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Council for Trade in Goods

MINUTES OF THE MEETING OF THE COUNCIL FOR TRADE IN GOODS 1 AND 2 NOVEMBER 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/20 and WTO/AIR/CTG/20/Rev.1; the proposed agenda for the meeting was circulated in document G/C/W/805. The meeting proceeded on the basis of the following modified agenda, as detailed below:

The Chairperson 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 the United States requested to be included, along with Australia and the European Union, as a co-sponsor of Agenda Item 16, "China – Subsidy Transparency and China's Publication and Inquiry Point Obligations under China's Protocol of Accession".

The delegate of the United Kingdom likewise requested to be included as a co-sponsor of Agenda Item 16, "China – Subsidy Transparency and China's Publication and Inquiry Point Obligations under China's Protocol of Accession".

Finally, the Chairperson informed delegations that, under agenda item "Other Business", he would report briefly on the Annual Plan of Meetings. In addition, 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 four RTAs had been notified to the CRTA, as followed:

- ASEAN Trade in Goods Agreement (ATIGA), Goods (WT/REG457/N/1);
- ASEAN Trade in Goods Agreement (ATIGA), Goods (WT/REG457/N/1/Add.1);
- Trade Continuity Agreement between the United Kingdom and Mexico, Goods and Services (WT/REG456/N/1-S/C/N/1060); and
- Agreement on Trade Continuity between the United Kingdom and Canada, Goods and Services (WT/REG419/N/1/Add.1-S/C/N/1061).

1.2. The Council took note of the information provided.

2 MARKET ACCESS ISSUES

2.1. The Chairperson informed Members that, as indicated in the Agenda, the Committee on Market Access (CMA) had forwarded five items for the Council's consideration.

2.1 Draft Decision on the Procedure for the Introduction of HS 2022 Changes to Schedules of Concessions Using the Consolidated Tariff Schedules (CTS) Database (G/C/W/802)

2.2. The Chairperson drew Members' attention to document G/C/W/802, containing a draft decision on the "Procedure for the Introduction of Harmonized System 2022 Changes to Schedules of Concessions Using the Consolidated Tariff Schedules (CTS) Database".

2.3. He noted that this draft decision followed the same approach that had been used in previous transposition exercises. Furthermore, the CMA had agreed that a final draft text, now contained in document G/C/W/802, be forwarded to the General Council for its adoption through the Goods Council.

2.4. Accordingly, he proposed that the Council agree to forward the draft decision contained in document G/C/W/802 to the General Council for adoption.

2.5. The Council so agreed.

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

2.2 Introduction of Harmonized System Changes into the WTO Schedules of Concessions – Collective Requests for Waiver Extensions

2.6. The Chairperson informed Members that, as indicated in the Agenda, the CMA had forwarded four draft collective requests for waiver extensions concerning the introduction of Harmonized System (HS) changes into WTO Schedules of Concessions for the consideration of the Council. These collective requests had been the subject of consultations in the CMA meeting that had taken place on 11 October 2021.

2.7. He drew Members' attention to the collective draft waiver decisions circulated in documents G/C/W/796, G/C/W/797, G/C/W/798, and G/C/W/799, which concerned one-year extensions of draft collective waiver decisions to the HS for the years 2002, 2007, 2012, and 2017, respectively, that would all expire on 31 December 2021.

2.8. Finally, he proposed that the Council agree to forward the draft waiver decisions contained in these documents to the General Council for adoption.

2.9. The Council so agreed.

3 ACCESSION OF THE REPUBLIC OF ARMENIA TO THE EURASIAN ECONOMIC UNION: PROCEDURES UNDER ARTICLE XXVIII:3 OF GATT 1994 – COMMUNICATION FROM ARMENIA (G/L/1110/ADD.7)

3.1. The Chairperson informed Members that, in a communication dated 11 October 2021, the delegation of Armenia had requested the Secretariat to circulate document G/L/1110/Add.7 relating to the extension of the time-period for the withdrawal of concessions, in connection with Armenia's accession to the Eurasian Economic Union (EAEU), until 2 January 2023.

3.2. The delegate of Armenia indicated the following:

3.3. After the last extension, Armenia has continued consultations and communications with the interested delegations. However, for understandable reasons, with less intensity than in the year in which it was initially considered. Armenia has made positive developments and real progress on the non-agricultural market access (NAMA) package and is finalizing the negotiations on the NAMA substance. At the same time, Armenia has intensified its efforts and concentrated more resources to come up with the formulation of a mutually acceptable position for a compensation package on agriculture.

3.4. However, considering the number of interested Members that are involved in the process, as well as the technical and logistical obstacles in relation to the COVID-19 pandemic to be overcome, Armenia believes that additional time will be required to complete the compensation negotiations. Therefore, with the purpose of properly organizing the process pursuant to document G/L/1110/Add.7, Armenia has indicated the following: "In connection with the Treaty of Accession of the Republic of Armenia to the Eurasian Economic Union (EAEU) […]; and in view of ensuring that Members reserve their rights pending the communication to the WTO Secretariat of the agreements reached in the context of Article XXIV:6 (GATT), Armenia believes that it is desirable to provide for an extension of 12 months (that is, until 2 January 2023)."

3.5. In consequence, Armenia expresses its readiness to provide to Members an extension of an additional 12-month period, until 2 January 2023, for the withdrawal of substantially equivalent concessions under Article XXVIII:3 of the GATT 1994. Armenia asks the Council to agree to this proposed extension.

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

3.7. The European Union welcomes the progress achieved in its negotiations with Armenia on tariffs for non-agricultural products, where an agreement of principle has been reached. On agriculture, recent progress indicates that an agreement of principle could also be reached soon, potentially by MC12. The EU therefore looks forward to completing these compensation negotiations in the near future.

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

3.9. The Russian Federation will continue to support the negotiation process of Armenia in order to conclude it successfully. The Russian Federation supports the extension of the deadline.

3.10. The delegate of Armenia indicated the following:

3.11. Armenia takes note of the statements made by the representatives of the respective delegations, which will be relayed to capital in due course. Meanwhile, Armenia will continue its communications with interested WTO Members in a pragmatic and constructive way. In this regard, Armenia confirms its readiness to organize the next round of bilateral negotiations with a view to finally bringing them to their completion. At the same time, Armenia will continue to inform the Council, as well as all interested Members, concerning the ongoing compensatory adjustment negotiations.

3.12. The Chairperson proposed that the Council take note of the statements made and of Armenia's communication, and that it agree to extend the deadline to withdraw substantially equivalent concessions under Article XXVIII of the GATT for 12 months, until 2 January 2023, as set out in document G/L/1110/Add.7.

3.13. The Council so agreed.

4 ACCESSION OF THE KYRGYZ REPUBLIC TO THE EURASIAN ECONOMIC UNION: PROCEDURES UNDER ARTICLE XXVIII:3 OF GATT 1994 – COMMUNICATION FROM THE KYRGYZ REPUBLIC (G/L/1137/ADD.6)

4.1. The Chairperson informed Members that, in a communication dated 18 October 2021, the delegation of the Kyrgyz Republic had requested the Secretariat to circulate document G/L/1137/Add.6, relating to the extension of the time-period for the withdrawal of concessions, in connection with the Kyrgyz Republic's accession to the EAEU, until 12 February 2023.

4.2. The delegate of the Kyrgyz Republic indicated the following:

4.3. After substantive discussions with Eurasian Economic Union partners, the Kyrgyz Republic has submitted a compensation proposal concerning non-agricultural products to one of the interested Members. The Kyrgyz Republic has received positive feedback from that Member concerning a NAMA goods package. This gives rise to the hope that a mutually agreeable outcome has been reached, and that the NAMA negotiations near their completion. On agricultural goods, the Kyrgyz Republic notes that the consultations at the technical level and an information exchange on agricultural products are under way; in addition, internal consultations are being held within the Eurasian Economic Union platform. Like Armenia, the Kyrgyz Republic also considered it necessary to extend the time-period for the withdrawal of substantially equivalent concessions, which expires on 12 February 2022. Considering that additional time would be required in order to move these negotiations forward, and in view of ensuring that Members reserve their rights pending the communication to the WTO Secretariat of the agreement, the Kyrgyz Republic requests for a further extension of Members' rights to withdraw concessions pending the conclusion of Article XXVIII:3 negotiations after 12 months, until 12 February 2023, as reflected in document G/L/1137/Add.6. The Kyrgyz Republic will not assert that WTO Members that have submitted a claim pursuant to Article XXIV:6 of the GATT 1994 are precluded from withdrawing substantially equivalent concessions because this withdrawal occurs later than six months after the Kyrgyz Republic's withdrawal of concessions.

4.4. On the basis of the above-mentioned, the Kyrgyz Republic expresses its gratitude for the understanding of interested WTO Members, and for their support in demonstrating no objections on the issue of the extension of rights. The Kyrgyz Republic will continue communicating and exchanging information with the relevant partners to this process in due course and thanked the European Union and the Russian Federation for their comments.

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

4.6. The European Union welcomes the progress achieved in its negotiations with the Kyrgyz Republic on tariffs for non-agricultural products, where an agreement of principle has been reached. On agriculture, recent progress indicates that an agreement of principle could also be reached soon, potentially by MC12. The EU therefore looks forward to completing these compensation negotiations in the near future.

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

4.8. The Russian Federation will continue to support the negotiation process of the Kyrgyz Republic in order to conclude it successfully. The Russian Federation supports the extension of the deadline.

4.9. The Chairperson proposed that the Council take note of the statements made and of the Kyrgyz Republic's communication, and that it agree to extend the deadline to withdraw substantially equivalent concessions under GATT Article XXVIII for 12 months, until 12 February 2023, as set out in document G/L/1137/Add.6.

4.10. The Council so agreed.

5 CUBA – REQUEST FOR AN EXTENSION OF THE WAIVER CONCERNING ARTICLE XV:6 OF THE GATT 1994 CONTAINED IN THE DECISION OF 7 DECEMBER 2016 (WT/L/1003) – (G/C/W/803)

5.1. The Chairperson recalled that this item had been included on the agenda at the request of Cuba, which had also requested the Secretariat to circulate document G/C/W/803,dated 14 October 2021, containing a request for an extension of the waiver from its obligations under Article XV:6 of the GATT 1994 because it was not a member of the International Monetary Fund (IMF).

5.2. The delegate of Cuba indicated the following:

5.3. Cuba once again brings to the Council a request for a waiver extension under paragraph 6 of Article XV of the GATT, as it has done every five years since October 1986. It does so in light of the fact that Cuba is not a member of the IMF, and the current waiver extension will expire on 31 December 2021. Beyond the reasons that had justified previous extensions of the waiver, they had become more acute as described in the document.

5.4. Indeed, Cuba wishes to highlight the measures under the financial and commercial embargo that the United States maintains against Cuba. The administration of former President Trump introduced 243 measures, tightening the embargo, that are still in force, and that, particularly following the pandemic, have combined to make it still more severe. Cuba could advance considerably if, as the international community has called for, the embargo were lifted. For example, recently, in the context of the 76th UN General Assembly, a number of Heads of State referred to Cuba's embargo.

5.5. Cuba has complied rigorously with the decisions taken by the General Council, including reporting on an annual basis the various measures required under the waiver exemption. Furthermore, this remains the focus of Cuba's activities, including compliance.

5.6. In addition, Cuba would like to reiterate that the approval of this extension will have no negative consequences for the WTO Membership. To the contrary, Cuba reaffirms its commitment not to cause any injury or prejudice to Members' rights. The extension of the waiver exemption seeks to continue promoting trade and investment for WTO Members, as can be seen in the documents that have been circulated.

5.7. The Council took note of Cuba's statement, approved the request for an extension of the waiver contained in document G/C/W/803, and agreed to forward the draft waiver decision to the General Council for adoption.

6 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)

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

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

6.3. The LDC Group has pointed out several times that the specific objective of this proposal is to correct a technical oversight. According to Article 27.2(a) of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), some Members are eligible to enjoy flexibilities under this agreement. Eligible Members are specified under Annex VII of the Agreement under two separate categories: (a) the least developed countries (LDCs); and (b) certain developing countries, as long as their GNI per capita remains below USD 1,000 in constant 1990 US dollar terms.

6.4. It is possible that some LDCs, that is, countries listed under Annex VII(a) of the SCM Agreement, may graduate from the LDC category even with a GNI per capita that remains below USD 1,000 in constant 1990 US dollars (as, for example, Nepal). However, it is not clear whether or not these LDCs, after graduation, and having a GNI threshold comparable to the Annex VII(b) countries, can still benefit from the flexibility foreseen in Article 27.2 of the SCM Agreement. This is a technical oversight that should be corrected.

6.5. Therefore, the submission proposes that an LDC Member, after graduation, as long as it remains below the USD 1,000 GNI threshold, should be allowed to have recourse to the flexibility foreseen under Article 27.2 of the SCM Agreement. The LDC Group's proposal is focused on a clarification issue only; it is not proposing to change any rule. The submission has already received wide support and the LDC Group is grateful to all Members.

6.6. At the same time, the LDC Group is engaging with the European Union and the United States on the concerns that they have raised. The LDC Group is grateful for the opportunity to do so. Furthermore, the LDC Group trusts that it can continue with its informal meetings with the EU and the US in order to get a positive result on the LDC Group submission. In conclusion, Bangladesh, along with the LDC Group, stands ready to engage constructively with Members.

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

6.8. As the United States mentioned at the Council's previous meeting, due to some data-related issues, the United States will be working with the Secretariat 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.

6.9. 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), and it should provide GNI per capita at constant 1990 US dollars for each Member for the most recent three years for which data is available.

6.10. The United States will ask that the SCM Secretariat circulate the table to Members when it has been prepared, and the United States looks forward to reviewing it.

6.11. The delegate of Turkey indicated the following:

6.12. As stated at previous meetings of the Council, Turkey continues to support this proposal.

6.13. The delegate of India indicated the following:

6.14. India has already supported this proposal in earlier meetings of the Council, and its position remains the same.

6.15. The delegate of Brazil indicated the following:

6.16. Brazil reiterates its support for the LDC proposal to amend Annex VII of the SCM Agreement, to allow graduated LDCs, whose GDP per capita remains below USD 1,000, to continue to be covered by Article 27.2(a). Brazil recalls that it has already supported this proposal, both within the scope of the SCM Committee and in the CTG itself.

6.17. The delegate of Nigeria indicated the following:

6.18. Nigeria thanks the LDC Group for the proposal and reiterates its support for it.

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

6.20. As there have been no new developments, the European Union's views remain the same as those expressed at the Council's previous meetings.

6.21. To recall, the European Union supports constructive initiatives meant to better integrate LDCs into the multilateral trading system. To this end, the EU encourages discussing this proposal, as any Special and Differential (SDT) proposal, on the basis of analysis that shows where specific problems lie.

6.22. The European Union is mindful of the challenges that graduating LDCs face. However, the EU would still need to assess the actual use of export subsidies by LDCs in order to establish whether a transition period is needed that would allow graduated LDCs to continue using export subsidies. In this regard, the EU would also welcome the submission of any additional data, as suggested by the United States and discussed at the Council's previous meeting.

6.23. The European Union stands ready to engage in informal consultations with the LDC Group on this proposal.

6.24. The delegate of Angola indicated the following:

6.25. Angola supports the proposal.

6.26. The delegate of Nepal indicated the following:

6.27. Nepal wishes to associate itself with the statement delivered by Chad on behalf of the LDC Group, and add some additional points. The eligibility criteria set out for graduation allows for countries to become eligible for graduation even by meeting only two of the relevant criteria, thus making it possible for a country to graduate without meeting the threshold of per capita income.

6.28. In this situation, the graduated Members may have a low level of GNP per capita and still meet and respect the spirit of the eligibility criteria set out in Annex VII(b) of the SCM Agreement. However, such a country, once graduated, cannot benefit from flexibilities in export incentives, as per the relevant provision laid down in the Agreement, even if it still has a low GNP per capita and meets the other relevant criteria set out in Annex VII(b) of the SCM Agreement.

6.29. Nepal, for example, is graduating without meeting the GNI per capita criteria, although it is currently still eligible to benefit from this provision of Annex VII(b). In consequence, Nepal will lose this benefit upon graduation, even if it is still being enjoyed by other developing countries in a similar situation. This is unfair, and a lapse in WTO law requiring that Members make the necessary positive adjustments.

6.30. LDC graduation is a global agenda and target; therefore, enabling and encouraging LDC graduation by extending maximum possible support to graduating LDC Members both before and after their graduation, and in a just manner, becomes urgent in order to meet this global target in a timely and sustainable manner.

6.31. Furthermore, LDC Members have been devastated by the COVID-19 pandemic, with health and economic systems unable to respond appropriately to its challenges. In addition, LDC Members have been suffering from huge gaps in many areas, especially infrastructure (including

ICT infrastructure), institutional and human capacity, resources, and technology, among others. The COVID-19 pandemic has further exacerbated the challenges for LDCs in their socio-economic transformation and their exports have been severely affected. Furthermore, the fact that LDCs only have a 1% share in world exports is a matter of disappointment considering that LDCs represent approximately 13% of the world's population.

6.32. In this context, graduated LDCs, or LDCs that are in the process of graduation, which still meet the criteria allowing recourse to export incentives, as per the provisions and spirit of the Agreement, should be permitted to enjoy the same level of flexibility as others.

6.33. This provision of the SCM Agreement seems to be very much focused on the level of an LDC Member's economic development, particularly in terms of GNP per capita; for this reason, this provision needs to be applied in a fair manner by extending the same level of flexibility to LDC Members even after graduation if they are eligible in terms of the provisions and spirit of the Agreement.

6.34. In conclusion, the LDC Group is not demanding anything new but only requesting that minor adjustments be made in accordance with the spirit of the law.

6.35. The Council took note of the statements made.

7 WITHDRAWAL OF THE UNITED KINGDOM FROM THE EUROPEAN UNION: PROCEDURES UNDER ARTICLE XXVIII:3 OF GATT 1994 – COMMUNICATION FROM THE EUROPEAN UNION (G/L/1385/ADD.1)

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

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

7.3. The European Union recalls that, on 22 December 2020, it submitted document G/SECRET/42/Add.3 in connection to the ongoing negotiations under Article XXVIII of the GATT 1994 on the apportionment of the European Union's tariff rate quota (TRQ) concessions following the withdrawal of the United Kingdom from the European Union. That communication highlighted that the European Union strives for the rapid and successful conclusion of these ongoing negotiations and consultations.

7.4. The European Union is pleased to report that good progress has been achieved. Agreements have been formally signed with six partners. Negotiations were finalized and are going through domestic validation procedures with a further five partners. In addition, there are several negotiating and consultation partners with whom there are very good prospects of closing negotiations and advancing towards initialling a draft agreement.

7.5. Thus, in line with established practice in the framework of Article XXVIII negotiations, and also under Article XXIV:6, the European Union believes it is desirable to extend the timelines of Article XXVIII:3 of GATT 1994 by six months, namely until 1 July 2022, without prejudice to the question of whether there are any rights to withdraw concessions pursuant to Article XXVIII:3(a) and (b). On this basis, the EU and other Members currently engaged in these Article XXVIII procedures can continue to concentrate on bringing these negotiations and consultations to a successful conclusion in the coming months. The EU remains fully committed to successfully conducting these negotiations and consultations within this extended deadline. Therefore, the European Union proposes that the Council take note of this communication and that it agree on the extension of the deadline until 1 July 2022, as indicated in document G/L/1385/Add.1.

7.6. The Chairperson proposed that the Council take note of the European Union's communication and the statement made. He also proposed that the Council agree on the extension of the deadline as set out in the European Union's communication G/L/1385/Add.1, until 1 July 2022.

7.7. The Council so agreed.

8 UNITED KINGDOM'S WITHDRAWAL FROM THE EUROPEAN UNION: PROCEDURES UNDER ARTICLE XXVIII:3 OF GATT 1994 – COMMUNICATION FROM THE UNITED KINGDOM (G/L/1386/ADD.1)

8.1. The Chairperson recalled that this item had been included on the agenda at the request of the United Kingdom.

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

8.3. The United Kingdom refers Members to document G/L/1386/Add.1, circulated on 22 October 2021. Members will be aware that the United Kingdom has been in ongoing negotiations and consultations with trading partners with respect to its obligations concerning TRQs contained within the United Kingdom's Schedule of concessions and commitments on goods in a process under Article XXVIII of the GATT.

8.4. Document G/L/1386/Add.1 sets out that the United Kingdom will now provide for the extension of timelines under Article XXVIII:3 of the GATT by six months, until 1 July 2022.

8.5. The United Kingdom has been consistently clear that it is strongly committed to working closely with WTO Members in discussions on the United Kingdom's Schedule, including the process under Article XXVIII, with the aim to conclude these discussions with all partners successfully. The United Kingdom thus sees an extension to these timelines as the best course of action to facilitate this outcome.

8.6. The United Kingdom continues to have productive discussions with relevant Members, and is pleased with the positive and sustained progress that it has been making in these negotiations towards resolving Members' concerns. The United Kingdom therefore believes that this six-month extension will be sufficient for those discussions to reach their conclusion.

8.7. The United Kingdom would like to thank those Members that have engaged constructively on matters relating to its Goods Schedule so far. The United Kingdom will further update Members following the conclusion of Article XXVIII negotiations, in line with past WTO practice.

8.8. The Chairperson proposed that the Council take note of the United Kingdom's communication and the statement made. He also proposed that the Council agree on the extension of the deadline, as set out in the United Kingdom's communication G/L/1386/Add.1, until 1 July 2022.

8.9. The Council so agreed.

9 EUROPEAN UNION – RECTIFICATION AND MODIFICATION OF SCHEDULES – SCHEDULE CLXXV – REQUEST FROM THE EUROPEAN UNION

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

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

9.3. The Russian Federation is the only WTO Member maintaining a reservation on the EU-28 draft Schedule CLXXV, which notably impedes the certification of the European Union's Nairobi commitments on export subsidies, a matter which is of systemic importance.

9.4. The European Union has engaged with the Russian Federation and replied to all its technical questions. In the EU's view, there are no more reasons to maintain the reservation. Therefore, the European Union urges Russia to lift the reservation as soon as possible.

9.5. The European Union underlines that schedule certification is not a process that is suitable for, and capable of, supporting requests formulated in the context of WTO tariff negotiations, or challenging the outcome of such negotiations.

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

9.7. The Russian Federation notes that neither its comments related to the increase of Aggregate Measurement of Support (AMS) and non-completion of negotiations under Article XXIV:6 of the GATT between the Russian Federation and the European Union following Croatia's accession to the European Union, nor other comments provided for in Notes Verbales submitted by the Russian Federation, have been taken into account by the European Union. For this reason, the Russian Federation continues to be concerned with the modification of the schedule proposed by the European Union.

9.8. The Council took note of the statements made.

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

10.1. The Chairperson recalled that this item had been included on the agenda at the request of Argentina, Australia, Brazil, Canada, Colombia, Costa Rica, Ecuador, Jamaica, Panama, Paraguay, the United States, and Uruguay.

10.2. The delegate of Brazil indicated the following:

10.3. The Brazilian co-sponsorship of this agenda item stems from the understanding that the European Union's position in relation to the definition of maximum residue limits (MRLs) puts at risk the balance established in the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) between the principle of protection of life and human and animal health and the guarantee that market access conditions negotiated multilaterally are not undermined by unjustified non-tariff measures. This balance rests upon the scientific principles enshrined in the SPS Agreement, and materialized through risk analysis, which must guide the adoption of sanitary and phytosanitary measures. However, 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. And this condition of imbalance cannot last.

10.4. Brazil considers that 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.

10.5. 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 such tropical countries as Brazil have always faced these SPS risks. Furthermore, the success or failure of agricultural activity depends on access to the new technologies. In the case of Brazil, for example, 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 important portion of the Brazilian and world population. In contrast, the introduction of new technologies has also led to more sustainable agricultural production; it has made it possible to use new practices in several countries, such as the no-till system, for example.

10.6. It is indisputable that production has become more sustainable, since no-tillage prevents soil erosion, reduces water loss 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. Indeed, it is an essential mechanism for increases in production based on increased productivity, and not the expansion of the planted area or deforestation.

10.7. 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 Brazil and other Members have to bring debates of this nature to the CTG in a context in which

Brazil itself has been following with concern certain legislation projects that try to create non-tariff trade barriers under the guise of environmental protection measures.

10.8. In addition, Brazil is extremely concerned about the publication by the European Union 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 in the SPS and the Technical Barriers to Trade (TBT) Committees, while others simply do not offer any justification and yet were approved.

10.9. In this context, Brazil believes that the European Union's treatment of countries requesting longer transition periods or exceptions to pesticide MRL decreases (or "import tolerances") is clearly discriminatory and incompatible with WTO rules.

10.10. The delegate of Paraguay indicated the following:

10.11. Paraguay regrets having to place this item on the agenda once again, in view of the lack of progress in resolving this concern that it still has with the European Union. Paraguay also regrets that, despite the fact that the EU received a comprehensive list of questions, the EU has decided not to reply to the written queries contained in document G/SPS/GEN/1926, which was circulated on 25 June 2021.

10.12. Paraguay wishes to avoid repeating its previous statements; nevertheless, it is difficult to avoid referring to the same points when it is not possible to move forward in the absence of a response, both in relation to this concern overall, and specifically in relation to the last set of detailed questions. At the same time, the four Members that worked on the preparation of document G/SPS/GEN/1926, including Paraguay, are developing countries, with small teams both in capitals and in Geneva. These four Members spent time and effort in producing their document and, for this reason, it is their hope that the delegation of one of the larger WTO Members will also be able to invest time and work in order to respond in writing to the question raised in document G/SPS/GEN/1926.

10.13. Paraguay recalls that the European Union announces in its proposal for reforming the functioning of the committees that, for better functioning, Members should submit their questions in writing with a view to moving forward on trade concerns, and that Members receiving questions should try to respond to them within 30 days of receiving them. This is considered by the EU as "good practice", which should be adopted in accordance with its proposal. However, the issue with which we are dealing today seems to be an exception.

10.14. Paraguay wishes to briefly recall the following points: (i) the European Union is applying the precautionary principle with respect to the elimination of active substances, which are routinely reviewed and whose maximum residue levels (MRLs) are reduced to the limit of detection, without conclusive scientific evidence, even where international Codex Alimentarius standards exist; (ii) the import tolerance procedure considers issues outside the scientific field, such as the so-called "other legitimate factors", which are not defined in the European legislation; (iii) in addition, the import tolerance procedure takes at least two years, and there is no guarantee that it will ultimately be successful; (iv) despite the EU's claim that these measures are adopted because consumer health cannot be compromised, even though there is no scientific evidence supporting these decisions, it also admits that these measures are being taken to "level the playing field"; that is to say, to benefit its producers and protect them from what they consider to be unfair competition; (v) the EU is seeking extraterritorial application of its policies, without regard to climatic, geographical and other differences in production systems, which make it impracticable to replicate its models in developing countries with tropical and subtropical climates; (vi) European producers benefit from billions of euros in subsidies that distort agricultural trade and, according to reports of the FAO, OECD, UNDP, and UNEP, are at the same time most damaging to the environment; and (vii) European producers also benefit from thousands of emergency authorizations allowing them to continue using these "prohibited" products, with a simplified procedure that merely involves sending a form to the member State, which is approved despite being practically blank on a number of occasions. This can be confirmed in the publicly available database that is maintained by the EU. Furthermore, in order to obtain these exceptions, European producers put forward many of the same grounds that Paraguayan producers claim are problematic in the policies implemented by the EU. However, Paraguayan producers are not beneficiaries of this type of special treatment, which is exclusively

reserved for European producers. Paraguay notes, above all, a proliferation of emergency authorizations in France, for beet producers, with respect to substances that are considered neonicotinoids and regarding which the EU recently announced that it was not granting import tolerances because the protection of bees is a global environmental concern. However, the EU has failed to provide a response as to whether it would no longer be granting emergency authorizations while no longer granting import tolerances.

