the Members who have raised the issue. Japan appreciates the GCC members' engagement regarding the communication in particular. Nevertheless, Japan would like once again to express its concern. Especially in the United Arab Emirates, a high tax rate is imposed on certain Japanese carbonated soft drinks due to their classification as energy drinks. As we are always stressing, Japan does not have any intention to raise an objection to impose certain excise taxes in order to improve human health. However, if the objective of the excise tax is improvement of human health, the tax must be a specific tax in line with the amount of ingredients such as stimulants that are harmful to human health. If such an approach is not taken, the tax would not act as an incentive to refrain from consumption of the stimulants concerned. Japan therefore requests that the selective tax be modified based on objective reasoning and in a transparent and constructive manner.

19.8. Japan noted that the Kingdom of Bahrain had provided an update on the current situation, on behalf of the GCC members, at the Council's previous meeting, as well as in the April meeting of the Committee on Market Access. At the time, Bahrain had mentioned that the GCC members were currently undertaking a review of the selective tax. Japan requests GCC members to share relevant information from this review in advance in order to avoid any confusion in the business sector or countries concerned that could potentially be caused by it. In addition, Japan requests GCC members to provide written answers to Members' questions.

19.9. The delegate of Switzerland indicated the following:

19.10. Switzerland would like to thank the delegations of the GCC member States for the information-sharing meeting of the previous month. Nevertheless, Switzerland's concerns with regard to the selective tax remain unsolved, particularly in relation to the state of play of the ongoing reform and the harmonization of the tax rate for energy drinks and other sugar-containing beverages. Based on the indication given by the delegation of the Kingdom of Bahrain, the future tax should be a volumetric tiered tax similar to that currently applied in the United Kingdom, where the applicable rate is determined by a product's actual sugar content. Currently, each GCC member is conducting a consultation process. Thus, in order to have more clarity on the entire process, Switzerland asks the GCC member States to provide a time plan regarding the following: (a) the completion of the ongoing study; (b) the completion of the national consultation processes; (c) the consolidation of these processes at the GCC level; (d) the adoption of a decision by the

GCC Ministerial Council; and (e) the date of implementation. This important information will allow the stakeholders to contribute constructively to the process and be prepared for the new tax structure.

19.11. In addition, the GCC is performing a review of category definitions for beverages subject to the tax. Switzerland is somewhat puzzled by this exercise as there is no need to define beverages with criteria other than their sugar content, if the revised tax will be levied on the basis of the sugar content/volume only. Switzerland seeks clarification as to whether there are still plans to apply different rates for energy drinks and other sweetened beverages, thereby deviating from international best practice. Switzerland wishes would like to understand the rationale for such differentiation in the case of a sugar-based tax. Furthermore, Switzerland wishes to know why the GCC member States plan to create an additional tier for low-caloric/no-added-sugar drinks under the future volumetric tax, while at the same time beverages containing sugar, like milk-based products or juices containing added sugar, are not subject to the tax.

19.12. As is common practice, Switzerland reiterates its expectation to receive written answers from the GCC member States to the questions it raised in document G/MA/W/169 and document G/C/W/792, as well as to the questions it has raised today. Finally, Switzerland would appreciate receiving the assistance of the GCC member States in setting up a call between Capital-based experts and persons in charge of the tax reform in order to help clarify the issues just raised.

19.13. The delegate of the Kingdom of Bahrain indicated the following:

19.14. On behalf of the Kingdom of Bahrain, the State of Kuwait, the Sultanate of Oman, the State of Qatar, the Kingdom of Saudi Arabia, and the United Arab Emirates, the Kingdom of Bahrain thanks the delegations that took the floor for the interest they have expressed in the application of the excise tax on beverages in the GCC member States. With respect to the questions raised in document G/C/W/792, which constitutes the basis of this agenda item, and which was circulated during the last session of the Council, held on 31 March and 1 April 2021, the Kingdom of Bahrain wishes to recall that, during that session, it had provided, on behalf of the GCC member States, all the clarifications currently available, as recorded in the minutes of the Council's meeting circulated in document G/C/M/139 on 16 June 2021. While reaffirming the above clarifications, and in the interest of emphasizing certain details that the Kingdom of Bahrain believes would be of interest to Delegations and the Council, the Kingdom of Bahrain would like to recall the following few points.

19.15. The reform of the excise tax on beverages in the GCC member States and the related studies and mechanisms is a lengthy and standing process of the GCC Tax Working Group, which is time-consuming and requires resources and sustained efforts to develop a tax system that will take into consideration new developments, international best practices, and optimal methods. It also requires an awareness of the implications of the reform on markets, industries, and consumers. In this regard, the Kingdom of Bahrain assures interested delegations that the GCC Tax Group aims to make recommendations in an objective, efficient, and non-discriminatory manner. With regard to timeline to inform officials from interested WTO Members about the study undertaken by GCC member States on possible revisions of the current excise tax model and alternative excise tax system, the Kingdom of Bahrain feels bound to say that to give a clear and precise timeline is difficult if not impossible at this stage because of the complex work that the GCC Tax Group is undertaking, which encompasses the harmonization and coordination tasks required to reach agreement among the representatives of the six member States. In this regard, the Kingdom of Bahrain confirms that, once a decision is taken on this matter at GCC level, there will be a formal communication issued in order to inform WTO Members of the new model and its implementation timeline.

19.16. The Kingdom of Bahrain also wishes to recall that the GCC member States are coordinating their efforts to harmonize their regulatory frameworks and reach common agreed systems in various areas, including in the area of excise tax. Therefore, the implementation of any revised model will be applied harmoniously across all of the GCC member States, although the programme of implementation may vary slightly depending on the status of preparedness of each individual GCC member State. As for consultations with private industry, the Kingdom of Bahrain wishes to recall that all GCC member States are open, through their own respective mechanisms, to engaging in consultations aimed at obtaining feedback and comments from the private sector. In this regard, the GCC member States remain committed to welcoming comments and suggestions from industry stakeholders. Regarding consultations with trading partner governments, the GCC member States

are open to all commonly known mechanisms and these at both bilateral and WTO levels. In this regard, bilateral consultations were organized on 1 June 2021 among the GCC member States and the European Union, Switzerland, the United States, and Japan, on the GCC Selective Tax. GCC member States stand ready to continue these consultations and are also open to any consultation that may be useful at Capital-level.

19.17. Once again, the Kingdom of Bahrain wishes to assure Members that all comments and suggestions from the relevant stakeholders, including the private sector, as well as from officials from WTO Members, are taken into consideration. In conclusion, the Kingdom of Bahrain wishes to confirm that it has provided all the information available at this stage on the issue of the excise tax in the GCC member States. Nevertheless, the Kingdom of Bahrain welcomes questions and comments that will be received with the highest consideration in GCC capitals.

19.18. The Council took note of the statements made.

20 SRI LANKA – IMPORT BAN ON VARIOUS PRODUCTS – REQUEST FROM AUSTRALIA AND THE EUROPEAN UNION

20.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia and the European Union.

20.2. The delegate of the European Union indicated the following:

20.3. The European Union continues to have serious concerns over the broad import restrictions imposed by Sri Lanka, in various forms, since April 2020. The European Union does not dispute that Members can take import restrictions in the case of a critical Balance-of-Payments (BOP) situation. However, when doing so, a WTO Member must comply with its WTO obligations when invoking Balance-of-Payments restrictions. The measures have already been in place for over a year now and the European Union needs to repeat that Sri Lanka has still not complied with its obligation to notify the import restriction and enter into consultations with other WTO Members. Although Sri Lanka stated at the Council's previous meeting that it would contact the WTO Secretariat regarding the preparation of a notification, Members are still waiting.

20.4. The European Union notes that, since the initial measure of April 2020, Sri Lanka has repeatedly modified the regulations, most recently in June 2021 via the Import and Export Control Regulations No. 08, 09, and 10. The European Union acknowledges that this latest revision has reduced the list of banned imports or imports under credit facility restrictions. The European Union is nevertheless disappointed to see that a significant number of goods were also again added to the list. This only adds to the uncertainty faced by exporters, and seems to indicate that the measures are not moving in the direction of being withdrawn. Furthermore, on a select number of tariff lines, such as motor vehicles, the full import ban remains in place.

20.5. Regulation No. 10 explicitly states that the goods in Schedule I of banned items have been identified "with a view to strengthen and revive the national economy". This seems clearly targeted to protect particular domestic industries. These measures, and the continued pressure exercised on the banks to reduce currency outflow, are hurting EU interests. Several EU member States report a decline of 30-40% in their exports to Sri Lanka in 2020, and a further reduction of 10-15% in 2021 so far. Finally, the European Union notes that this is now the third time that it has had to raise this import ban at this Council. In the absence of any notification or justification of these measures, the European Union calls for their full withdrawal.

20.6. The delegate of Australia indicated the following:

20.7. Australia appreciates the difficult circumstances that Sri Lanka is under as a result of the impact of the COVID-19 pandemic on its economy and trade. Nevertheless, a well-functioning, transparent, predictable, and stable global trading system remains fundamental to global economic stability and indeed to our recovery from the pandemic. Australia would like to reiterate its concerns raised at the Council's meetings of November 2020 and April 2021 with respect to the measures Sri Lanka has implemented since April 2020 restricting the imports of various products. Australia understands that Sri Lanka has subsequently implemented revised import restrictions as of 11 June 2021. These measures appear to be overly trade-restrictive, including by continuing to

temporarily suspend a range of imports into Sri Lanka, without a clear end-date. In addition, Sri Lanka has failed to notify these measures to the WTO.

20.8. Australia welcomes Sri Lanka working with the Secretariat to ensure that these measures are adequately notified to the WTO. However, Australia reiterates its request for Sri Lanka to notify the WTO of these measures as soon as possible, including an explanation of their WTO basis. Australia also requests Sri Lanka to update Members on when these measures will be lifted. The continuing lack of certainty has been trade-disruptive and has impacted Australia's exporters' ability to provide staple food stuffs to Sri Lankan consumers. Australia would appreciate if Sri Lanka could reassure Members that: (i) the measures have only been implemented to address the immediate impact of the COVID-19 pandemic; (ii) they will not be maintained longer than necessary; and (iii) they are being implemented in a manner consistent with Sri Lanka's WTO obligations. Finally, Australia would welcome the opportunity to meet with the Sri Lankan delegation, plus other interested delegations, to receive an update on these import measures and to discuss the questions and concerns of Members, including those that have been raised today.

20.9. The delegate of Japan indicated the following:

20.10. Although wishing to avoid repeating its statement from the Council's previous meeting, Japan requests Sri Lanka to abolish this measure as soon as possible since there is a possibility that it could be in violation of Article XI of the GATT.

20.11. The delegate of Sri Lanka indicated the following:

20.12. Sri Lanka would like to recall that it made a detailed intervention on this subject during the meeting of the Committee on Market Access held on 29 and 30 April 2021. During that meeting, Sri Lanka highlighted the steps taken by its government to relax the import policy measures introduced to curb the impact of the COVID-19 pandemic. Accordingly, the requirement to obtain import licences was removed in relation to 451 products and for these products no prior approval is required as the temporary suspension is no longer applied. Close to around 1,300 items were made available to be imported on a credit basis, which includes certain motor vehicles, ceramic articles, garments, and rubber items. In addition to the payment terms on a credit basis, where payment of import bills on certain items can take place on a credit basis of either 90 days or 180 days, the measures have been regularly liberalized, including through the introduction of two other types of payment methods, namely advance payment and open account payments, enabling importers to benefit from these additional payment terms as well.

20.13. Many delegations question the steps that Sri Lanka has taken under its transparency obligations to notify the WTO of the trade policy measures it has introduced to curb the impact of the COVID-19 pandemic. Sri Lanka acknowledges that it has not yet been able to notify these measures. As indicated at previous meetings, the delegation of Sri Lanka, in consultation with the Secretariat, has prepared the first draft of the notification, which is currently being finalized in Capital. The delegation of Sri Lanka is awaiting feedback from the authorities concerned in the context of the lockdowns imposed due to a third wave of the COVID-19 pandemic.

20.14. Indeed, Sri Lanka is currently struggling with the third wave of the COVID-19 pandemic, which has posed an unprecedented threat to its economy and to the entire health sector of the country. Although Sri Lanka does not wish to cite this situation as an excuse for not fulfilling its transparency obligations, it has nevertheless been compelled to face the pandemic's bitter reality. In fact, the country had to be fully closed during a long period in which only essential services were delivered on the basis of a skeleton staff. Nevertheless, Sri Lanka will continue to make its best efforts to secure the final draft notification as expeditiously as possible. This notification will soon be submitted to the Council of Trade in Services. The Government of Sri Lanka is continuously examining existing restrictions on foreign exchange, which is why these measures are liberalized at regular intervals.

20.15. The Council took note of the statements made.

21 UNITED STATES – IMPORT RESTRICTIONS ON APPLES AND PEARS – REQUEST FROM THE EUROPEAN UNION

21.1. The Chairperson recalled that this item had been included in the agenda at the request of the European Union.

21.2. The delegate of the European Union indicated the following:

21.3. The European Union regrets that the United States has so far failed to resolve this matter, despite the EU raising it on multiple occasions in the SPS Committee and this Council. The scientific risk assessment carried out by the United States was finalized already years ago. It demonstrated that safe imports of apples and pears from the European Union can take place under a systems approach. The United States continues to block the publication of its Federal Notice, which is the last remaining step to allowing imports of apples and pears from the European Union under this systems approach, without any scientific grounds for doing so. The United States is herewith going against the SPS Agreement as it maintains an approval procedure with undue delays and without providing a scientific justification to explain those delays. The European Union urges the United States to base its import policy on science in line with its WTO commitments. The European Union also urges the United States to finalize the last purely administrative step necessary to allow market access to apples and pears from the European Union without any further delay. The European Union looks forward to continuing to cooperate with the United States with the aim of finding a swift solution on this overly long and still outstanding matter.

21.4. The delegate of the United States indicated the following:

21.5. The United States thanks the European Union for its continued interest in the status of the request from eight EU member States to export apples and pears under a systems approach to the United States. The US Department of Agriculture (USDA) continues to work through its administrative procedures on this request. The United States would again note that the European Union is able to export apples and pears to the United States under the existing pre-clearance programme.

21.6. The Council took note of the statements made.

22 CHINA – IMPLEMENTATION OF TRADE DISRUPTIVE AND RESTRICTIVE MEASURES – REQUEST FROM AUSTRALIA

22.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia.

22.2. The delegate of Australia indicated the following:

22.3. Australia and China have enjoyed a strong bilateral partnership and trading relationship, built over many decades, that has delivered benefits to both sides. However, Members will recall that Australia raised China's implementation of trade disruptive and restrictive measures at this Council's November 2020 and April 2021 meetings. Australia remains concerned by the broad range of trade restrictive measures China has taken against Australia, particularly in the context of official Chinese statements linking these actions to unrelated issues in our bilateral relationship. Australia has serious concerns regarding China's increasing and cumulative number of measures targeting a wide range of Australian products, specifically agricultural commodities and resources, over the past 12 to 18 months. The affected products include bottled, bulk, and sparkling wine; logs; meat; dairy; lobsters and other seafood; infant formula; cotton; hay; barley and other grains; table grapes; citrus fruit; copper ores and concentrates; and coal.