10.15. In light of the above, Paraguay considers that the EU measures are not only discriminatory but also provide more favourable treatment to EU domestic producers than to their competitors. Furthermore, Paraguay also considers that the EU measures are inconsistent with the European Union's obligations under the TBT and SPS Agreements in being more restrictive than necessary and in not being based on scientific evidence.

10.16. The delegate of Australia indicated the following:

10.17. Australia, as a co-sponsor of this item, again highlights its ongoing concerns in relation to the European Union's non-tariff barriers on agricultural products, including agricultural chemical regulations and policy and the potential negative effect on farmers and trade. This includes concerns about elements of the EU's Farm to Fork Strategy and its implementation. Australia has also previously raised its concerns about the EU's risk assessment and import tolerance setting policies in this Council, as well as at the TBT and SPS Committees.

10.18. Australia raised or supported a number of specific trade concerns against the European Union, including at the most recent SPS and TBT Committee meetings. Many other Members also joined in expressing these concerns, highlighting a strong level of concern from a broad cross-section of Members regarding the EU's measures. It is clear that these concerns are largely based on the EU's lack of transparency and predictability for exporters.

10.19. 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.

10.20. Australia questions the European Union'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.

10.21. Australia continues to seek clarification on how the European Union 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 used in a production system compared with presence in consumed produce.

10.22. 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.

10.23. The use of emergency authorizations and 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 and EU produce. Australia would welcome more details on the European Union's process of emergency authorization and establishment of temporary MRLs.

10.24. Australia is looking for the European Union to substantially engage on these long-running issues with Australia and other Members.

10.25. The delegate of Colombia indicated the following:

10.26. Colombia regrets that, since the item was first raised, insufficient progress has been made on the substance of this item for it to be removed from the agenda. Colombia also regrets that it has not received a reply from the European Union to its latest set of questions, prepared with several countries six months ago.

10.27. On this occasion, Colombia intends to summarize its position and address more explicitly the European policy's implementation, rather than considering its nature or political decision. It must be stressed that the European Union's MRL policy, beyond its guiding principles, its justifications, and its public policy objectives, is simply discriminatory in its implementation. Indeed, regardless of whether one agrees or disagrees with its purported objectives, the way in which the policy works in practice is very different for local and foreign producers. The differences are as follows.

10.28. First, Colombia has stated that the European Union's process to determine MRLs is discriminatory in terms of selecting the substances to be reviewed. When it comes to choosing which substances will be evaluated every year, a natural prioritization and selection exercise is conducted by the EU. Obviously, certain substances are chosen for evaluation over others, taking into consideration the impact on its own constituencies, not on foreign ones. Thus, This selection exercise can therefore lead to setting aside certain substances that would burden its own agricultural producers, or more easily selecting substances that have already lost their intellectual property protection, in which case the laboratories producing said substances protect themselves by closing the door to potential generic competitors abroad. In this first selection process, carried out behind closed doors and with room for arbitrariness, there is a lot of leeway for domestic trade protection.

10.29. Second, it is also discriminatory to establish different MRLs for the same substance, but used in a primarily European product versus a foreign one. For example, banana peel treated with a pesticide called imazalil is considered hazardous, whereas orange peel treated with imazalil is considered non-hazardous. One does not have to be an expert to know that orange peel can be consumed, while banana peel cannot. There is also unequal treatment in the selection of products to be reviewed, which should be equal.

10.30. Third, in terms of allowing the involvement of stakeholders, the European procedure allows its member States and their stakeholders to intervene at various stages, while other Members have to wait until the decision reaches the WTO to have a say; that is, after an intra-European consensus has already been negotiated and achieved. Hence, despite notifications and comments being submitted, they have never changed a single measure pertaining to MRLs. Comments from European producers and countries are made at a point in the process when they are effective, while comments from foreign producers and countries are made after the decision has already been taken. There is no equal treatment.

10.31. Fourth, the implementation of the European policy has powerful exceptions, waivers and carve-outs, which take into account the different geographical and climatic conditions of countries, as well as the localized prevalence of pests. For these situations, there exists a simple waiver procedure, a carve-out, that allows European farmers to continue using the substance, to sell it throughout the European market, and to export it without adequate controls. None of these geographical or climatic circumstances is duly recognized as valid for foreign products. Especially in tropical areas, pests are prevalent and distinctive. Again, one does not have to be an expert to see that higher temperatures lead to a higher prevalence of pests than in temperate zones. That said, these simple and convenient waivers, which are poorly controlled and known as "emergency authorizations", do not exist for foreign products. For foreigners, there is a difficult procedure, which is often impossible to carry out and increasingly strict. An exception mechanism should be equivalent, and equally strict or flexible, which is one of Colombia's reasonable requests.

10.32. Therefore, the policy on MRLs, with its laudable green objectives, human health protection, and biodiversity conservation (which Colombia fully shares), clashes with a severely unfair implementation plan, in which some must comply with very onerous rules, with no possibility of discussing them, while others can influence, decide, and even exempt themselves from measures that they themselves have discussed. This is not a matter of health or the environment, but simply of protectionism in the implementation of a policy.

10.33. To this rather bleak picture must be added, lastly, the huge subsidy capacity that the European Union has to ensure that its producers are able to adapt to any standard, which other Members lack. Not only are the standards uneven, but so are the financial means to support the producers.

10.34. To be very clear, all of the above occurs without the basis for the policy itself being called into question. Colombia has also questioned the scientific basis for such determinations and, in particular, the precautionary application of new MRLs in the absence of any negative information on their effects. However, here at this meeting, Colombia is still focusing on the uneven and discriminatory implementation of these standards.

10.35. For this reason, Colombia again stresses the need for the establishment of a structured and comprehensive mechanism for plurilateral dialogue, in parallel with bilateral discussions, in order to seek constructive and substantive solutions to this uneven playing field. Colombia proposes the following options, which it considers reasonable and acceptable for the European Union, and which do not require the EU to change its policy or regulations, without prejudice to the fact that Colombia reserves its rights in connection with the latter aspect. Constructive spirit could be shown through the adoption of the following measures: (a) creating a mirror mechanism for import authorizations, strictly equivalent to the existence of emergency authorizations within the EU, allowing producers to continue using products containing non-authorized substances, or granting emergency authorizations under the same terms as those that apply to European producers; (b) allowing longer transition periods, especially in cases where there are no viable alternatives for substances not renewed on the market; (c) carrying out a joint review of the marketing authorization procedure for substances, to ensure the effective participation of the countries affected, in terms of good regulatory practices, well before the notifications reach the WTO; and (d) maintaining the MRLs defined by the Codex Alimentarius in cases in which scientific evidence is inconclusive, until the scientific data are complete. In cases in which there are no Codex MRLs, the EU could establish a fixed MRL, by default different from the 0.01%, which meets its objective, but is not more trade restrictive than necessary.

10.36. These are simply a few ideas that Colombia believes are constructive and plausible for all. Reaching an agreement requires political will and a lot of dialogue, for which Colombia is fully prepared.

10.37. The delegate of Uruguay indicated the following:

10.38. 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 tariff and non-tariff measures and policies. 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.

10.39. 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 SPS matters.

10.40. Uruguay would like to make it clear that any determination of MRLs, 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.

10.41. Uruguay agrees with other Members that the issue of emergency authorizations to use non-approved 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. Specifically, Uruguay notes that this element could lead to tensions regarding the consistency of the policies adopted at domestic level by the member States of the European Union with the aim of protecting health at Community level, as well as to trade-related situations that could be discriminatory *vis-à-vis* third parties.

10.42. Furthermore, Uruguay wishes to underline its concern about persisting uncertainties over the approach, definition, and implementation of the new EU regulations on veterinary drugs, particularly regarding the requirements that would be imposed on exporting third countries as of January 2022. In this regard, Uruguay would like to stress that any measure 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 for that are appropriate to the individual situations in productive sectors and the marketing conditions of the products concerned.

10.43. Thus, we once again urge the European Union, as one of the largest markets for agricultural products, to reconsider its regulatory approach in order to avoid the unjustified proliferation of barriers to international trade in agricultural products. Consideration must be given to the serious social and economic consequences that these policies may have on other Members, especially developing and LDCs, whose economies rely on the production and trade of agricultural and agro-industrial products, and for which the EU market is of key importance.

10.44. The delegate of Ecuador indicated the following:

10.45. Ecuador also regrets to include once again this item on the CTG's agenda. Although Ecuador has called upon the European Union multiple times to act in accordance with its multilateral commitments, Ecuador notes with concern that there is no response to its requests. Indeed, Ecuador's concern grows even more since, given the current circumstances, the post-pandemic economic recovery requires a global and coordinated effort.

10.46. Ecuador refers to its previous interventions in this Council and once again urges the European Union not to adopt restrictive trade measures without conclusive scientific evidence. Rather, Ecuador urges the European Union (i) to observe international standards recognized as binding on human, plant and animal health protection and not to apply unilaterally determined standards; (ii) to comply with the requirements established in the SPS Agreement, which take a risk assessment approach to any measure; and (iii) to consider suspending the ongoing implementation of measures to reduce MRLs and maintain the levels recommended by the Codex Alimentarius, granting the necessary adjustment period, of at least 36 months, in cases where the reduction of MRLs is shown to be essential. On this last point, Ecuador notes that, together with the delegations of Colombia, Guatemala, and Paraguay, it has submitted written follow-up questions to the EU in the framework of the Committee on Sanitary and Phytosanitary Measures, which are contained in document G/SPS/GEN/1926. The co-sponsors submitted the document in a constructive spirit, seeking to obtain additional information on the modification of MRLs. However, to date, no reply has been received.

10.47. Ecuador urges the European Union to be proactive regarding the exchange of information, and to engage in a dialogue that would allow Members to move forward in addressing their longstanding trade concerns. It is Ecuador's understanding that this interest is shared by all the parties.

10.48. The delegate of Panama indicated the following:

10.49. Panama wishes to echo the statements made by previous speakers. As co-sponsor of this trade concern and joint communication, Panama reiterates the importance it attaches to this issue. The reduction of MRLs without sufficient scientific evidence restricts access to essential substances for agricultural production, particularly in countries with a tropical climate, such as Panama.

10.50. Panama believes that the European Union's set of policies and practices carries the risk of nullifying and impairing the legitimate rights of the WTO Members that have signed the Agreement on Agriculture and the SPS Agreement.

10.51. While Panama agrees with the European Union's goal of supporting the global transition to more sustainable world agri-food systems, this goal must be based on building solutions designed and implemented through dialogue mechanisms, and multilateral cooperation frameworks. Panama once again urges the EU to listen to the legitimate concerns of dozens of WTO Members. Panama

believes that a constructive, serious, and ongoing dialogue, in conjunction with mutually agreed technical assistance, will allow us to reach mutually beneficial solutions.

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

10.53. The United States continues to be concerned about the European Union'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 or to abandon trade.

10.54. The European Union 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.

10.55. Further, the European Union enforces new reduced MRLs at the point of production for domestic goods, and at point of importation for imported goods. This causes trade inefficiencies and disruptions for products destined for the EU market, depending on when a new 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.

10.56. The United States remains concerned that it appears as though the European Union is following a similar approach through its new veterinary drug legislation that could prohibit producers from using antimicrobials that are not considered medically important. The United States recalls its concerns, as raised in the SPS Committee, that these prescriptive restrictions, which do not appear to be based on completed risk assessments, will apply to foreign producers shipping animals and animal products to the EU.

10.57. 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 other countries' national regulatory systems as it works to implement its own system. The international community should be working together to support science-based measures that promote a safe and sustainable food supply, and the United States calls upon the European Union to join with its trading partners in identifying such mutually beneficial solutions.

10.58. The delegate of Argentina indicated the following:

10.59. Despite the length of time that has elapsed, all of the concerns, proposals, and requests contained in document G/C/W/767/Rev.1 remain valid. 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 in this Council and some of its subsidiary bodies.

10.60. Despite this, Argentina has still not received 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. These measures disproportionately affect trade in agricultural products and undermine harmonization and standard-setting efforts at the multilateral level.

10.61. Compounding what was stated on previous occasions is the concern that, as part of the objectives of the Farm to Fork, Biodiversity and Green Deal strategies, the European Union has announced that, when setting import tolerances, it will take into account, on top of public health risks, the substances' environmental aspects for which MRLs are established in third countries. The EU is therefore extrapolating its policies to other countries.

10.62. Therefore, Argentina once again strongly encourages the European Union to cease implementing these measures that unnecessarily and inappropriately restrict international trade. Argentina also asks that the EU establishes a transparent, predictable, and commercially viable import tolerance process for PPPs that have not been re-approved, and which includes a risk assessment, taking into account the risk assessment techniques developed by the relevant international organizations. Lastly, Argentina believes that the proposals that were introduced today

by Colombia are constructive and very specific. Argentina urges the European Union to consider them with the attention they deserve.

10.63. The delegate of Costa Rica indicated the following:

10.64. Costa Rica shares the concerns of other Members and continues to co-sponsor and support this item and document G/C/W/767/Rev.1. Costa Rica considers that all of the different elements in this discussion remain very relevant. In the interest of time, Costa Rica wishes to refer Members to its previous statement to the Council, and calls upon the European Union to continue its dialogue with the interested parties in order to overcome Members' concerns as expressed in the relevant committees.[2]

10.65. The delegate of Canada indicated the following:

10.66. As noted in its previous interventions on this subject, Canada emphasizes the need for transparency and predictability in international trade.

10.67. In accordance with 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.

10.68. 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 impacts this approach is having on trade in food.

10.69. Canada shares the European Union's ambitions related to health, safety, and environmental protection, with a view to making the agriculture sector more sustainable and adaptable. That said, for this to work in practice, related measures must be predictable and based on thorough scientific analysis and risk assessments that reflect the specific realities at the national and regional levels.

10.70. 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 2021; Canada appreciated the information shared and the opportunity to participate and ask questions.

10.71. 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. However, Canada is not reassured and has yet to be convinced by the real-world feasibility, commercial viability, and compliance with the SPS obligations of the EU's approach for setting import tolerances when a plant protection product has met the hazard-based "cut-off" criteria.

10.72. In the meantime, Canada requests that the European Union 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.

10.73. In addition, Canada understands that environmental considerations with a global reach will be included as a factor in future assessment of import tolerances. Canada would appreciate details on the timelines for when environmental considerations will be included in the import tolerance process. Canada would note that including environmental considerations as part of the import tolerance assessment does not align with relevant international guidance.

10.74. 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.

[2] Document G/C/M/140, paragraphs 6.6-6.10.

10.75. Canada also notes that EU member States have authorized numerous emergency derogations to allow PPPs to be placed on the EU market. There are many examples of emergency derogations being granted for individual member States for multiple years, and often with a lack of justification for their authorization. This would seemingly contradict the EU's approach to renewing PPPs as their approval periods expire, as well as allowing domestic producers an unjustified advantage through the repeated approval of these derogations without affording importers the same approvals. There is also uncertainty regarding how numerous emergency derogations align with the high level of health protection chosen by the EU and its low risk tolerance for these substances.

10.76. 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. Sufficiently long transition periods should therefore be factored in.

10.77. In conclusion, Canada hopes that reiterating its concerns to the Council serves as a clear indication of the importance that Canada, and many WTO Members, attribute to seeking enhanced transparency and predictability for trade.

10.78. The delegate of India indicated the following:

10.79. India thanks the proponents of this communication and shares the concerns raised regarding the European Union's application of SPS standards on agriculture products.

10.80. In implementing its SPS measures, the European Union seems to impose its own domestic regulatory approach onto its trading partners. India believes that the EU has not accounted for the feedback provided by the Members on its proposed regulations. The hazard-based approach being used by the EU does not adequately balance the twin objectives of protecting human health and facilitating trade.

10.81. On the one hand, Members see that the objectives of transparency are talked about vocally in forums like the Committee on Agriculture, and so much so that transparency has become an additional eighth pillar of the Agreement on Agriculture; but when it comes to applying the same principles to their own trade practices, the votaries of transparency fail to be consistent. And the process of implementation of these regulations by the European Union puts the interests of farmers in developing countries and LDCs at grave risk.

10.82. The delegate of Guatemala indicated the following:

10.83. Guatemala reiterates its concern over the measures by the European Union and the lack of dialogue to date. The use of the precautionary principle by the EU is extremely concerning, especially when one compares production in the EU to production in other countries. It is important to recall that there are important geographical differences between the different continents, and that tropical countries lack the European cold weather that helps to contain the spread of certain pests. Additionally, it seems to ignore the different conditions prevailing across countries around the world and seeks to impose its measures on third countries.

10.84. Guatemala is concerned by the European Union's attitude regarding the treatment of emergency authorizations in a way that disadvantages developing countries. Guatemala wishes to reiterate the points made by Colombia concerning the treatment of certain generic substances and other issues. Guatemala recalls the transparency proposals by the EU and calls upon the European Union to reply to the written questions submitted in document G/SPS/GEN/1926.

10.85. The delegate of Nigeria indicated the following:

10.86. Nigeria supports the paper tabled by the proponents and shares their same concerns. Nigeria believes that the EU measure has disproportionately affected farmers from developing countries and LDCs. While Nigeria believes that protection of human health is key, such SPS measures should not be designed in a manner that restricts trade. Therefore, Nigeria supports Members' calls for greater transparency. And Nigeria also calls upon the European Union to review its measure and consider replacing it with options that are less trade restrictive.

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

10.88. The European Union takes note of, and continues to pay due attention to, the concerns expressed. The EU provided detailed replies to these concerns in previous CTG meetings and wishes to refer to these earlier statements, which remain valid in their entirety.

10.89. 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 national MRLs.

10.90. The European Union has an open market, and its high level of consumer protection has never been an impediment to the import of agricultural commodities, including from the Members raising these concerns, whose large exports of agricultural products to the EU during these five years have remained stable.

10.91. The European Union provides technical assistance to developing countries and LDCs, directly or through other international organizations, such as the FAO, to support a smooth transition towards new products or production systems.

10.92. The European Union wishes to emphasize again its commitment to continuing an open dialogue on its policies and measures. Therefore, the EU stands ready to further engage with its trading partners on this issue, including by providing clarifications of its policies to its trading partners. Finally, based on the outcome of the UN Food Systems Summit convened in September 2021, the EU believes that Members have a shared interest in making food systems sustainable and protecting citizens' health by tackling the issue of toxic active substances with appropriate measures.

10.93. The Council took note of the statements made.

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

11.1. The Chairperson recalled that this item had been included on the agenda at the request of the European Union, Indonesia, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

11.2. The delegate of Indonesia indicated the following:

11.3. Indonesia appreciates India's discussion of this issue at the Working Group on Trade and Investment's virtual meeting that took place on 5 August 2021. However, Indonesia has also sent an enquiry to India's enquiry point, requesting further clarification of this matter, but has yet to receive a response.

11.4. An Indonesian tyre exporter complained about the hindering of Indonesian tyre imports into India since 2020, resulting from India's unilateral suspension of imports from Indonesian exporters. This policy has been in effect since India issued a new import policy in Notice No. 12/2015-2020 "Amendment in Import Policy of Tyres", dated 12 June 2020, concerning changes in tyre import policy, namely that the trye import criteria had changed from "free" to "limited".

11.5. Indonesia thanks India for issuing an import permit for tyre products in early 2021. However, India applies another restriction, which is that only tyres that meet certain criteria, and which are not manufactured in India, can be exported to India. As a result of the new provisions, several import licences were revoked.

11.6. On this occasion, Indonesia requests India to explain in detail its policy on prohibiting or restricting tyre imports, including the requirements for obtaining import approvals and, if any, import recommendations.

11.7. Indonesia also requests that India immediately review its policy to ensure its adherence to WTO principles. Indonesia would likewise be grateful if the regulation in question could be forwarded

to the TBT Committee. And finally, Indonesia hopes to follow-up on bilateral meetings virtually at the TBT meeting, the previous meeting, in July, of the CTG, and the meeting of the CMA that took place in October 2021.

11.8. The delegate of Chinese Taipei indicated the following:

11.9. Chinese Taipei joins the European Union and Indonesia in expressing its concerns on this agenda item. The situation has been ongoing for more than one year since India announced its restrictive import measure on new pneumatic tyres in June 2020. Chinese Taipei has flagged its concerns in the previous CTG meeting as well as numerous times in the Committees on Market Access and Import Licensing. It is regrettable that the concern has remained unchanged.

11.10. 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). As a result, importers must apply to the DGFT for a licence or special approval before importing those items.

11.11. Since then, Chinese Taipei has noticed that only about 40% of its applications have been approved by the Indian Authority, compared to average figures over the past three years. The delay in issuing import licences has severely affected Chinese Taipei's exports to India, resulting in a sharp decrease of 70% of trade in 2020 compared to the same period in 2019.

11.12. To Chinese Taipei's understanding, India appears to issue import licences only for those kinds of pneumatic tyres that are not produced domestically, and sets a limit on those imported tyres. This clearly constitutes a ban on tyre imports. Chinese Taipei questions how the measure could be compatible with the GATT 1994 and the Agreement on Import Licensing Procedures (ILP Agreement).

11.13. Chinese Taipei urges India to comply with Article XI:1 of the GATT, which prohibits Members from instituting any import restriction made effective through import licensing, and the ILP Agreement, which requires non-automatic licensing procedures to be implemented in a transparent and predictable manner, and without having trade-restrictive or trade-distortive effects on imports additional to those caused by the imposition of the restrictions. Chinese Taipei would also like to ask India to provide the rationale that led it to implement this new measure, which by its nature is restrictive and discriminatory.

11.14. In conclusion, Chinese Taipei kindly urges India to share the reasoning behind its licence-granting practice and to take immediate measures to ensure that import licences can be issued in a timely, transparent, non-discriminatory and predictable manner.

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

11.16. The European Union would like to reiterate the concerns, which were already raised in this Council in July 2021, regarding the licensing regime for importation of pneumatic tyres introduced by India under Notification No. 12/2015-2020 of 12 June 2020. Despite having raised the issue on multiple occasions at WTO level (three times in both the Import Licensing and Market Access Committees) there has been little progress towards a positive resolution.

11.17. The European Union welcomes the belated WTO notification of India related to this measure. However, the EU remains highly concerned by the restrictive and discriminatory nature of this measure, which has had a considerable negative impact on EU replacement tyres manufacturers.

11.18. Only a limited number of licences have been granted to EU tyre manufacturers. In addition, these licences are limited in duration, quantities, and types of tyres. In particular, no licences have yet been granted to bus and truck tyres.

11.19. The European Union therefore urges India: (i) to increase transparency with respect to the applicable requirements and procedural steps for tyre importers to follow; and (ii) to eliminate any implicit or explicit quantitative or other restrictions on the import of replacement tyres that could run contrary to WTO requirements.

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

11.21. The Republic of Korea wishes to reiterate its concern, expressed also in previous meetings, about India's import policy on tyres adopted in June 2020. This policy continues to restrict trade by substantially banning the import of tyres, which is not consistent with WTO rules, including Article 3.2 of the ILP Agreement. Therefore, Korea urges India to improve its policy in accordance with the relevant WTO rules to prevent it from constituting a barrier to free trade.

11.22. The delegate of Thailand indicated the following:

11.23. Thailand shares the same concerns as those of the co-sponsors of this item about India's import policy on tyres, which has been changed from free to restricted. This change has caused adverse effects on Thailand's exports of tyres to India. For this reason, Thailand continues to closely monitor the developments on this matter and encourages India to provide further clarifications and its rationale behind its restrictive import policy on tyres.

11.24. The delegate of India indicated the following:

11.25. India would like to thank the delegations of Indonesia, the European Union, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, the Republic of Korea, and Thailand, for their interest in this issue. This issue was also discussed earlier, in October 2021, in the CMA, and India believes that it had clarified the questions on that occasion.

11.26. However, to reiterate, the non-automatic licensing requirements are administered in a manner consistent with the rules of the ILP Agreement, including with respect to the time-frames for the granting of import licences. This process 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).

11.27. The import policy measure has been taken keeping in view the quality issues for the product. For granting licences under this non-automatic licensing procedure, India has laid down specific criteria to evaluate the applications received. The comments of the concerned administrative ministries are also taken into account as part of this non-automatic licensing procedure. For import of tyres, the EFC has granted licences in almost all cases after due examination of the applications.

11.28. Specifically on Indonesia's points, the fee being charged is a marking fee and not termed as "royalty fee on tyres". The Bureau of Indian Standards (BIS) operates a product certification scheme as per the scheme-1 of the BIS (conformity assessment) regulation 2018, under the BIS Act 2016. Under this scheme, the BIS grants product certification licence to the domestic or foreign manufacturers as per the regulation.

11.29. The manufacturer is required to pay to the BIS the necessary fee, as notified in the above-mentioned scheme for each product. The marking fee for a product is specified on two criteria: (a) minimum marking fee per annum; and (b) unit and unit rate.

11.30. The manufacturer is required to pay the minimum marking fee in advance for the validity period of the licence. The actual marking fee for each year is calculated by multiplying the unit rate with the quantity (units) marked with ISI mark during the year by the manufacturer. The higher of the actual marking fee thus arrived at, or the minimum marking fee for the year, is payable by the manufacturer.

11.31. To reiterate, the marking fee calculation as per the process described above is the same for domestic and foreign manufacturers and does not discriminate between them. The marking fee is chargeable on all production of tyres carrying the ISI mark.

11.32. The Council took note of the statements made.

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

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

12.2. The delegate of Uruguay indicated the following:

12.3. Uruguay regrets having to include this item on the Council's agenda again and would like to make reference to its previous statements, reaffirming Uruguay's concern around the European Union's decision to include the term "Danbo" as a protected geographical indication of origin.

12.4. As explained at the previous meeting, Uruguay considers that Danbo is a cheese production technique that, although it was created by a Danish national, it goes not correspond to any geographical place in Denmark or anywhere in the world. In contrast, Codex Alimentarius Standard 264 establishes the characteristics, production method, and labelling for this kind of cheese. This standard has been changed a number of times, most recently in 2007, with the participation and approval of the European Union and its member States. For this reason, Uruguay considers that the term "Danbo" is a generic term that refers to a generic production method established in the Codex Standard independently of where the cheese is manufactured.

12.5. The actions taken by the European Union in its trade agreements, including Danbo as a geographical indication, mean that third party producers that are not Danish can no longer fully export this product, thereby restricting market access. This is why Uruguay considers that the registration of the term Danbo by the European Union creates a *de facto* monopoly on a generic term, in contravention of international rules that the European Union approved. And regardless of how much time has lapsed, Uruguay will continue to maintain this trade concern.

12.6. The delegate of Argentina indicated the following:

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

12.8. Indeed, the recognition and registration of the term Danbo as a protected geographical indication in favour of Denmark in the European Union did not give due consideration to the Codex Alimentarius international reference standard for Danbo cheese, standard "CODEX STAN 264-1966", which was last revised by that international body in 2008.

12.9. Under this standard, Danbo is established as the generic name for the product in question 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, not only in Denmark.

12.10. The protection of the name in any place other than Denmark constitutes an undue restriction on international trade in Danbo cheese, when it is produced in any other place, as it does not take into account that the international reference standard specifies it as the common name of the product, which is why no country should appropriate that name.

12.11. Therefore, no country that bases its technical regulation on the Codex Alimentarius standard should encounter constraints to trade due to a misappropriation of the term.

12.12. The delegate of New Zealand indicated the following:

12.13. As stated at previous CTG meetings, in relation to this issue New Zealand remains interested and concerned. Specifically, New Zealand is concerned that the European Commission has chosen to register the terms "Danbo" and "Havarti", despite having previously agreed to a Codex standard

in which the European Commission and Denmark both acknowledged that "the country-of-origin statement preserves its generic nature".

12.14. Registering cheese names for which there are existing Codex standards shows disregard for the integrity of the standards-setting system, which promotes reliability and consistency in international trade rules, and which New Zealand would expect the European Union to support. Furthermore, such actions will negatively affect producers outside Denmark who have invested with the legitimate expectations that they could use the standard.

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

12.16. The European Union has consistently provided its views on this issue in past CTG meetings. The EU's views remain unchanged, and the EU notes that its statements from the Council's previous meetings, and in particular the last meeting, remain valid.

12.17. The European Union has notably explained how the generic status of a name is assessed in the European Union. To recall, the European Union 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.

12.18. Generic status in the European Union can only be assessed with regard to the perception of the consumers in the EU territory. In the European Union, 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.

12.19. The European Union has also explained that 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. Nevertheless, even if intellectual property rights (in particular, elements related to the substantive protection of geographical indications) are part of the notified measures, these are not relevant for TBT purposes.

12.20. The Council took note of the statements made.

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

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

13.2. The delegate of Uruguay indicated the following:

13.3. Uruguay wishes to reaffirm its position and concerns, which are both trade-related and systemic, on the European Union's modification of TRQ concessions under Article XXVIII of the GATT 1994.

13.4. In Uruguay's view, there was no need for the European Union to modify, the concessions set out in its WTO schedule, as applied to third parties as a consequence of an internal matter such as Brexit. And in addition to being unnecessary, there are also no legal grounds under the WTO Agreements for the apportionment of these tariff rate quotas between the European Union and the United Kingdom.

13.5. Despite the complaints lodged by many trading partners, which saw how their conditions of access would be undermined as a result of the apportionment, the European Union decided to go ahead with the project.

13.6. Without prejudice to existing these fundamental differences, Uruguay was a committed and constructive participant in the process under Article XXVIII from the outset. And it did so 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. It is for this reason that

Uruguay prepared and presented impact assessment studies that showed the injury that its agricultural sector, as well as its economy as whole, would suffer as a result of the apportionment. In line with these studies and the provisions of Article XXVIII, Uruguay requested the EU to provide a fair compensation. However, the EU rejected those requests.

13.7. As a sign of flexibility, and in a spirit of compromise, Uruguay adjusted its claims downwards. It did so with a view to achieving the balance needed to ensure moderate but tangible results, taking into account the context and scope of this process launched under Article XXVIII. However, even these more modest requests were met with nothing more than another refusal from the European Union.

13.8. Unfortunately, it must be said that refusals from the European Union in this kind of process are not new to Uruguay. In fact, Uruguay has systematically reserved its rights in open-ended negotiations throughout the successive enlargements of the European Union in the past. However, on only two occasions – in the last decade, upon the accession of Croatia, and 40 years ago, upon the accession of Greece – did the EU consider that a small country like Uruguay was entitled to specific compensation. This same European Union, when faced with the withdrawal of one of its former member States, now seeks to reduce the volume of most of its tariff rate quotas, including eight of the ten that it recognized as duties for Uruguay, while refusing to offer compensatory adjustments – as provided for under Article XXVIII – as part of a process that leaves third parties worse off.

13.9. This is why Uruguay wishes to reiterate its profound deception and dissatisfaction with this situation, while reaffirming its willingness to find a mutually agreed solution, insofar as the European Union recognizes Uruguay's specific conditions and needs, and demonstrates the necessary political will to reach an agreement. This has been clearly absent during this process.

13.10. Lastly, without prejudice to the bilaterally agreed commitments between them, Uruguay once again requests that the European Union remove the United Kingdom from the potential users of its tariff rate quotas in its WTO Schedule of concessions. At the same time, given that it has been almost a year since the completion of the United Kingdom's withdrawal from the European Union, Uruguay reiterates its query about when and how the European Union intends to adjust downwards its final bound AMS entitlements in its schedule of concessions, in line with the announcements made.

13.11. The delegate of Brazil, addressing agenda items 13 and 14, indicated the following:

13.12. Initially, Brazil would like to register that it expects that the decreasing number of Members sponsoring these agenda items is in consequence of a review on the part of the European Union and the United Kingdom of their negotiating stance.

13.13. Although the EU-UK trade agreement has resolved the concern relating to the risk of bilateral trade occupying the quotas object of the "apportionment", Brazil considers that little has been done to remedy the fact that all Members will be worse off in terms of access to the EU-27 and the UK markets due to the unilateral reduction of quota volumes.

13.14. Other than that, many of Brazil's country-specific quotas were made international law by virtue of past Article XXIV and XXVIII negotiations, and of dispute settlement procedures under the GATT and the WTO. Therefore, they cannot be subject to reductions simply due to Brexit.

13.15. 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 they enough by themselves to guarantee access to the British market.

13.16. As a new WTO Member, if one 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 1947, the UK quotas should at least respect the Uruguay Round minimum access criteria. And 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 a large final bound Total Aggregate Measure of Support (FBTAMS).

13.17. However, it is contradictory that the United Kingdom seeks to move away from the Uruguay Round with regard to the volume of its TRQs. The United Kingdom also seems to ignore the Uruguay Round 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 that it seeks to consolidate. And 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.

13.18. Brazil would also like to register its systemic concern regarding the decision of the United Kingdom and the European Union to conclude negotiations that possibly involve Brazilian negotiating rights, despite following the negotiations with Brazil on these TRQs.

13.19. The delegate of China, addressing agenda items 13 and 14, indicated the following:

13.20. China appreciates the consultations and negotiations with the European Union that took place in June 2021, and those that took place with the United Kingdom in September 2021, respectively. China provided its updated requests at those meetings and looks forward to receiving feedback from the EU and the United Kingdom as soon as possible. In this regard, China will continue its negotiations with the EU and the United Kingdom, and hopes to reach mutually satisfactory outcomes as soon as possible.

13.21. The delegate of Paraguay, addressing items 13 and 14 together, indicated the following:

13.22. Paraguay wishes to recall its earlier interventions making reference to its systemic concerns regarding these agenda items. Especially regarding the downward adjustment of the total aggregate measure of support by the European Union, which does not allow Paraguay to arrive at the necessary level of certainty and clarity that it needs to be able to put forward objections to the schedule of the United Kingdom on this particular matter.

13.23. The delegate of India indicated the following:

13.24. India has already expressed its concerns, both in writing and during the formal consultations with the European Union under Article XVIII of the GATT 1994 negotiations. India has also made it clear to the EU how the present methodology and threshold years taken into account for the apportionment of TRQs adversely affects Members' rights. India expresses its concerns that the EU had not taken on board the issues raised by India for the early resolution for an amicable solution. India expects that the EU will provide reasonable opportunities to all WTO Members, including India itself, to exercise their rights under the WTO Agreements and take into account the concerns raised. India looks forward to further fruitful negotiations with the European Union.

13.25. The delegate of New Zealand, addressing agenda items 13 and 14, indicated the following:

13.26. New Zealand shares the concerns that have been raised by other Members regarding the TRQ commitments following the United Kingdom's departure from the European Union. New Zealand is, however, working now to finalize satisfactory outcomes to address these concerns and hopes to have these processes completed soon.

13.27. The delegate of Canada, addressing agenda items 13 and 14, indicated the following:

13.28. Negotiations with both the European Union and the United Kingdom, on their respective negotiations for the modification of TRQ commitments as a result of Brexit, are still ongoing. In this regard, Canada notes the two extensions, one for the European Union, and the second for the United Kingdom, in terms of the extensions of these negotiations to 1 July 2022. Finally, Canada looks forward to continuing these separate discussions with the European Union and the United Kingdom to bring them to a successful conclusion.

13.29. The delegate of Mexico, addressing agenda items 13 and 14, indicated the following:

13.30. Mexico wishes to reiterate its systemic concern over the modification of the TRQs in the schedules of concessions of the European Union and the United Kingdom, as well as the proposed

methodology for doing so, which could result in a reduction, and even an elimination, of market access opportunities.

13.31. Mexico also reiterates the need to heed the calls to modify the AMS commitment in the European Union's schedule to reflect the changes that it intends to make due to the United Kingdom's withdrawal.

13.32. In the light of the foregoing, Mexico urges both the European Union and the United Kingdom to continue their discussions with WTO Members as agreed today, with the extensions granted, and to take into consideration the trade and systemic concerns raised with a view to finding a mutually satisfactory solution through procedures that comply with the rules of this Organization.

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

13.34. The European Union is pleased to report on the good progress achieved so far, including with agreements formally signed with six partners, and negotiations with five other partners for which draft texts are being finalized and will be shortly initialled.

13.35. The European Union welcomes the increased engagement of many WTO Members. For its part, the EU remains fully committed to continuing these negotiations and consultations and to bringing them to a successful close in the coming months.

13.36. The Council took note of the statements made.

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

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

14.2. The delegate of Uruguay indicated the following:

14.3. In addition to the various elements raised under the previous agenda item, which are fully applicable to the current agenda item, Uruguay wishes to reaffirm the following three specific points: (i) the claim of the United Kingdom to have a bound total AMS warrants analysis and discussion on the part of the Members. It is especially problematic since, almost a year after the completion of said Member's exit from the European Union, the EU has still not lowered its bound AMS levels; (ii) it does not seem appropriate for the United Kingdom to attempt to replicate the rights to invoke the Special Agricultural Safeguard, 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. In this regard, Uruguay wishes to know whether the United Kingdom intends to waive the rights to apply special agricultural safeguards for certain products, including those not produced in its territory; (iii) the proposal to introduce a currency conversion in the draft schedule of concessions based on the average daily exchange rate in the 2015-2019 period also raises concerns. Firstly, given its ability to generate bound tariffs and particularly high levels of AMS entitlements which are 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 secondly, given its factual linkage with the ongoing Article XXVIII process.

14.4. Regarding this process, Uruguay also regrets the United Kingdom's lack of openness, thus far, to considering Uruguay's proposals in a positive light. In this context, Uruguay reiterates its willingness to enter into substantive bilateral negotiations, based on meaningful proposals, to arrive at a mutually advantageous agreement. This agreement should enable the United Kingdom to have an independent schedule of concessions formally established in the WTO, while at the same time safeguarding the legitimate rights and interests of the other Members concerned, such as Uruguay.

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

14.6. The Russian Federation continues to have a significant concern regarding the United Kingdom's approach to the renegotiations of its TRQs, and stresses the impossibility of concluding

negotiations without an agreement on compensation. To this end, the Russian Federation urges the United Kingdom to provide its compensatory proposal.

14.7. The delegate of India indicated the following:

14.8. India is engaged with the United Kingdom in bilateral discussions under Article XXVIII of the GATT 1994 to resolve similar issues. India remains interested in the resolution of issues pertaining to TRQs, with an approach that recognizes the rights of the UK's trading partners. India also urges the United Kingdom to use consistent methodologies across all aspects of the negotiations, such as the calculation of the AMS, and the special safeguard measures for agricultural products.

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

14.10. The United Kingdom reiterates the commitments it set out under Agenda Item 8 of the Council's current meeting, and in previous WTO meetings. The United Kingdom is committed to resolving all discussions on its schedule successfully, working closely with partners to do so. The extension of timelines under Article XXVIII, set out in that item, will offer space for conclusion of discussions.

14.11. On statements relating to AMS, SSGs, and currency conversion, the United Kingdom refers Members to its previous statements from this Council and the CMA, which set out its position on those issues, which still stand.

14.12. The United Kingdom is committed to continuing constructive bilateral dialogue towards resolution of the concerns voiced by WTO Members.

14.13. The Council took note of the statements made.

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

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

15.2. The delegate of Australia indicated the following:

15.3. It has been one year since Australia first raised in this Council its concerns with China's disruptive and restrictive trade measures targeting Australian products. These measures include the following: *de facto* import bans or quantitative restrictions (QRs); the imposition of unjustified anti-dumping and countervailing duties; increased and arbitrary border testing and inspections applied without prior notification; and unwarranted delays in listing and re-listing export establishments, and issuing import licences.

15.4. As Members are now well familiar, these measures have severely limited Australia's trade with China in a range of products over the past 18 months, including barley, coal, copper ores and concentrates, cotton, logs, rock lobsters, and bottled wine. China's measures have also delayed Australia's technical market access for dairy, infant formula, hay, and meat, among other commodities.

15.5. In the normal course of trade, it is not unusual for occasional technical issues to arise. But the concurrent and sustained imposition of such a breadth of trade restrictions by one Member on another Member appears highly unusual.

15.6. Australia continues to raise these issues here and in other WTO bodies because these problems persist and because China's actions have implications beyond their impact on Australian exporters. Indeed, they raise the risk and uncertainty of China's market for the global business community.

15.7. Australia is deeply concerned by China's failure to observe due process and its lack of engagement on the technical merits for each measure, including in response to Australian submissions. Australia is also particularly concerned with credible reports that Chinese authorities

have instructed importers to not purchase certain Australian products. Any such instruction by Chinese authorities, whether formal or informal, is inconsistent with China's WTO obligations.

15.8. These actions undermine the transparency and predictability of trade and the effective operation of the rules-based trading system on which all Members rely. Furthermore, statements by Chinese officials have directly linked China's actions to unrelated issues in China and Australia's bilateral relationship. WTO rules do not permit any Member to impose such conditions on another for political reasons.

15.9. Australia has taken careful note of China's previous responses to its concerns, in this and other WTO bodies, and feels that China has still not provided satisfactory answers on how its actions are consistent with its WTO commitments.

15.10. During its recent Trade Policy Review (TPR), China reiterated its commitment to safeguarding a rules-based multilateral system that is transparent, non-discriminatory, open, and inclusive. Australia urges China to give full effect to this vision by ceasing immediately any discriminatory measures being applied to Australian products.

15.11. Australia and China have enjoyed a strong trading relationship, built over many decades, which has delivered benefits to both sides. Australia has welcomed China's growth for the better economic outcomes and standard of living it delivers to the people of China. Australia stands ready to engage with China bilaterally on these matters at any time.

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

15.13. The United Kingdom would again like to express its support for Australia's concern about trade restrictive measures taken by China against Australian products.

15.14. China must ensure that its trade measures are applied in a non-discriminatory, predictable manner, and with the necessary transparency around decision-making and administrative procedures as required by the relevant WTO Agreements. It is vital that, as Members, we adhere to the fundamental principles and objectives of free and fair trade underpinning the rules-based multilateral trading system.

15.15. Unfair and market-distorting trade practices risk undermining the integrity of, and trust in, the multilateral trading system, and lead to direct consequences for business and citizens worldwide. This is a point that the United Kingdom, and other Members, made clear during China's latest TPR.

15.16. The United Kingdom encourages China to engage in good faith and in a timely and responsive manner, providing clarifications to the points raised by Australia.

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

15.18. The United States shares Australia's concerns, and notes that China appears to have implemented a broad range of restrictive measures against certain Australian goods. Official Chinese statements have linked these actions to unrelated bilateral matters. The United States is also concerned that China's actions are not isolated to Australia.

15.19. As noted during China's TPR, the United States is concerned with a wide range of Chinese trade and economic practices, including the Chinese practice that has come to be known as "economic coercion". If another WTO Member speaks out against or otherwise offends China, China's response increasingly has been to use its economic clout to pressure the offending country to "correct its mistakes". A number of WTO Members in this room have experienced China's "economic coercion", in apparent retaliation for unconnected bilateral issues.

15.20. China asserts that it upholds the "rules-based multilateral trading system" and is complying with its international trade commitments, but this claim seems inconsistent with China's actions.

15.21. China's failure to adhere to global trade norms and WTO principles challenges the prosperity, security, and values not just of the United States, but also of many other Members of this institution.

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

15.23. As stated in previous meetings, the European Union is not directly involved in the issues that Australia is currently raising with China. Rather, the EU's statement is related to questions of principle, and not to the facts of the measures that Australia has brought to the Council's attention. However, the European Union does note with concern the long list of measures adopted by China that have a negative impact on Australian exports.

15.24. 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 technical committees and dispute settlement. This being said, the already noted length of the list of issues raised by Australia, as well as the current discussion of this agenda item, suggests that there is an additional dimension to this matter.

15.25. 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 same commitment to safeguard and nurture this Organization, which is currently facing major challenges.

15.26. However, there is a further problem about which the European Union is concerned, namely an appearance that the underlying true reason for the resort to these measures, be they formal or informal, is an intention to put pressure on, or sanction, the other country involved for a policy choice that lies within the rights of that country.

15.27. Within the European Union, the European Parliament, member States, and the European Commission, have all expressed their concerns as to such practices of certain countries seeking to coerce other countries, and also the EU, to take or withdraw particular policy measures. Such coercion raises questions of international legality beyond WTO-consistency.

15.28. In conclusion, the European Union is grateful for this opportunity to share its concerns about this increasing trend towards coercion.

15.29. The delegate of Canada indicated the following:

15.30. Canada shares the systemic concerns raised by Australia. Canada has also raised a number of specific trade concerns regarding China's application of SPS measures that are restricting trade in food, plants and animals, and their products. Canadian agri-food exporters continue to experience a lack of transparency and predictability with respect to China's application of SPS measures, and significant undue delays in China's approval procedures.

15.31. Canada has noted a recent pattern regarding China's growing willingness to use unjustified SPS and TBT measures to block or otherwise hinder trade. The use of these trade-disruptive and coercive measures challenges and destabilizes the rules-based international trading system, from which China, Canada, and all WTO Members have benefited. For example, Canadian canola seed exports to China continue to be arbitrarily and unjustifiably restricted, which is why Canada has requested the establishment of a WTO panel on this matter.

15.32. In addition, Canada remains concerned that measures adopted by China in 2020 to temporarily suspend exports from meat and fish establishments due to China's alleged concerns regarding COVID-19 transmission remain in place despite recent findings from the FAO and the WHO that point to the contrary. With no scientific evidence to support these measures, the continued suspension can only be viewed now as a tool to block trade. Canada urges China to base its SPS measures on sound science and to take into account the updated FAO/WHO guidance that confirms that food and food packaging is not a pathway for the spread of COVID-19.

15.33. Canada also remains concerned that other new regulations in China, notably Decrees 248 and 249, create unjustified disruptions and delays for Canadian food exporters. For this reason, Canada requests China to provide, at the very least, more clarity on these two decrees, and to delay their implementation for eighteen months to allow trading partners time to comply with them.

15.34. Canada encourages all WTO Members, including China, to abide by their WTO commitments.

15.35. The delegate of New Zealand indicated the following:

15.36. New Zealand shares the systemic interest in the concerns expressed by other Members on this topic. As New Zealand has repeatedly noted in a number of forums, 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.

15.37. Given the challenges that 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. And 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.

15.38. Trade measures by WTO Members that cause widespread disruption to trade and lack transparency cause concern to New Zealand, including actions undertaken against a range of Australian exports. New Zealand encourages Members to fully comply with their WTO obligations, including in the application of trade remedies.

15.39. The delegate of Japan indicated the following:

15.40. Japan shares the concerns expressed by Australia that China's trade measures, including trade remedy measures, should be implemented within the framework of the WTO Agreements, and should comply with the relevant WTO Agreements in the procedures and fact-finding.

15.41. As Members pointed out during China's TPR, government measures by China conducted in an informal or undisclosed manner are problematic in terms of China's WTO Accession Protocol, as well as the transparency principle in the WTO. Japan believes that it is important that China ensures transparency for its relevant measures.

15.42. If China operates trade measures in an arbitrary manner, as reported, then its approach conflicts with the international trade system, which is based on free and fair rules. Japan hopes that China will respond to Australia's concerns in good faith and in a timely manner.

15.43. The delegate of China indicated the following:

15.44. China has already provided explanations on this issue several times in this Council and other relevant WTO bodies, and China also provided very detailed responses in its recent TPR. For these reasons, China will not repeat its detailed past explanations, but only reiterate that the measures taken by China against certain Australian exports to China are aimed at protecting the legitimate rights and interests of China's domestic industries, and the safety of consumers, and are measures that are consistent with Chinese laws, regulations, and the WTO. In addition, China has notified these measures to Australia and the communication between the Chinese authorities and the Australian authorities has been open and smooth.

15.45. The Council took note of the statements made.

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

16.1. The Chairperson recalled that this item had been included on the agenda at the request of Australia and the European Union, later joined by the United Kingdom and the United States as additional co-sponsors.

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

16.3. As this Council is aware, over the years, the United States and other Members have had numerous serious concerns with respect to the transparency of China's industrial subsidy regime.

16.4. In China's Protocol of Accession, China agreed to publish all trade-related measures in a single journal, which China has designated as the MOFCOM Gazette. Often, if not normally, however, 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.

16.5. In its Protocol of Accession, China also 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."

16.6. Several years ago, the United States came across references to five legal measures, two relating to fuel subsidies for fishers, 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, roughly eighteen months ago.

16.7. Under its Protocol of Accession, 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. Notice of the delay and the reasons therefor shall be provided in writing to the interested party."

16.8. Despite the United States having submitted its initial request in April 2020, it has yet to receive a written formal response to its request. In September 2020, months beyond the deadline for a written response, a Ministry of Commerce representative did speak with the US Embassy, as China referenced at the Council's previous meeting. In that telephone call, the United States was informed that China would not be providing copies of any of the requested measures because they were either soon to be replaced by new measures or because they were not relevant to China's WTO commitments. The United States views China's handling of its request as inadequate and contrary to China's WTO commitments.

16.9. First, China plainly should have provided copies of the requested measures that it claims were soon to be replaced. Paragraph 2(c) of China's Protocol of Accession to the WTO contains no provision for China to withhold measures that may be superseded at some point in the future. When new measures eventually did come out, it was nearly a year after the United States' initial request and well beyond the 45-day response time mandated in China's Protocol of Accession to the WTO.

16.10. Second, the United States disagrees with China's refusal to provide copies of the requested measures that China claims are not relevant to its WTO commitments. The requested measures clearly appear to address policies and guidelines relating to the development of China's fisheries and semiconductor sectors, and therefore clearly would appear to satisfy the standard of "pertaining to or affecting trade in goods" in paragraph 2(c) of China's Protocol of Accession to the WTO.

16.11. While it perhaps could be debated whether the requested measures provide "subsidies" within the meaning of the SCM Agreement, China's obligation under paragraph 2(c) of China's Protocol of Accession to the WTO is not limited to a requirement to provide copies of requested subsidies measures. Rather, China is to provide copies of any measures pertaining to or affecting trade in goods, which should include the requested measures.

16.12. The United States also notes that none of the requested measures appear to have been published in China's designated official journal, the MOFCOM Gazette, as required by paragraph 2(c) of China's Protocol of Accession to the WTO. Moreover, the two new fishery support measures have also not been published in the MOFCOM Gazette.

16.13. The transparency obligations of China's Protocol of Accession to the WTO are there because Members were concerned, in part, with the lack of transparency of China's industrial subsidy regime. After twenty years, unfortunately, those very same concerns remain.

16.14. But more fundamentally, beyond the legal technicalities, why is China refusing to publish or simply make public a legal measure, for example, about a fuel subsidy programme for fishers that was being ended? It is difficult to understand the need to conceal and suppress these measures.

16.15. Often the first response that Members hear from China on these transparency issues is that China takes its WTO transparency obligations very seriously. But to be frank, the experience of the United States in making a simple request to China's enquiry point seems to demonstrate otherwise.

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

16.17. The commitment by China under its Protocol of Accession to publish all trade-related measures, as well as providing information through the enquiry point, is designed to improve transparency.

16.18. However, in order for such a commitment to be meaningful, China must publish all its trade-related measures in the MOFCOM Gazette, and actually respond to requests for information under the enquiry point. This is not only in the interest of transparency, but also required under China's obligations in its Protocol of Accession.

16.19. Therefore, the European Union urges China to comply fully with its commitments under the Protocol of Accession to the WTO by publishing all trade-related measures, as it agreed to do, and by responding to requests for information under the enquiry point without undue delay.

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

16.21. The United Kingdom believes that it is important to continue to co-sponsor this item both at this Council and at the Committee on Subsidies and Countervailing Measures (SCM Committee). Accordingly, the United Kingdom would like to reiterate its belief that transparency is central to the proper functioning of the WTO. The United Kingdom urges all Members, including China, to take all steps necessary to fulfil their obligations, including by complying with their transparency commitments in accordance with their WTO obligations.

16.22. The delegate of Australia indicated the following:

16.23. Australia attaches considerable importance to the WTO notification and transparency obligations, and is particularly concerned about transparency in relation to subsidy programmes.

16.24. Australia notes the transparency commitments made as part of China's Protocol of Accession. Paragraph 2(c) of the Protocol requires the designation of an official journal to publish all laws, regulations, and other measures affecting trade in goods.

16.25. It also requires China to establish or designate an enquiry point where, upon request, all information relating to the measures required to be published under paragraph 2(c) may be obtained. In this regard, Australia raised its concerns at last week's Subsidies Committee and specifically asked China for the details of how this enquiry point mechanism was functioning. Furthermore, Australia understands that to date no satisfactory response has been received to a request made by a Member under this mechanism.

16.26. Australia considers that transparency is the thread that is woven through all the WTO Agreements. Accordingly, notification obligations remain critical to the proper functioning of the WTO; they are obligations, and not aspirational in nature. Similarly, transparency is what underpins the SCM Agreement, whereas a lack of transparency increases the uncertainty for all our exporters in being able to compete fairly in international markets.

16.27. In conclusion, Australia requests China to provide further information on how the enquiry point mechanism functions, and to assure Members that it is fully adhering to its transparency obligations, including those under its Accession Protocol.