22.4. The measures include a spike in testing and inspections at the border; undue delays in the listing and re-listing of export establishments, including in response to the COVID-19 pandemic; undue delays in granting approvals for specific species and brands and the issuance of import licences; and the imposition of unjustified anti-dumping and countervailing duties. These developments have effectively closed off areas of trade, and created significant delays, uncertainty, and risk, for exporters and importers of Australian products. Australia has previously outlined the formal actions that China has taken against Australian barley, lobster, logs and wine, which have

rendered trade in these items prohibitive. Each of these commodities shows at least a 95% decline in exports to China in the first quarter of 2021 compared to the first quarter of 2020. Australia is equally concerned about China's lack of transparency, due process, and engagement on the technical merits for each measure, including in response to Australian submissions.

22.5. Regrettably, Australia has seen no improvement in the conditions being applied to the affected Australian products. In addition, the range of products subject to heightened inspection and delays has increased, in particular for table grapes and citrus fruit, as well as other products, including oats and live cattle, without explanation. These developments have increased uncertainty. Australia also continues to be concerned about credible reports that Chinese authorities have instructed importers not to purchase certain Australian products. Despite China's denials that any such instructions are in place, there have been significant decreases in imports of most of these products, including the complete halt in trade in some of these products. For example, Australia notes that Chinese trade data shows zero Chinese imports of Australian coal and copper ores and concentrates since December 2020. Nevertheless, China continues to import these items from countries other than Australia.

22.6. Australia considers that any instruction by Chinese authorities not to purchase Australian products, whether issued formally or informally, would appear to be inconsistent with China's WTO obligations. The cumulative impact of these measures, their sudden increase in intensity over the past 18 months, the disproportionate impact of these measures on Australia, and China's public statements linking trade with political issues in our relationship, takes China's actions beyond the realm of the technical. They give rise to concerns about China's adherence to its international trade obligations. Australia therefore urges China to immediately cease any discriminatory measures being applied to Australian products.

22.7. Australia continues to seek to address its concerns with China bilaterally and through the relevant WTO committees. Australia has not received satisfactory responses from China to the issues it has raised and has seen no improvement in the conditions being applied to the affected Australian products, causing ongoing uncertainty and economic damage to Australian exporters and Chinese importers of Australian products. China has consistently stated that it is committed to open trade and the multilateral trading system. Australia expects all WTO Members to conduct their trading relationships in a manner consistent with their WTO and free trade agreement obligations, and the market-oriented principles that underpin WTO membership.

22.8. The delegate of the United Kingdom indicated the following:

22.9. The United Kingdom supports Australia's request for assurances that Australian exports to China are not, and will not be, subject to measures which unfairly stop or limit purchases and imports of Australian goods. Free and fair trade are fundamental principles and objectives of the rules-based multilateral system. The United Kingdom is concerned by unfair trade practices which undermine the integrity of the global trading system and free markets to which it is committed. Such market-distorting practices only erode fairness and trust in the system, resulting in damaging, real-world consequences for citizens and businesses. The United Kingdom asks China to ensure that its trade measures are applied in a non-discriminatory, predictable manner, which is in line with WTO obligations, with the necessary transparency around decision-making and administrative procedures. It is also important to maintain open channels to seek redress or explanations; to this end, the United Kingdom hopes that China will engage in good faith and in a timely and responsive manner to address these problems.

22.10. The delegate of New Zealand indicated the following:

22.11. The multilateral rules-based trading system provides that all Members, regardless of their size or trading capacity, are subject to the same rights and obligations. This provides the predictability and certainty necessary to ensure that trade can take place efficiently and with the least friction possible. Given the challenges all Members are facing as a result of the COVID-19 pandemic, the certainty provided by the multilateral trading system is more important than ever. If Members step away from their commitments, or adopt remedies provided for under the WTO Agreements for other purposes, this will undermine the predictability and certainty on which the system rests. Therefore, New Zealand encourages Members to comply fully with their WTO obligations, including in the application of trade remedies.

22.12. The delegate of the United States indicated the following:

22.13. The United States would like to register its systemic concern in relation to the information provided by Australia. China appears to have implemented a broad range of restrictive measures against certain Australian goods, and official Chinese statements have linked these actions to unrelated bilateral matters. The restrictive measures include suspension of imports, increased inspection and testing at the border, delays in granting import permits, delays in registration of export establishments, and imposition of anti-dumping and countervailing duties. The United States also wishes to register its systemic concern over reports that Chinese authorities have informally instructed importers not to purchase certain Australian goods. For several years, the leaders of the Communist Party of China have asserted that China firmly upholds the "rules-based multilateral trading system". But this sloganeering belies China's actions. Such actions, if ignored, would herald the coming of a very different system – one based on privileges, not rights; power, not rules; and predation, not reciprocity.

22.14. The delegate of the European Union indicated the following:

22.15. The European Union is not directly involved in the issues that Australia is currently raising with China and, for this reason, the European Union wishes to make only a brief statement on this occasion. The European Union's statement is related to questions of principle, not to the facts of the measures that Australia has brought to the attention of the Council. However, the European Union notes with concern the long list of measures adopted by China that are having a negative impact on Australian exports. The European Union notes and respects Australia's preference to treat these issues on their individual technical merits, including raising them in the various forums that the WTO offers for that purpose, including through technical committees and dispute settlement. That said, the length of the list of issues raised by Australia, and this discussion at the CTG, suggests that there is an additional dimension to this matter.

22.16. Taking a step back and looking at the world more generally, the European Union of course agrees that Members' compliance with WTO obligations is key for the security and predictability of the international trading system. It is key for the reliability of trading opportunities in the interests of growth, efficiency, and welfare. And compliance is key for a Member's reputation in this Organization and beyond. The European Union trusts that all Members share the commitment to safeguard and nurture this Organization, which is currently facing major challenges. However, there is a further problem about which the European Union is concerned, namely an appearance that the true underlying reason for resorting to these measures, be they formal or informal, is to put pressure on or sanction the other country involved for a policy choice that is within the rights of that country.

22.17. Within the European Union, the European Parliament, member States, and the European Commission, have all expressed their concerns as to the practices of certain countries seeking to coerce others, and also the European Union, to take or to withdraw particular policy measures. Such coercion raises questions about international legality that go beyond the issue of WTO-consistency. The European Union is grateful for this opportunity to share its concerns about a certain increasing trend that it has been observing over recent years.

22.18. The delegate of Canada indicated the following:

22.19. Canada shares the systemic concerns that have been raised by Australia. Canada has also raised a number of specific trade concerns regarding China's application of sanitary and phytosanitary measures that are restricting trade in food, plants and animals, and their products. In the case of canola, Canada has even taken the step of requesting the establishment of a dispute settlement panel. Canada encourages all WTO Members, including China, to abide by their WTO commitments.

22.20. The delegate of Japan indicated the following:

22.21. Japan shares the views expressed by Australia, and other Members, that anti-dumping measures should be implemented within the framework of the WTO Agreements, and that China should comply with the Anti-Dumping Agreement not only for the investigation procedures themselves, but also for fact-finding and analysis when conducting an investigation. Japan also

shares the concerns expressed by Australia that every necessary transparent measure should be secured.

22.22. The delegate of China indicated the following:

22.23. On this issue, China has provided explanations at the Council's previous meetings. China does not wish to repeat those detailed responses, but rather reiterates that the relevant measures have been taken to address the problems of certain Australian products exporting to China and to counter certain unfair trade practices of Australia. These measures are consistent with Chinese laws, regulations, and international practices, as well as the provisions of the China-Australia Free Trade Agreement.

22.24. The Council took note of the statements made.

23 CHINA – COSMETICS SUPERVISION AND ADMINISTRATION REGULATIONS (CSAR) - REQUEST FROM AUSTRALIA, JAPAN, AND THE UNITED STATES

23.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia, Japan, and the United States.

23.2. The delegate of the United States indicated the following:

23.3. It is unfortunate that the United States must again reiterate its concerns over this issue, as expressed many times previously. Indeed, the United States brings the issue to this meeting of the Council because it is imperative that a resolution is found to US concerns with China's development of the Cosmetics Supervision and Administration Regulation (CSAR) and its implementing measures. Despite extensive multilateral and bilateral engagement from the United States, US industry, and other WTO Members and stakeholders, significant trade concerns remain.

23.4. First, the United States has significant concerns that the only means China provides importers to establish conformity with good manufacturing practices, if their respective governments do not issue Good Manufacturing Practice (GMP) export certificates, involves animal testing. The United States questions China's rebuttal to the comments of several WTO Members that its requirements for imports and domestic products are equivalent, as US companies with manufacturing in China report that they are not required to conduct animal tests to certify GMP when they register their production facility. The United States asks that China consider less trade restrictive means for its importers to meet its requirements, such as third-party programmes under the ISO/IEC 17065: Conformity Assessment standard that align with the ISO cosmetics GMP standard. The United States also asks again that China be flexible and transparent with respect to which GMP certificates or production licences it will accept as demonstrating conformity.

23.5. Second, the United States remains concerned that CSAR and its implementing measures require overly extensive information to assess conformity and fulfil China's regulatory objectives. The United States is disappointed that China has not pared back these highly burdensome requirements. The United States asks China's National Medical Products Administration to reconsider the extent of the information requirements.

23.6. Third, the United States considers that China has failed to address concerns that exceptions to the provisions protecting confidential business information (CBI) and reference to China's Regulation on the Disclosure of Government Information may undermine protections for trade secrets and CBI. The United States asks that China clarify whether it will develop an explicit mechanism for companies to indicate to the National Medical Products Administration (NMPA) when information provided should be treated as trade secrets and CBI, to protect it from unauthorized disclosure. The United States requests that China provide a mechanism to ensure that the treatment of CBI is monitored and legally enforceable within China.

23.7. Fourth, the United States requests that China not require duplicative testing at laboratories that have Chinese Metrological Accreditation, if companies provide test results from other laboratories that are in conformity with China's requirements. The United States requests that China consider accepting test results from laboratories certified to Good Laboratory Practices or Good

Clinical Practices, as per the International Council for Harmonization of Technical Requirements for Pharmaceuticals for Human Use (ICH) Guidelines.

23.8. Fifth, the United States continues to have a concern about new cosmetics labelling requirements potentially creating unnecessary obstacles to trade. As explained previously, the United States requests that China not require companies to disclose the product manufacturer on the product label. The United States also asks that China not require that Chinese labelling be a direct translation of the foreign label, but rather, that the information on the Chinese label does not conflict with the product safety and effectiveness information on the foreign label.

23.9. The United States requests that China delay finalization of additional measures until these trade concerns, as expressed by the United States and many other WTO Members, are addressed.

23.10. The delegate of Australia indicated the following:

23.11. Australia understands that China's new CSAR and its various implementing regulations entered into force on 1 May 2021. Australia would like to request an update from China on the CSAR and its implementing regulations, including whether any cosmetics have been imported into China under CSAR. If so, Australia requests that China provide details of the specific processes that met the requirements under the CSAR and led to successful importation.

23.12. Australia was initially hopeful that this new regulatory framework would modernize the way China regulated cosmetics and provide Australian exporters with a viable pathway to access the Chinese cosmetics market without first testing their products on animals. However, Australia has ongoing concerns with the new measures introduced by China under the CSAR framework and questions the consistency of these regulations with China's international obligations under the WTO Agreement. While China has now provided a pathway for imported cosmetics to be exempted from animal testing, this pathway is narrowly defined, requiring imported product to have exporting country certification of production quality systems. Australia requests that China consider more flexible approaches to the provision of certification of manufacturing quality.

23.13. While Australia recognizes the right of Members under the WTO Agreement on Technical Barriers to Trade to apply particular measures, including technical regulations, these should not create unnecessary obstacles to trade, or be more trade restrictive than necessary to fulfil the legitimate objective. China's CSAR includes stringent and burdensome measures that Australia considers are unnecessary to manage the risk posed by low-risk general-use cosmetics products. Australia believes that China could achieve its objective of ensuring the safety and quality of imported cosmetics products in a less trade restrictive manner.

23.14. A particular concern for Australia is the requirement under the CSAR for exporting Member governments to be involved in the certification of production quality management systems such as GMP. Australia would appreciate a clear explanation from China of the justification for this requirement, including with regard to the following: (i) what is the policy purpose for which quality/GMP certification is being required; (ii) why is GMP certification or animal testing required for low-risk cosmetics products formulated using approved ingredients; (iii) how does a quality requirement equate as an alternative to animal testing in terms of managing either safety risks or quality of cosmetics products; (iv) how does the requirement under the CSAR take account of the fact that different Members can organize their national regulatory systems in different ways, while still achieving the same overall quality and safety standards; for example, the CSAR appears to discriminate in favour of domestic Chinese cosmetics products and products from WTO Members with similarly structured national regulatory regimes, regardless of product safety and quality; (v) why are governments needed to provide GMP certification when commercial providers with specialist technical expertise would likely be better qualified to certify compliance with international standards such as ISO, should it be needed?

23.15. Aside from GMP certification, Australia's exporters have also expressed concern about other measures under the CSAR framework, including onerous testing and registration requirements and requirements to provide detailed information on production processes and other aspects of their intellectual property.

23.16. Australia is a consistent supplier of high quality and safe cosmetics products domestically, and to the world. Australia is disappointed that China has repeatedly not taken up its requests for discussions between officials on this topic. As Australia has said on previous occasions, the Australian Government stands ready to work with China and discuss the CSAR and our respective systems for cosmetics regulation.

23.17. The delegate of Japan indicated the following:

23.18. Japan noted that China enforced the revised CSAR in January 2021. In addition, Japan also noted that China has submitted TBT notifications regarding many of its related implementing regulations. Japan has been expressing its concerns on the above-mentioned regulations as well as the related implementing regulations in the TBT Committee since March 2019.

23.19. Japan shares the same serious concerns expressed by the United States and Australia that China may potentially include business confidential information among the information it requests to be disclosed. Although such language as "protection of relevant business confidential information" was added in the regulations, Japan noted that there are some regulations and implementing regulations that require disclosure of certain information concerning the production process.

23.20. In addition, Japan wishes to point out that there is a problem in that China only approves the results verified by Chinese domestic agencies without approving international methods of investigation such as ISO, and so on. Japan would like to request China to ensure that the CSAR is formulated and implemented in accordance with Article 2.2 of the TBT Agreement without deviating from the international standard.

23.21. The delegate of the Republic of Korea indicated the following:

23.22. The Republic of Korea joins other Members in expressing its concern about China's CSAR.

23.23. According to the Regulation, exporters to China are required to specify the sources and quality data of all ingredients in the application, which contain critical information to businesses. Furthermore, the labelling requirement is excessive compared to internationally recognized practice. All such requirements are creating a trade barrier to Korea's exports by restricting trade more than is necessary to fulfil the objective of securing product safety and market norms. Korea would like to request China to make improvements in its Regulation in order to ensure that it does not constitute an unnecessary obstacle to international trade.