16.28. The delegate of Canada indicated the following:

16.29. Canada shares the concerns of other Members with respect to the transparency of China's subsidies. When it acceded to the WTO in 2001, China accepted comprehensive transparency obligations. Among other things, China agreed to publish all laws, regulations, or other measures affecting trade in goods in a single official journal. It also agreed to respond to enquiries by individuals, enterprises, and WTO Members relating to these measures.

16.30. Canada considers that compliance with notification requirements and responses to enquiries in accordance with the SCM Agreement and China's Protocol of Accession to the WTO is critical to the successful functioning of the rules-based international trading system. Canada urges China to fulfil its WTO transparency obligations.

16.31. The delegate of Japan indicated the following:

16.32. Notification obligations and transparency are the most important foundations of the WTO system, and compliance with them is in the interests of all Members. If the transparency of subsidy expenditure is not ensured, there is concern that distorted subsidies will be increased, which may lead to problems such as oversupply. This issue was discussed at the SCM Committee's meeting of 26 October, but it is difficult to say that China is taking sufficient measures.

16.33. Regarding China's subsidies, various WTO Members have expressed concerns about transparency and the possibility of non-notification of China's subsidy measures at the relevant committees. At the same time, China is the world's largest trader, and is required to be transparent and to comply with the WTO's notification obligations, especially regarding subsidies.

16.34. Like other Members, Japan urges China to fulfil its transparency obligations agreed upon in the context of its WTO Accession Protocol, and to ensure the effectiveness of the mechanisms that contribute to increasing transparency.

16.35. The delegate of China indicated the following:

16.36. As stated in previous meetings, China attaches great importance to compliance with WTO rules; accordingly, China responds to the formal requests of WTO Members for its trade policies, as defined in China's Protocol of Accession to the WTO.

16.37. Regarding the enquiry made by the United States, and as China stated at the Council's previous meeting, China already provided its replies in September, in accordance with the commitments specified in China's Protocol of Accession to the WTO. Regarding subsidy transparency, China has made great efforts to enhance its transparency in relation to its subsidy policies; indeed, China has already submitted its notifications of subsidies at the central and local government levels. Specifically, China's latest notifications on subsidies for 2019/2020 includes 71 subsidy policies at central level, and 374 subsidies at local level. In addition, China has also submitted its latest notifications on state trading enterprises and quantity limitations; and China will also soon submit a notification on its domestic support to the agricultural sector.

16.38. The delegate of the United States intervened a second time to indicate the following:

16.39. The United States wishes to take this opportunity to reiterate its questions to China. Will China provide the United States the five requested measures? If not, what is China's justification for denying the request? And if China is not going to provide the requested measures, will China provide a written explanation as to why it is denying the US request?

16.40. The delegate of China indicated the following:

16.41. As stated earlier in its intervention, China wishes to reiterate that it has already provided its replies regarding the enquiry made by the United States in September, in accordance with the commitments specified in China's Protocol of Accession to the WTO.

16.42. The Council took note of the statements made.

17 CHINA – COSMETICS SUPERVISION AND ADMINISTRATION REGULATIONS (CSAR) – REQUEST FROM AUSTRALIA, THE EUROPEAN UNION, JAPAN, AND THE UNITED STATES

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

17.2. The delegate of Australia indicated the following:

17.3. Australia respects the right of Members to implement technical measures for legitimate policy purposes and in accordance with their obligations under the TBT Agreement. However, Australia is still concerned that measures under China's Cosmetics Supervision and Administration Regulations (CSAR), and various implementing regulations, which entered into force on 1 May 2021, are more stringent than necessary. Australia would ask that China pursue its objective of ensuring the safety and quality of imported cosmetics using less trade-restrictive measures.

17.4. Australia requests more information from China on its reasons for requiring either GMP certification or animal testing for managing either safety risks or quality of low-risk cosmetics products formulated using approved ingredients. China's responses on this in July 2021, and in the TBT Committee, have not sufficiently answered these questions.

17.5. Australia would also like to know why China has maintained its requirement for mandatory animal testing of cosmetics products to be used on children, regardless of the level of risk presented by those products. Australian exporters are also concerned about stringent and inflexible measures under the CSAR framework, particularly regarding testing and registration requirements and requirements to provide detailed information on production processes and other aspects of their intellectual property.

17.6. Australia is a consistent supplier of high quality and safe cosmetics products domestically, and to the world. As Australia has said on previous occasions, the Australian Government stands ready to work with China and discuss the CSAR and their respective systems for cosmetics regulation.

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

17.8. It is unfortunate that the United States must again reiterate its serious concerns. The United States brings this issue to the Council on this occasion because it is imperative to find a resolution to US concerns with China's development of the 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.

17.9. 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 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. The United States asks that China consider less trade-disruptive means for its importers to meet China's animal testing exemption requirements, such as second and third-party certificates to the ISO GMP cosmetics standard. The United States also again asks that China be flexible and transparent with respect to which government or other GMP certificates or production licences it will accept as demonstrating conformity.

17.10. Second, the United States acknowledges that China notified an updated draft of the Good Manufacturing Practices for Cosmetics (GMP) to the WTO (G/TBT/N/CHN/1626) for comment in September 2021, given the substantive updates. The United States asks China to confirm that, for the purposes of overseas inspections, foreign manufacturers will be considered in conformity with the Chinese GMP standard if, as provided in Article 17 of the Provisions for the Management of Cosmetics Registration and Notification Dossiers (a draft of which was notified as G/TBT/N/CHN/1524), they are in conformity with their national or international GMP standards.

17.11. Third, 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 re-consider the extent of the information requirements.

17.12. Fourth, 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 NMPA when information provided should be treated as trade secrets and CBI, to protect from unauthorized disclosure. The United States requests that NMPA provide a mechanism to ensure that the treatment of CBI is monitored and legally enforceable within China.

17.13. Fifth, 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.

17.14. Sixth, the United States continues to have concern that new cosmetics labelling requirements potentially create 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 foreign product safety and claims labelling be a direct translation of the Chinese label, as this may require companies to develop new packaging to enter China. The United States asks that China allow for foreign labelling, so long as the foreign product safety and claims information does not conflict with this information on the Chinese label.

17.15. Seventh, the United States is concerned, given the magnitude of some of the new CSAR requirements, that China has not consistently notified its transition periods for the new CSAR requirements so as to allow for public comment. The United States asks that China allow importers and manufacturers at least two to three years to update existing registrations and to sell through existing inventory for products already on the market. The United States requests that China delay finalization of additional measures until these trade concerns expressed by the United States and many other WTO Members are addressed.

17.16. The delegate of New Zealand indicated the following:

17.17. New Zealand welcomes China's endeavours to modernize its regulatory system for cosmetics and appreciates the opportunity to comment on specific elements of China's Regulations. While New Zealand welcomes the intention to improve safety and quality assurance, it would like to encourage China to ensure that facilitation of trade is considered in the implementation of the regulations.

17.18. New Zealand notes that, under the measures, non-animal tested cosmetics are able to enter China's market only if regulator-issued GMP certification is provided. Yet 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.

17.19. New Zealand warmly welcomes the introduction of alternatives to mandatory animal testing for imported cosmetics. Yet New Zealand, like others, is disappointed that the measures do not provide for non-regulator issued GMP certification or other trade facilitative mechanisms for providing product assurances, meaning that significant and unnecessary barriers to trade for imported cosmetics products still apply for Members that cannot offer regulator-issued GMP certification.

17.20. New Zealand encourages China to engage directly with affected Members, including New Zealand itself, to identify a trade-facilitative mechanism to demonstrate GMP conformity, without imposing animal-testing requirements. Specifically, and following China's response to New Zealand's question submitted during its recent TPR, New Zealand seeks clarification of whether the requirement for a regulator-issued GMP certificate as an alternative to animal testing requirements can be exempted on the basis that: (i) the product fully complies with the relevant ISO 22716 standard, or higher, confirming the safety of the product; or (ii) a product safety risk assessment result is provided from a laboratory accredited by a National Accreditation Body that confirms the safety of the product. Additionally, New Zealand 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. Otherwise, this is a burdensome and

unnecessary trade barrier for exporters that send products to China as well as multiple other markets. Building in such flexibility would be trade facilitative and in accordance with international best practice.

17.21. New Zealand also holds concerns, which it notes are shared by a number of Members, that China requires more detailed disclosure of product formulas than is required in other markets, including specific sources of each ingredient. New Zealand encourages China to limit such disclosure requirements, particularly in relation to sensitive information, to only cover the information that is required to assure product safety in China's domestic market, so as not to compromise intellectual property.

17.22. New Zealand appreciates its recent constructive bilateral engagement on cosmetics issues and looks forward to engaging further with China on its CSAR measures to address these issues. New Zealand would welcome China's response to the concerns raised by it and other Members in this and other forums.

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

17.24. The Republic of Korea wishes to reiterate its concern about China's CSAR. The requirements under the Regulation are creating a trade barrier to Korea's exports to China by restricting trade more than necessary. The Regulation requires exporters to specify, in the application form, the sources and quality data of all ingredients. Such information contains a number of trade secrets and is more than is required in other countries. In addition, the labelling requirement is excessive compared to internationally recognized practice. Korea requests China to improve its Regulation so that it does not constitute an unnecessary obstacle to international trade.

17.25. The delegate of Japan indicated the following:

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

17.27. Although China explained at the Council's previous meeting that it was properly protecting sensitive commercial information, the regulations, as well as related implementing regulations, are still requesting the disclosure of such information as production processes or purchase information for the materials. In addition, Japan considers it a problem that China only approves the results verified by Chinese domestic agencies, while it does not approve international methods of investigation, such as ISO. Japan requests 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.

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

17.29. The CSAR has introduced new definitions and classifications of cosmetics, new cosmetic ingredient application, and safety assessment and requirements. The European Union understands that the aim of the CSAR is to ensure consumer safety. However, the EU has concerns linked to the obligation to transmit confidential information for new products to the Chinese authorities. The EU would also like to recall its concerns as expressed at the CTG's previous meeting, held in July 2021, namely: (i) the mandatory disclosure in the registration process of commercially sensitive information, touching on the intellectual property rights of companies involved; (ii) the amount of information required for the notification of new ingredients, as well as potential issues over the disclosure of such information after a certain period of time; and (iii) the need to publish a detailed summary of efficacy evaluation, which may damage business secrets.

17.30. The European Union believes that these requirements go beyond what is necessary to ensure consumer safety and traceability of the ingredients used in cosmetics, diverging from international practice. This extensive level of information is not required elsewhere in the world for notification and registration purposes. Finally, the European Union reiterates its comment that a differentiated approach is needed between new products and products on the market. Such a differentiated

approach would avoid a situation where product supply could be interrupted for an extended period of time due to insufficient preparation time for both industry and supervision authorities.

17.31. The delegate of China indicated the following:

17.32. China takes note that many technical questions have been raised at today's meeting, such as animal testing, intellectual property rights protection, trade secrets protection, GMP licences, extensive information requirements, labelling and packaging issues. However, as similar questions were also raised in China's most recent TPR, which took place just one week prior to this meeting, and as China has also provided detailed answers to technical questions, in written form, in the context of that review, for the sake of time, China does not intend to repeat, on this occasion, its detailed technical replies. Accordingly, China encourages relevant Members to refer to its written replies provided in the context of its TPR. At the same time, Members' additional questions will be forwarded to capital for further consideration and appropriate action.

17.33. The Council took note of the statements made.

18 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)

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

18.2. The delegate of Australia indicated the following:

18.3. Australia's concerns with India's restrictive measures on pulses imports, particularly India's QRs, are well known to all Members. While Australia has previously welcomed 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.

18.4. Australia has previously said, in this Council and in other relevant WTO bodies, 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 was 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.

18.5. 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.

18.6. Australia and the co-sponsors of this agenda item have submitted numerous formal questions to India in various WTO forums, including in this Council. Unfortunately, India has not answered all of the co-sponsors' questions or addressed all of their concerns. It is important that India provides detailed answers to explain the market and other conditions behind its decisions, including the temporary suspension, 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.

18.7. Australia asks India to clearly explain the status of all the QRs on pulses, in particular whether the temporary suspensions have continued beyond 31 October, or whether the QRs were reinstated on 1 November, and the status of the QR on yellow peas for the fiscal year 2021-2022. Australia also requests India to explain the policy rationale for the minimum import price requirement and port restrictions for yellow peas.

18.8. India needs to provide certainty and stability to exporters, traders, and the global pulses market, which will not be achieved by continuing to implement potential "temporary suspensions" to what were claimed to be "temporary measures" that have now been in place since August 2017. Australia requests that India respond to its questions and permanently remove the QRs.

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

18.10. The Russian Federation once again raises its long-standing concern over India's pulses import policy, and calls upon India to stop applying restrictive measures on imports of yellow peas that are inconsistent with WTO rules. Since the start of the application of restrictive measures, in 2018, India has not provided sound reasoning for its introduction of measures that hinder the import of pulses into India. Import quotas, an import ban, minimum import price requirements, and port of entry restrictions have led to a situation in which import volumes of yellow peas from the Russian Federation have plunged almost to zero in the first half of 2021.

18.11. India repeatedly declares justification for its measures on imported pulses by recourse to Article XX(a) and (b) of the GATT. The Russian Federation once again urges India to explain the causal link between the protection of public morals, human, plant or animal life or health, and import restrictions on yellow peas. Thus far, India has failed to provide such a link.

18.12. One more point is the lack of transparency on the details of India's import policy on yellow peas for the 2021-2022 fiscal year. As of the date of this meeting, 1 November 2021, the information about the import conditions on yellow peas on the website of the DGFT of India is still absent, meaning that India has delayed the publication of this information by half a year already.

18.13. The Russian Federation urges India to fully respond to the questions and requests it has raised on these issues in multilateral and bilateral forums. The absence of information, and India's unwillingness to respond, run contrary to the basic principles of this Organization.

18.14. The Russian Federation urges India to eliminate its minimum import price requirement, to lift its ports of entry restriction, and to allow import of yellow peas into India's market, as required by India's obligations in the WTO. The Russian Federation also calls upon India to publish timely information about its import conditions.

18.15. The delegate of Canada indicated the following:

18.16. Canada and other Members have raised India's restrictions on the imports of pulses in this Council and in other WTO Committees. Canada continues to question the legal interpretation provided by India to justify its trade restrictive measures on dried peas. It is increasingly difficult for Canada to understand why India continues to claim that these measures are "temporary" when the QRs on imports of dried yellow peas were established over three and a half years ago. For dried peas, no quota volume has been announced by India for the fiscal year 2021. Canada therefore understands that the import of dried peas is banned.

18.17. Canada asks 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 imports of Canadian dried peas can resume. To conclude, Canada calls for India to immediately and expeditiously remove 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.

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

18.19. As has been previously stated in this and other WTO committee meetings, the United States remains concerned with India's application of import restrictions for pulses, including pigeon peas, mung beans, black gram lentils, and peas. The United States repeats its previous requests for information on how the measures reflect India's WTO commitments, and when and how the allegedly temporary measures will be ended. Furthermore, the United States notes that India still has not responded to its written questions submitted on 19 March 2021. When can the United States expect to receive a response from India?

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

18.21. This issue has been raised on multiple occasions. To refer only to the latest discussions, the European Union has taken note of India's reply in the October 2021 meeting of the CMA. In the EU's view, India's reply on that occasion unfortunately fell short in addressing the requests for clarifications raised by the many Members concerned about India's quantitative import restrictions on pulses. In this regard, the EU's concerns remain over the application of import restrictions for pulses, and the EU echoes the interventions made by other Members. This supposedly temporary measure has been in place about four years, and thus cannot be considered temporary. Finally, the European Union requests that India provide clarifications as to how its measures are WTO-compliant, as well as more clarity as to when and how the measures will be ended.

18.22. The delegate of Argentina indicated the following:

18.23. Despite the concerns expressed on this matter in various forums, India's explanations have not yet led to a better understanding of the scope and duration of this measure. Therefore, Argentina does not know whether it is a temporary measure, or whether it will be maintained over time. According to the information available, in May 2021, the Indian Ministry of Commerce and Industry published new import conditions for certain pulses. Even though the quota restriction was lifted for mung beans, providing greater flexibility for export, the regulation will be in force until 30 November 2021 (with shipping date prior to 31 October 2021), without guarantees or information about the conditions thereafter. Finally, Argentina wishes to point out that India did not open any quotas in 2020, nor in 2021, for the import of yellow peas.

18.24. The delegate of India indicated the following:

18.25. India wishes 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 such reviews, the import quota on pulses has been increased from time to time.

18.26. The characterization of these measures as anything but temporary is not correct. Apart from the increase in import quotas from time to time, the Government of India has relaxed its import measures through the draft Notification S.O. 1858(e), dated 15 May 2021. Through this order, the restrictions on the import of tur / pigeon peas (*cajanus cajan*), moong, and urad have been withdrawn by revising their import policy from "restricted" to "free", with effect from 15 May 2021, and which were in effect until 31 October 2021.

18.27. Further, on 13 September 2021, through Notification S.O. 3707(e), the Government of India notified that the import of tur / pigeon peas (*cajanus cajan*) will remain free. This order was published in the Gazette, which has the necessary details.

18.28. India continues to review these measures.

18.29. The Council took note of the statements made.

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

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

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

19.3. The European Union regrets to repeat its concerns over the import restrictions imposed by Sri Lanka, in various forms, since April 2020. In this context, the EU does not dispute that Members can take import restrictions in the case of a critical balance-of-payments (BOP) situation. However, the measures have been in place for over a year and a half. To the EU's knowledge, Sri Lanka has still not complied with its obligation to notify the import restriction and enter into consultations with other WTO Members.

19.4. At the October meeting of the CMA, Sri Lanka repeated that it was preparing a notification to the Council for Trade in Services. However, the European Union believes that this is not a services issue, or at least not solely a services issue.

19.5. Since the introduction of the initial measure, in April 2020, Sri Lanka has repeatedly modified the corresponding regulations. However, the European Union cannot conclude that the measures are temporary or close to being phased out. To the contrary, in September 2021, the EU was informed of a newly announced 100% cash margin deposit requirement on various import lines, relating in particular to agri-food products, which risks making imports more difficult or unprofitable, especially for smaller companies.

19.6. In addition, the European Union notes that the suddenly banned imports of fertilizers are, since July 2021, made subject to opaque import licences. Again, this measure has not been notified, and imports remain unpredictable. As a result, this could affect the production and ultimately also the export of agricultural products.

19.7. Contrary to what Sri Lanka implied at the most recent CMA meeting, these measures, and the continued pressure exercised on the banks to reduce currency outflow, are hurting EU interests and significantly affecting EU exports. Moreover, despite all these measures, the trade deficit has continued to increase, and the macro-economic situation is deteriorating. In addition, the European Union is concerned to read in official presentations of the Central Bank that the authorities aim for a continued reduction of imports, whereas the import restrictions should have been temporary.

19.8. The European Union does not believe that this situation is sustainable in the absence of international macro-economic assistance. Furthermore, this is the fourth time that the EU is raising this import ban at this Council, if, thus far, to no avail. Therefore, the European Union reserves its right to take further steps if Sri Lanka fails to notify and initiate consultations.

19.9. The delegate of Australia indicated the following:

19.10. Australia welcomed the update provided by Sri Lanka on its series of import restrictions at the CTG and CMA meetings earlier this year, most recently its update at the October CMA meeting. Despite these updates, Australia wishes to reiterate its concerns with respect to the range of import measures currently being implemented and their cumulative impact. These measures appear to be overly trade restrictive and do not have a clear end-date. Australia appreciates the difficult circumstances that Sri Lanka is under as a result of the impact of COVID-19 on its economy and trade. Nevertheless, a well-functioning, transparent, predictable, and stable global trading system remains fundamental to global economic stability.

19.11. Australia welcomes Sri Lanka working with the Secretariat to ensure these measures are adequately notified to the WTO. In addition, Australia reiterates its request for this notification to be submitted as soon as possible, particularly to provide the WTO basis of these measures, and to indicate when they will be lifted. The continuing lack of certainty has been trade-disruptive and has impacted upon Australian exporters' ability to provide staple food stuffs to Sri Lankan consumers. Furthermore, Australia requests Sri Lanka to reassure Members that the measures are being implemented in a manner consistent with its WTO obligations. Finally, Australia remains open to engaging with Sri Lanka further on this issue, including through the suggested briefing with interested Geneva delegations.

19.12. The delegate of Thailand indicated the following:

19.13. Thailand shares the views of Australia and the European Union regarding Sri Lanka's import measures that came into effect on numerous products in 2020, including automotive products, about which Thailand has been particularly concerned. Thailand takes note of Sri Lanka's updates and explanations at the most recent meeting of the CMA. Nevertheless, Thailand wishes to encourage Sri Lanka to review and implement less restrictive alternative import measures and to notify the amendments of its import policies to the WTO at the earliest opportunity. Thailand continues to closely monitor Sri Lanka's responses to this matter and stands ready to engage with Sri Lanka to discuss this issue bilaterally.

19.14. The delegate of Argentina indicated the following:

19.15. Argentina wishes to support the concern raised by the European Union and Australia, since Sri Lanka's Notification No. 2184/21 affects Argentine exports of mung beans.

19.16. The delegate of Japan indicated the following:

19.17. Japan shares the concerns expressed by Australia and the European Union, and believes that Sri Lanka's import restrictions, especially its automobile import restrictions, may amount to an import ban, which would not be in compliance with Article XI:1 of the GATT.

19.18. Japan understands that Sri Lanka advocates the need for this measure because of the difficulties it is experiencing with its Balance of Payments (BOP). At the same time, such an import restriction, due to the BOP, should not be introduced easily. Rather, it should be carried out with the utmost caution and due consideration for the substantive and procedural requirements in the WTO Agreements.

19.19. Japan requests Sri Lanka to explain how this measure meets those requirements, and to indicate its reasons for considering the measure to be justified. In addition, considering Sri Lanka's explanation, since March 2020, that this measure is to be applied temporarily Japan calls upon Sri Lanka to proceed with its early withdrawal.

19.20. At the Council's meeting of July 2021, Sri Lanka explained that, not only transactions by letter of credit, but also transactions by two types of payment methods, such as prepaid and open account payment, had been introduced for certain items. Japan wishes to clarify whether this applies to automobiles, such as passenger cars, commercial vehicles, two-wheeled vehicles, or repair parts, and also in which laws and regulations the two types of payment methods are stipulated.

19.21. The delegate of Sri Lanka indicated the following:

19.22. Sri Lanka wishes to thank delegations for their continued interest in Sri Lanka's trade policy measures introduced to curb the economic impact of the COVID-19 pandemic. Sri Lanka has already made several statements on this matter at previous meetings of various WTO bodies, including the CTG. Sri Lanka also made a detailed statement at the October meeting of the CMA, where an account was provided on the most recent developments regarding Sri Lanka's trade policy measures under reference.

19.23. Therefore, Sri Lanka does not wish to make a detailed statement on this occasion. However, Sri Lanka does wish to share key aspects of the developments that have taken place since June 2021. Accordingly, the previous Import and Export Control Regulations, issued since April 2020, which imposed measures on imports, have been repealed as follows: (i) the requirement to obtain import licences has been removed, and for those products, no prior approval is required as the temporary suspension is no longer applied; (ii) those items that were subject to importation only on a 90 or 180 days credit basis are no longer subjected to such requirements; (iii) those goods that were subjected to temporary suspension are now allowed to be imported, except automotive vehicles and plastic goods. In addition, certain fertilizer varieties have been brought under Special Import Licences. These measures on imports, which still continue to exist on plastic goods and certain kinds of fertilizer, are justified under Article XI of the GATT 1994, as they have been introduced on a non-discriminatory basis to limit the use of certain plastic and chemical fertilizer domestically for environmental reasons.

19.24. Sri Lanka has taken note of the additional concerns expressed by Australia and the European Union and will coordinate with its capital-based officials accordingly. At the same time, Sri Lanka will continue to engage on this matter with all of the Members concerned.

19.25. The Council took note of the statements made.

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

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

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

20.3. The European Union wishes 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. This registration procedure constitutes a considerable obstacle to trade. It imposes an unnecessary administrative burden and blocks or substantially delays EU exports. The European Union continues to question the measure and Egypt's justification for this mandatory registration of EU companies.

20.4. The European Union notes with concern that the pending registration cases known to the EU have still not been successfully processed, and that some sectors (like ceramic tiles) continue being disproportionately affected by the discretionary application of Decree No. 43. Moreover, the EU would like to highlight the structural problems relating to Decree No. 43/2016, like the lack of transparency of the registration process, the lack of clear deadlines for processing the requests, the lack of a clear appeal procedure, and the high level of discretion in granting registrations. The European Union stands ready to work with Egypt in order to terminate the measure.

20.5. The delegate of Turkey indicated the following:

20.6. Turkey would like to share its continuing concerns regarding Egypt's Manufacturer Registration System, which still constitutes a significant trade barrier. Although certain improvements are being reported in comparison with the early days of the system's implementation, its lack of transparency and resulting unpredictability continues to be a burden on exporters. Turkey now has additional concerns with the recent regulatory change. Decree No. 273, of the Ministry of Trade and Industry foresees to prohibit the dismantled parts of the articles prescribed by the two Ministerial Decrees that relate to the Manufacturer Registration System. That is, Decree No. 43 of 2016 and Decree No. 44 of 2019. Turkey will closely follow the implementation process of this new Decree. In conclusion, while remaining ready to engage bilaterally with Egypt with a view to addressing all trade-related matters, Turkey wishes once again to ask Egypt to review this measure considering its obligations under the WTO Agreements, and to ensure its implementation in full transparency.

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

20.8. The United States remains concerned about the lack of transparency concerning Egypt's measure, as well as its application, which appears to be unnecessarily burdensome for US exporters.

20.9. The delegate of Egypt indicated the following:

20.10. Egypt wishes to thank the European Union, Turkey, and the United States, for the issues that they have raised concerning Decree No. 43 of 2016, and notes that Egypt and the EU have been engaged in discussions of this issue on numerous occasions at various forums. In the context of those meetings and exchanges, Egypt has explained its understanding of the issues raised by the EU and its trading partners, and has exchanged information regarding the status of the registration of EU companies. Egypt is committed to working towards the resolution of the remaining issues.

20.11. On the systemic issues relating to the implementation of the registration system, Egypt has indeed taken a number of positive steps in the right direction, and will continue to work on the improvement of the system, including transparency. On the issue raised by Turkey concerning Decree No. 273 on the registration of dismantled parts of the goods provided for in Decrees No. 43 and No. 44, Egypt wishes to note that this Decree has been suspended. Finally, Egypt emphasizes its commitment towards working with its trading partners towards the resolution of any pending issues in this matter.

20.12. The Council took note of the statements made.

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

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

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

21.3. The European Union once again wishes to express its concerns over import and export restrictive policies and practices by Indonesia. The EU is deeply concerned that no real progress could be registered in this respect as yet. Rather, the number and scope of Indonesian restrictions seem to have further expanded over time, with negative impacts on trade flows, and with a bigger impact 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. A country cannot rely only on promoting exports, but also needs to be open to increasing imports and to creating a trade and investment-friendly climate.

21.4. 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 EU notes with concern that several burdensome and opaque requirements remain in place, preventing the trade and investment facilitation impacts of the Omnibus Law from materializing. In particular, the EU reiterates its serious preoccupation with a number of Indonesia's policies and practices, including burdensome and lengthy SPS import authorization procedures; complex rules on halal labelling; mandatory use of, and limited possibilities for audits on, domestic SNI (Indonesia National Standard) standards; and restrictive import licensing requirements for an increasingly broad range of goods.

21.5. These policies and practices *de facto* hinder access to the Indonesian market for a variety of EU products, and hamper bilateral trade and investment relations. The European Union, therefore, urges Indonesia to reduce its high number of trade barriers, which have been affecting EU trade flows for too long. The European Union also calls upon Indonesia to refrain from creating new trade barriers. Finally, the European Union also reiterates its call to Indonesia to ensure that all relevant measures are notified to the WTO, thereby affording Members an opportunity to provide their comments on them.

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

21.7. The United States takes this opportunity to underscore its deep concern with a number of worrying developments in Indonesia's trade and investment regime. First, the United States remains deeply dismayed by the lack of substantive response to the concerns that the United States has raised regarding Indonesia's use of local content requirements. As Members know, Indonesia has imposed such requirements across a wide range of sectors, including telecommunications, mobile technology, energy, textiles, retail, and franchising. Despite the United States and other Members repeatedly raising concerns in the WTO TRIMs Committee, Indonesia has expanded its use of such requirements. Most notably, the Indonesian government recently announced plans to suppress imports, including through the use of local content requirements, with the goal of "substitut[ing] 35 percent of imported products" by 2022. And in line with this goal, in October 2021, the ICT Ministry issued a regulation that will increase local content requirements for all 4G and 5G devices to 35%. It is difficult to envision how Indonesia could implement its plan to suppress imports in a WTO-consistent manner, and the US strongly urges Indonesia to clarify these reported plans and reconsider its use of local content requirements generally.

21.8. Second, the United States remains concerned by what it sees as a pattern of Indonesia finalizing trade-related measures without sufficient opportunities for stakeholder input. For example, in the WTO TBT Committee, the United States recently learned that Indonesia had signed into effect several measures connected to its halal product assurance law, without sufficient notification or opportunities for input. US concerns with Indonesia's regulatory transparency are not hypothetical; indeed, the halal measures that Indonesia finalized have the potential to impact a significant proportion of global goods trade with Indonesia, including US exports. Going forward, the United States encourages Indonesia to notify draft measures of its halal law to the TBT Committee and to consider the adoption of a more consultative policymaking process overall. The United States believes that this will be to Indonesia's benefit, including by providing greater certainty to domestic businesses and foreign investors.

21.9. Third, the United States strongly encourages Indonesia to respond to the concerns that it has raised with respect to applying tariffs at the border on a category of ICT products that appear to exceed its WTO bound tariff commitments. The United States has raised this issue several times with Indonesia over the past two years, including in the Market Access and ITA Committees, as well

as bilaterally. Unfortunately, Indonesia has yet to provide a substantive response to US concerns. The United States has been patient and constructive, providing concrete examples that clearly illustrate US concerns multiple times, as well as preparing several specific questions, which were circulated to the ITA Committee on 14 April 2021; unfortunately, Indonesia has yet to provide a substantive response to repeated US attempts at engagement. 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. US traders have also been actively noting the disincentives to investment that result from these tariffs.

21.10. The United States is hopeful that, in raising these important issues again on this occasion, it can help to pave the path for greater engagement. To this end, the US stands ready to work in partnership with Indonesia to address these concerns.

21.11. The delegate of New Zealand indicated the following:

21.12. New Zealand echoes the concerns raised by the European Union and Japan. New Zealand notes again that it believes that Indonesia's restrictions on agricultural imports undermine core WTO principles. New Zealand remains 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. And delays in the processing of applications in 2021 reduced the commercial certainty exporters have in this market.

21.13. Despite outlining these concerns at the Council's previous meeting, and Indonesia undertaking to follow up on the issues raised by Members, New Zealand notes that timely issuance of commercially meaningful import licences remains a significant concern, continuing to impact trade throughout the season.

21.14. In the week before the Council's current meeting, for example, Indonesia's Ministry of Trade released a number of new regulations, including Regulations No. 18/2021 and No. 20/2021 relating to Indonesia's import regime. While importers were previously able to apply for licences in November for the following year's import season, these regulations take effect very quickly, from 15 November. Furthermore, the regulations appear to be dated 1 April 2021. New Zealand is concerned that the regulatory environment continues to be unpredictable for importers and exporters to operate in, leading to unnecessary disruptions to trading practices.

21.15. New Zealand encourages Indonesia to provide an update on how the issues outlined by Members will be addressed, and how Regulations No. 18/2021 and No. 20/2021 relate to, and will address, the concerns previously raised.

21.16. The delegate of Japan indicated the following:

21.17. In past meetings of the CTG and TRIMs Committees, Japan has been continuing to express its concerns about the WTO consistency of various local content requirement measures (LCR measures) by Indonesia relating to 4GLTE equipment, TV equipment, retail industry products, and so on. In this regard, it is regrettable that Indonesia has declared that it has no plans to review its LCR measures in the near future. Indonesia has repeatedly explained that LCR measures in general are related to the following three things: (i) government procurement; (ii) policies that involve fulfilling the need to maintain the welfare and life necessities of the entire Indonesian population; or (iii) national management of strategic supplies. However, not all LCR measures fall under these categories, nor are they justified by these reasons.

21.18. Japan is also concerned about the increase in import restricting measures to the import registration or approval system for textile products and air conditioners, raising concerns about their consistency under Article XI:1 of the GATT. Japan appreciates that there is an improvement in the level of permitted quantities, but hopes that the criteria will be clarified, and the operational transparency improved.

21.19. Moreover, when 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 would take into account national supply and demand balance when deciding whether or not to issue a Technical Consideration for API-U. Since then, the actual number of approved quantities of both API-U and API-P for manufacturers decreased, so Japan considers that *de facto* import restrictive measures have been implemented.

21.20. Furthermore, on textile products, it was truly regrettable that the safeguard measure on carpets was introduced on 17 February 2021, even though Japan called upon Indonesia to reconsider its introduction in the context of the Safeguards Committee and bilateral consultations. There are two main problems with the safeguard measure, one being that the tariff is as high as 150-200% in terms of *ad valorem* tax conversion, and the other being that it was introduced in a situation where carpet exports have dropped sharply.

21.21. Japan is concerned about the increase in Indonesia's trade restricting measures, which it suspects are inconsistent with WTO Agreements, and requests from Indonesia a concrete explanation regarding the background to the introduction of these systems, and their WTO consistency.

21.22. Finally, regarding Indonesia's import regulation on air conditioners, its import licence for steel, and its import regulation for textiles, Japan recalls the questionnaire that it submitted to the Import Licensing and TRIMs Committees earlier in the year. Japan expects a prompt response from Indonesia. In addition, Japan hopes that the import regulations on air conditioners will be operated in such a way that they do not become import restrictions, that future permit standards and procedures will be stipulated more transparently, and that the other measures at issue will be corrected or abolished as soon as possible.

21.23. The delegate of Norway indicated the following:

21.24. Norway has an ongoing concern in this matter and looks forward to a change in Indonesia's practice in this regard.

21.25. The delegate of Indonesia indicated the following:

21.26. Indonesia thanks the United States, the European Union, Japan, and New Zealand for returning to Indonesia as an investment and trade destination. Indonesia is well aware of Members' concerns over its import policies, including the following: the US concern about the Domestic Component Level (TKDN), halal certification, and information and communication technology; the EU's concern about the underlay process of animal and plant products, as well as information on halal certification; Japan's concern about TKDN on 4GLTE products, import restrictions on textile products, and high import duties on safeguard measures for carpet products; and New Zealand's concern about Indonesia's inconsistency in issuing import approvals for horticultural products.

21.27. Indonesia reiterates that there are no restrictions, such as import policies and actions related to government procurement, that concern the fulfilment of the Indonesian population's living needs and welfare, and policies involving strategic resources managed by the Indonesian State. Furthermore, based on import data from 2016 to 2020, the products in question do not generally show or experience a decline but rather a comparatively positive trend.

21.28. Indonesia will always support simplification, transparency, and efficiency to make exports and imports easier to take place. With the current implementation of export and import licensing procedures, Indonesia has managed to create an automatic and digital export and import licensing system, allowing applications to be processed in a relatively short time if all the required documents are completed correctly before their submission.

21.29. The Council took note of the statements made.

22 INDONESIA – IMPORT SUBSTITUTION PROGRAMME – REQUEST FROM THE EUROPEAN UNION

22.1. The Chairperson recalled that this new item had been included on the agenda at the request of the European Union.

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

22.3. As reflected under the previous agenda item, the European Union holds deep concerns about the ever-increasing trend in Indonesia towards applying import restrictive measures. In particular, the EU wishes to bring to the attention of this Council some worrisome recent developments regarding Indonesia's strengthened focus on import substitution. Notably, the EU has serious concerns about reported plans by the Indonesian Ministry of Industry to achieve, by 2022, a reduction in imports equivalent to 35% of the value of its 2019 import potential. This would be achieved through a range of measures, including expanding local content requirements and the mandatory use of national "SNI" standards, as well as the further promulgation of cumbersome import licensing procedures.

22.4. The European Union understands that the implementation of this approach is already under way. For example, with the adoption of import restrictions on medical devices, through the "freezing" of several foreign devices in the Indonesian e-catalogue for public procurement, preventing government health institutions from purchasing them.

22.5. EU industry (including, for example, the toy and tyre sectors) is also facing increasing challenges linked to the requirements on use of SNI standards for a growing range of products. Notably, the renewal or granting of new SNI certificates remains extremely difficult, since virtual audits or certification by foreign bodies are not allowed, and options for physical inspections remain significantly limited due to COVID-19-related restrictions.

22.6. Therefore, the European Union wishes to ask Indonesia for clarification of the following: the reported plans for an import substitution programme, including its underlying rationale; the implementing measures that Indonesia intends to take; and how Indonesia intends to ensure that such policies and practices will be compliant with its WTO obligations.

22.7. The delegate of Switzerland indicated the following:

22.8. Switzerland wishes to express its concerns regarding Indonesia's Import Substitution Programme. And while Switzerland recognizes the challenges that Indonesia has had to face due to the pandemic, indeed like many other countries, Switzerland firmly believes that, in an interconnected world, restricting imports can only jeopardize Indonesia's economic recovery. In this context, Switzerland recalls the importance of ensuring that trade policies and practices are compliant with WTO rules. Switzerland looks forward to hearing Indonesia's responses to questions posed by other delegations.

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

22.10. The United States shares the European Union's concerns regarding the Indonesian government's recent statements that it will suppress imports with the goal of "substituting 35% of imported products" by 2022. The United States urges Indonesia to share further information on these statements, including the government's objectives. In particular, the United States would like to better understand which 35% of imports Indonesia wishes to suppress, and why. Finally, the United States urges Indonesia to rethink this trade-distortive goal, which seems to run counter to the foundational WTO principle of fair competition.

22.11. The delegate of Japan indicated the following:

22.12. Japan noted that Indonesia implemented the P3DN (Use of Domestic Products) programme in 2018, which stipulates that the purchase and use of domestic products should be prioritized, and that the Minister of Industry wanted to accelerate this programme as of February of this year. Japan shares the European Union's concerns regarding such import substitution programmes.

22.13. Japan has expressed a series of concerns about a situation in which Indonesia has introduced and maintained LCR measures in various fields. Japan has also expressed its concern that import licence-related measures have been effectively restricted in terms of import quantity. Japan is concerned that this programme will exacerbate this situation.

22.14. Japan wishes to ask for a clarification of how Indonesia intends to implement the P3DN programme. Japan also requests Indonesia to explain how it aims to ensure WTO consistency with the measures that it is trying to implement to realize the plan.

22.15. The delegate of Indonesia indicated the following:

22.16. Regarding the questions on the alleged Indonesia's Import Substitution Programme, Indonesia took note of the concerns and will transmit them back to capital.

22.17. The Council took note of the statements made.

23 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, SWITZERLAND, AND THE UNITED STATES (G/C/W/792)

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

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

23.3. 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. However, we have not yet received written responses to those questions and ask these Members to indicate today when those responses will be provided.

23.4. Nevertheless, the United States wishes to acknowledge a recent telephone call with the GCC members, Switzerland, and the European Union, to discuss this issue. The United States and co-sponsors look forward to the written responses from the GCC members, and request a fulsome update on revisions to the GCC excise tax model and its implementation plan under the GCC Unified Excise Tax Agreement, and in particular those steps that members see being taken by the end of 2021. In this regard, the timely engagement with interested trading partner governments and private sector stakeholders on the concerns noted is critical.

23.5. The delegate of Switzerland indicated the following:

23.6. Switzerland would like to thank the delegations of the GCC member States for the discussions that took place in the week prior to the Council's current meeting and, like the United States, is looking forward to receiving written answers to the questions. Although Switzerland appreciated the opportunity to discuss the state of play of the current reform process, its concerns with regard to the current discriminatory design and impact of the selective tax remain unresolved. In particular, Switzerland reiterates and underlines its request to harmonize at 50% the tax rate for energy drinks and other sugar-containing beverages. Switzerland makes this request again because, from a health perspective, energy drinks and carbonated soft drinks contain similar amounts of sugar. A recent review of the available studies concerning the safety of caffeine performed by the competent authorities in the Kingdom of Saudi Arabia also came to the conclusion that the normal consumption of caffeine does not present a risk for human health. In addition, the share of energy drinks in the GCC markets is very small. Finally, the GCC member States have expanded the scope of the selective tax to include fruit juices and milk drinks containing added sugar. This expansion generates additional revenues and compensates for the harmonization of the tax. For all these reasons, an equalization of the rates at 50% would neither have a detrimental effect on the revenues nor on the legitimate health objectives of GCC member States.

23.7. As the reform process advances within the GCC member States, Switzerland would again ask to be regularly informed about the evolution of this process. Switzerland will certainly contribute constructively in the consultation process and make comments once a draft is publicly available. Finally, Switzerland will continue to follow this issue closely and looks forward to the next opportunity for further exchanges with the GCC member States, as previously discussed.

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

23.9. The European Union thanks the GCC countries for the meeting that took place in the week prior to the Council's current meeting, and looks forward to continuing such engagement. Of particular importance to the EU is the harmonization of the implementation of the Excise Tax Law, as well as the need for a close engagement with private industry stakeholders on the process for revising the tax.

23.10. The European Union would also seek GCC confirmation that, in the revised tax system, energy drinks will fall within the scope of a sweetened beverage tax, and be taxed according to the same criteria as other sweetened beverages, namely solely on the basis of their sugar content. The EU would also welcome information on the envisaged timeline for the change to the volumetric tax and an acceleration of the implementation of the new tax regime.

23.11. The European Union also calls for providing immediate relief for industry until the ongoing GCC excise taxation revision takes effect, by exempting 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.

23.12. The European Union will continue engaging with GCC countries on this issue in order to have this trade barrier lifted in the near future.

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

23.14. On behalf of the United Arab Emirates, the Kingdom of Bahrain, the Kingdom of Saudi Arabia, the Sultanate of Oman, the State of Qatar, and the State of Kuwait, Bahrain wishes to thank the delegations of the European Union, Japan, Switzerland, and the United States for their interest in the GCC excise tax regime, and for their communication on the application of the excise tax on carbonated soft drinks, malt beverages, energy drinks, sport drinks, and other sweetened beverages, contained in document G/C/W/792, dated 19 March 2021.

23.15. In this regard, the Kingdom of Bahrain recalls the GCC statement before the CMA during its meeting of 11 October 2021, in which some of the concerns expressed by interested delegations were answered. As for the timeline of the ongoing process on the new GCC excise tax model, and its implementation, Bahrain recalls, once again, that the revision of the excise tax on beverages is a complex exercise that needs significant effort, extensive coordination, and comprehensive studies. The GCC Working Group on Tax Issues is sparing no effort to complete this exercise in order to submit to the GCC member States the appropriate results and high standards excise tax model. The complexity, time, and resource-consuming nature of this process was emphasized during the consultations held on 28 October 2021, via video conference, with certain of the GCC member States' Geneva-based delegations, in which representatives from the GCC capitals participated. In this respect, the GCC member States were satisfied with the discussions and the exchange of ideas held during the said consultations on the GCC excise tax regime.

23.16. The Kingdom of Bahrain can confirm that the concerns expressed by interested WTO Members will be taken into account and treated with consideration in the framework of the GCC revision of the excise tax regime. As mentioned during the 28 October consultations, appropriate procedures, and timelines, will be adopted by the GCC member States for the revision of their excise tax regimes. Once the process has been completed, the relevant information will be immediately shared with WTO Members.

23.17. The Council took note of the statements made.

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

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

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

24.3. The European Union has raised this issue on multiple occasions in the SPS Committee and under this Council, and the EU's concerns remain. The current so-called pre-clearance system put in place by the United States is too costly and in practice the US market is closed for imports of apples from the EU.

24.4. The United States carried out a scientific risk assessment on allowing imports of apples and pears from several EU member States under a systems approach. This assessment was finalized several years ago and demonstrated that safe imports of apples and pears from the European Union could take place under a systems approach.

24.5. Since 2014, the United States continues to block the publication of its Federal Notice, which is the last remaining step to allow imports of apples and pears from the European Union under this systems approach, and this without any scientific grounds. The United States is thereby going against the SPS Agreement, as it maintains an approval procedure with undue delays and without providing a scientific justification explaining those delays.

24.6. The European Union urges the United States to base its import policy on science, in line with its WTO commitments. The European Union calls upon the United States to finalize the last purely administrative step to allow market access of apples and pears from the EU without any further delay. The European Union looks forward to continuing to cooperate with the United States with a view to finding a swift solution on this overly long outstanding matter.

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

24.8. 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 continues to work through its administrative procedures on this request. The United States would again note that the EU is able to export apples and pears to the United States under the existing pre-clearance program.

24.9. The Council took note of the statements made.

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

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

25.2. The delegate of Indonesia indicated the following:

25.3. Indonesia requests further clarification from Sri Lanka regarding its policy of prohibiting palm oil imports, as contained in the Operating Instruction of the Sri Lanka Export and Import Supervision Department No. 8/2021, which has been updated with Operating Instruction No. 9/2021, dated 12 April 2021. In this policy, crude palm oil products are categorized into a list of products that are prohibited from being imported because Sri Lanka does not know how to deal with the issue of micro-toxin contamination. Indonesia understands that such contamination has occurred as a result of the actions of certain importers, who are deemed to have acted unethically by bringing crude palm oil onto the Sri Lankan market while claiming it as refined palm oil and mixing it with coconut oil.

25.4. Sri Lanka is a major producer of coconut oil products, and in recent years there has been an increase in imports and consumption of palm oil, which is seen as detrimental to domestic producers and smallholders. Thus, Sri Lanka has issued a prohibition policy to make Sri Lanka free from oil palm plantations and free from palm oil consumption. The implementation of the prohibition policy has had a direct impact on exports of palm oil products to Sri Lanka, especially from Indonesia, and this affects the livelihoods of small palm oil farmers in Indonesia, and has a systemic impact on the global palm oil trade. Indonesia considers that Sri Lanka's prohibition policy is a form of discrimination, and is not permitted under WTO provisions; it also has the potential to create unnecessary barriers to international trade.

25.5. Indonesia appreciates Sri Lanka's step in notifying the policy in question to the TBT Committee, in document G/TBT/N/LKA/36. Nevertheless, Indonesia had submitted a request for clarification to Sri Lanka's enquiry point, to date without response or answer. In this regard, Indonesia hopes that Sri Lanka can immediately provide its responses and answers regarding this clarification request, and if Sri Lanka's policy is renewed, it should immediately be notified to the TBT Committee, including further explanation of its rationality, administration, objectives, and duration, as well as the scientific basis for its justification.

25.6. Indonesia hopes that Sri Lanka will review the implementation of its palm oil import ban policy and instead use other, alternative, policy instruments, which are permitted and in line with the applicable provisions in the WTO, such as through implementation of technical standards/regulations to ensure the quality of imported palm oil products.

25.7. The delegate of Colombia indicated the following:

25.8. Colombia is also interested in this topic and concerned about the measures adopted by Sri Lanka, that is, the restrictions and bans on the importation of palm oils, derivatives. Colombia produces and exports palm oil derivatives and biofuels that are created using palm oil. In this vein, market dynamics and restrictions or bans imposed on the trade of these goods in various jurisdictions have a direct impact on Colombian exports. On this particular matter, Colombia is especially concerned about the operating instructions issued by the Sri Lankan Government that have suspended or restricted imports of palm oil. Yet again, as it has done in other WTO Committees, Colombia requests that Sri Lanka provide greater information about these measures, so that Members can get acquainted with Sri Lanka's policy objectives, the period of implementation, the procedures to commercialize palm oil and derivatives, and the time-frame during which these restrictions will apply.

25.9. The delegate of Sri Lanka indicated the following:

25.10. Sri Lanka notes that this issue had also been raised at the meetings of the Committee on Import Licensing, and the CMA, held on 8 and 11 October, respectively, where Sri Lanka had responded to those queries substantially.

25.11. In this context, Sri Lanka would like to reiterate that it has not changed its import policy in respect of the importation of palm oil. In addition, the process of implementation of import authorizations through import licences by Sri Lanka is fully transparent and predictable. As Members have previously been informed, Sri Lanka has complied with due procedures with regard to provisions under the ILP Agreement, as well as the TBT and SPS Agreements. For the record, Sri Lanka wishes to repeat the following key points:

25.12. First, through its Notification to the TBT Committee, in document G/TBT/N/LKA/36, dated 28 May 2018, Sri Lanka has notified its Imports Standardization and Quality Control Regulations of 2017, which were introduced through the Extraordinary Gazette of Sri Lanka No. 2064/34, dated 29 March 2018. This regulation governs the Compulsory Import Inspection Scheme of Sri Lanka, operated by the Sri Lanka Standards Institution. Under the Compulsory Import Inspection Scheme, importers are not permitted to import to Sri Lanka the specified 122 items listed in Schedule-I of this regulation, including palm oil, unless they conform to the relevant Sri Lanka Standards.

25.13. At the meetings of various committees, Sri Lanka has already explained its reasons for including all palm oil, palm olein, and palm stearin varieties under its Compulsory Import Inspection Scheme, namely that it is purely due to the SPS measures relating to aflatoxins and mycotoxins, which are carcinogenic materials. As stated above, the two TBT and SPS focal points in Sri Lanka, namely, Sri Lanka Standard Institute (SLSI), and the Ministry of Health, respectively, had already notified to the WTO the standards adopted for 122 items, including palm oil products. As notified, there are three SLSI Standards, one in relation to palm oil, which is SLS 720, one in relation to palm olein, which is SLS 961, and one in relation to palm stearin, which is SLS 960. Of all palm oil, palm olein, and palm stearin varieties, the specific products falling under HS codes 1511.10.00, 1511.90.20, and 1511.90.90, appeared to have been more contaminated with aflatoxins and mycotoxins, prompting Sri Lanka to impose much stricter measures on their importation.

25.14. Second, the principal set of procedures that relate to automatic and non-automatic licences are stipulated in the Regulation published in Extraordinary Gazette No. 1739/03, dated 2 January 2012. Sri Lanka has already notified this Regulation to the WTO, in 2014. Accordingly, palm oil products falling under HS codes 1511.90.10, HS 1511.90.30, and HS 1511.90.90, can be imported to Sri Lanka by obtaining an import licence from the Department of Import and Export Control, with a fee of 0.4% of c.i.f. value.

25.15. The Council took note of the statements made.

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

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

26.2. The delegate of Indonesia indicated the following:

26.3. Indonesia expresses gratitude to India for notifying to the TBT Committee, on 25 May 2020, in document G/TBT/N/IND/147, the draft Automobile Wheel Rims (Quality Control) Order 2020. Wheel rim products must meet IS 16192 and bear the Indian Standard Mark, which is licensed by the BIS, based on these criteria.

26.4. Indonesia pays close attention to this policy and requests that India postpone or provide adequate transition time for Indonesian industry to comply with the regulation. Indonesia also needs clarification of the status of the regulation's implementation at this time. Although the regulation went into effect on 1 October 2020, India has made no additional notification regarding the establishment of the arrangement. As there is no clarity regarding the regulatory mechanism, Indonesia believes that the regulation will have an adverse impact and become a trade barrier to Indonesian trade. In addition, Indonesia requests India's clarification of several policy issues, including the status of implementing regulations, factory visits, the implementation of the International Center for Automotive Technology (ICAT) standards, and the scope of the arrangement.

26.5. Indonesia also hopes for a follow-up bilateral meeting further to the discussions that took place at the TBT and CTG meetings that took place in July, the Working Group on Trade and Investment meeting that took place in August, and the CMA meeting that took place in October. Indonesia has also sent an enquiry to India's enquiry point to request further clarification of this matter; however, it has yet to receive any feedback from India in this regard.

26.6. The delegate of India indicated the following:

26.7. India notes that it is not a mandatory obligation under the TBT Agreement to notify a final measure to the WTO. However, the same is published in the gazette and publicly available. As also mentioned on the BIS website[3], the implementation date for the regulation has been postponed to 21 March 2022. This same clarification has already been provided in the October meeting of the CMA.

26.8. The quality control order has listed the mandated standard and the conformity assessment procedures (CAPs) required. There is no provision in BIS (conformity assessment) regulations 2018 for remote assessment or any other means for inspection. However, India is considering alternatives to in-person inspections, with this discussion currently in its initial stages. India requests Indonesia to share the specific challenges being faced on account of this measure.

26.9. The Council took note of the statements made.

[3] https://www.bis.gov.in/wp-content/uploads/2021/06/automobile-wheel-rim-component-quality-control-amendment-order-2021.pdf

27 INDIA – PLAIN COPIER PAPER QUALITY ORDER 2020 – REQUEST FROM INDONESIA

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

27.2. The delegate of Indonesia indicated the following:

27.3. Indonesia seeks clarification from India regarding the provisions outlined in the Plain Copier Paper (Quality Control) Order 2020. Only the Indian Standards Bureau (BIS) performs certifications based on the Conformity Assessment Regulation 2018 via Scheme 1 of Schedule-II, which requires factory visits, sampling, product testing, and licensing procedures.

27.4. Indonesia regrets India's failure to address the current COVID-19 pandemic, which prevents factory visits, and includes travel bans, and social distancing policies. In this regard, Indonesia requests India to consider using remote assessment in conducting factory visits, and relaxing its policies, as a means of facilitating trade and minimizing technical trade barriers, particularly in the context of this pandemic.

27.5. Indonesia requests that India postpone the measures or provide for a reasonable transition time to grant Indonesia's pulp and paper industry sufficient time to comply with the regulation, and also that India immediately adopts the available international standards as the basis for its testing methods, namely remote assessment during factory visits.

27.6. In addition, Indonesia requests India to notify the TBT Committee of this technical regulation. Indonesia also hopes for a follow-up virtual bilateral meeting further to the discussions that took place at the July meetings of the TBT Committee and the CTG, the August meeting of the Working Group on Trade and Investment, and the October meeting of the CMA.