23.24. The delegate of New Zealand indicated the following:

23.25. New Zealand welcomes China's endeavours to modernize its regulatory system for cosmetics and also welcomes the opportunity to comment on specific elements of China's Cosmetic Supervision and Administration Regulations.

23.26. While New Zealand welcomes the intention to improve safety and quality assurance, New Zealand would like to encourage China to ensure that facilitation of trade is considered in the implementation of the regulations.

23.27. New Zealand notes that, under the measures, non-animal tested cosmetics are able to enter China's market only on the basis that regulator-issued GMP certification is provided. Non-special use cosmetics are considered to be low-risk products in many countries, including New Zealand, and for this reason are not subject to regulator-issued GMP certification. While New Zealand welcomes the introduction of alternatives to mandatory animal testing for imported products, like others, New Zealand is disappointed that the measures do not provide for non-regulator issued GMP certification or other trade facilitative mechanisms for providing product assurances. This appears to mean that animal testing requirements will still apply for Members who cannot offer regulator-issued GMP certification for cosmetics imported into China and, as such, will act as a significant and unnecessary barrier to trade for imported cosmetics products.

23.28. New Zealand would like to better understand what consideration China has accorded to less trade restrictive alternatives. New Zealand encourages China to engage directly with New Zealand

and other affected Members to identify a trade-facilitative mechanism to demonstrate GMP conformity, without imposing animal-testing requirements.

23.29. New Zealand further requests that China also provide flexibility in respect of product testing requirements. In particular, New Zealand encourages China to accept test reports from accredited laboratories situated outside of China. If test reports from internationally accredited bodies outside of China are not accepted, then this will create burdensome and unnecessary trade barriers for exporters as well as multiple other markets. Building in flexibility to accept test reports from accredited laboratories outside of China would be trade facilitative and in accordance with international best practice.

23.30. New Zealand also holds concerns, that we note are shared by a number of Members, around the issue of China requiring more detailed disclosure of product formulas than is required, including specific sources of each ingredient. New Zealand encourages China to limit disclosure requirements, particularly that of sensitive information, to that which is required to assure product safety in China's domestic market and so as not to compromise intellectual property.

23.31. New Zealand looks forward to engaging further with China on its CSAR measures and welcomes China's response to the concerns raised by New Zealand and other Members.

23.32. The delegate of the European Union indicated the following:

23.33. The European Union supports the interventions made by Australia, Japan, and the United States. China has notified to the WTO TBT Committee the drafts containing rules for the implementation of the new CSAR. The European Union is of the opinion that the clear steps outlined in the implementing rules for product and ingredient registration can lead to a faster and more efficient registration and filing mechanism. In particular, the obligation for reviewers to identify mistakes and applicants to answer questions at once will avoid the current practice of repeated, time-consuming question-answer loops during applications.

23.34. However, the European Union would like to underline that certain requirements, such as the disclosure of "the source of the ingredients and their quality specifications", go beyond the CSAR principles in a way that they would create problems for the operation of cosmetic companies, including both domestic manufacturers and importers. The EU would like to point out that this kind of information, on a raw-material-by-raw-material basis is commercially sensitive and touches on the intellectual property rights of the companies involved (suppliers and cosmetic manufacturers). Mandatory disclosure of this information in the registration and filing process is therefore a significant concern for the EU. The EU is of the opinion that including this kind of information, as part of the pre-market registration or filing dossier is not necessary to ensure consumer safety and traceability of the ingredients used in cosmetics.

23.35. Companies' registration and notification documentation may be accessible to a number of people including the pharmaceutical supervisory and administrative department, professional technical institutions and their staff, and personnel participating in the review. The European Union would like to underline that this diverges from international practice as this documentation is not required elsewhere in the world for notification and registration purposes. Preparing this amount of information for submission will not only cost significant time and resources, but will also increase the risk for and impact of eventual data breaches.

23.36. The European Union has noted that no specific transition periods are indicated in the notified draft measures, although they will be a crucial "workability" factor for the successful implementation of CSAR and its implementing legislation. Given the number of changes to industry practice that this implementing legislation will introduce, the EU is of the opinion that a differentiated approach is needed between new products and products already on the market. This would avoid a situation where product supply could be interrupted for an extended period due to insufficient preparation time for both industry and supervising authorities.

23.37. The delegate of China indicated the following:

23.38. China notes that this item has been discussed several times in the TBT Committee, where China had already provided very detailed explanations of this issue at these meetings. China has

taken note of the questions today, which would be sent to Capital for appropriate action. China will not repeat those earlier detailed responses, but limits itself on this occasion to highlighting the following few points: (i) strengthening the supervision of cosmetics production is a necessary means to ensuring product quality and safety, and is a common practice internationally; (ii) China attaches great importance to the protection of trade secrets and the intellectual property of enterprises; the brief description of product process, raw material production process, and other registration and filing documents, submitted by enterprises according to Chinese laws and regulations, are not subject to government information disclosure; furthermore, the relevant Chinese laws clearly stipulate that authorities are prohibited from disclosing information involving trade secrets and personal privacy that may harm the legitimate rights and interests of third parties; therefore, this practice will not undermine the enterprises' trade secrets and intellectual property rights; and (iii) in the process of drafting relevant technical requirements, China takes full consideration of protecting the trade secrets and intellectual property rights of enterprises; for example, only a summary of the efficacy claim basis, rather than the full text, is required in the evaluation data of a cosmetics efficacy claim.

23.39. The Council took note of the statements made.

24 CHINA – SUBSIDY TRANSPARENCY AND CHINA'S PUBLICATION AND INQUIRY POINT OBLIGATIONS UNDER CHINA'S PROTOCOL OF ACCESSION – REQUEST FROM AUSTRALIA, CANADA, THE EUROPEAN UNION, JAPAN, THE UNITED KINGDOM, AND THE UNITED STATES

24.1. The Chairperson recalled that this item had been included in the agenda at the request of Australia, Canada, the European Union, Japan, the United Kingdom, and the United States.

24.2. The delegate of the United States indicated the following:

24.3. As Members are aware, the United States and many other Members over the years have expressed numerous serious concerns with respect to the transparency of China's subsidy regime. After China joined the WTO, for example, it took five years before it submitted its first subsidy notification, which only covered the central government. And once China did start submitting notifications, they were normally late and, in the view of the United States, grossly incomplete. For example, it was not until 2016, 15 years after becoming a Member, that China submitted its first subsidy notification covering sub-central governments – entities which play a very significant role in China's subsidy regime.

24.4. In the absence of transparency, the United States is often compelled to ascertain the facts about China's subsidy regime for itself. When conducting this research, it is not unusual to see references to legal measures, normally with an official citation, that the United States then tries to locate. The United States can usually find these measures in one place or another; but often the United States cannot find them, no matter how hard it looks. This can be particularly frustrating when these "missing measures" are repeatedly cited elsewhere and appear to be foundational to a particular subsidy programme.

24.5. In China's Protocol of Accession, China agreed to make available to WTO Members all trade-related laws, regulations, and other measures prior to implementing or enforcing them, and to designate a single journal for the publication of all trade-related laws, regulations, and other measures, which China has designated as the MOFCOM Gazette. However, in most cases, subsidy measures, especially normative measures and sub-central measures, are not published in the MOFCOM Gazette. And sometimes these measures are nowhere to be found anywhere else.

24.6. In addition to the publication obligation, in its Protocol of Accession, China agreed to "establish or designate an enquiry point where, upon request of any individual, enterprise or WTO Member all information relating to the measures required to be published … may be obtained." Furthermore, China agreed with respect to its enquiry point that "Replies to requests for information shall generally be provided within 30 days after receipt of a request. In exceptional cases, replies may be provided within 45 days after receipt of a request."

24.7. The United States has identified references to five legal measures, two relating to fuel subsidies for fishermen, one relating to the development of China's distant water fishing fleet, and

two relating to the semiconductor industry. Unable to find these measures in the MOFCOM Gazette, or anywhere else, the United States submitted a request to China's WTO enquiry point in April 2020, well over a year ago. The United States was then required by China to needlessly re-submit its request in May 2020. The United States has yet to receive a formal response to its request – made well over a year ago – despite China's obligation in its Protocol of Accession to respond no later than 45 days.

24.8. This raises serious questions as to China's commitment to adhere to its WTO obligations. What can be so sensitive about a fuel subsidy programme for fishermen, for example, that it was not published in the MOFCOM Gazette, or anywhere else, apparently? Why has China refused for well over a year to provide a copy of such measures pursuant to a properly submitted request?

24.9. The United States urges China to respond to its request by providing all the requested documents, as soon as possible, in accordance with its obligations under its Protocol of Accession.

24.10. The delegate of the European Union indicated the following:

24.11. The commitment by China under its Protocol of Accession to publish all trade-related measures, as well as providing information through the enquiry point, are designed to improve transparency. However, in order for such a commitment to be effective, China must publish all its trade-related measures in the MOFCOM Gazette, as well as respond to requests for information under the enquiry point. Again, this is in the interests of transparency, and in accordance with the obligations undertaken in China's Protocol of Accession. The European Union therefore urges China to publish all trade-related measures and to provide the information requested.

24.12. The delegate of Japan indicated the following:

24.13. WTO Members have been expressing their concerns regarding the possibility of a lack of transparency and non-notification of China's subsidies in the relevant committees. Japan is concerned that failure to ensure transparency on subsidies expenditure might give rise to such problems as supply surplus by encouraging trade-distorting subsidies. As the largest trader in the world, China is required to observe its notification obligations while ensuring transparency. Like the United States and the European Union pointed out, Japan requests that China implement its transparency obligations and ensure the effectiveness of its mechanisms to enhance transparency, as agreed under its WTO Protocol of Accession.

24.14. The delegate of Canada indicated the following:

24.15. Canada echoes the US concerns with China's compliance with WTO transparency requirements. When it acceded to the WTO in 2001, China accepted comprehensive transparency obligations. Through its Protocol of Accession, China agreed, among other things, to publish all laws, regulations, or other measures affecting trade in goods in a single official journal. China also agreed to respond to enquiries by individuals, enterprises, and WTO Members relating to these measures, within 30 days. These transparency obligations were negotiated into China's Protocol of Accession for a reason. Without information on subsidy measures being made available in a timely manner, it is impossible for Members to assess their possible impact on trade and exercise their rights in respect of the implementation and enforcement of such measures. This has the effect of undermining the secure and predictable rules-based system.

24.16. Transparency obligations in the context of the WTO ASCM are just as important. China has yet to respond to an enquiry from Canada dated January 2020 regarding two unnotified subsidy programmes.

24.17. Compliance with notification requirements and response to enquiries in accordance with WTO rules, including transparency obligations in China's Protocol of Accession, is of great significance to the successful functioning of the rules-based international trading system. This is all the more important as WTO Members gradually build back from the COVID-19 crisis.

24.18. The delegate of the United Kingdom indicated the following:

24.19. The United Kingdom would like to reiterate its belief that transparency is central to the proper functioning of the WTO. It is vital that all Members fulfil their obligations, including any Member-specific commitments, in a timely manner.

24.20. The delegate of Australia indicated the following:

24.21. Australia attaches considerable importance to the WTO notification and transparency obligations. Australia is particularly concerned about the lack of transparency in relation to subsidy programmes. In this regard, Australia notes the commitment made by China as part of China's Protocol of Accession. This mechanism was intended to improve transparency. In Australia's view, transparency remains critical to the proper functioning of the WTO. The more Members do not notify, the more the uncertainty for all our exporters in being able to compete fairly in international markets. This underpins the Subsidies Agreement. Australia calls on China to fully adhere to its transparency obligations, including those under its Protocol of Accession.

24.22. The delegate of China indicated the following:

24.23. China recalls that this issue has been discussed several times in the Subsidies Committee and would like to refer Members to the statements made during those meetings. China attaches great importance to complying with WTO rules and fulfilling WTO obligations. The China Foreign Trade and Economic Cooperation Gazette is an official publication that uniformly publishes Chinese trade policies. Eighty issues are published every year and the general public can access them through the website of the Ministry of Commerce of China. Regarding China's obligation on an enquiry point, China has provided replies to the requests made by a certain Member last September, in accordance with the commitments specified in China's Protocol of Accession.

24.24. The Council took note of the statements made.

25 CHINA – MEASURES RESTRICTING THE IMPORT OF SCRAP MATERIALS – REQUEST FROM THE UNITED STATES (G/C/W/790)

25.1. The Chairperson recalled that this item had been included in the agenda at the request of the United States.

25.2. The delegate of the United States indicated the following:

25.3. It is unfortunate that the United States must again reiterate its concerns, as expressed many times previously in this and other WTO bodies, regarding the negative trade and environmental impacts resulting from China's import ban, and accompanying measures, on certain recovered materials.

25.4. As the United States has indicated before, these measures seem to contradict China's own pro-circular economy narrative that it is promoting in the WTO, as well as internationally. The United States is concerned that these measures are also a detriment to our shared environment and have resulted in increased volumes of recyclables going to landfills and other less desirable waste channels, including becoming marine litter.

25.5. The United States circulated a set of questions ahead of the March 2021 CTG meeting, requesting that China provide written responses as soon as possible, including an explanation of the scientific bases that it has used to determine which categories of scrap materials it will allow to be imported as "recycled raw materials". The United States has not yet received written responses to its questions; the United States asks China to indicate at this meeting when those responses will be provided. Furthermore, as it has requested many times previously, the United States asks that China immediately revise the relevant measures in a manner consistent with existing international standards for trade in scrap materials, which provide a global framework for transparent and environmentally sound trade in recyclable commodities.

25.6. The delegate of New Zealand indicated the following:

25.7. New Zealand maintains an ongoing interest in this issue. As per its past statements at meetings of the CTG and the TBT Committee, New Zealand remains concerned that vanadium slag is included in China's catalogue of banned imports under this measure. New Zealand does acknowledge and support the right of all WTO Members to regulate and achieve legitimate health and environmental objectives. However, New Zealand would appreciate clarification from China on how it has ensured that the rules that apply to foreign products are no less favourable than those accorded to domestic products. New Zealand thanks China for its recent engagement on this issue, including bilaterally, and at the TBT Committee, and looks forward to further constructive engagement on this topic to better understand China's approach to distinguishing between waste and non-waste materials.

25.8. The delegate of China indicated the following:

25.9. China thanks the United States for its interest in this issue. As China has provided its responses on this issue at previous meetings of the CTG and other WTO bodies, China requests Members to refer to its statements delivered at those meetings.

25.10. China would like to reiterate that its import prohibition on solid waste aims to effectively protect human health and its eco-system safety. China welcomes trade in recycling materials that are properly treated, pose no hazard to human health and the environment, and comply with China's national mandatory quality standards on the relevant products. China has published its national quality standards for recycling materials, such as brass, copper, and cast aluminium alloys.

25.11. China urges the major solid waste exporting Members to reduce solid waste at source, and to shoulder their international responsibilities to handle and dispose of their own solid waste.

25.12. The Council took note of the statements made.

26 MEXICO – CONFORMITY ASSESSMENT PROCEDURE FOR CHEESE UNDER MEXICAN OFFICIAL STANDARD NOM-223-SCFI/SAGARPA-2018 – REQUEST FROM THE UNITED STATES

26.1. The Chairperson recalled that this item had been included in the agenda at the request of the United States.

26.2. The delegate of the United States indicated the following:

26.3. The United States must raise its concerns over Mexico's NOM-223, cheese conformity assessment procedures, a measure that may be finalized any day now. US concerns are three-fold. First and foremost, NOM-223 contains a conformity assessment scheme which includes: (i) third-party testing of cheese with an annual production facility inspection, traceability, and post-market surveillance performed by a third-party certification body; or (ii) batch-by-batch testing at the border to determine the quality of cheese products with the objective of providing better information to consumers. Such a scheme may be overly trade restrictive. Providing information to consumers about cheese quality is a low-risk undertaking. The United States and industry are concerned that Mexico's scheme is not proportional to those risks, and that Mexico does not appear to have seriously considered available alternatives to meet the consumer's needs. The United States requests that Mexico halt the finalization of the regulation and consider the alternatives previously proposed by the US government and industry stakeholders, including the use of standards of identity, labelling, or suppliers' declaration of conformity to demonstrate the completion of third-party test procedures. Second, cheese made from animal fat will have to undergo these burdensome testing and certification requirements, while cheese produced from vegetable fat will not. The United States requests Mexico to please explain the reasoning for the difference in the treatment of these products. The third US concern relates to whether Mexico has taken comments from WTO Members and stakeholders into account. Stakeholders provided input into a draft in the working group that concluded in September 2020, and the final draft is significantly different from the draft agreed to by that working group. Again, the United States asks Mexico to suspend the draft and reconsider the less trade-restrictive alternatives presented by industry and other WTO stakeholders.

26.4. The delegate of Mexico indicated the following:

26.5. The delegation of Mexico welcomes the comments shared by the delegation of the United States on the conformity assessment procedure applicable to Mexican technical regulation 223 on "cheese".

26.6. The reason for developing this measure is to address the concerns of the Mexican authorities over the authenticity of the products that are offered on Mexican territory and the information that consumers receive about them, as well as to prevent deceptive practices.

26.7. As has been made known to the Members of this Council and other committees within this Organization, Mexico has identified various products, both of domestic and foreign manufacture, that claim to be "cheese" but do not comply with the specifications of the applicable technical regulation. Mexico therefore considers it very important to strengthen the regulatory framework for the product in question.

26.8. The Mexican authorities continue to analyse this procedure in a comprehensive manner so that the requirements envisaged, including compliance with international commitments, ensure that products bearing the name "cheese", and that are marketed in Mexico's national territory, comply fully with the applicable technical regulation.

26.9. The delegation of Mexico reiterates its willingness and commitment to clarifying any doubts that Members may have regarding this procedure, and to report on any progress made through the Committee and relevant contact points.

26.10. The Council took note of the statements made.

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

27.1. The Chairperson recalled that this item had been included in the agenda at the request of the Russian Federation.

27.2. The delegate of the Russian Federation indicated the following:

27.3. The Russian Federation reiterates its statements made during the previous regular meetings of the working bodies of the WTO on cobalt classification adopted under the 14th adaptation to technical progress to the Classification, Labelling and Packaging (CLP) Regulation notified in document G/TBT/N/EU/629.

27.4. The European Union applied this classification in the absence of comprehensive laboratory and epidemiological data. Based on this classification, it is clear that the Commission will go further and develop industrial, product specific, and technical regulations, which will set unjustified restrictions or prohibit cobalt use in a wide range of products. An additional step in this direction is the chemicals strategy for sustainability that proposes imposition of a ban on the use of the most harmful chemicals.

27.5. Moreover, as a result of stigmatization, even without further restrictions, cobalt and cobalt-containing products consumption will suffer due to deselection of these products by manufacturers of such final goods as electric vehicles' batteries, energy storage units, and similar equipment critical to fight climate change and achieve green sustainability. Although the Russian Federation welcomes the European Commission's efforts to approve gastric bioelution, it notes that this methodology has not yet been approved. Could the European Union inform the Council of the status of the work on bioelution?

27.6. Finally, the Cobalt Institute initiated a scientific study of the carcinogenicity of cobalt metal for oral routes of exposure. In this regard, the Russian Federation requests that the European Union inform Members if all restrictions and prohibitions of cobalt use introduced following the implementation of the 14th Adaptation to Technical and Scientific Progress (ATP) and the chemicals strategy for sustainability will be lifted in case the carcinogenicity of cobalt for oral route of exposure will not be confirmed.

27.7. The delegate of the European Union indicated the following:

27.8. The European Union has taken due note of the concerns expressed by the Russian Federation. The European Union has provided explanations in various WTO bodies, including at the most recent meetings of the TBT Committee and this Council.

27.9. As explained in those meetings, titanium dioxide and cobalt were included in the 14th ATP amending the CLP Regulation. Several discussions on the classification of cobalt and TiO2 and the classification of mixtures containing TiO2 took place in the expert group for Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) and CLP (CARACAL) and in the regulatory committee (the REACH Committee).

27.10. After its adoption by the Commission on 4 October 2019, the Commission Delegated Regulation was sent to the Council and the European Parliament for the two-month objection period. As no objection was raised, the Commission Delegated Regulation (EU) 2020/217 was published in the Official Journal of the European Union on 18 February 2020 and the classification of cobalt as a carcinogen will become applicable as of 1 October 2021.

27.11. The classification of cobalt as a carcinogen for all routes of exposure is based on the scientific opinion of the Risk Assessment Committee (RAC) of the European Chemicals Agency (ECHA), as well as on the comments received and concerns expressed by the member States and stakeholders. This opinion is in line with the CLP Regulation, as well as the UN Globally Harmonized System of Classification and Labelling of Chemicals (UN GHS). The opinion and the background document containing all the relevant scientific information on which the opinion is based are available to all WTO Members and stakeholders at the ECHA website.

27.12. In its scientific assessment, the ECHA's RAC Committee took all available data into account, including the information submitted during the public consultation period. Review of an RAC opinion is only possible if new and relevant scientific information becomes available.

27.13. The European Union wishes to reassure WTO Members in the Council that all of the comments that they sent in the context of the EU notification, in accordance with the TBT Agreement, were distributed to EU member States and duly taken into account by the Commission and member States in the decision-making process. The Commission has also sent written replies to the comments from WTO Members on the TBT notification of the measure.

27.14. The European Union also proposed to harmonize, at OECD level, the method on bioelution. This method could be useful to ensure that, if a metal contained in an alloy is not bioavailable (that is, if it remains in the matrix), then the alloys (for example, stainless steel) do not need to be classified. An agreement at the OECD has been reached in May 2020 to develop and validate this method. The European Union would welcome any support for third countries actively to participate in the development of the OECD test method on bioelution. A special expert sub-group has also been recently established by the Commission in order to provide advice and exchange views on technical, legal, and policy issues relating to the use of the relative in vitro bioaccessibility of a hazardous metal in metal compounds or alloys, for the refinement of their classification under CLP. The discussions are expected to focus on the applicability of the data generated with a validated test method.

27.15. The Council took note of the statements made.

28 EUROPEAN UNION - CARBON BORDER ADJUSTMENT MECHANISM (THE EUROPEAN GREEN DEAL OF DECEMBER 2019) – REQUEST FROM ARMENIA, THE KINGDOM OF BAHRAIN, CHINA, KAZAKHSTAN, KYRGYZ REPUBLIC, QATAR, THE RUSSIAN FEDERATION, AND THE KINGDOM OF SAUDI ARABIA

28.1. The Chairperson recalled that this item had been included in the agenda at the request of Armenia, the Kingdom of Bahrain, China, Kazakhstan, Kyrgyz Republic, Qatar, the Russian Federation, and the Kingdom of Saudi Arabia.

28.2. The delegate of the Russian Federation indicated the following:

28.3. The Russian Federation remains concerned by the European Union's plans to introduce a Carbon Border Adjustment Mechanism (CBAM). It is now only a few days before its planned formal announcement, but the concept of the mechanism by itself continues to raise the same questions as a number of months before.

28.4. First, one of the objectives of the CBAM, as declared by the European Union, is to address the risk of carbon leakage. The fight against the risk of the delocalization of the European Union's capacity cannot be envisaged either as a climate goal or as a climate measure. Such a measure would, in all probability, run against agreed multilateral approaches. The Russian Federation takes note of the assurances from the European Union that the mechanism would be WTO-consistent. The Russian Federation expects the European Union to explain, at this meeting or upon publication of the draft measure, the details of their consistency evaluation.

28.5. Second, this mechanism would create an additional burden for exporters and importers. Obviously, it is going to significantly affect world trade in the various respective sectors. Currently the world economy is not in good shape due to the crisis caused by the COVID-19 pandemic. The European Union should have very good reason to put in place trade restrictions at a time when all of the rest of us are trying to invent magic tools and means by which to save our people and our industries. The Russian Federation would like to hear from the European Union about such reasons, and to be able to comment upon the draft measure in advance.

28.6. Finally, it is not very clear why the European Union needs to establish such a mechanism in order to achieve the goals of the Paris Agreement. If the European Union considers that the climate actions of other WTO Members are not sufficient, the Russian Federation believes that this issue should be discussed at the United Nations Framework Convention on Climate Change (UNFCCC) fora. The Russian Federation would welcome additional bilateral consultations with the EU.

28.7. The delegate of China indicated the following:

28.8. China has closely followed the development of the proposed Carbon Boarder Adjustment Mechanism. China wishes to reiterate that the UNFCCC is the most important international treaty tackling global climate change. The UNFCCC has confirmed the common but differentiated responsibilities as one of the core principles for international cooperation on climate change. This principle should be fully respected. China encourages the European Union to enhance transparency and ensure the proposed CBAM is compatible with WTO rules. China will continue to follow this issue.

28.9. The delegate of Kazakhstan indicated the following:

28.10. Kazakhstan reiterates its position as expressed at the previous meeting of the CTG and continues to follow the developments around the EU CBAM. As mentioned before, Kazakhstan urges the European Union to fully consider the compatibility of the CBAM with WTO rules and regulations so that any such measure does not create obstacles to trade.

28.11. The delegate of the Kingdom of Bahrain indicated the following:

28.12. The Kingdom of Bahrain shares similar concerns to those raised by the Russian Federation, the Kingdom of Saudi Arabia, and the other proponents. The Kingdom of Bahrain thanks the European Union for its consultations with Members thus far and encourages its continued engagement in order to ensure the full compliance of the proposed CBAM with WTO rules and agreements. Finally, the Kingdom of Bahrain looks forward to receiving further details and clarifications from the EU regarding this proposed mechanism and stands ready to engage with the European Union and other interested Members in this matter.

28.13. The delegate of Kyrgyz Republic indicated the following:

28.14. The issue of the European Union's CBAM has been raised more than once at the different bodies of the WTO. The Kyrgyz Republic commends the efforts of WTO Members in establishing and achieving the aim of a sustainable ecological environment. Issues relating to ecology and the environment are important for all Members of the WTO. At the same time, the Kyrgyz Republic

believes that all actions and measures taken with a view to achieving the above-mentioned mission should not affect the interests of other Members and should be implemented and maintained in full compliance with WTO rules and norms.

28.15. The delegate of Qatar indicated the following:

28.16. Qatar has taken note of the European Union's Green Deal and its ambition to become the first climate-neutral continent by 2050. Qatar compliments the European Union for its political courage in setting these objectives. Like the European Union, Qatar has also signed and ratified the Paris Agreement and is equally ambitious in its climate change objectives. However, on the European Union's Green Deal, Qatar wishes to express some trade-related concerns over the introduction of a CBAM to address the so-called "carbon leakage" issue.

28.17. Qatar wishes to seek further clarification from the European Union regarding how the CBAM will applied compatibly with fundamental WTO principles, including the most-favoured-nation treatment principle and the principle of national treatment. Qatar is of the view that treating "like products" differently based on the carbon content of the production process would go against decades of well-considered jurisprudence. Qatar takes this opportunity to thank the European Union and looks forward to continuing this discussion in a fruitful and cooperative manner.

28.18. The delegate of the Kingdom of Saudi Arabia indicated the following:

28.19. First, the Kingdom of Saudi Arabia thanks the Russian Federation and China for raising the subject of the CBAM and wishes to render its support to them on this very delicate and substantive issue.

28.20. Second, from Saudi Arabia's perspective, while the European Union stated that the proposed mechanism will be in conformity with WTO rules and its other international obligations, it is yet to provide clear explanations regarding how it aims to achieve this. Although the European Union's stated intention is to address the risk of investment leakage from the EU to other countries, in fact its main objective is to maintain the competitiveness of EU industries. Saudi Arabia's initial review indicates that the proposed mechanism raises extremely serious concerns due to its potential long-term spill over negative implications on global trade that will distort the full value chain of trade, including goods, services, and jobs.

28.21. Saudi Arabia urges the European Union to further engage in consultations with Members, in order to ensure the full compliance of the CBAM with the WTO rules and agreements while ensuring that the proposed mechanism would not create barriers to trade or be applied in a manner that constitutes protection to the EU domestic industries.

28.22. Finally, Saudi Arabia looks forward to receiving further details and reflections from the European Union on this proposed mechanism. The Kingdom stands ready to engage with the EU and interested Members in this regard.

28.23. The delegate of Argentina indicated the following:

28.24. Argentina wishes to thank the proponents for including this item on the Council's agenda, which is a cause of growing concern among Members because of the doubts that have been raised regarding whether a mechanism of this nature can be consistent with a number of WTO provisions, in particular with the GATT 1994.

28.25. All Members have a duty to combat climate change. The actions that they take, and the instruments that they use, must be in compliance with international commitments. They must neither be more trade restrictive than necessary to fulfil legitimate objectives, nor constitute a disguised restriction on international trade. Against this backdrop, Argentina notes with concern the European Union's intention to impose the same level of ambition globally, without taking into consideration the principle of common but differentiated responsibilities.

28.26. Argentina wishes to stress to the European Union the importance of avoiding unilateral actions that lack any proper legal basis. Argentina considers that such initiatives have the potential

to create a major disruption to international trade by discriminating against imported products in an arbitrary and unjustified manner.

28.27. Argentina will be following the development of this initiative and hopes to receive detailed information on the model to be adopted, the carbon calculation system, and the scope of the mechanism, and hopes that this information will be provided in good time, in order to allow for productive exchanges on it. As requested during the meeting of the Committee on Market Access, Argentina also reiterates that, should this proposed initiative go ahead, it is important that it be duly notified to the WTO.

28.28. The delegate of India indicated the following:

28.29. India believes that a thorough legal examination will be required of this mechanism to ascertain its conformity with the relevant WTO rules, including the most-favoured-nation and national treatment principles. India would reiterate that any such deal must take into consideration the principle of common but differentiated responsibilities, and the respective capabilities of different countries in light of different national circumstances. India believes that there may be WTO non-compliance issues relating to this mechanism that will require further deliberation. India also looks forward to receiving details of these measures as soon as possible.

28.30. The delegate of Turkey indicated the following:

28.31. Like many Members, Turkey is closely following the developments regarding the European Union's Green Deal since its announcement by the European Commission in December 2020. Within the context of the Green Deal, Turkey knows that the European Commission is going to unveil a proposal for a CBAM on 14 July 2021.