27.7. The delegate of India indicated the following:

27.8. There is no provision in the BIS conformity assessment regulations 2018 for remote assessment or any other means for inspection. India is considering alternatives to in-person inspections, with this discussion currently in its initial stages. The quality control order refenced in this discussion has listed the mandated standard, as well as the CAPs required. On standards, India wishes to clarify that international standards are indeed adopted unless specified otherwise.

27.9. The Council took note of the statements made.

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

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

28.2. The delegate of Japan indicated the following:

28.3. Japan continues to have concerns over China's Export Control Law, which entered into force in December 2020. In particular, the details of the export-controlled items, and the details regarding regulations and operations, are still unclear to Japan.

28.4. As stated in previous Council meetings, and taking into consideration the objective of the law to safeguard national interests, Japan especially wishes to reiterate the following three points: (i) the possibility to set out the scope of the products excessively broadly; (ii) cases that may 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, which are maintained in the law.

28.5. 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 consequently be inconsistent with the WTO Agreement.

28.6. In this regard, Japan wishes to reiterate the following two points, as raised already in previous meetings of the Council: (i) the draft regulations on rare earths, published in January 2021, mentioned a plan to set out strategic reserves, which Japan believes could mean the possibility that China may introduce controls on exports of rare earths and related products, in accordance with the aforementioned Export Control Law; and (ii) regarding the "Unreliable Entities List", and the export prohibition list based on the External Trade Law, Japan is concerned that the relationship between the entities list in the Export Control Law, the items covered in the law, and the technology list, is also unclear.

28.7. Japan understands that China explained at the Council's previous meeting that it is still drafting the Export Control Law's supporting regulations and the control lists, and that it will communicate with the Members concerned and provide updates in due course. For its part, Japan will continue to observe the details of the regulations on implementing the law and hopes that its concerns will be resolved accordingly in their final draft. In addition, Japan is of the view that the countermeasure provisions should be removed from the law.

28.8. In conclusion, Japan requests China to provide information on the detailed regulations, and their timeline, in full transparency, while also providing ample time for their consideration.

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

28.10. The European Union is closely following developments regarding China's new Export Control Law, which took effect on 1 December 2020. While recognizing that China's Export Control Law consolidates its non-proliferation commitments and export controls, the EU still has concerns relating to the following five main issues.

28.11. First, the extra-territorial application of the law. 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.

28.12. Second, rules on deemed exports and re-exports. The law appears to provide for controls to apply to transactions within China ("deemed exports", as per Article 2.3). In this regard, the European Union places great importance on the non-discriminatory treatment of EU companies in China (for example, their Chinese subsidiaries). The EU is concerned that the concept of "deemed exports", which goes beyond the internationally agreed standards on export controls, might lead to an unequal treatment and have adverse effects on the activities of EU companies in China (for example, research and development). 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. It would be useful to confirm that this is not the case under the current re-export provision.

28.13. Third, objectives and scope of controls. The law names "national security and interests" as a prime objective, next to "non-proliferation and other international obligations". Even though the law does not reference "development interests", "industrial competence", or "technological development" anymore as control principles (as previous drafts did), the European Union 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 still reflecting objectives other than international security obligations and commitments. The EU recalls that the objectives and scope of export controls should be in line with a Member's international obligations and multilateral commitments. In the context of its TPR, China replied that "[n]ational interests are inseparable from the concept of national security. The legislative purposes of major international countries' export controls all mention safeguarding national security and safeguarding national interests". However, the EU would welcome further 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, for example, on the application of control parameters ("national security" and "development", Articles 1, 3, and 13); "terrorist purposes" (Article 12); the 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).

28.14. Fourth, the 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". In the context of its TPR, China replied that this would be "in line with the basic norms of international relations, WTO rules and internationally accepted practices". The European Union is of the view that this provision is not in line with international export control standards and requests China to provide additional clarifications. The EU will place great importance on any secondary legislation and would welcome clarifications and specifications on the application of such provisions.

28.15. Fifth, the European Union requests China to explain the relationship between the technologies that are subject to the restrictions under the Export Control Law (for example, the lists formulated under the implementing administrative laws and regulations) and the list of technologies that are prohibited/restricted to be exported under the Catalogue of Technologies Restricted or Forbidden for Export. In the context of its TPR, China replied that "the Catalogue of Technologies Restricted or Forbidden for Export does not lie in the applicable scope of the Export Control Law. […] The former was made according to the Export Control Law, while the latter was under the Regulations on Unreliable Entity List". However, the Export Control Law explicitly stipulates that the purpose of the legislation is to safeguard the national security and interests, while the Catalogue of Technologies Restricted or Forbidden for Export also aims to regulate management over technological exports and maintain national economic security. The European Union would like to ask China to further clarify the difference, in particular in terms of the consequences for EU companies and operators in China.

28.16. The European Union requests China to clarify whether the lists originate from multilateral non-proliferation efforts or whether it is based on national considerations, and if so, which? The European Union requests China to clarify whether corresponding references to the lists of multilateral export control regimes will be published in order to provide legal clarity. The European Union thanks China for the explanations provided as part of its recent TPR. Nevertheless, the European Union would appreciate receiving China's further clarification of the various issues just outlined.

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

28.18. 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 is 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 closely.

28.19. The delegate of Australia indicated the following:

28.20. Australia notes the statements delivered by Japan, the European Union, and the United States in relation to China's Export Control Law. Australia was pleased to make a submission to the Government of China in relation to this law in August 2020 as part of a public consultation process. In this regard, Australia appreciated China's consultation with interested parties ahead of the law's adoption in December 2020. As set out in Australia's submission, Australia also welcomed China's efforts to codify the regulatory framework for defence export controls.

28.21. However, Australia still has concerns, which relate primarily to the broad scope of the law. Australia encourages China to provide greater clarity in relation to key elements of the law, including jurisdiction, the scope of administrator powers, and confirmation that the law is consistent with China's international commitments, including WTO rules and the China-Australia Free Trade Agreement (ChAFTA). Australia continues to urge China to take account of the concerns of foreign businesses and Members in the implementation of this law and the development of future measures, and looks forward to continuing to work closely with China.

28.22. The delegate of Canada indicated the following:

28.23. Canada would welcome further clarity from China with regard to the scope and application of its Export Control Law (ECL). For example, Canada understands that the ECL includes a broader concept of "national interests" that is well beyond the scope of international export control regimes, which are based on national security and international non-proliferation considerations. Canada requests more information on how China defines "national interests" in this context, and how it could affect the scope of export controls that could be considered under the ECL. For example, does it provide scope for China to adopt any export controls intended solely to promote economic development and industrial policy objectives?

28.24. Canada also understands that the ECL includes a provision stipulating that China could take reciprocal measures against foreign countries or regions that "abuse" their export control measures. Canada requests clarity on how "abuse" of export control measures by foreign countries is defined, including, but not limited to, "abuse" deemed to be endangering China's "national interests".

28.25. Canada notes the importance of transparency in the application of the ECL, to ensure that legitimate commercial activities are not impeded, and would welcome any clarifications that China could provide in this regard.

28.26. The delegate of China indicated the following:

28.27. China is still in the process of drafting the legislation of the supporting rules and regulations for its Export Control Law. These supporting laws and regulations will provide clear and more specific guidance for all parties, including foreign enterprises, to implement and abide by China's ECL. China welcomes any suggestions provided by Members during the drafting process and China is willing to continue to engage with relevant Members on this issue. For the specific questions raised by Members, China encourages the relevant Members to refer to China's detailed written replies provided in its recent TPR.

28.28. The Council took note of the statements made.

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

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

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

29.3. The Russian Federation continues to openly develop and apply a policy of import substitution and forced localization of production that is contrary to the spirit, and often the letter, of the Russian Federation's WTO commitments, and which, consequently, is the origin of numerous trade irritants affecting EU products.

29.4. At the Council's previous meeting, the European Union referred to six specific measures. However, on this occasion the EU will not raise the issue of quotas for foreign products, as this issue is now subject to dispute settlement (DS604). Nevertheless, the EU will comment again on the other five issues previously raised.

29.5. First, the European Union referred in some detail in past meetings to the planned increase in the so-called "recycling fee" for certain categories of vehicles. In this context, the EU requests the Russian Federation to kindly inform Members about the state of play of those planned increases. The EU also renews its request to the Russian Federation to conduct a fact-based evaluation of the recycling market for vehicles before any future decision is taken, and to ensure that measures supporting demand provide the same advantages to domestic and imported products.

29.6. Second, on cement, the European Union takes note of Russian Government Decree No. 1265, of 24 July 2021. The EU wishes to know how this Decree will affect the certification requirements that have blocked EU exports of cement to Russia, effectively since 2016. The EU would also like to

understand whether it will lead to the partial remedy announced by the Russian Federation in 2019 in the form an amendment to the standard.

29.7. Third, on the Federal Law "on protecting consumer rights", which mandates the pre-installation of Russian software in a number of consumer electronic devices, the European Union reiterates its previously stated view that the amendment to that Law is a potentially discriminatory measure, for which reason the EU requests its notification, in accordance with the TBT Agreement. The measure could contravene WTO national treatment provisions concerning goods, as well as the Russian Federation's WTO commitments for certain services.

29.8. Fourth, on Federal Law No. 468, "on Viticulture and Winemaking", the European Union notes that, since the Council's previous meeting, the Russian Federation has adopted a new law (Law No. 345, of 2 July 2021), which alters Federal Law No. 468. This law introduced additional new requirements for placing wine products on the Russian Federation's market. The European Union urges the Russian Federation to notify this new law to the WTO, in accordance with the TBT Agreement. This law has already had negative effects on exports of EU wine and spirits to Russia. The European Union also reiterates its request to notify Federal Law No. 468. Furthermore, these laws, including the newest, affect the use of European geographical indications on the Russian Federation's market. The European Union expects that the Russian Federation will refrain from further pursuing its stated goals to reduce imports of foreign wines and spirits into the Russian Federation.

29.9. Fifth, the European Union reiterates its concerns about the announced introduction of an export ban on unprocessed wood, starting from 1 January 2022. It is of high importance to the EU that the Russian Federation explains how such an export ban and related measures may be compatible with WTO rules and its own Schedule of concessions, which includes tariff-rate quotas for the export of wood, some of which are EU-specific. The European Union also urges the Russian Federation to notify any corresponding draft legislation.

29.10. The European Union continues to call upon the Russian Federation to ensure that its measures fully conform to WTO rules and to abandon its policy of import substitution and localization.

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

29.12. The United States again raises its flag to add its voice to the European Union's to express concerns about the Russian Federation's trade restrictive practices. However, the US intervention will be short because the Members of this Council are, by now, quite familiar with its concerns.

29.13. The United States has identified, and described in this Council, numerous measures adopted by the Russian Federation that impose local content requirements, exclude imports from certain sectors of the economy, mandate the use of domestic products, establish quotas for the use of domestic products, and provide preferential pricing for domestic products, to name but a few. In short, the Russian Federation is turning inward, imposing import substitution strategies and building walls to keep out global trade. And such a posture is hardly consistent with the goals of this Organization.

29.14. The Russian Federation assures this Council and other WTO bodies that its measures "should be applied in accordance with the international obligations of the Russian Federation". However, laws and regulations adopted by the Russian Federation appear to explicitly mandate behaviour that is not in accordance with the Russian Federation's international obligations. Those international obligations include the guiding principles of the WTO: to foster global trade through the guarantee of most-favoured-nation principle and non-discriminatory treatment by and among Members, and a commitment to transparency. The Russian Federation seems to be moving its economy away from those principles.

29.15. The United States will continue to carefully examine the Russian Federation's actions and raise its concerns with the Russian Federation's restrictive measures in the hope that the Russian Federation will reverse these trends, and participate in an open and fair multilateral trading system.

29.16. The delegate of Australia indicated the following:

29.17. Australia thanks the Russian Federation for its recent engagement on this issue. However, Australia wishes to reiterate its concerns over the Russian Federation'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.

29.18. The Federal Law poses several barriers to the importation of wine into the Russian Federation, imposing 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. Furthermore, the Russian Federation has not yet notified the WTO of the Federal Law, despite it being in force for over a year, having entered into force on 26 June 2020. Australia requests that the Russian Federation notifies the Federal Law to the WTO accordingly, and as soon as possible.

29.19. Australia also notes several obligations within the Federal Law that are inconsistent with the Eurasian Economic Union Technical Regulation No. 047/2018, "On safety of alcohol products". Australia understands that the entry into force of the Technical Regulation has been postponed to 1 January 2022 to allow harmonization work with the Russian Federation's Law. Australia requests that the Russian Federation provide an update on this harmonization work and confirm whether the Technical Regulation is expected to enter into force on 1 January 2022.

29.20. Finally, Australia requests that the revised Technical Regulation is notified to the WTO accordingly, and that an adequate transition time be put in place to provide businesses with sufficient time to adjust to the new requirements.

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

29.22. In past meetings of the CTG, in other WTO working bodies, and in the context of the Russian Federation's most recent TPR, the Russian Federation has previously commented extensively on many of the issues raised on this occasion. The Russian Federation wishes to highlight the following points. On its import substitution policy, the Russian Federation refers to the remarks made by the head of its delegation in its past TPRs, as well as to the Russian Federation's replies to the relevant questions within those TPRs.

29.23. 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 rate of the fee is the same irrespective of the product source. WTO rules do not prohibit charging fees at any rate as long as they comply with the national treatment and non-discrimination principles.

29.24. As for cement, the GOST-R on rules of certification of cement was developed in order to ensure the safety and quality of products, both imported and domestic, circulated in the market of the Russian Federation. The Russian Federation notes that certain provisions of this standard are being reconsidered.

29.25. Regarding developments at the EAEU level, the Russian Federation notes that the member States of the EAEU have made a decision to develop a technical regulation on the safety of building materials, which includes cement. It is currently planned that the draft regulation should be developed by the fourth quarter of 2022.

29.26. On the Federal Law on Viticulture and Winemaking, the Russian Federation notes that the law is aimed at settling specific issues concerning the manufacturing of wine raw materials and wine products in the Russian Federation. Besides, the objectives of the law are to set a mandate for the government and for the self-managing of organizations, as well as to set the legal status of economic operators in the field of viticulture and winemaking, in order to eliminate counterfeiting and unnecessary administrative barriers.

29.27. The Russian Federation notes that the value of wine imports, including from the European Union, the United States, and Australia, remained stable or else increased after the Law had entered into force, as the customs statistics indicate. Bearing this in mind, one can only conclude that the Law did not result in any negative impact on the traditional trade in wine products.

29.28. In respect of geographical indications, the Russian Federation notes that GIs are protected by its Civil Code. "Cognac" and "Shampanskoe" are terms not protected in the Russian Federation as they are generic names and associated by Russian consumers with categories of products. According to Article 24.6 of the TRIPS Agreement, nothing shall require a WTO Member to apply protection in respect of geographical indications of any other WTO Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods. Besides, neither the TRIPS Agreement, nor any WIPO Convention, set out a list of automatically recognized GIs.

29.29. As for the export ban on timber, the Russian Federation notes that there is no export prohibition in force for the export of timber products from the Russian Federation. Rather, all the measures that the Russian Federation introduces in the sphere of the regulation of export of timber products, including the reduction of railway border crossing points, are measures aimed to combat criminal activities in the field of illegal logging and illegal export of these products.

29.30. The Russian Federation's Track and Trace System aims to combat counterfeiting and smuggling, as well as to ensure that all taxes are paid for each item.

29.31. As for additional obstacles to trade, the Russian Federation notes that, before the System enters into force in respect of each category of products, the Government carries out the relevant pilot projects in collaboration with the private sector (manufacturers, importers, representatives of foreign companies). These pilots are usually carried out more than a year in advance of their implementation in order to ensure the smooth operation of the System and to avoid any technical issues and challenges before its implementation. Besides, the statistics on the issued codes and imports show that the measure does not have any impact on trade.

29.32. The Council took note of the statements made.

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

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

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

30.3. The United States must raise its concerns over Mexico's NOM-223 – Cheese Conformity Assessment Procedures (CAPs), a measure that may be finalized by December 2021, and implemented in 2022. The US concern is fourfold.

30.4. First, and foremost, NOM-223 contains a conformity assessment scheme that is overly trade restrictive, as the United States has detailed before. Providing information to consumers about cheese quality is typically 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 needs of the consumer. For these reasons, the United States requests Mexico to 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 supplier's declaration of conformity to demonstrate the completion of third-party test procedures. The United States has also requested that Mexico notify this revised draft measure to the WTO Secretariat under the terms of the TBT Agreement, with a corresponding comment period of at least 60 days.

30.5. 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 explain the reasoning for the difference in treatment of these products.

30.6. The third US concern relates to whether Mexico has seriously taken into account the comments from WTO Members and stakeholders. In 2020, stakeholders provided input into a draft, and participated in good faith 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.

30.7. The fourth US concern relates to confusing and potentially conflicting processes for revising NOM-223. In this regard, the United States wishes to know how Mexico will harmonize the final cheese CAP in NOM-223 with the resulting cheese standard in NOM-223 still being formulated in 2021.

30.8. Again, the United States asks Mexico to suspend the cheese CAP (in its mandatory form) and to reconsider the less trade-restrictive alternatives presented by other WTO Members, and dairy industry stakeholders.

30.9. The delegate of Mexico indicated the following:

30.10. As already stated, the measure in question is to address issues and problems relating to the authenticity of products called "cheese" that are offered in Mexican territory, to inform consumers about them, and to prevent practices that could be misleading. Mexican authorities are still analysing the CAP comprehensively in light of international procedures, in order to ensure a proper regulation and compliance with international procedures, and to reach the legitimate objectives sought by the CAP. In addition, any change will be notified to the TBT Committee in due course, after consulting with WTO Members.

30.11. Mexico is available, through transparent and open communication channels to clarify any doubts that Members might have on the CAP and to inform them of any progress made through Mexico's relevant contact points.

30.12. Finally, Mexico believes that this agenda item is a good example of the need to have better coordination on the dates of the meeting of this Council and its subsidiary bodies. Mexico encourages the Chairperson to continue his consultations to improve the sequencing of meetings because these technical issues would be better discussed in the context of those technical bodies, before they are discussed in the Council. Indeed, Mexico believes that Members could resolve these issues in the Council's subsidiary bodies without having to overload the Council's already very heavy agenda.

30.13. The Council took note of the statements made.

31 CHINA – ADMINISTRATIVE MEASURES FOR REGISTRATION OF OVERSEAS PRODUCERS OF IMPORTED FOODS – REQUEST FROM THE UNITED STATES

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

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

31.3. The United States notes that China published the final version of this measure as Decree No. 248, on 12 April 2021, with an implementation date of 1 January 2022. This measure, when implemented, will create major trade disruptions for the United States and every country that exports food and agricultural products to China. The United States is very concerned that China has not provided detailed guidance regarding implementation of this measure, yet plans to implement it on 1 January 2022. Any measure of this magnitude requires far more time for industry to be able to implement. Thus, the United States requests China immediately to suspend or delay implementation of these measures for at least 18 months until sufficient guidance has been provided and exporting countries' questions have been answered.

31.4. The delegate of Norway indicated the following:

31.5. Norway underlines its concern regarding these measures, as stated in China's most recent TPR, as they affect Norwegian food exports to China. Norway will return to this issue at the meeting of the SPS Committee later that week.

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

31.7. The European Union would like to echo the concerns raised by the United States on the implementation of Decree No. 248 of the Chinese Customs Administration. The EU does not question China's objective of ensuring that imported food products come from legitimate sources. However,

the EU is deeply concerned about the manner in which China is implementing the planned registration of exporting businesses.

31.8. China and the European Union trade high volumes of food products and beverages through tens of thousands of enterprises; some are big, many are small. For an effective registration of businesses, clear guidance, registration template forms, and realistic transition periods, are indispensable in order to avoid disruptions to economic relationships between enterprises on both sides. However, instead of offering such information, through the holding of seminars or briefing sessions, for example, China sent a letter to EU member States and other trading partners with the request to identify and register exporting businesses for 14 unclearly defined product categories within five weeks.

31.9. This deadline is impossible to meet given that it covers tens of thousands of businesses. Considering that products due to be imported into China early next year have already been produced, if existing time-frames are maintained, Decrees No. 248 and No. 249 risk disrupting global food supply chains and delaying food supply into China.

31.10. The European Union urges China: (i) to postpone the implementation of Decree No. 248 until detailed guidelines, template forms, and functioning websites are available; (ii) to clearly define those product categories by their HS numbers that must register under the "registration with recommendation" procedure under Article 8 of Decree No. 248, and to clarify the specific actions requested from foreign competent authorities, in particular in the "Declaration of Conformity"; and (iii) to provide for realistic and practicable transition periods of at least 18 months for the self-registration of businesses under Article 9 of Decree No. 248. Trade with businesses not yet registered should continue without disruption.

31.11. Once registrations are approved and registration numbers are allocated, provisions relating to labelling under Article 15 must be implemented with adequate transition periods. In particular, products with a long shelf life, such as spirits, may be in retail stocks for many months and must be protected by transition periods of at least 36 months. The European Union urges China to organize information sessions both for trading partners and industry to foster a better understanding of the new registration requirements.

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

31.13. The United Kingdom is concerned that the application of such measures to all food products, regardless of risk, would create unnecessary barriers and negatively impact food trade. The United Kingdom reiterates its request for China to share risk assessments and scientific evidence supporting its intended application of the measures. Without clarity on the food items in scope, and how measures will be applied, it is not possible for food manufacturers or national authorities to adapt to any new requirements. Therefore, the United Kingdom requests that China postpone the implementation of these measures and, in the meantime, provide full clarity on their scope and application.

31.14. The delegate of Switzerland indicated the following:

31.15. Switzerland shares the concerns expressed by other Members regarding the two decrees, Decrees No. 248 and No. 249, published by the General Administration of Customs of the People's Republic of China (GACC). Switzerland understands and supports China's objective of ensuring that only safe food is imported. However, Switzerland regrets that the measures still include all food categories, irrespective of their risk profile, and seem to be more trade restrictive than necessary to ensure the safety of imported food products. Switzerland has also expressed its concerns in this regard in previous SPS and TBT Committee meetings.

31.16. Switzerland notes that there are still many open questions for which it, as well as its industry, does not have sufficient information. Examples of incomplete information include product categories (by their HS codes), the types of operations that will need to be registered, or questions regarding labelling. Switzerland strongly encourages China to brief all interested WTO Members on the detailed guidelines, implementing rules, and template forms, and to do so at the earliest possible date. It is important that all Members have access to the same necessary information, which we can then share with our competent authorities and industries. Furthermore, Switzerland invites China to foresee

realistic and practicable implementation and transition periods and asks for an extension of at least 18 months.

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

31.18. The Republic of Korea wishes to join others in raising its concern regarding China's administrative measures for the registration of overseas producers of imported foods. The measures, such as the expansion of the product scope, and requirements related to hazards found in food products, may impose an excessive burden on the authorities of the exporting country, creating an unnecessary barrier to trade. Therefore, Korea urges China to clarify the relevant guidelines on the registration process, and to provide a reasonable time-period for foreign governments and companies to prepare for the application of these measures.

31.19. The delegate of Brazil indicated the following:

31.20. Brazil has been following the Chinese regulatory process regarding the registration of producers of imported food both bilaterally and at the TBT Committee. In these instances, the Chinese government has not yet provided clarification on the risk analysis that supported its disproportionate requirements for food products of different categories. In Brazil's assessment, the new requirements constitute unnecessary obstacles not only for Brazil's private sector, but also for Brazilian regulators, who should operate as the Competent National Authority for a much more extensive list of products than usual, several of which are of low or no health risk, and without an adequate adaptation period.

31.21. The delegate of Mexico indicated the following:

31.22. Mexico wishes to note that it will make a statement at the TBT Committee requesting more clarity on the scope and application of this measure.

31.23. The delegate of Canada indicated the following:

31.24. Canada shares the concerns raised by the United States and other Members. Canada and other Members continue to raise significant concerns and challenges with China's administrative measures for the registration of overseas manufacturers of imported food. Canada is concerned that the Decrees will negatively impact trade. Indeed, these measures are broad, over-arching in scope, and will have a significant impact on exports to China. Canada remains concerned that the administrative measures being implemented by China are overly burdensome and unjustified as they do not appear to be based on an assessment of risks using the risk assessment techniques developed by international organizations and go beyond the extent necessary to protect against food safety risks. Canada urges China to provide Members with additional information and clarification on the implementation of Decrees No. 248 and No. 249, and delay their implementation for 18 months, to allow both foreign governments and industry to fully understand and comply with the new requirements contained in the Decrees.

31.25. The delegate of Australia indicated the following:

31.26. Australia is concerned that China's Regulation on Registration and Administration of Overseas Manufacturers of Imported Food, promulgated as Decree No. 248, will unnecessarily disrupt and restrict trade. Furthermore, Members have not been given sufficient time and information to register, adjust, and prepare, before these measures enter into force on 1 January 2022.

31.27. Australia has previously raised its concerns in both the SPS and TBT Committees, but China's responses in these committees have not been reassuring. In fact, in early October 2021, China advised the Australian Government that it had issued a deadline for the submission of information to support Article 7's registration by 31 October 2021, giving only days to gather and provide the relevant information to China.

31.28. Furthermore, businesses whose exports would come under Article 9 of Decree No. 248 are not yet able to register and, two months out from implementation, the specific requirements these businesses will need to meet are yet to be clarified. Similarly, Australia is also lacking clarity on

labelling requirements for products for export in 2022, and processes for businesses looking to export to China for the first time. Many businesses are already producing and labelling products for export in 2022 and would need time to adjust their settings and sell-through existing products. China's delays in clarifying how these products will be treated raises the potential risk of trade disruptions when the measures enter into force.

31.29. Australian food exporters are ready and willing to comply with China's food safety requirements, but businesses and governments need clarity and a reasonable time to make changes to comply with new measures. In the circumstances, Australia requests that China delay implementation by at least 18 months and provide more detailed guidance to allow WTO Members and businesses to prepare and register, and for administrative processes to be properly implemented and tested. Australia would also welcome the opportunity to engage bilaterally with China to discuss how it can meet China's food safety objectives, while ensuring that trade is not unnecessarily disrupted.

31.30. The delegate of Chinese Taipei indicated the following:

31.31. Chinese Taipei thanks the United States for bringing this agenda item to the CTG for the first time. Chinese Taipei notes that the issue concerns China's proposed "Administrative Measures for Registration of Overseas Producers of Imported Foods (Decree No. 248)", which was published on 12 April 2021, with an implementation date on 1 January 2022.

31.32. In fact, quite a number of Members, including Chinese Taipei, have already expressed the same concern numerous times in the TBT and SPS Committees since February 2020. Furthermore, at China's most recent TPR meeting, Chinese Taipei also heard many Members specifically expressing their serious concerns over this new regulation, including the negative impact of immediate trade disruptions, delays, and extra administrative burdens. It clearly shows that even up to the present time, when China has introduced its measure, many uncertainties about the interpretation and implementation of the measure still remain, and Members are still puzzling over related details, including the scope of products and facilities that are subject to this measure, registration requirements and guidelines on how to fill out application documents, procedures and timelines for audits, and re-evaluation and renewal of registration.