28.32. As expressed on previous occasions, Turkey believes that all members of the international community should play their part in combating climate change, taking into account the principle of common but differentiated responsibilities and respective capabilities, as indicated in the scope of the UNFCCC. It is also very important that any CBAM respects WTO rules, is applied in a manner that least disturbs trade, and does not constitute a disguised restriction on international trade. Turkey wishes also to highlight that any CBAM should be designed in a transparent way and, most importantly, the different levels of development between countries should be considered in order to address trade distortions.

28.33. It goes without saying that the green transformation requires massive investment and financing, which are lacking in many developing and least developed countries. In this regard, cooperation, in terms of implementing investment projects and mobilizing finance for green projects, is essential throughout the value chain. Last but not least, an adequate transition period should be provided for all relevant parties before implementation of the CBAM. Apart from the adaptation needs of the business world, it would take time for countries to adapt their climate policies and fulfil the legislative and administrative requirements to guide the private sector. Accordingly, it is important that the transition period be designed with a view to giving sufficient time to sectors and companies, especially small and medium-sized enterprises (SMEs), to adapt to the changed circumstances and possible new requirements stemming from a CBAM.

28.34. The delegate of Brazil indicated the following:

28.35. Brazil reiterates that it is carefully monitoring the European Union's proposal for the establishment of a CBAM. In addition, it expects that once specific elements of a CBAM have been defined, especially the modalities for its implementation and the methodologies employed to quantify the carbon footprint, an opportunity for a more direct dialogue between the competent authorities will be provided in order to ensure that the measure is not discriminatory in character and that it is fully compatible with WTO rules. Finally, as highlighted by other delegations, Brazil must also stress that the principle of common but differentiated responsibilities, enshrined in the UNFCCC since it was agreed in Rio in 1992, cannot be ignored.

28.36. The delegate of Pakistan indicated the following:

28.37. Pakistan wishes to recall the statement made under this agenda item at the CTG's meeting of 31 March 2021. While Pakistan acknowledges the European Union's stated objectives of preserving the environment and tackling climate change, it stresses that the European Union's CBAM should be consistent with its various international obligations, including those at the WTO. Pakistan also remains concerned about the European Union's CBAM creating unnecessary barriers to trade, and about the various technicalities and operations of this programme and its wider impact on trade flows, including potential negative implications for Pakistan's exports to the European Union. The European Union's CBAM might also entail long-term negative consequences for global trade. Therefore, Pakistan urges the European Union to share with the Membership further details of the mechanism. Pakistan will continue to follow developments in this issue.

28.38. The delegate of Uruguay indicated the following:

28.39. Uruguay recognizes the policy objectives identified by the European Union and reaffirms its strong commitment to climate change matters, as reflected in its commitments undertaken in the various multilateral agreements in this area, including the Paris Agreement, and its policies adopted to comply with those agreements. Uruguay wishes to reiterate its interest in following up on the process of development, adoption, and implementation of a CBAM by the European Commission, within the "European Green Deal".

28.40. While Uruguay has received some information regarding the possible scope and operation of this mechanism, it reiterates its interest in continuing to receive official, updated, and detailed information on this initiative from the European Union, including on its current state of development and adoption process, how the measure will be designed, its coverage at sector and product level, and its progressive implementation. Uruguay understands that the legal text should shortly be approved by the European Commission and seeks confirmation from the EU delegation that its understanding is correct in this regard. Lastly, Uruguay wishes to stress the importance of ensuring the measure's compatibility with the commitments made by the European Union in the WTO Agreements.

28.41. The delegate of Chinese Taipei indicated the following:

28.42. Chinese Taipei continues to register its interest in this subject. It appears to Chinese Taipei that the CBAM is part of a broader EU industrial strategy that could have wide implications for international trade. As the CBAM is planned to be implemented in 2023, Chinese Taipei would urge the European Union to step up its engagement with international stakeholders as soon as possible, and in a more transparent and comprehensive manner. It should take due account of the existing relevant WTO rules and widely accepted international standards, avoid undesirable trade barriers arising from the mechanism and, last but not least, ensure that there is a sufficient transitional period for industries. Chinese Taipei will continue to follow this topic very closely, and would welcome any updates from the European Union as it proceeds.

28.43. The delegate of the Republic of Korea indicated the following:

28.44. The Republic of Korea appreciates the European Union's efforts to combat the climate crisis and its commitment to carbon neutrality by 2050. It is Korea's understanding that the European Union is currently in the process of elaborating a CBAM in an effort to address the issue of possible carbon leakage, and that it plans to announce its framework soon. However, prudence is needed in adopting trade-related measures, even when they are intended for a legitimate objective, so that such measures do not constitute a disguised or unnecessary trade barrier.

28.45. The CBAM is known to be targeting carbon emissions occurring during the stage of manufacturing imported goods in their countries of origin; however, there are concerns that the European Union's CBAM could cause an unnecessary trade barrier to, or arbitrary discrimination against, imported goods. In this regard, Korea wishes to place on record its expectation that the CBAM will be introduced and implemented in a manner that is consistent with WTO rules.

28.46. At the same time, any possible burden on foreign companies, financial or administrative, which could be caused by the CBAM should be taken into due consideration. Korea believes that it

is important to ensure transparency during the process of preparing the CBAM and to provide a sufficient transition period prior to the official introduction of the scheme. Korea hopes that dialogue will continue among the stakeholders concerned and looks forward to engaging in such discussions.

28.47. The delegate of the United States indicated the following:

28.48. The United States is looking forward to the European Union releasing the draft legislation on 14 July for its CBAM. The United States strongly encourages the European Union to consult closely with trading partners to ensure that the draft CBAM, when fully designed and implemented, does not act as a disguised barrier to trade, particularly given the US-EU bilateral trading relationship. The United States is committed to appropriately utilizing trade channels as another tool for tackling the potentially catastrophic impact of climate change, including through market and regulatory approaches to address greenhouse gas emissions and to achieve net-zero global emissions by 2050 or before. The United States further encourages the European Union to fully consider the compatibility of its measure with applicable WTO rules to ensure that there is an open system of trade and that any such measure will not constitute a barrier to trade.

28.49. The delegate of Japan indicated the following:

28.50. Japan acknowledges that interest in the European Union's CBAM has been increasing among WTO Members, including Japan, because it is an area that will have a significant impact on their trade. As Japan has pointed out in the May 2021 meeting of the Trade and Environmental Sustainability Structured Discussions (TESSD), it is a prerequisite that the CBAM be designed to be consistent with WTO rules. In addition, Japan estimates that there will be some challenges that will need to be addressed. For example, a CBAM should be designed to adequately take into account the efforts to reduce carbon emissions of each of the other countries. It should also be designed to achieve its objective of preventing carbon leakage with the least effect on trade. Therefore, it is important to consider measurement or evaluation methods for carbon emissions per product unit that are internationally reliable. It is also important to consider the actual verification of carbon costs, including any costs that, in effect, are borne by the product in proportion to the level of its carbon emissions. It will be necessary to continue conducting sufficient discussions on this issue internationally going forward.

28.51. The delegate of New Zealand indicated the following:

28.52. New Zealand is a strong advocate for coherent and mutually supportive trade and climate policy responses. New Zealand has actively engaged in the Agreement on Climate Change, Trade and Sustainability (ACCTS), which seeks to bring together some of the inter-related elements of the climate change, trade, and sustainable development agendas. New Zealand echoes other Members in calling for a CBAM that must be all of the following: WTO-compatible; non-discriminatory; transparent; scientifically robust; not a barrier to trade; and developed further to meaningful consultation with EU trading partners.

28.53. The delegate of Australia indicated the following:

28.54. Australia is strongly committed to addressing climate change and believes that international trade can and should contribute to this objective. Australia is confident that policies that facilitate increased trade in environmental goods and services, and related investment, can make a strong contribution in support of international climate policy. Australia notes that WTO Members, including those participating in the Structured Discussions on Trade and Environmental Sustainability (TESSD), are beginning to exchange views on approaches to strengthening the positive role of the WTO in relation to international climate change, particularly those policies that are mutually supportive of trade and climate.

28.55. Australia encourages the European Union to continue its consultative approach taken with respect to a CBAM. This will be particularly important once the European Union releases more detailed information on its CBAM policy. Australia also notes the European Union's commitment to ensure the consistency of its eventual measure with its WTO obligations. Australia would particularly welcome the European Union engaging as fully as possible, and in detail, on those elements of the policy that are most likely to raise issues of WTO consistency. This focus would be helpful for those

Members, like Australia, that have questions and concerns about any unjustifiable impact on trade that could result from the application of such a measure.

28.56. The delegate of the European Union indicated the following:

28.57. The European Union appreciates the interest of its partners in this important issue. The European Union is determined to ensure that its declared greenhouse gas reduction targets, required to keep the temperature goals of the Paris Agreement within reach, are implemented in practice. This is why the European Union is fully translating the necessary steps into legislation. But the climate challenge is inherently global. This is why the European Union wants, and needs, its international partners to share a comparable level of ambition.

28.58. The CBAM is an environmental measure that aims to avoid the risk of carbon leakage as the European Union increases its climate ambition. The decarbonization objectives of this EU action would be sharply curtailed if EU businesses in certain emission-intensive sectors were to transfer their production to other countries with less stringent emissions constraints. This could lead to an increase of total emissions globally, thus undermining the effectiveness of the EU's emissions mitigation policies.

28.59. However, the CBAM would take into account efforts by the European Union's international partners to adopt policies and measures to reduce greenhouse gas emissions from industrial production, including through carbon pricing mechanisms. In addition, the CBAM will be designed in a way that is WTO-compatible. Importers will be treated in an even-handed manner and will not be subject to an adjustment that is higher than that applied domestically.

28.60. The European Union has been fully transparent throughout the CBAM development process. The European Union has discussed the CBAM with a range of partners multilaterally and bilaterally. Following the presentation of the legislative proposal on 14 July, the Commission will continue working with the European Union's trading partners to ensure that its adjustment measures work in an open and fair manner that is also fully in compliance with WTO rules.

28.61. The Council took note of the statements made.

29 EUROPEAN UNION – THE EUROPEAN GREEN DEAL – REQUEST FROM THE RUSSIAN FEDERATION

29.1. The Chairperson recalled that this item had been included in the agenda at the request of the Russian Federation.

29.2. The delegate of the Russian Federation indicated the following:

29.3. In December 2019, the European Commission announced its political vision for sustainability and published the European Green Deal, which aims to reduce GHG emissions by at least by 55% by 2030, and to reach climate neutrality by 2050. The Russian Federation shares the European Union's view of the importance of fighting climate change.

29.4. However, the Russian Federation wishes to note that, whatever activities Members plan within the framework of the environment and climate change, they should be carried out in accordance with the fundamental principles and rules of the WTO, and should not result in any kind of discrimination or disguised restrictions on trade. None of the "green" measures should impede trade and be used as a means of "green protectionism", as implied in paragraph 32 of the Doha Ministerial Declaration.

29.5. The Russian Federation's dossier on the European Union's Green Deal includes about 100 pages only enumerating EU trade-related measures adopted under it. The Russian Federation wonders if such instruments of implementation under the Green Deal will be consistent with the European Union's obligations in the WTO.

29.6. Currently, WTO Members have raised specific trade concerns regarding certain elements of the Green Deal. The first measure is the CBAM that Members discussed under the previous agenda item. However, the European Union's targets laid down in the European Green Deal are not limited

to the establishment of this mechanism. The European Green Deal also provides for reductions in the use of chemical and more hazardous pesticides, reductions in fertilizer use, the promotion of EU energy standards and technologies at the global level, the diversification of energy source supplies, the adoption of new technical regulations, the revision of competition rules, and so on. Most of the respective projects are, or will be, heavily subsidized, and their implementation would lead to the elimination of traditional foreign supplies from the EU market. From a trade point of view, Members are dealing here with a classic forced import substitution. The Russian Federation expects the European Union to explain in detail why the Russian Federation is wrong to make such a serious claim.

29.7. The Russian Federation already sees cause for concern in the implementation of certain elements of the European Union's Green Deal. For example, the draft EU regulation on batteries notified in document G/TBT/N/EU/775. This measure sets out product requirements for new batteries as a condition for access to the EU market as well as material recovery targets for waste batteries. This regulation specifically sets requirements on the maximum level of carbon footprint over the life cycle of batteries, and the minimum level of recycled materials that they should contain, such as cobalt, lithium, copper, lead, and nickel. Apparently, the requirements for the minimum level of recycled materials in batteries is aimed at reducing the use of primary metals in the European Union. It is no secret that the European Union does not have sufficient capacity in terms of primary non-ferrous metals in its territory to meet internal demand. By introducing a provision that discriminates against imported primary materials vis-à-vis domestically remanufactured materials, the draft regulation aims to substitute imported primary metals by like domestically recycled materials. This draft regulation is not based either on science or on international standards and guidelines that specify the content of recycled materials in batteries, the material recovery targets, and the levels and methodologies for calculation of the carbon footprint of this product over its life cycle. Another issue under the Green Deal is the chemical strategy for sustainability. This strategy may have a trade distorting effect on a wide range of economic sectors. It implies the imposition of new technical barriers to trade within the REACH/CLP legislation, and new bans and restrictions in respect of primary non-ferrous metals that are usually unscientifically classified as hazardous materials by the European Commission, using the precautionary principle.

29.8. In sum, the Russian Federation draws Members' attention to the fact that environmental policies should not result in the imposition of unnecessary restrictions on international trade. The Russian Federation expects that current trade rules will be fully respected by the EU.

29.9. The delegate of Uruguay indicated the following:

29.10. Uruguay is particularly interested in learning more about the concrete implementation on the ground of the broad policy objectives outlined in the European Union's Green Deal, and their possible impact on international trade and production beyond EU borders.

29.11. Although Uruguay shares the European Union's objectives of combating climate change and protecting the environment, Uruguay is concerned about the attempt to impose the view that there is a single model of production and sustainable development that should be emulated worldwide, without taking into account the specific characteristics and circumstances of different countries and regions, including the situation of their production systems, and their relative contributions to the problems to be addressed.

29.12. The restrictive effects that several of the strategies and policies announced in the European Union's Green Deal may have on international trade are also cause for concern. In this regard, Uruguay reiterates to the European Union the need for its policies affecting trade to remain in full compliance with the EU's multilateral commitments made in the WTO. Uruguay reaffirms its interest in following up on this issue through all appropriate channels.

29.13. The delegate of Paraguay, addressing items 28 and 29 together, indicated the following:

29.14. As Paraguay has reiterated on numerous occasions and in the various committees of this Organization, Paraguay shares with the European Union the objectives of environmental protection and the need to take action to combat climate change. However, Paraguay holds a different view concerning the methods adopted by the European Union to achieve those objectives.

29.15. The adoption of unilateral measures, such as the CBAM, and other initiatives contained in the European Green Deal, such as the Farm-to-Fork Strategy, erode multilateral work and efforts being developed in existing forums and standard-setting bodies, in which the principle of common but differentiated responsibilities, as well as the specificities of each Member, are taken into account to achieve an appropriate balance between the three pillars of sustainability, namely economic, social, and environmental.

29.16. The costs of environmental protection must be shared equitably, so that the common but shared responsibilities of Members, according to their level of development, can be taken into account. This principle is being circumvented when one Member can take unilateral trade restrictive actions with a view to modifying the environmental policies of another, ignoring the costs imposed by such restrictive measures on that Member. This is not because of an alleged pre-eminence of trade over the environment, but to underline the importance of multilateral cooperation in the search for solutions to common problems.

29.17. The insistence that one Member's policies, adopted domestically, must in turn be adopted by all those wishing to trade with it, ignores these principles. This approach would seem to indicate that the Member in question assumes that it is better qualified than Members' own authorities to determine their environmental policies, or that it alone has the power to decide on the overall course that all Members must take.

29.18. Paraguay reiterates that there is no single model that offers a solution applicable to and replicable by all 164 Members of this Organization, each with different climatic conditions, particular environmental characteristics, and levels of development. Ignoring "the other" in these debates leads to a biased and even radicalized vision, which does not allow for the establishment of a constructive dialogue that leads to knowledge and understanding of the circumstances that Members face.

29.19. The first few articles of Paraguay's National Constitution recognize the right to a healthy environment and environmental protection. Paraguay is responsible for less than 0.02% of global GHG emissions, has a forest cover of more than 40% of its territory, and has good agricultural practices, such as crop rotation for integrated pest management (IPM) and direct sowing, which also contribute to soil preservation, better water absorption, and carbon sequestration. Paraguay uses biotechnology and precision farming, seeking to increase productivity through innovation to better preserve natural resources. Paraguay produces 100% clean and renewable energy. Latin America and the Caribbean is the main region providing ecosystem services at the global level, with over half of the world's primary forest and biodiversity.

29.20. Paraguay constantly hears as arguments that domestic producers require their competitors to conform to the same requirements in order to compete on an equal footing, otherwise an "imbalance" would be created. But what seems to be overlooked is that Members are not all equally responsible for the environmental damage that must be reversed, and that those that are historically responsible for the current situation are the ones that must invest more to reverse current and future damage. This should be acknowledged when developing new policies which should be based on a solid scientific basis so they do not become trade-distorting measures.

29.21. The delegate of Brazil indicated the following:

29.22. Brazil supports the adoption of legitimate policies with environmental objectives, but is concerned about the adoption of unilateral environmental measures that result in an unnecessary negative impact on international trade, contrary to the commitments made by Members in other fora. Brazil understands that it is essential that the environmental measures adopted by the European Union relating to trade are fully compatible with WTO rules, including the most-favoured-nation and national treatment principles, in order to avoid potential protectionist bias or the adoption of discriminatory measures. In this context, Brazil urges the European Union to take into due consideration its comments made in the process of drafting and implementing the measures under the "Green Deal", and expresses its hope that communication channels will be established to allow dialogue between the competent authorities on these topics. It would also like to urge the EU to adopt a broader approach in the formulation of environmental policies and take into account the negative environmental impact of agricultural subsidies. Finally, it should be recalled that all countries have committed themselves to address the three pillars of sustainable development

simultaneously. Brazil recalls that sustainability standards based on billions in subsidies, which cannot be matched by developing countries, cannot be considered a common reference in this global challenge.

29.23. The delegate of the European Union indicated the following:

29.24. Late in 2019, the European Union committed to becoming the world's first climate-neutral continent by 2050. The European Green Deal was unveiled as a comprehensive plan to ready the European Union's economy and society in this regard, facilitating the resetting of EU economic policy to better correspond to the challenges of the global climate crisis. Its overarching objective is the transition towards a climate neutral, environmentally sustainable, resource efficient and resilient economy by 2050, with the ambition to reduce greenhouse gas emissions by at least 55% by 2030.

29.25. On 14 July 2021, the European Union will put forward the necessary legal framework for a green transition. Our "Fit for 55" package is a package of 12 initiatives, one completely new, the CBAM, and 11 that are about bolstering existing legislation. These proposals will be fully in line with WTO rules and the European Union's other international commitments.

29.26. Trade policy already contributes quite significantly to achieving sustainable development; but more can be done. The climate crisis is a global crisis and progress will depend on global partners, including large emitters and polluters, being ready to increase their level of ambition.

29.27. The Communication of February 2021, entitled "Open, Sustainable and Assertive Trade Policy", takes a fresh look at trade policy in light of the European Green Deal. The Communication aims to build a consensus around the strategic direction and objectives of the European Union's trade policy for the next decade. The European Union sees the green transition as an opportunity, not a threat. Furthermore, global climate change mitigation efforts are necessary as part of the solution. Thus, cooperation at multilateral and bilateral levels is needed, as this would have the biggest impact in terms of shaping the rules for a fair and sustainable globalization. The European Union is looking forward to working together with WTO Members in that respect.

29.28. The Council took note of the statements made.

30 EUROPEAN UNION – REGULATION (EU) 2017/2321 AND REGULATION (EU) 2018/825 – REQUEST FROM CHINA AND THE RUSSIAN FEDERATION

30.1. The Chairperson recalled that this item had been included in the agenda at the request of China and the Russian Federation.

30.2. The delegate of the Russian Federation indicated the following:

30.3. The Russian Federation has raised its concerns on numerous previous occasions at this Council regarding the amendments to the European Union's basic regulation on protection against dumped imports introduced by Regulation (EU) No. 2017/2321 and Regulation (EU) No. 2018/825. The Russian Federation will not repeat all of its concerns in detail on this occasion but only touch on two of their characteristics.

30.4. First, the amendments are discriminatory in nature. For example, Regulation (EU) No. 2017/2321 envisages the issuance of reports on so-called "significant distortions" in the countries of export. At the moment only two reports have been issued and nothing suggests that any other reports are planned.

30.5. Second, the amendments imply a double punishment. The same situation can be labelled as a "significant distortion" under Regulation (EU) No. 2017/2321, and as a "raw material distortion" under Regulation (EU) No. 2018/825. This makes for a comfortable excuse for boosting the dumping margin and denying lesser duties to exporters.

30.6. The Russian Federation reiterates its principal position that such treatment of exporters is WTO-inconsistent. The Russian Federation is also curious to hear any clarification or update the European Union may wish to provide in this regard. However, current developments do not leave us much hope. It appears that the European Union does not intend to comply with its WTO obligations

in its investigations, and the proclaimed "country-neutrality" of its methodologies appears to be an empty promise. The Russian Federation urges the European Union to abstain from the application of discriminatory and WTO-inconsistent methodologies.

30.7. The delegate of China indicated the following:

30.8. China's position on this issue remains unchanged. China is of the view that the European Union's anti-dumping regulation and relevant practices are inconsistent with WTO anti-dumping rules. China is particularly concerned by the so-called "significant market distortion" concept and relevant standards in the regulation, the working document on "significant distortion of China", as well as the use of third-party data for normal value calculation.

30.9. The delegate of the European Union indicated the following:

30.10. The European Union notes the points raised both by China and by Russia. The European Union again refers to its previous statements on this issue that are on the record both of this Council's meetings[15], and of numerous meetings of the WTO Anti-Dumping Committee, as the position expressed is still relevant.

30.11. The Council took note of the statements made.

31 ANGOLA – IMPORT RESTRICTING PRACTICES – REQUEST FROM THE RUSSIAN FEDERATION

31.1. The Chairperson recalled that this item had been included in the agenda at the request of the Russian Federation.

31.2. The delegate of the Russian Federation indicated the following:

31.3. The Russian Federation remains concerned about Angola's import restrictions on certain agricultural and industrial products under its Presidential Decree No. 23/19, and reiterates its statements made at previous meetings of the Committee on Market Access (CMA) and the CTG. Since its most recent consultations with Angola, held at the beginning of the year, the Russian Federation has not seen any positive developments in respect of the elimination of Angola's QRs. The Russian Federation urges Angola to bring its measures into conformity with the WTO Agreements and to lift its import bans on agricultural products.

31.4. The delegate of the United States indicated the following:

31.5. As the United States has expressed previously in this Council and in the Committee on Market Access, the United States is committed to strengthening its trade and investment ties with Angola. However, the United States remains concerned that this decree appears aimed at restricting Angola's imports and could negatively impact this relationship. The United States appreciates Angola's response to our questions submitted through the Committee on Agriculture. The United States urges Angola to continue to address this issue in this Council or its subsidiary bodies. The United States continues to hear reports of confusion over how the decree is being enforced and of delays facing goods at the border. US agricultural exporters remain concerned over delays that perishable goods face amidst all this uncertainty. The United States hopes that Angola will take steps to revise this decree to address US concerns and ensure that its measures with respect to imports are in compliance with WTO rules.

31.6. The delegate of the European Union indicated the following:

31.7. The European Union remains supportive of Angola's intention to diversify its economy and to develop its domestic industry. However, the European Union reiterates the concerns previously expressed in various WTO bodies, and for a long time now, over Decree No. 23/19. The Decree seems to protect domestic industries in a manner that is incompatible with WTO rules and that could be detrimental to foreign investments in Angola. The European Union urges Angola to review the relevant measures in order to ensure their compliance with WTO rules. Irrespective of the issue of

[15] See, for example, document G/C/M/139, paragraphs 31.8-31.9.

the compatibility of these measures with WTO rules, the European Union would welcome receiving clarification from Angola as to whether the concerns expressed have been considered, and whether Angola intends to introduce changes to its legislation, and if so, how.

31.8. The delegate of Angola indicated the following:

31.9. Angola took note of the statements made by the delegations of the Russian Federation, the United States, and the European Union, and their reiterated concerns around Angolan imports. Angola notes that these concerns mostly focus on Decree No. 23/19, which is now to be reviewed. As Angola has stated previously at the CTG, the Committee on Market Access, and the Committee on Agriculture, Angola is engaged in bilateral consultations with the embassies in our Capital in order to ensure more clarity on the specific issues relating to the concerns raised. Fortunately, Angola has had fruitful discussions and hopes shortly to be able to remove this item from the agendas of the various WTO bodies where previously it had appeared. Indeed, Angola is close to formally sending its responses to the questions raised by the Russian delegation, although other ministries have been involved in this work at national level. Again, Angola takes note and informs the Council that it has a technical team working on a possible revision to Decree No. 23/19. Angola remains available for any further clarification as it strongly supports the multilateral trading system.

31.10. The Council took note of the statements made.

32 INDIA – MANDATORY CERTIFICATION FOR STEEL PRODUCTS – REQUEST FROM JAPAN

32.1. The Chairperson recalled that this item had been included in the agenda at the request of Japan.

32.2. The delegate of Japan indicated the following:

32.3. Regarding India's mandatory certification for steel products, Japan has repeatedly been requesting that India ensure its proper implementation through discussions in both the TBT Committee and the CTG.

32.4. Japan wishes to touch on four points. First, Japan would like to request India to expeditiously approve applications since it is still taking a long time to get approval for a conformity assessment, especially for new projects. Second, Japan understands that, due to the COVID-19 pandemic, the Government of India has not been able to proceed with on-site inspections. Japan therefore requested India to implement appropriate alternative measures. In response to Japan's request, India mentioned the possibility of introducing remote inspection during the most recent meeting of the TBT Committee. Japan would like to request that India provide an update on progress in introducing such alternatives as remote inspections. Third, if alternative appropriate measures will not be introduced, Japan wishes to request that India postpone the enforcement of the introduction of new compulsory standards. Finally, Japan would like to request India to improve the following situations that have been raised in past meetings.

32.5. Japan expresses its concern that, for certain products, the Government of India requested that Japanese companies switch to local procurement from Indian companies, even though this has no relation to the process of applying for certification. Japan is also concerned by the Government of India's request that Japanese companies submit future plans for domestic production in India. These requirements were not included as part of the original application procedure.

32.6. The delegate of India indicated the following:

32.7. India thanks Japan for its continued interest in this matter. In this context, India requests Japan to refer to its statement made on this issue in the TBT Committee. India has also taken note of Japan's statement on this occasion, which will be conveyed to New Delhi for examination.

32.8. The Council took note of the statements made.

33 INDIA - IMPORT RESTRICTION ON AIR CONDITIONERS – REQUEST FROM JAPAN

33.1. The Chairperson recalled that this item had been included in the agenda at the request of Japan.

33.2. The delegate of Japan indicated the following:

33.3. Japan continues to have deep concerns over India's import ban on air conditioners, including refrigerants, introduced in October last year, which is a measure that unreasonably imposes a restructuring of corporate supply chains. Indeed, Japan is deeply concerned that this measure is likely to be an import ban that is inconsistent with Article XI.1 of the GATT. In this regard, India responded that the measure is consistent with its obligations under the Montreal Protocol and with regulations on Hydrofluorocarbons (HCFCs), which are ozone-depleting substances. However, this import ban is unnecessary and irrational in that it covers a wide range of air conditioners that use refrigerants, which are not subject to India's reduction and elimination obligation under the Montreal Protocol. Japan calls upon India to proceed with the early withdrawal of this measure. In addition, Japan is preparing written questions to India after receiving its request in the TRIMs Committee. If India considers the measure to be justified, Japan wishes India to be more specific in its response as to its reasons why.

33.4. The delegate of India indicated the following:

33.5. This issue was raised previously at the CTG's meetings held on 31 March and 1 April 2021, where India explained the rationale for the same. India would like to inform Members again that the measure was necessary for the application of standards and for the regulations for marketing of the item, besides reducing risks to human, animal and plant life and health, consistent with India's commitment to the Montreal Protocol. Furthermore, as per the Ozone Depleting Substances (Regulation and Control) Amendment Rules, 2014, the import of air conditioners containing Group VI substances (HCFCs) is prohibited since 1 July 2015.

33.6. The Council took note of the statements made.

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

34.1. The Chairperson recalled that this item had been included in the agenda at the request of China.

34.2. The delegate of China indicated the following:

34.3. China wishes to express its serious concern over US measures prohibiting market access for ICT products. This is a long-standing issue on which no progress has been made. What concerns China further is that the United States seems to continue intensifying the relevant measures against Chinese communication companies. Recently, the US Federal Communications Commission voted to advance a plan to ban approvals for equipment in US telecommunication networks from Chinese companies. Until now, China has not seen any evidence provided by the United States showing that Chinese ICT products pose risks to its national security; nor has China received any clear clarification in this regard at this Council.

34.4. It appears to China that national security is being used as a simple and effective excuse for the United States to serve its wide range of trade-unrelated interests. What happened to TikTok is a good example of this. China believes that such unfair practices undermine the integrity of the global trading system and the global supply chain. Such market-distorting practices only erode the fairness of, and trust in, the multilateral trading system. Therefore, China urges the United States to fully abide by the WTO rules and to stop abusing the national security exception.

34.5. The delegate of the United States indicated the following:

34.6. As the United States has stated previously, it does not believe that the WTO Council for Trade in Goods is the appropriate forum to discuss issues related to national security.