31.33. In addition to the measure's possible inconsistency with the SPS and TBT Agreements, Chinese Taipei also questions how the measure could be compatible with the GATT, including Article XI:1 of the GATT, which prohibits Members from instituting any import restriction made effective through any other measures, and how the measure could be justified under Article XX of the GATT due to its discriminatory and excessive nature. Given the measure's potential incompatibility with the GATT and other WTO Agreements, its high level of uncertainty, as well as its lack of sufficient transition time, it has caused great concern among foreign administrative authorities and business operators. Therefore, Chinese Taipei echoes others in urging China to substantially postpone, at the very least, its implementation date, in order to allow sufficient time for foreign administrative authorities and business operators to be in a better position to prepare for the new administrative requirement.

31.34. The delegate of China indicated the following:

31.35. In order to ensure its population's health and safety, China has revised its previous regulations on the safety management of imported and exported food, and the registration management of overseas producers of imported food. On 12 April 2021, China's General Administration of Customs announced two orders: Order No. 248 and Order No. 249, which will take effect on 1 January 2022. Before the announcement, in accordance with the relevant WTO rules, China had issued a circular requesting comments and suggestions from the relevant WTO Members. China welcomes the feedback and notes that some of the reasonable opinions and suggestions from Members have already been incorporated. China will soon provide additional information regarding the above-mentioned two orders. In addition, China notes that Order No. 248 will not affect the implementation of China's bilateral protocols with other WTO Members.

31.36. The Council took note of the statements made.

32 INDIA – ORDER RELATED TO REQUIREMENT OF NON-GM CUM GM FREE CERTIFICATE ACCOMPANIED WITH IMPORTED FOOD CONSIGNMENT – REQUEST FROM THE UNITED STATES

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

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

32.3. The United States must raise its serious concerns with India's measure mandating that competent authorities of exporting countries provide a "non-GM origin and GM free certificate" on a per consignment basis. The Order has created significant barriers for US exports to India, and trade stoppages risk future product shortages that could lead to price increases for Indian consumers and further disruptions to Indian supply chains. Furthermore, the United States is concerned with India's lack of consistency and clarity on the certification requirements of the measures.

32.4. India's issuance of "Clarification" documents on the scope and timing of the Order have not responded to the United States' concerns, nor do they in fact clarify the scientific basis for the measure. While the Order is intended to apply only to food crops, and not to processed products or products intended for animal consumption, India has not identified criteria for a product to be deemed "processed", and nor has it established a process for determining a product's end-use. The Order states that it is intended to be temporary, "pending framing of regulations" for GM and GM-derived food, however India has not notified a termination date.

32.5. Therefore, the United States encourages India to provide the consistency and clarity needed to facilitate the safe trade of these 24 listed food crops. Considering the above-mentioned concerns, the United States requests India to withdraw this measure immediately. If India is unable to withdraw this measure, the United States requests that India quickly engage in dialogue with the United States and other WTO Members and explore less trade disruptive and science-based alternative approaches that can be implemented in a non-discriminatory manner.

32.6. The delegate of Uruguay indicated the following:

32.7. There is international consensus that genetically modified products, approved by exporting countries on the basis of Codex recommendations in relation to the risk assessment methodology, are equivalent to their conventional counterparts. Therefore, in Uruguay's view, there would not appear to be any technical justification for the implementation of the certification measure proposed by India, taking into account the legitimate objective cited in the Order in question, of ensuring the safety and wholesomeness of imported food. In light of this objective, Uruguay therefore wishes to reiterate that, in its view, this measure should be notified to the SPS Committee.

32.8. Uruguay wishes to stress the importance of Members establishing measures based on scientific principles, and particularly of applying such measures with the objective of minimizing negative trade effects, in line with the provisions of the SPS Agreement. Uruguay remains attentive to any comments or questions that the delegation of India may have in response to Members' concerns expressed in both Geneva and New Delhi, including in a joint note submitted in January 2021 by a number of countries, including Uruguay.

32.9. The delegate of Canada indicated the following:

32.10. Canada shares the concerns raised by the United States. Canada has also raised specific trade concerns in the TBT and SPS Committees relating to India's non-GM Order, which mandates that a non-genetically modified or GM free certificate accompany imported consignments of imported food products. Canada encourages India to consider the scientific and technical information in its approach to support a transparent, predictable, risk- and science-based trading environment, in line with India's WTO commitments. Canada requests that India suspend the implementation of this measure and allow trade to continue without a certificate requirement until a viable solution is found. This would provide an opportunity for India to further engage with Members to discuss and consider an alternative, less trade-restrictive approach that would meet India's objectives and minimize the impact on trade. Canada would be pleased to contribute to these discussions and share its extensive experience in this area.

32.11. The delegate of India indicated the following:

32.12. India wishes to inform Members that the requirement to regulate the import of GM food is based on already existing provisions of the Environment Protection Act (1986) and is not a new requirement. The Food Safety and Standards Authority of India (FSSAI) Order, dated 21 August 2020, requiring non-GM certificate for import of 24 food crops, is only an assurance provided by competent authorities of the exporting countries that the food crops that are not approved by the Genetic Engineering Appraisal Committee (GEAC) for genetic modification, are not imported into India.

32.13. It may also be noted that this requirement has already been notified to the WTO. It is not trade restrictive as it is uniformly applicable to imports from all countries. In addition, India wishes to clarify that the requirement of non-GM certificate is not applicable for import of processed food and animal feed. Moreover, the non-GM attestation on phytosanitary certificates, which is already issued for every consignment, is also acceptable. Members may also please note that several major trading partners are complying with this requirement and furnishing a copy of non-GM certificates in the prescribed format for their export consignments. Nevertheless, India is open to discuss this matter further with the United States, Uruguay, and Canada, for any additional clarification.

32.14. The Council took note of the statements made.

33 KINGDOM OF SAUDI ARABIA – SABER CONFORMITY ASSESSMENT ONLINE PLATFORM/SALEEM PRODUCT SAFETY PROGRAM – REQUEST FROM THE UNITED STATES

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

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

33.3. The United States brings its concerns for the Kingdom of Saudi Arabia's SABER Conformity Assessment Online Platform/SALEEM Product Safety Program to the Council on this occasion to find a resolution regarding the lack of clarity in Saudi Arabia's conformity assessment program covering 40 technical regulations for a wide range of goods, including construction materials, electrical products, saws, textiles, and toys. Despite the United States, along with the European Union and Switzerland, having raised concerns over this program in the last five TBT Committee meetings, these concerns have gone unresolved.

33.4. SABER is an online system that was introduced by the Saudi Arabia Standards, Metrology, and Quality Organization (SASO), to operate the SALEEM program. SABER enables exporters, importers, and local manufacturers to electronically obtain the required Product Certificate of Conformity (PCoC) and Shipment Certificate of Conformity (SCoC) for their products. The PCoC is type-approval for medium- and high-risk products that are governed by mandatory technical regulations, and the SCoC is required for other products not needing type approval, whether they are regulated or not.

33.5. First, this mandatory conformity assessment program has never been notified to the WTO for a notice and comment period, despite repeated requests for notification, including the most recent US request for information on 1 February 2021. The United States asks that Saudi Arabia notify this program for WTO Member comment.

33.6. Second, the registration and certification process remains unnecessarily complex and time-consuming for US exporters. The United States requests Saudi Arabia to simplify the registration and certification process and to implement clear and transparent guidelines.

33.7. Third, industries report that the HS codes on the SABER system, including those listed on SABER's website, often do not match international HS codes. The United States requests SASO to provide the list of products, using complete HS Codes having 10 digits, for which SASO will require third-party certification, and new certificates of conformity instead of self-declarations.

33.8. Fourth, the United States notes that the question of how to obtain the Gulf Conformity Tracking Symbols (GCTS) remains confusing. The United States requests Saudi Arabia to clarify the

documentation requirements for manufacturers when they apply to Notified Bodies to obtain the GCTS mark and registration number required under SABER.

33.9. Finally, the United States notes that manufacturers report that the CAPs required in the technical regulations implemented by Notified Bodies are not consistent, and asks how SASO is working to ensure that all Notified Bodies implement the CAPs in the same manner. The United States looks forward to the response from Saudi Arabia.

33.10. The delegate of Switzerland indicated the following:

33.11. Switzerland is concerned over the potential negative impact of the SABER Conformity Assessment Online Platform on bilateral trade with the Kingdom of Saudi Arabia across a range of products. Like other WTO Members, Switzerland is also following this matter in the TBT Committee.

33.12. The registration and certification process remains costly, complex, and time-consuming for Switzerland's exporters. Manufacturers continue to report that recognized bodies require disproportionate fees when carrying out CAPs. Depending on the sector, strict CAPs apply for products considered in their majority to be low-risk products. Furthermore, additional third-party certification and registration is required for the same low-risk products that already have been certified and registered in the system. For companies exporting quality products in small quantities in particular, the registration and certification process leads to disproportionate costs and documentation requirements, making it prohibitive to enter the market.

33.13. Switzerland would appreciate it if the Kingdom of Saudi Arabia could ensure that the registration and certification process is not more strict than necessary to give adequate confidence that products fulfil the applicable requirements. Furthermore, Switzerland encourages the Kingdom of Saudi Arabia to base the documentation and certification requirements on international standards, to implement clear and transparent guidelines, and to ensure that the requirements are applied in an equal and uniform manner.

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

33.15. The Kingdom of Saudi Arabia thanks the United States and Switzerland for raising this matter of the SABER Platform and the SALEEM Program. The Kingdom of Saudi Arabia takes note of the interventions made by previous speakers and wishes to refer to its intervention delivered at the TBT meeting in June 2021, where it responded to this concern. In addition, Saudi Arabia requests to receive the statements in writing so they can be transmitted back to capital.

33.16. The Council took note of the statements made.

34 PANAMA - ONIONS AND POTATOES HARVEST LIFE AND SPROUTING REQUIREMENTS – REQUEST FROM THE UNITED STATES

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

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

34.3. The United States thanks Panama for continuing bilateral discussions regarding the implementation of Panama's technical regulations for potatoes and onions. The United States also thanks Panama for delaying implementation of the potato regulation for another six months. While the United States appreciates Panama's flexibility on the potato regulation, it would provide greater economic certainty for exporters if Panama would suspend the measure until technical discussions have concluded.

34.4. During bilateral discussions, the United States indicated that Panama's technical regulations for potatoes and onions appear to be inconsistent with relevant international standards, and further indicated that Panama's requirements appear to be unjustified and unnecessarily trade restrictive. Given these considerations, the United States reiterates its request that Panama provide the scientific justification for its measures or suspend implementation of both the potato and onion regulations until technical discussions have concluded.

34.5. The delegate of Panama indicated the following:

34.6. Panama thanks the United States for its comments and has taken note of US concerns. Panama is taking into account the comments of trading partners affected by the measure, as evidenced by the additional six-month delay granted in the entry into force of the amendment to potato requirements. Panama is working bilaterally to address the concerns of its trading partners and looks forward to working together towards finding mutually satisfactory solutions. Nevertheless, Panama's previous comments regarding this trade concern remain valid. Panama will share with the Committee any information that it receives from capital as a result of these conversations.

34.7. The Council took note of the statements made.

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

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

35.2. The delegate of China indicated the following:

35.3. China regrets to have to raise this issue again as its concerns have not been addressed. China reiterates its serious concerns on the relevant measures taken by the United States restricting China's companies from providing communication products in the US market. In this regard, China considers that national security should not serve as a defence for trade protectionism. Therefore, China urges the United States to abide by WTO rules, and to refrain from its unilateral practice of abusing the national security exception.

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

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

35.6. The Council took note of the statements made.

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

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

36.2. The delegate of China indicated the following:

36.3. The United States continues to impose export control measures against Chinese companies, abusing its state power to oppress Chinese companies without any evidence. The United States has included more than 900 Chinese companies, entities, and individuals in its export control list, and other various unilateral measures, which have seriously disrupted normal bilateral exchanges between the two countries. China firmly opposes this practice, which disregards basic WTO rules, including by undermining the market principle and the principle of fair competition. China urges the United States immediately to stop this unjust and unfair practice in order to create favourable conditions for bilateral normal trade and investment cooperation.

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

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

36.6. The Council took note of the statements made.

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

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

37.2. The delegate of China indicated the following:

37.3. China regrets to raise this issue again, but it considers that the key questions that it addressed to Australia have still not been directly answered as yet. China also has key serious concerns about the prohibition having been extended to existing 4G networks. Australia believes that the issue of telecommunications network security should be addressed based on scientific and verifiable facts and data, rather than upon the origin of the suppliers. China urges Australia to review its regulatory policies in the telecommunications sector, to provide fair market access to Chinese companies, and to align its actions with WTO rules.

37.4. The delegate of Australia indicated the following:

37.5. Australia notes China's statement. China first raised this issue in the WTO in late 2018. Since then, Australia has engaged constructively 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.

37.6. The Council took note of the statements made.

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

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

38.2. The delegate of China indicated the following:

38.3. China continues to raise its concern about Sweden's measure prohibiting Chinese companies from participating in the construction of Sweden's 5G network. Until now, China has still not seen any evidence provided by the Swedish host and the telecom authority showing that the Chinese companies' products show security risks to Sweden. Therefore, China is of the view that Sweden's non-transparent measure is groundless, discriminatory, and inconsistent with WTO rules. For these reasons, China requests Sweden to immediately withdraw its discriminatory measure, and to provide a fair, transparent, and non-discriminatory environment for Chinese companies operating in Sweden.

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

38.5. The European Union notes that the matter raised by China in relation to the recent Swedish 5G spectrum auction is still under legal proceedings in Sweden. In light of these ongoing proceedings, the European Union will not enter into the details of this issue on this occasion.

38.6. The Council took note of the statements made.

39 EUROPEAN UNION – CARBON BORDER ADJUSTMENT MECHANISM (THE EUROPEAN GREEN DEAL OF DECEMBER 2019) – REQUEST FROM CHINA AND THE RUSSIAN FEDERATION

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

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

39.3. On 14 July, the European Union published a draft proposal concerning its Carbon Border Adjustment Mechanism (CBAM). It is a mechanism that will be applied in respect of imports of iron

and steel, cement, fertilizers and chemical products, aluminium, and electricity. The Russian Federation continues to analyse the proposal, although many of its elements have not yet been developed and will be presented in separate acts.

39.4. The Russian Federation already has many questions, including in relation both to some elements of the proposed mechanism, and to its relationship with international agreements, including the WTO Agreement. For example, according to the proposal, starting from 2023, the products concerned shall only be imported into the customs territory of the European Union by a declarant that is authorized by the competent authority. The Russian Federation wonders about the reasons for revoking the authorization for a declarant. The Russian Federation also has certain questions regarding the methods for calculating embedded emissions, and the price of the CBAM certificates, including, in particular, their relationship and consistency with the relevant methods applied under the EU ETS. Furthermore, the Russian Federation cannot avoid questioning the exclusions and exemptions of goods originating in certain WTO Members from the CBAM, as well as the adaptations of default value based on various factors, including natural resources and specific market conditions. These and other questions were circulated by the Russian Federation in document G/MA/W/172–G/C/W/800. In conclusion, the Russian Federation urges the European Union to consider these questions and to provide its responses in accordance with WTO procedures.

39.5. The delegate of China indicated the following:

39.6. China believes that, in order to effectively address climate change and promote sustainable development, Members need to actively implement the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, and to promote trade and investment liberalization in green sectors. However, the CBAM does not conform to the basic principles of the UNFCCC and the Paris Agreement of common but differentiated responsibilities. It is also inconsistent with the WTO principles that underpin a free and open multilateral trading system. In China's view, the CBAM will not increase mutual trust and promote economic growth after the pandemic. Therefore, China requests the European Union to clarify how its CBAM will comply with the WTO principles of MFN treatment and national treatment, as well as with the EU's concession schedule obligations. The CBAM is a unilateral measure, and it would also be hugely controversial if its compliance with WTO rules were based on invoking exception clauses. China stands ready to continue working, together with the European Union and other parties, to promote trade liberalization, facilitation, and investment in green sectors, and to address climate change collectively.

39.7. The delegate of India, addressing agenda items 39 and 40, indicated the following:

39.8. India believes that a thorough legal examination will be required of various elements of the European Green Deal, including the CBAM, to ascertain its conformity with the relevant WTO rules. India advocates handling the environment-related issues within the multilateral environment agreements (MEAs). Members have proposed Intended Nationally Determined Contributions (INDCs) in the relevant MEAs. These INDCs are based on the respective capacity of Members, honouring the principle of common but differentiated responsibilities.

39.9. Mechanisms such as the CBAM seek, on the one hand, to burden the global trade structure with new commitments, but on the other, developed Members are not adhering to the commitments that they have made in MEAs. In particular, India finds the following elements to be conspicuous by their absence: technology transfer; grant funding; low interest financing; and long tenure financing.

39.10. India notes with great disappointment that additional commitments are being sought from the very same Members that are already doing more than their respective capacity to fight the urgent climate change issues, and this is being done without the support of those Members that continue to generate the highest per capita emissions, and without fulfilling their commitments to create technology and financing resources.

39.11. The delegate of Kazakhstan indicated the following:

39.12. Kazakhstan reiterates its position as expressed at the CTG's previous meeting, and continues to follow developments around the EU's CBAM. Kazakhstan again urges the European Union to fully

consider the CBAM's compatibility with WTO rules and regulations, and to ensure that any such mechanism does not create obstacles to trade.

39.13. The delegate of Uruguay indicated the following:

39.14. Uruguay recognizes the policy objectives identified by the European Union and reaffirms its strong commitment to climate matters, reflected in the commitments Uruguay has made under the multilateral agreements on the matter, including the Paris Agreement, and the policies adopted to comply with those agreements.

39.15. Uruguay takes note of the proposal for a Regulation establishing a CBAM, introduced by the European Commission on 14 July 2021, as part of the "European Green Deal". Uruguay will closely follow the process of development, adoption, and implementation of this mechanism.

39.16. Uruguay wishes once again to stress the importance of ensuring the measure's compatibility with the European Union's commitments under the WTO Agreements. Preliminarily, it seems important to monitor the measure and ensure that it does not violate Articles I, II, and III of the GATT. In this respect, Uruguay wishes to know, for example, how eventual inconsistencies, resulting from the possible simultaneous application of the CBAM for imported products, and the "free allowances" for domestic products, will be avoided. Likewise, Uruguay wishes to know how, in the respective calculations, carbon reduction policies will be taken into account separately from the carbon pricing applied by different countries. Lastly, Uruguay wishes to know how the European Commission addressed the principle of "common but differentiated responsibilities", enshrined in the Paris Agreement, when preparing the proposal.

39.17. The delegate of Brazil, addressing agenda items 39 and 40, indicated the following:

39.18. Brazil supports the adoption of policies with legitimate environmental objectives, but is concerned about the adoption of unilateral measures that result in unnecessary negative impacts on international trade, contrary to commitments made by Members in other forums. As countries discuss the interdependence between trade, climate change, and environmental sustainability, it is important that they do so based on the terms, commitments, and principles that are enshrined in the Agenda 2030 for Sustainable Development, the UNFCCC, and in international environmental law more broadly. Most importantly, Brazil recalls the principle of "common but differentiated responsibilities and respective capacities", which stems from the different historical responsibilities for the global problem of climate change, and that was agreed to by all countries in Rio de Janeiro in 1992.

39.19. Against this backdrop, Brazil believes that the EU Green Deal, and the CBAM in particular, must necessarily comply not only with core WTO rules, but also with the fundamental principles established in international environmental law, many of them enshrined in Agenda 21, signed in Rio de Janeiro in 1992, such as common but differentiated responsibilities and respective capacities, and international cooperation. And in both the UNFCCC and the Paris Agreement, the European Union has agreed to take into account historical responsibilities and respective capabilities, thus committing itself not to seek to impose its standards on other countries. Therefore, Brazil believes that the EU's claim that its Green Deal, and the CBAM in particular, is ambitious, should be taken with several grains of salt.

39.20. First, historical responsibilities mean that countries that industrialized first, benefiting from cheap and more polluting energy sources, should bear a larger brunt of the costs of emission reduction. In this context, Members should take not only direct emissions on European soil into account, but also how European companies have benefited from polluting activities all over the world for over two centuries.

39.21. Second, access to finance is a fundamental aspect. A country with a debt to GDP ratio of more than 100%, and that can borrow at very low cost, is not necessarily more ambitious in its investments or policies than a country with a much lower debt to GDP ratio, but which faces the challenge of a new "taper tantrum" to finance its investments in sustainability.

39.22. Third, if each Member were to use criteria that were more advantageous to itself, Brazil could, for its part, impose taxes on countries that did not match Brazil's "ambition" of having a grid

based on 80% of renewables; other countries could similarly choose other criteria, and this could wreak havoc on the multilateral trading system.

39.23. Therefore, in order to avoid a potential protectionist bias or the adoption of discriminatory measures, Brazil urges the European Union to take into due consideration the comments made by Brazil in the process of drafting and implementing the measures under the EU Green Deal, and hopes that a channel of dialogue will be established between the competent authorities on these topics.

39.24. Finally, Brazil observes that many stakeholders have called for trade negotiators to work closely with environmental experts, as these topics cannot be addressed in silos. In this context, Brazil believes that the best way to move forward in discussions on sustainable development at the WTO is through fully respecting not only the WTO rules, but also those concepts, principles, and commitments that have been agreed in other forums, and which reflect the balanced outcomes achieved there.

39.25. The delegate of Turkey indicated the following:

39.26. As a country committed to respond to the challenges of climate change, Turkey is closely following the developments regarding the European Green Deal since its announcement by the European Commission in December 2020. Within the context of the Green Deal, Turkey, together with many other Members, is paying particular attention to the details of the European Union's CBAM. While Turkey is currently analysing the CBAM proposal with a view to sharing with the EU its comprehensive comments on the draft, it nevertheless wishes to reiterate certain points of significance to Turkey.

39.27. Turkey considers that it is important to note, in the scope of Members' discussions, that the CBAM, as a response measure aimed at mitigating climate change, will have certain adverse transboundary impacts. In this context, the most visible negative transboundary effect of the CBAM will be on international trade.

39.28. It is thus imperative to ensure that any CBAM is applied in the least trade-restrictive manner, without constituting a disguised restriction on international trade, and in line with WTO rules and principles. Any CBAM should also respect the principles of international environmental law, including the principle of cooperation and common but differentiated responsibilities and respective capabilities, as indicated in the scope of the UNFCCC. In other words, WTO Members, in crafting their responses aimed at mitigating climate change, should keep in mind the rights and obligations conferred both by multilateral environmental agreements and by WTO Agreements, since only a reading of these together can provide a clear picture of the tools available to respond to climate challenges in a balanced way. And omitting any of these elements may risk foregoing the objectives and methods that were once intended and agreed upon by our negotiators in order to meet those challenges.

39.29. In conclusion, Turkey requests the European Union to keep WTO Members informed of details and developments concerning its CBAM, as transparency and cooperation remain invaluable in this process.

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

39.31. The Republic of Korea appreciates the European Union's efforts to tackle ongoing climate change and takes note of the framework of the CBAM, which was revealed in July 2021, to address the issue of possible carbon leakage.

39.32. As it has stated at previous meetings, Korea wishes to stress that trade-related measures, including the CBAM, should be consistent with WTO rules and not constitute trade barriers. In addition, it is necessary that companies affected by the CBAM be more fully informed and engaged. To this end, it is necessary that sufficient information about the scheme be available to them, and that they are also given opportunities to submit their comments.

39.33. The Republic of Korea hopes that the CBAM will be implemented in a way that fulfils the WTO's objectives of achieving sustainable development and facilitating free trade. Korea will

continue to follow the process of introduction of the EU's CBAM, and also suggests that further WTO discussions be held on the use of trade measures for environmental purposes.

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

39.35. From the perspective of the Kingdom of Saudi Arabia, while the European Union has stated that the proposed mechanism would be in conformity with WTO rules and other international obligations, the EU has yet to provide explanations as to how it aims to do so. While the European Union may intend to address the risk of investment leakage from the EU into other countries, its main objective is in fact to maintain the competitiveness of EU industries. And Saudi Arabia's very preliminary review indicates that the proposed mechanism raises very serious concerns due to its potential long-term negative implications on global trade, which will distort the full value chain of trade, including goods, services, and jobs.

39.36. The Kingdom of Saudi Arabia urges the European Union to further engage in consultations with Members in order to ensure the CBAM's full compliance with WTO rules and Agreements, that it will not create any unnecessary barriers to trade, and that it will not be used as a means of arbitrary or unjustifiable discrimination, or a disguised restriction on international trade, or be applied in a manner that constitutes protection to EU domestic industries. Finally, the Kingdom of Saudi Arabia stands ready to engage with the European Union and other interested Members, and looks forward to receiving further details and reflections from the EU concerning this proposed mechanism.

39.37. The delegate of New Zealand indicated the following:

39.38. New Zealand is a strong advocate for coherent and mutually supportive trade and climate policy responses. New Zealand is forward leaning when it comes to the opportunity to contribute to meaningful and positive climate mitigation efforts through trade policy. In this regard, New Zealand cites what it is trying to achieve in the context of the Agreement on Climate Change, Trade and Sustainability (ACCTS), a plurilateral effort that aims to bring together some of the inter-related elements of the climate change, trade and sustainable development agendas. Indeed, New Zealand has long been a leading proponent of phasing out and eliminating environmentally harmful subsidies, including the reform of agricultural, fisheries, and fossil fuel subsidies.

39.39. New Zealand recognizes the potential value of CBAMs as a tool to contribute to climate change mitigation goals, while also acknowledging challenges in their implementation. In this regard, New Zealand believes that, for such a mechanism to be effective, it must be environmentally effective, WTO-compatible, and scientifically robust. Furthermore, its design should include meaningful consultation with trading partners. New Zealand invites the EU to continue sharing with Members the ongoing developments.

39.40. The delegate of Australia indicated the following:

39.41. Australia has made a number of statements in various WTO committees in recent months, highlighting some of its concerns over the European Union's CBAM draft regulation. These include the issues of WTO consistency, possible protectionist impact, and the need for the policy to consider alternative, implicit measures, such as higher standards, or Australia's technology-led approach, which can be equally if not more effective in reducing emissions. Australia looks forward to any updates the European Union can provide on its deliberations, including any potential changes to the CBAM policy since the draft regulation's release on 14 July 2021.

39.42. The delegate of Japan indicated the following:

39.43. Japan is aware that the CBAM may have a significant impact on trade, and therefore that the interest in it is increasing on the part of all WTO Members, including Japan. As Japan has pointed out in previous meetings of the Trade and Environmental Sustainability Structured Discussions (TESSD) and the CTE, it is a prerequisite that the CBAM be designed to be consistent with WTO rules. In addition, Japan estimates that there will be certain challenges to address. For example, Members have been working towards reducing carbon emissions by implementing various policies; bearing these efforts in mind, the CBAM should be designed to achieve its objective of preventing carbon leakage with the least effect on trade.