34.7. The Council took note of the statements made.

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

35.1. The Chairperson recalled that this item had been included in the agenda at the request of China.

35.2. The delegate of China indicated the following:

35.3. China would like to express its serious concern over the export control measures for ICT products taken by the United States. Five more Chinese companies have recently been added to the entity list, bringing the total number of Chinese companies on this list to almost 400. The companies listed in the entity list cannot conduct free trade with US companies. What most concerns China, besides the sharply increasing number of listed Chinese companies in such a short time, is the various reasons for those companies to be listed, including "protecting the United States values", "restricting the development of Chinese high-technology", and "safeguarding the United States national security".

35.4. Earlier in the current Council's meeting, some Members made clear statements about free and fair trading being the fundamental principle and objective of the multilateral trading system, and that Members should not take market-distorting actions or link trade measures to unrelated matters. China fully agrees and urges all who are saying such things to do as they say. But China wishes here to ask simple questions. Are the US export control measures in line with free and fair trade principles? Are these measures market oriented or non-market oriented? Could the United States also tell China if such discriminatory measures are based on privilege or rights, on power or rules, and on manipulation or reciprocity?

35.5. The delegate of the United States indicated the following:

35.6. As the United States has stated previously, it does not believe that the WTO Council for Trade in Goods is the appropriate forum to discuss issues related to national security.

35.7. The Council took note of the statements made.

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

36.1. The Chairperson recalled that this item had been included in the agenda at the request of China.

36.2. The delegate of China indicated the following:

36.3. China regrets to have to raise this issue again; however, no substantial progress has been made on it to date, and many key questions remain unanswered. China is of the view that the issue of telecommunication network security should be addressed based on scientific and verifiable facts and data rather than the origin of suppliers. China urges Australia to review its regulatory policies in the telecommunications sector, to provide fair market access to Chinese companies to participate in its 5G construction, and to bring its measures into line with WTO rules.

36.4. The delegate of Australia indicated the following:

36.5. Australia has taken note of China's statement. China first raised this issue in late 2018. Since then, Australia has engaged constructively and in good faith with China to explain the rationale for its position on 5G networks. As Australia has previously stated, its position on 5G networks is country agnostic, transparent, risk-based, non-discriminatory, and fully WTO consistent.

36.6. The Council took note of the statements made.

37 EUROPEAN UNION – SWEDEN'S DISCRIMINATORY MARKET ACCESS PROHIBITION ON 5G EQUIPMENT – REQUEST FROM CHINA

37.1. The Chairperson recalled that this item had been included in the agenda at the request of China.

37.2. The delegate of China indicated the following:

37.3. China regrets to have to raise this issue again, but China is deeply concerned about Sweden's measure prohibiting China's companies from participating in Sweden's 5G construction. Until now, China has not seen any evidence provided by the Swedish Post and Telecom Authority (PTS) showing that Chinese companies' products pose security risks to Sweden. Therefore, China is of the view that Sweden's non-transparent measure is groundless, discriminatory, and inconsistent with WTO rules. China requests Sweden immediately to withdraw its discriminatory measure, and to provide a fair, transparent, and non-discriminatory environment for Chinese companies operating in Sweden.

37.4. The delegate of the European Union indicated the following:

37.5. On the previous occasion that the matter of the recent Swedish 5G spectrum auction was raised by China, the European Union had already stressed that it was under legal proceedings in Sweden. These proceedings remain ongoing. For this reason, the European Union will not enter into the details of this issue in the context of the Council's present meeting.

37.6. The Council took note of the statements made.

38 FUNCTIONING OF THE COUNCIL FOR TRADE IN GOODS AND SUBSIDIARY COMMITTEES: INFORMATION FROM THE CHAIR

38.1. The Chairperson recalled that, at the Council's previous formal meeting, which took place on 31 March 2021, his predecessor had suggested that, as requested by delegations, he should coordinate with the Chairpersons and Secretaries of the CTG's subsidiary bodies with a view to avoiding meeting overlaps and to improving the sequencing between the scheduled meeting dates of the CTG and its subsidiary bodies.

38.2. On 18 May 2021, he sent a communication to the Chairpersons and Secretaries of the Subsidiary Bodies of the CTG explaining that a number of Members had expressed concerns over the way in which the meetings had being organized over the past years. He also asked them to try to avoid meeting overlaps and to improve the sequencing between the scheduled meeting dates of the CTG and its subsidiary bodies. Given the dates of the Ministerial and the possible meeting dates of the General Council, he requested them to try to meet before the first week of November, with a view to ensuring that their meetings took place sufficiently in advance of the CTG's meeting, and that all the annual reports by the Committees could be considered at the CTG's final meeting in 2021.

38.3. On 2 June 2021, the Chairpersons of the SPS and the TBT Committees replied that, with the assistance of the Secretariat, they had explored the possibility of moving their meetings, which were currently scheduled for 2-5 November (SPS Committee), and 8-11 November (TBT Committee), and which had been announced to delegations in September 2020. That is, well before the dates of the Ministerial, General Council, and CTG meetings had been fixed. Unfortunately, the meeting schedule for the autumn was already very full, and there were no alternative weeks available on which the SPS and TBT Committees could meet on several consecutive days, as required by their agendas. Nevertheless, a solution had been found that would avoid overlaps between the formal meetings of the SPS and the TBT Committees and the last CTG meeting of the year, although the sequencing was not that desired by Members.

38.4. He was aware that this was a very important issue for Members, and he regretted that it had not been possible to avoid having this situation for the year 2021. However, he had requested the Secretariat to coordinate with all the Secretaries of the subsidiary bodies and coordinate already the plan of meetings for the year 2022. The coordination also included the General Council and the organizers of the Public Forum, which typically took place during the last week of September or the first week of October. He was pleased to inform the Council that the result of this planning and

consultations had been communicated in room document RD/CTG/13, which contained the updated Annual Plan of Meetings, including the tentative meeting dates for 2022 and the closing dates of the agendas. He had requested the Secretariat to prepare an update for each CTG meeting, which should facilitate an early identification of any potential issues and allow Members to plan accordingly.

38.5. He intended to continue engaging with the new Chairpersons of the CTG subsidiary bodies, as soon as they were elected, as well as with their Committee Secretaries, with a view to continuing to improve the coordination, thus ensuring that Members' concerns were addressed in a satisfactory manner.

38.6. The delegate of the United States indicated the following:

38.7. The United States thanks the Secretariat for this information, which is very helpful to US authorities and should contribute to a more rational scheduling of meetings going forward. The United States would like to briefly make a few comments and requests. First, in 2021, there appear to be two CMA meetings scheduled in October. The United States understands that the meeting is set for 11-12 October, and requests that this be clarified on the schedule. Second, in 2022, the United States requests that the April meeting of the CTG be pushed back to later in April. As it stands, the agenda for the CTG meeting would close on the same day that the SPS Committee is meeting, and before the CMA has met. This is too close, and contributes to a large amount of overhang between the CMA and the CTG in particular. Third, we note that a number of meetings are scheduled for June and not July, like this year. The calendar seems potentially unbalanced. The United States wishes to know if there is a reason for the apparent shift forward.

38.8. The delegate of Paraguay indicated the following:

38.9. Paraguay thanks the Secretariat for document RD/CTG/13. Paraguay believes that this good practice should continue because it allows Members to have a clear overview of the meeting calendars, as well as with regard to the closure of agendas. Paraguay also believes that it is an important tool to help the Secretariat in its internal coordination, and considers that this was perhaps the reason why a number of Members requested that such a document be created. Paraguay notes with concern that, unfortunately, Members still do not have the proper sequencing of meetings with some subsidiary bodies, as the Chairperson has pointed out and Paraguay has noted in previous interventions. And this sequencing remained important for delegations. For example, in the item relating to EU technical barriers on the importation of agricultural products, there is a close connection between the work done in the subsidiary bodies and the progress that could be made before it reaches this Council. This is why Paraguay insists on maintaining a proper sequencing of meetings. However, Paraguay understands that best efforts have been made, and that, despite that, it was simply not possible on this occasion. However, Paraguay notes that the problem seemed to have been addressed for next year. Paraguay once again thanks the Secretariat for its work, and also thanks the Chairperson for his leadership in upholding this initiative, which came out of the real need of Members that this Organization improves its coordination and organization of meetings in general. Paraguay takes note that the circulation of this document, as the United States has pointed out, raises a number of potential issues which Paraguay hopes will be addressed in order to improve the functioning of this Council and its subsidiary bodies.

38.10. The Chairperson recalled that the challenge had been compounded this year because of the COVID-19 pandemic, which had resulted in new constraints. He thanked delegations for their understanding in this regard. He committed to do his best to improve the planning for next year and would take into account the comments received at the meeting.

38.11. The Council took note of the statements made.

39 WORK PROGRAMME ON ELECTRONIC COMMERCE

39.1. The Chairperson recalled that, at the General Council's meeting of March 2021, the Chairperson of the General Council had indicated that the General Council would continue holding periodic reviews of the Work Programme on Electronic Commerce in its future sessions, based on the reports submitted by the WTO bodies entrusted with the implementation of the Work Programme. For that purpose, the General Council had instructed these bodies, including the CTG,

to continue placing the issue of the Work Programme on the agenda of their meetings and to send updates to the General Council in order to assist it in its preparations for MC12.

39.2. Since MC12 would take place in November 2021, and in order to fulfil the renewed mandate of this Council to update the General Council about the discussions that have taken place on this issue, he 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 in preparation for MC12. As was already agreed at the CTG's previous meeting when this agenda item was discussed, in the autumn he would submit to the General Council a factual report under his own responsibility based on the CTG meetings that had taken place in 2021.

39.3. The delegate of Chad, on behalf of the LDC Group, indicated the following:

39.4. On this item, the LDC Group considers the Work Programme on Electronic Commerce (E-Commerce) to be an important mechanism, particularly given the unquestionable significance of E-Commerce and its accompanying opportunities today. E-Commerce is now a key issue in the wider context of countries' social development and economic growth.

39.5. Chad recalls that the LDC Group submitted a communication in November 2019, contained in document WT/GC/W/787. This communication highlights a number of obstacles, barriers, and challenges faced by LDCs that prevent them from adequately using E-Commerce to flourish and boost their economies. These include the following: a lack of adequate and affordable information technology (ICT) infrastructure; limited use of online payments; weak regulatory frameworks; a lack of digital skills among many enterprises in LDCs; weak human and institutional capacity; and inadequate facilities for physical delivery of online purchases.

39.6. According to recent International Telecommunication Union (ITU) indicators, only 25% of households in urban areas in LDCs have internet access, and 35% use the internet overall, mobile phone usage included. In contrast, only 10% of their households in rural areas have internet access, with 19% of the total population using the internet, mobile phone usage included. Essentially, the notable lack of internet access remains a major obstacle to the growth of E-Commerce in LDCs. In late 2020, the United Nations Conference on Trade and Development (UNCTAD) reported that only 19% of people in LDCs were using the internet, compared with 87% in developed countries. This poses a major challenge. Clearly, these figures contrast starkly with those of developed countries and many developing countries. We believe that relevant content in the Work Programme on E-Commerce will help LDCs with their efforts to use E-Commerce for development and economic growth.

39.7. Certainly, as regards infrastructure, initiatives such as public-private partnerships can be useful and worthwhile. Governments can also play a more active role on the regulatory front, including by promoting E-Commerce policy frameworks. A national and regional strategy can streamline initiatives in different sectors, allow for the sharing of best practices, and help achieve economies of scale.

39.8. A strategic perspective must also address the matter of fees and taxes. The LDC Group notes that a number of countries, such as Canada and Australia, are at the forefront of systems to simplify the collection of taxes on micro, small, and medium-sized enterprises (MSMEs) and cross-border online trade. Members can certainly learn from such initiatives to support cross-border digital trade, especially for LDC enterprises, which due to our nature as LDCs, are all MSMEs. The LDC Group would be delighted to learn more about how the systems implemented by these pioneers (Canada, Australia, and other Members) can help LDC enterprises and women entrepreneurs to take advantage of new opportunities and facilitate their exports.

39.9. The COVID-19 pandemic has forced us all to rethink the way enterprises operate, including in sectors that can be considered viable. E-Commerce, which is growing and evolving rapidly, has gradually taken hold in countless sectors. After the outbreak of the pandemic, the E-Commerce wave provided a major boost to established players, such as platforms and third-party marketplaces, while conventional enterprises attempting to sell online did not enjoy the same success. This reflects the challenge of adapting business models in the short term, in respect of operational costs, the supply chain, and regulatory approvals.

39.10. As for consumers, habits and trust represent the other side of the coin, enabling E-Commerce to prosper. The LDC Group notes at this point that a change of mindset cannot happen overnight, even in a specific context such as the pandemic. For example, the preference for cash on delivery reflects one aspect of the lack of trust in online payment solutions. The challenge is all the greater given the rapid development of technologies, particularly in production methods, such as the progressive automation of production lines, thanks to increasingly sophisticated and complex robots. Furthermore, it is also worth highlighting the use of technologies such as 3D printing, which give a competitive edge to companies capable of using them and certainly in terms of finding a market in which the resulting goods comply with safety, hygiene, and other technical standards.

39.11. These technologies undoubtedly open up new perspectives and opportunities. However, Members must be mindful that they can widen the gap between the technologically developed Members and the LDCs, which are already facing a considerable digital divide. The challenge is great, since the automation of production lines means that jobs that could have been created in LDC countries may be cut or may never even be created due to the trend towards internalizing production.

39.12. Coming back to the heart of the matter, the LDC Group emphasizes that the main aim for LDCs is to ensure their capacity to reap the benefits of E-Commerce soon, without losing sovereignty over their domestic economic and regulatory activities and to really focus on bridging the digital divide between LDCs and developed and developing Members, or between LDCs and economies with a greater technological base.

39.13. The LDC Group believes that conducting needs assessments at the national level can help to better understand where to start in rolling out a strategic E-Commerce reform programme. Such assessments in LDCs require technical assistance and material and financial support. The LDC Group therefore calls upon its trading partners to support us in this regard.

39.14. The LDC Group believes that, for LDCs to make optimal use of E-Commerce, which is indispensable in today's world, LDCs still need to fulfil certain prior conditions, such as better internet access, solving the perennial issue of energy, improving skills, building human and institutional capacity, a coherent regulatory framework, and an integrated financial and logistical system, to name but a few.

39.15. All these issues are linked to the development dimension, which underpins the Work Programme on E-Commerce and is an integral part of the WTO discussions. The LDC Group hopes that these issues will be listened to, or at least given the special attention they deserve, by all WTO Members and the LDC Group's technical and financial partners. E-Commerce is transforming traditional trade and allowing more enterprises to participate in global trade. The LDC Group hopes that this becomes a definite reality in LDCs, thereby allowing them to truly participate in global trade.

39.16. The delegate of India indicated the following:

39.17. As the digital revolution is still unfolding, India has on a number of occasions stated that it is important to first understand the complex and multi-faceted dimensions of issues related to E-Commerce. Members still do not comprehend the full implications of the effects of E-Commerce on competition and market structures, issues related to transfer of technology, data storage, and automation, and its impact on traditional jobs and gaps in policy and regulating frameworks in developing countries.

39.18. India, therefore, has been a proponent of strengthening Members' multilateral work under the non-negotiating and exploratory 1998 Work Programme on E-Commerce. Under this multilateral Work Programme, with the intention of understanding the implications of the moratorium on customs duties on electronic transmissions. India, along with South Africa, has introduced three submissions, which explain our understanding on the scope and impact of the moratorium.

39.19. In December 2019, India joined the consensus for a six-month extension of the moratorium, with an understanding that the Work Programme on Electronic Commerce will be reinvigorated with the specific objective of achieving clarity on issues related to the scope of the moratorium, the definition of electronic transmissions, identification of products which are covered under the

moratorium, as well as its impact. In this context, India would again draw the attention of the Membership to paragraph 3.1 of the Work Programme, which requires this Council to examine and report on aspects of electronic commerce relevant to the provisions of GATT 1994, the trade agreements covered under Annex 1A of the WTO Agreement, and the approved Work Programme. The said paragraph also provides an inclusive list of issues to be deliberated upon here in this Council.

39.20. In this regard, India is finalizing a submission on this issue, along with like-minded Members, for submission to this Council. India would urge the Membership to deliberate and report on these mandated issues sincerely instead of prematurely jumping to rule making on such issues.

39.21. The delegate of Nepal indicated the following:

39.22. Nepal wishes to associate itself with the statement delivered by Chad on behalf of the LDC Group, and to add the following few points. The COVID-19 pandemic has increased the urgency of enabling weaker economies, such as LDCs and LLDCs, to participate in E-Commerce, not to benefit from it but to survive in the global trading system in this critical situation. Therefore, immediate interventions are essential through the Work Programme on E-Commerce. A huge digital divide and capacity gaps are hindering access to the just benefits from E-Commerce, and as a result, E-Commerce has unevenly divided the world. Access to trade infrastructure, including ICT infrastructure, technology transfer, institutional and human capacity, and financial implications, among others, are some major areas to assess while designing the Work Programme. Since the benefits of E-Commerce would not flow automatically to LDCs, a comprehensive approach would be necessary to ensure that weaker economies benefit from E-Commerce in a just manner.

39.23. The delegate of Pakistan indicated the following:

39.24. Pakistan would like to refer to its statement made under this agenda item at the CTG's meeting of 31 March 2021.[16] The digital divide is a reality, which has been further exacerbated by the COVID-19 pandemic. The gaps between the early starters and the late starters permeate beyond infrastructure and connectivity into the domain of digital skills, capabilities, and technologies. These issues require thorough examination and cannot be resolved overnight; it is important to understand and address them. Pakistan wishes to re-emphasize that any attempt at rule making, without first addressing these issues, might widen the existing digital divide and create further imbalances, which can have detrimental effects on the prospects of developing countries addressing existing and new challenges.

39.25. In light of the growth of E-Commerce and the emergence of such technologies as 3D printing and Artificial Intelligence, as well as the need for digital industrialization in developing countries, all aspects of the financial and industrial developmental and other implications must be factored in before extending the moratorium. Pakistan would therefore like once again to stress and support engagement at the correct mandated forum, including the relevant WTO bodies, such as the Committee on Trade and Development (CTD), in which multilateral discussions on E-Commerce can take place with a view to finding solutions for developing countries to further their objectives of digital development and industrialization. Such discussions can help developing countries to better understand and explore avenues for their economic growth through digital capabilities within their particular socio-economic context.

39.26. The delegate of Norway indicated the following:

39.27. Norway is a strong supporter of the Work Programme on Electronic Commerce, including the moratorium, and welcomes all discussions, both in the CTG and in other relevant fora, and the structured discussions under the Chairpersonship of the General Council. Like other Members that have intervened on this issue, namely India, Pakistan, Nepal, and Chad, Norway considers that it is important that the Work Programme, including the moratorium, is extended beyond MC12. Norway sees many different issues that need to be discussed both in the CTG and in other relevant fora. Therefore, Norway supports an extension of the Work Programme and moratorium.

[16] G/C/M/139, paragraphs 42.8-42.10.

39.28. The delegate of Indonesia indicated the following:

39.29. Indonesia is aware of the current and future importance of E-Commerce in shaping global trade. Thus, our discussion on E-Commerce must have a certain degree of flexibility and allow room for improvements in order to make today's discussion relevant to future progress. Indonesia is of the view that the Moratorium on the imposition of customs duties on electronic commerce should not be preserved permanently. This issue goes beyond the revenue perspective; it also concerns other issues, such as trade statistics, creating a level playing field between digital and non-digital products, encouraging SMEs, providing certainty, assessing the risks posed by digital goods, and state sovereignty. The current practice, through the WTO Ministerial Decision not to impose customs duties on electronic transmissions, not including content transmitted electronically, is the best alternative for now in light of the aforementioned rationale. Therefore, Members need to keep a certain degree of flexibility to facilitate future adjustments in ways that do not violate WTO rules and principles or any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

39.30. The Council took note of the statements made.

40 OTHER BUSINESS

40.1 Extension by the European Union and the United Kingdom of the Community Steel Safeguard – Request from Brazil; and United Kingdom – Safeguard Measures on Certain Steel Products – Request from Switzerland

40.1. The delegate of Switzerland indicated the following:

40.2. Switzerland requested that this item be placed on the Council's agenda because it has systemic and trade concerns regarding the United Kingdom's extension of its safeguard measures on certain steel products.

40.3. On 2 July 2021, the United Kingdom notified the Committee on Safeguards of its decision to extend its safeguard measures on certain steel products for three years on ten product categories and, in a new addition, for one year on five product categories. Concerning the latter extension, Switzerland is of the view that some requirements contained in the Agreement on Safeguards are not being met. In particular, as indicated in prior notifications made by the United Kingdom, for four of the five product categories, there was no absolute or relative increase in imports during the period of investigation. In these circumstances, Switzerland fails to see, in particular, how the United Kingdom could demonstrate that serious injury, or threat thereof, is caused by "increased imports", and that the measure is applied only to the extent necessary to prevent or remedy serious injury. In addition, the United Kingdom stated, in its notifications dated 21 May and 11 June 2021, that it would not extend its safeguard measures on these product categories. Switzerland also regrets that the extension of the United Kingdom's measures on these five categories was notified to the WTO after it came into effect, making it impossible to hold consultations on such an extension prior to its application.

40.4. Switzerland had already expressed certain systemic concerns about the United Kingdom's "transitioning" of the European Union's safeguard measures on certain steel products, as of 1 January 2021, because such transitioning amounts to new safeguard measures that are subject to the material and procedural requirements of the Agreement on Safeguards. The present extension only adds to Switzerland's concerns. Therefore, Switzerland urges the United Kingdom immediately to remove the newly extended safeguard measures on the five product categories concerned.

40.5. The delegate of Brazil indicated the following:

40.6. Under "Other Business", Brazil requests to address the extension by the European Union of the Community Steel Safeguard and the extension, by the United Kingdom of this same measure (Documents G/SG/N/8/EU/1/Suppl.2 - G/SG/N/10/EU/1/Suppl.11 - G/SG/N/11/EU/1/Suppl.8 and G/SG/N/8/GBR/1/Suppl.2 - G/SG/N/10/GBR/2-G/SG/N/11/GBR/2, respectively). Brazil would like to express its concern regarding both decisions and recalls that the respective revisions had already been raised by Brazil in the Committee on Safeguards.

40.7. Brazil reiterates its understanding that the measure violates multilateral regulations, which should lead to its immediate extinction, rather than extension, both in the European Union and in the United Kingdom. In addition, Brazil expects the European Union and the United Kingdom to comply with the obligation, under Article 8.1 of the Agreement on Safeguards, to offer compensation equivalent to the adverse effects of the measure. Brazil seeks to participate in the consultation processes opened by both Members in order to be able to address, in greater detail, the technical inaccuracies of the original and extended measures, as well as obtain adequate compensation. Finally, Brazil notes that it reserves its rights to use the resources provided for in the Agreement on Safeguards in order to rebalance the conditions of trade with the European Union and the United Kingdom affected by the imposition of the respective measures.

40.8. The delegate of the Republic of Korea indicated the following:

40.9. It is with regret that the Republic of Korea must express its disappointment over the European Union's decision to extend its safeguard measures on certain steel products for another three years, as of 1 July 2021. Given that, by their nature, safeguard measures are imposed on fair trade activities that are in accordance with the relevant WTO rules, they should be introduced and extended only to the minimum extent necessary, taking into account the overall impact of those measures in the global context. In this sense, Korea believes that there is no reasonable evidence and compelling grounds for the European Union to extend its measures. Accordingly, Korea would like to urge the EU to have the relevant measures terminated. At the same time, Korea encourages the EU to play an important role in upholding free trade and the multilateral trading system.

40.10. It is also regrettable that the United Kingdom has transitioned the European Union's steel safeguards, as of 1 January 2021, and that it has also decided to extend some of its measures for another three years, as of 1 July 2021. Korea believes that the United Kingdom's imposition of steel safeguard measures earlier in the current year, which was carried out without conducting any prior investigation, as set out in the GATT 1994 and the Safeguards Agreement, cannot be consistent with the WTO rules. In addition, it is noted that the extension of these WTO-inconsistent measures also lacks legal grounds. Moreover, on 30 June 2021, the United Kingdom overturned its preliminary decision and decided to add five more products to its extended measures for one year. In fact, the United Kingdom had acknowledged in its preliminary decision that it had not seen the imports of those products increasing or being likely to cause serious injury. Therefore, Korea urges the United Kingdom to promptly terminate its measures. In addition, Korea encourages the United Kingdom to play an important role in upholding free trade and the multilateral trading system.

40.11. The delegate of Turkey indicated the following:

40.12. First, in relation to the safeguard measures of the European Union on certain steel products, Turkey notes that it had already raised its concerns in the meetings of the Committee on Safeguards. Moreover, Turkey also conveyed its views regarding the expiry review process, and stated that the continuation of the measures was, in its view, not necessary. Nevertheless, the European Union has now notified, through its latest notification, its decision to extend these measures by three years.

40.13. According to Article 8.2 of the Agreement on Safeguards, Members affected by safeguard measures shall be free to suspend the application of substantially equivalent levels of concessions or other obligations. To this end, on 30 June 2021, Turkey revised its previous notifications on the proposed suspension of concessions and other obligations referred to in Article 8.2 of the Agreement on Safeguards, taking into account the extension decision of the European Union, and notified this to the Committee on Safeguards through document G/L/1359/Rev.2–G/SG/N/12/TUR/9/Rev.2.

40.14. In meetings of the Committee on Safeguards, as well as in its written and oral submissions to the European Commission, Turkey has already underlined that the measures in question are not in compliance with the relevant provisions of the Agreement on Safeguards. Accordingly, Turkey has initiated dispute settlement proceedings, which are currently ongoing.

40.15. Turning to the United Kingdom's safeguard measures on certain steel products after Brexit, Turkey notes that it has been raising its concerns over their continuation in meetings of the Committee on Safeguards. Turkey is of the view that the continuation of these measures is incompatible with the provisions of the GATT 1994, the Agreement on Safeguards, and the relevant WTO jurisprudence, since the United Kingdom did not individually examine whether the criteria were

being met to permit the imposition of a safeguard measure. Therefore, Turkey strongly believes that the United Kingdom's steel safeguard measures should have been terminated after 31 December 2020. In contrast, on 2 July 2021, the United Kingdom notified the Committee on Safeguards of its decision to extend the measures, starting from 1 July 2021.

40.16. At this point, Turkey shares the concerns of Switzerland, namely that the United Kingdom's decision in this regard lacks certain of the legal prerequisites required under the Agreement on Safeguards. In its notifications dated 21 May and 11 June 2021, in relation to finding serious injury and threat, the United Kingdom proposed not to extend the measures for certain product categories considering that the development in imports across the period of investigation did not meet the criteria of an absolute increase in imports. However, in the United Kingdom's latest notification, dated 2 July 2021, it has notified its decision to extend the measure for those categories by one year. Turkey is of the view that such an extension does not comply with Article 7.1 of the Agreement on Safeguards, which requires Members to apply safeguard measures only for such period of time necessary to prevent or remedy serious injury. In conclusion, Turkey notes that it reserves all its rights stemming from Article 8 of the Agreement on Safeguards and other relevant WTO Agreements.

40.17. The delegate of the European Union raised a point of order and indicated the following:

40.18. On a point of order, the European Union wishes to note that the Council is currently under agenda item, "Other Business". And if the European Union's understanding on this point is correct, the Rules of Procedure provide that discussions on substantive issues under "Other Business" should be avoided. The European Union would appreciate it if the Council could follow this rule.

40.19. The Secretariat (Mrs Suja Rishikesh-Mavroidis) confirmed that, according to the Rule 25 of the Rules of Procedure, "representatives should avoid unduly long debates under 'Other Business'; discussions under 'Other Business' shall be avoided and the Council shall limit itself to taking note of the announcement by the sponsoring delegation as well as any reactions to such an announcement by other delegations directly concerned."

40.20. The delegate of the Russian Federation indicated the following:

40.21. The Russian Federation thanks Brazil and Switzerland for raising the issue of the extension of safeguard measures on certain steel products by the European Union and the United Kingdom today. Like other WTO Members, the Russian Federation is deeply concerned about the extension. As for the EU measure, the Russian Federation has seen no grounds for its extension at the start of the review and also fails to see them at the end of the review. Regulation No. 2021/10-29 explains that the state of the EU industry had deteriorated. At the same time, it can be seen from the Regulation that a decline in production and sales of the European Union coincide with a similar decline in consumption. This indicates that the deterioration, as stated by the European Union, if any, stems from developments on the EU market other than increased imports. Remarkably, the deterioration appeared when the measure was in place, which can hardly be an illustration that the EU industry is adjusting. Certain developments in the EU industry that are portrayed in the regulation as evidence of adjustment can hardly have relevance to an improvement in ability to compete with imports. The Decision of the United Kingdom to expand the measure was also disappointing. Like other Members, the Russian Federation is concerned about the method used to determine which product categories should remain subject to the measure. The Russian Federation believes that no measures should apply unless serious injury to the domestic industry caused by increased imports, or threat thereof, is unconditionally established. The Russian Federation reiterates all of its previous concerns as expressed, in particular, in the Committee on Safeguards. The Russian Federation reserves its rights under the Agreement on Safeguards and the GATT, and urges the European Union and the United Kingdom to withdraw the measure.

40.22. The delegate of the United Kingdom indicated the following:

40.23. The United Kingdom takes note of all of the points that have been raised. As set out in its notification circulated to Members on 2 July, the United Kingdom invites those Members having a substantial interest in this issue, as exporters of products subject to the extended measure, to request consultations through the UK Mission.

40.24. The delegate of the European Union indicated the following:

40.25. The European Union received no prior notice that this item would be included on the agenda under "Other Business". In this regard, the European Union wishes to recall Rule 25 of the Rules of Procedure. That said, the European Union has taken due note of the intervention by Brazil under this item and their comments will be conveyed to Brussels.

40.26. The Council took note of the statements made.

40.2 Date of Next Meeting

40.27. The Chairperson announced that the next CTG meeting had been tentatively scheduled for 1-2 November 2021. These dates would be confirmed in due course.