39.44. Japan believes that it is important to consider internationally reliable measurement or evaluation methods for carbon emissions per product unit. 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 its carbon emissions. Finally, Japan considers that it will be necessary to continue conducting sufficient discussions internationally on this issue.

39.45. The delegate of Paraguay indicated the following:

39.46. Paraguay has made a significant commitment to the protection of the environment, with a 100% clean energy matrix; more than 40% of its surface area covered by forests; good agricultural practices which contribute to the conservation and preservation of the environment, including through direct planting, crop rotation, and use of biotechnology. We will likely hear again today that the European Union will justify this measure to offset carbon leakage. However, Paraguay notes that they have not heard how the compensation mechanism would function to take into account the impact of these measures on third parties. In this context, Paraguay notes that it accounts for less than 0.02% of the world's CO_2 generation, whereas the EU overall accounts for close to 10%.

39.47. Therefore, we have common but differentiated responsibilities, who pollutes more should do more, and not require from others to pay the same. And what concerns Paraguay in regard to this measure is that, rather than levelling the playing field, it would in fact favour some over others, not only by ignoring historical but also current responsibilities, accompanied by generous subsidies which represent a fiscal advantage to which most developing countries do not have access.

39.48. In this regard, Paraguay echoes the questions and concerns posed by Uruguay and the comments made by Brazil on the danger to world trade from introducing unilateral measures and their possible proliferation. And without a compensation measure, such measures begin to look more like commercial protectionism than the protection of the environment. For this reason, Paraguay wishes to urge the European Union to inform its trading partners as soon as possible as to how its compensation measure for third parties would function.

39.49. Turning to the European Green Deal, in the next agenda item, Paraguay notes that it appears not only to contain a number of measures that do not seem based on scientific evidence, but also promotes subsidies in ways that could prove detrimental to the environment. For example, a subsidy paid out or granted for the mechanisms of mechanical dredging, without looking at the issue of release of carbon that had been naturally captured in the ground. Paraguay therefore asks if the EU's Green Deal is really seeking to protect the environment, or if it is rather seeking to protect certain policies that are being subsidized by Members seeking to defend, in a very artificial fashion, the competitiveness of their agriculture.

39.50. The delegate of Canada indicated the following:

39.51. Canada is carefully reviewing the European Commission's draft legislation, and will continue its discussions with the European Union to ensure that the design of the CBAM takes Canada's carbon pricing policies fully into account. In addition, Canada expects that the CBAM and its administration will respect the EU's international trade obligations. More broadly, Canada looks forward to collaborating with the EU, as well as other WTO Members, on how CBAM can fit into a broader strategy to meet climate targets while addressing potential carbon leakage risks.

39.52. The delegate of Mozambique indicated the following:

39.53. The European Union's CBAM (EU Green Deal of December 2019), is an issue that has been drawing the attention of Mozambique, it being one of the producers and exporters of certain of the products targeted. For various reasons, Mozambique shares the concerns raised by other Members. Mozambique is also convinced that the matter concerns a sensitive and global issue. For this reason, Mozambique would highly encourage a deeper analysis, data-sharing, and also the sharing of scientific evidence, to avoid considering unilateral measures for a global problem.

39.54. In any case, any measures introduced by the European Union to address such areas of global concern must take into consideration the guiding principle of common but differentiated responsibility, a principle that must be observed to enable Members the necessary policy space and, in the case of LDC and developing Members, the necessary differentiated treatment.

39.55. Mozambique sees the need for a continuous dialogue with the European Union in order to ensure that all aspects of the concerns raised are taken into consideration, and that a solution for one Member does not imply a position prejudicial to the interests of others, which, in the particular case of Mozambique, is embedded in government efforts to reduce poverty and advance economic development.

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

39.57. The European Union appreciates the interest of its partners in this important issue. The EU has stepped up its climate ambition, fully translating the implementation of the Paris Agreement into legislation, and invites its partners to share a comparable level of ambition.

39.58. The introduction of a CBAM to address the risk of carbon leakage is an integral part of that implementation and ambition, as reflected in the European Green Deal, to avoid EU climate action being undermined. The CBAM is a purely climate-oriented environmental policy tool. It will be applied in a non-discriminatory and even-handed manner, in full compliance with WTO rules and other international obligations.

39.59. The aim of the CBAM proposal is to ensure that imported goods are subject to an equivalent carbon price as goods produced in the European Union. The CBAM does not target third countries; rather, it applies to goods of certain carbon-intensive sectors at high risk of carbon leakage. It will take into consideration the application of carbon pricing systems by third countries, as well as indirectly taking account of effective climate policies that lead to lower emissions. Actual carbon emissions embedded in a product will also be taken into account.

39.60. The mechanism will initially apply only to a selected number of goods at high risk of carbon leakage. A monitoring and reporting system will be put in place from 2023 until the end of 2025 for those goods, the objective being to facilitate a smooth roll-out and dialogue with third countries. This gradual phasing-in of the mechanism will provide businesses and trading partners with legal certainty, stability, and the necessary time to prepare.

39.61. As of 2026, the CBAM will gradually begin to be applied, with revenue collection, to the products covered, and in direct proportion to the reduction of free allowances allocated under the EU Emission Trading Scheme for those sectors. Over time, the CBAM will replace the free allocation of allowances.

39.62. The European Union has been transparent throughout the process and remains ready to engage with trade partners and international organizations to inform and, where possible, assist with the implementation of the measure. In addition, the EU believes that international collaboration is essential to fighting climate change effectively. Trade policy has an important supporting role to play in this fight. For this reason, climate action is an EU priority in WTO discussions.

39.63. The environmental sustainability statement for MC12, which is being advanced in the TESSD, is establishing discussions on how trade-related climate measures and policies can best contribute to climate and environmental goals. All Members will have the opportunity to share their views on carbon leakage in the context of those discussions.

39.64. The Council took note of the statements made.

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

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

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

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

40.4. However, the Russian Federation notes that whatever activities Members plan within the framework of the environment and climate change, these activities should be carried out in accordance with fundamental WTO principles and rules, and should not result in any kind of discrimination or disguised restrictions on trade; in particular, none of the "green" measures should impede trade and be used as a means of "green protectionism", as implied by paragraph 32 of the Doha Ministerial Declaration. Nevertheless, WTO Members are currently raising specific trade concerns over certain elements of the European Union's Green Deal.

40.5. The first measure is the CBAM, as discussed under the previous agenda item. The European Union's targets, laid down in the European Green Deal, are not limited to the establishment of this mechanism. It also provides for the reduction of the use of chemical and more hazardous pesticides, the reduction of fertilizer use, the promotion of EU energy standards and technologies at the global level, the diversification of energy sources of supply, the adoption of new technical regulations, and the revision of competition rules, and so on. Most of these projects are, or will be, heavily subsidized; furthermore, their implementation would lead to the elimination of traditional foreign supplies from the EU market. From a trade point of view, this equates to classical forced import substitution. The Russian Federation expects the European Union to explain in detail how wrong Russia is in making such a serious claim.

40.6. At the same time, the Russian Federation is already concerned about the implementation of certain elements of the 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.

40.7. 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, given that the EU does not have sufficient capacity in 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 the like domestically recycled metals. Indeed, this draft regulation is not based on science, nor on international standards or guidelines that specify the content of recycled materials in batteries, material recovery targets, and the levels and methodologies for the calculation of a carbon footprint over the life cycle of a battery.

40.8. Another issue under the EU's Green Deal is the Chemicals Strategy for Sustainability, which involves plans to further tighten current regulation of chemical substances and mixtures under the CLP/Reach Regulations and other product-specific regulations. These plans include the ban of hazardous materials classified as such by the CLP Regulation. Russia hereby notes that this Regulation employs the precautionary principle, which implies strict classification decisions without available laboratory or epidemiological data. One recent example is cobalt classification under the 14th Adaptation to Technical and Scientific Progress (ATP) of the CLP Regulation. Expanding this practice will entail restrictions and prohibitions of safe substances classified unjustifiably strictly using the precautionary principle. The EU sticks to the position that, once relevant scientific data is available, the classification decision can be revised. However, such a revision would have little practical implications, since the manufacturers of prohibited products would already have stopped their production, revised their technological processes, or even gone out of business.

40.9. In conclusion, the Russian Federation draws Members' attention to the fact that environmental policies should not result in the imposition of unnecessary restrictions on international trade. For this reason, the Russian Federation expects that current trade rules will be fully respected.

40.10. The delegate of Qatar, addressing agenda items 39 and 40, indicated the following:

40.11. Qatar takes note of the European Union's ambitious Green Deal and, in particular, of its ambition to become the first climate-neutral continent by 2050. Qatar compliments the EU for its political courage in setting these objectives. Like the EU, Qatar has also signed and ratified the Paris Agreement, and is equally ambitious in its climate change objectives. However, considering the EU Green Deal, Qatar wishes to express certain additional trade-related concerns over the

introduction of the CBAM to tackle so-called carbon leakage. In particular, Qatar seeks further clarification from the EU on how it intends to apply the CBAM in such a way as to ensure its compatibility with such fundamental WTO principles as the MFN principle and the principle of national treatment. In this context, Qatar considers that treating like products differently based on the carbon content of the production process goes against decades of well-considered WTO jurisprudence.

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

40.13. Climate change and biodiversity loss are existential threats. Science tells us that this decade is a make-or-break moment for delivering on Members' commitments under the Paris Agreement, and that the cost of non-action is clearly higher than the cost of fulfilling our climate ambitions. For this reason, the European Union committed, in 2019, to becoming the world's first climate-neutral continent by 2050. With the European Climate Law now in force, the EU's ambitious 2030 climate target, of a reduction of at least 55% in greenhouse gas emissions compared to 1990 levels, is now a legal obligation, which must be implemented through binding legislation applicable across the European Union.

40.14. The European Green Deal was unveiled as a comprehensive plan to make the EU economy and EU society ready to meet its Paris Agreement goals, facilitating the resetting of its economic policy to better correspond to the challenges of the global climate crisis. On 14 July 2021, the European Union presented a package of proposals intended to deliver on the ambition of the Green Deal, the "Fit for 55" package. This package comprises a mix of existing legislation upgraded to deliver on the EU's new level of ambition, plus a number of new initiatives, covering a range of policy areas and sectors of the economy, including the following: climate, energy, transport, fuels, buildings, taxation, land use, agriculture, and forestry. It is based on a comprehensive set of impact assessments and has been carefully designed to be fully aligned with WTO rules and the EU's other international commitments.

40.15. It is clear that trade policy alone cannot solve the global climate crisis, but it can certainly contribute to advancing climate action. International trade is an engine of growth that creates new green jobs, reduces poverty, and increases economic opportunity across the globe. Indeed, trade policy already contributes quite significantly to sustainable development, even if more can still be done. To this end, the new trade strategy communication presented by the European Commission in February 2021 outlines how trade policy and environmental and climate policies are, and must be, mutually supportive. And the European Union views green transition as an opportunity; global climate change mitigation efforts are a necessary part of the solution. Cooperation at multilateral and bilateral levels is therefore needed to shape the rules for fair and sustainable globalization.

40.16. The Council took note of the statements made.

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

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

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

41.3. The Russian Federation reiterates its statements made during previous regular meetings of the TBT Committee and the CTG on the cobalt classification adopted by the European Union under the 14th Adaptation to Technical Progress to the CLP Regulation, and notified to the WTO in document G/TBT/N/EU/629. The EU approved this classification in the absence of comprehensive laboratory and epidemiological data. Based on this classification, it is clear that the European 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. The Russian Federation welcomes the European Commission's efforts to approve gastric bioelution, but notes that, although it was supposed to have been approved at EU level in September 2021, this methodology has not yet been approved. The Russian Federation requests the European Union to inform the Council of the state of work on bioelution approval.

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

41.5. As explained at previous Council meetings, titanium dioxide and cobalt were included in the 14th ATP amending the CLP Regulation. Several discussions on the classification of cobalt, TiO2, and the classification of mixtures containing TiO2, took place in the expert group on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and the Classification, Labelling and Packaging Regulation (CLP Regulation) (CARACAL), and in the regulatory committee (the REACH Committee).

41.6. 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) No. 2020/217 was published in the EU's Official Journal on 18 February 2020, and the classification of cobalt as a carcinogen became applicable as of 1 October 2021.

41.7. 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 EU 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.[4] In its scientific assessment, the ECHA's RAC Committee took all available data into account, including the information submitted during the public consultation period. However, review of an RAC opinion is only possible if new and relevant scientific information becomes available. In this regard, the European Union notes that all comments submitted by WTO Members in the context of the EU notification in accordance with the TBT Agreement were duly taken into account by the Commission and member States in the decision-making process. Furthermore, the Commission has also sent written replies to the comments from WTO Members on the TBT notification of the measure.

41.8. The European Union has also proposed to harmonize at OECD level its 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 EU would welcome any support from third countries to actively participate in the development of the OECD test method on bioelution.

41.9. As a new development, the European Union notes that the special expert sub-group that has 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, has already met twice. A third meeting, to conclude its discussions, is planned for mid-November.

41.10. The Council took note of the statements made.

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

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

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

42.3. The Russian Federation remains concerned about the amendments to the EU basic regulation on protection against dumped imports introduced by Regulation (EU) No. 2017/2321 and Regulation (EU) No. 2018/825. The Russian Federation wishes on this occasion to reiterate its systemic views about the discriminatory nature of the aforementioned amendments. Taken together, these amendments seem to be designed to selectively squeeze the imports of certain WTO Members out of the EU market. The presence of only two reports of so-called "significant distortions" in the

[4] https://echa.europa.eu/registry-of-clh-intentions-until-outcome/-/dislist/details/0b0236e1806bd156

exporting countries in question speaks in favour of this understanding. The Russian Federation reiterates its view that such treatment of exporters is WTO-inconsistent; accordingly, it calls upon the European Union to abstain from its application. In addition, the Russian Federation requests the European Union to provide it with any update that may dispel the Russian Federation's worries regarding the amendments in question.

42.4. The delegate of China indicated the following:

42.5. China's concern over this issue remains. China believes that the European Union's anti-dumping regulation and relevant practices are inconsistent with WTO anti-dumping rules. China is particularly concerned about the so-called significant market distortion concept and relevant standards in the regulation, the working document on significant distortion in China, as well as the way of using third party data for normal value calculation. China urges the EU to bring its practices into line with the WTO Anti-Dumping Agreement and relevant rulings.

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

42.7. The European Union notes the points raised by both China and the Russian Federation. However, the EU also notes that its position on these points is well known, and remains unchanged. Therefore, to avoid repetition, the EU refers to its previous statements on this issue as delivered both at this Council and at meetings of the Anti-Dumping Committee.[5]

42.8. The Council took note of the statements made.

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

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

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

43.3. The Russian Federation remains concerned over Angola's import restrictions under Presidential Decree No. 23/19, intended to protect Angola's domestic industries, the conformity of which with WTO rules on certain agricultural and industrial products is doubtful. Russia's concern in this regard has been raised multiple times in this Council and the CMA. The Russian Federation wishes to thank Angola for their fruitful consultations during the course of the year. Nevertheless, Russia sees no developments relating to the elimination of Angola's trade restricting measures. The Russian Federation urges Angola to bring its measures into conformity with WTO rules. To this end, Russia remains open to further bilateral discussion with Angola.

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

43.5. As the United States has expressed in this Council and in the CMA, it is committed to strengthening trade and investment ties with Angola. However, the United States remains concerned that Presidential Decree No. 23/19 appears to be aimed at restricting Angola's imports, which could negatively impact the US relationship with Angola. The United States continues to hear reports of confusion over how the Decree is being enforced, and of delays facing goods at the border. In particular, 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 the Decree in question to address US concerns and ensure that its measures with respect to imports are in compliance with WTO rules.

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

43.7. The European Union maintains its long-held concern over Angola's Decree No. 23/19, which seems to protect domestic industries in a manner that is incompatible with WTO rules, and which could also be detrimental to foreign investments in Angola. Since 2019, the EU has not received any substantive explanations from Angola as to how it intends to make Decree No. 23/19

[5] See, for example, document G/C/M/140, paragraphs 30.9-30.10.

WTO-compliant. Irrespective of the issue of compatibility with WTO rules, the European Union urges Angola to provide clarity as to the process under way in Angola as concerns this Decree, and whether or not Angola intends to introduce any changes to it and, if so, in which areas. The European Union remains supportive of Angola's intention to diversify its economy and to develop its domestic industry. Nevertheless, the European Union once again urges Angola to review the relevant measures in order to ensure their compliance with WTO rules.

43.8. The delegate of Angola indicated the following:

43.9. Angola takes note of the statements made by the delegations of the Russian Federation, the European Union, and the United States, regarding their concerns around Angolan imports. Angola considers its previous statements delivered in this Council, and at other committees, to remain valid; however, since Angola has received excellent contributions from the aforementioned Members, Angola has begun to adjust the Decree in question in order to make it more comprehensive. To this end, Angola will certainly be counting upon the technical assistance of interested Members.

43.10. Despite the trade concerns raised around the Decree, Angola wishes to ensure Members that the level of its imports has remained unchanged, as can be verified from the available statistics, and especially for those Members that have expressed concerns. For this reason, Angola suggests that the Members in question consult their exporters in order to be provided with the real information concerning the current status of their exports to Angola, which continue to develop normally. In conclusion, Angola reiterates that the Decree in question is under review.

43.11. The Council took note of the statements made.

44 MONGOLIA – MEASURES APPLIED WITH RESPECT TO CERTAIN AGRICULTURAL PRODUCTS – REQUEST FROM THE RUSSIAN FEDERATION

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

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

44.3. The Russian Federation wishes to raise the issue of Mongolia's quantitative measures applied to the importation of certain agricultural products. Russia appreciates the fact that Mongolia did not open quotas for imports of bottled water, liquid milk, and wheat flour for 2021. However, Russia reiterates that these products were not excluded from the list of agricultural products subject to annual QRs. Rather, according to the Mongolian Food Law, such quotas may be imposed in the future.

44.4. In the context of its TPR, Mongolia stated that "the Law on Food has been included in the guidelines for improving the Mongolian legislation until 2024 and shall be amended in accordance with the WTO rules and principles by 2021". During the Committee on Agriculture meeting in June 2021, Mongolia indicated that the Food Law would be improved, in compliance with the WTO Agreements, during the autumn session of the Parliament. In September 2021, Mongolia stated that the required amendments were under development.

44.5. Mongolia's quota regime continues to be inconsistent with its obligations under the WTO Agreements, in particular, Article XI of the GATT 1994 and Article 4.2 of the Agreement on Agriculture, as well as Mongolia's accession commitments under paragraph 20 of the Working Party Report. The Russian Federation would appreciate Mongolia sharing information regarding the progress of bringing its legislation into compliance with WTO rules.

44.6. The Russian Federation also wishes to raise a concern relating to Mongolia's Enrichment Law, which sets out the mandatory requirement for wheat flour to be fortified with vitamins and mineral compounds. In the context of its TPR in March 2021, Mongolia stated that the procedure for enriched flour examination had not yet been worked out. In this regard, the Russian Federation asks why Mongolia imposes a measure while its procedure has not yet been elaborated. For this reason, Mongolia's application of a mandatory fortification requirement in practice raises issues with regard to its consistency with the relevant provisions of the TBT Agreement.

44.7. The Russian Federation expects Mongolia to take all further necessary steps to bring its legislation and measures into compliance with the relevant WTO rules. The Russian Federation also urges Mongolia to terminate the implementation of its Enrichment Law. Finally, the Russian Federation will continue to carefully monitor the review of Mongolia's quota policy and food nutrition measures.

44.8. The delegate of Mongolia indicated the following:

44.9. Mongolia thanks the Russian Federation for its continued interest in Mongolia's trade policy on agricultural products. Mongolia reiterates that the Food Law of Mongolia is in force, and it is not possible to exclude wheat flour and liquid milk from the list of agricultural products. At the same time, Mongolia notes that no import quotas have been imposed on wheat flour and liquid milk since 2019, and nor will any such quotas be reimposed. Mongolia wishes to inform the Council that the necessary amendments to the Food Law, which are intended to ensure its compliance with the WTO Agreements, are under development. Mongolia also takes note of the comments on the Enrichment Law and other issues raised by the Russian Federation. These comments will be forwarded to capital and Mongolia will respond to them at the Council's next meeting.

44.10. The Council took note of the statements made.

45 INDIA - MANDATORY CERTIFICATION FOR STEEL PRODUCTS – REQUEST FROM JAPAN

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

45.2. The delegate of Japan indicated the following:

45.3. Regarding India's mandatory certification for steel products, Japan has repeatedly requested that India ensure its proper implementation through discussions in both the TBT Committee and the CTG. Japan wishes to touch on four points in this regard.

45.4. First, Japan requests India to approve expeditiously the applications, since it is still taking a long time to receive approval for a conformity assessment, especially for new projects.

45.5. Second, Japan understands that due to the COVID-19 pandemic the Government of India has been unable to proceed with on-site inspections. For this reason, Japan requested India to implement appropriate alternative measures. In response to Japan's request, India mentioned, at the most recent meeting of the TBT Committee, the possibility of introducing remote inspections. Japan requests India to provide an update on its progress in introducing such alternatives.

45.6. Third, if appropriate alternative measures are not to be introduced, Japan requests that India postpone the introduction and enforcement of new compulsory standards.

45.7. Finally, in obtaining a certification of conformity, some products are not subject to the original application procedure, and some companies need to switch procurement to Indian companies, even though such a switch has no relation to the process of the acquisition of the certification of conformity with the standards set. An additional submission of future plans for local production is also required. Japan requests India to improve upon this situation by addressing such problems.

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

45.9. The Republic of Korea wishes to raise a concern regarding India's Steel and Steel Products (Quality Control) Order. The Order requires compulsory certification for imported steel products for which Korean companies have applied. However, there has been a delay in the process of assessing the applications since December 2020, as the "factory visit" was deferred because of the COVID-19 pandemic. The "factory visit" is one of the requirements for obtaining the certification. To avoid any additional delay and to accelerate the process, the Republic of Korea urges India to be more flexible by temporarily replacing the "factory visit" requirement by a document-based examination until the COVID-19 situation improves. If this is not possible, an alternative would be a provision that allows virtual or remote inspection, in place of an on-site visit.

45.10. The delegate of India indicated the following:

45.11. The mandatory BIS certification for steel products is enforced through the notification of quality control orders to ensure that the quality of steel being manufactured by domestic producers or imported into the country is as per Indian standards. The WTO recognizes a Member's right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, protection of the environment, prevention of unfair trade practices, or national security. The technical regulations and QCOs on steel and steel products have been issued based on the same policy objectives. The QCOs notified by the government are not trade-restrictive, but rather a necessity to meet the legitimate objective of ensuring a level playing field for domestic as well as foreign suppliers.

45.12. The Council took note of the statements made.

46 INDIA – IMPORT RESTRICTION ON AIR CONDITIONERS – REQUEST FROM JAPAN

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

46.2. The delegate of Japan indicated the following:

46.3. Japan reiterates its concern that India's import ban on air conditioners, including refrigerants, introduced last year through Notification No. 41/2015-2020, is a measure that unreasonably imposes a restructuring of corporate supply chains. Japan is significantly concerned that this measure may be an import ban that is inconsistent with Article XI:1 of the GATT, as well as Article 2.1 of the TRIMs Agreement.

46.4. India responded in its TPR, and at the CTG, that its measure was consistent with its obligations under the Montreal Protocol. However, this import ban is still considered by Japan to be superfluous and irrational in that it covers a wide range of air conditioners that use refrigerants. Furthermore, these air conditioners are subject neither to India's reduction and elimination obligation under the Montreal Protocol, nor to the regulation for freon gas causing ozone layer depletion under India's domestic regulation. In this respect, after considering India's previous answers, Japan submitted written questions to the TRIMs Committee meeting in September 2021; in this regard, Japan expects India to provide prompt and more detailed answers to its questions.

46.5. In addition, as Japan mentioned at the recent TRIMs Committee meeting, regarding air conditioners, India's ISI Mark certification system is scheduled to come into effect in January 2022 based on the quality control order for air conditioners and their parts. However, while it is necessary to obtain a BIS licence for these products through the conformity procedure, the BIS has stopped conducting overseas factory inspections, and the certification procedure for imported products has not progressed. Japan is concerned that imports may be restricted if nothing is done. Japan requests India to consider (i) an extension of the measure's enforcement date; and (ii) alternative procedures for certification other than overseas factory inspection.

46.6. The delegate of Thailand indicated the following:

46.7. Thailand shares Japan's concerns over India's import restriction on air conditioners, which has had an adverse impact on Thailand's exports of air conditioners to India. Thailand also wishes to reiterate its concerns regarding India's restrictive import policies on television sets, as raised in previous meetings of the CMA. Thailand continues to closely monitor developments in this regard, and encourages India to find and implement less restrictive import measures on these products. Thailand also welcomes bilateral discussion with India on this issue.

46.8. The delegate of India indicated the following:

46.9. This is an issue that was raised at the Council's meetings of March and April 2021, wherein India explained the rationale for the measure undertaken. India wishes to inform Members again that the measure was necessary for the application of standards and regulations. Besides reducing risks to human, animal and plant life and health, it is also 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 (hydrochlorofluorocarbons) is prohibited since 1 July 2015.

46.10. In August 2021, India provided its approval for the ratification of the Kigali Amendment to the Montreal Protocol, on substances that deplete the ozone layer. This amendment was adopted by the parties to the Montreal Protocol in October 2016 at the 28th meeting of the parties held at Kigali, Rwanda. India will complete its phasedown of hydrofluorocarbons in four steps, from 2032 onwards, with cumulative reduction of 10% in 2032, 20% in 2037, 30% in 2042, and 85% in 2047. India has a consistent policy in this regard and remains open to discussing this issue with Japan bilaterally.

46.11. The Council took note of the statements made.

REPORTS TO THE GENERAL COUNCIL

47 WORK PROGRAMME ON ELECTRONIC COMMERCE

47.1. 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. Therefore, 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.

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

47.3. The United States notes that this agenda item should be requested by a Member and driven by proposals from Members for consideration. It is not a standing agenda item.

47.4. The delegate of Pakistan indicated the following:

47.5. All Members are well aware that, in this era of digitization, the digital divide is a reality, and one that has been further aggravated by the COVID-19 pandemic. At its onset, countries with low digital penetration faced insurmountable problems in dealing with the natural outcome of the global pandemic in different forms. These challenges have not yet subsided, and developing countries are making concerted efforts, within their available fiscal space, to improve upon their situation. However, the digital divide can only be bridged if efforts are made by all Members, in line with the original negotiating mandate, as agreed at the Second WTO Ministerial Conference.

47.6. Any attempts at rule-making in this area without first addressing the concerns of developing countries will further widen the existing digital divide, including by creating additional imbalances that may have a detrimental impact on the prospects for developing countries to address their structural issues.

47.7. Therefore, Pakistan wishes once again to stress and support engagement at the correct mandated forum in which multilateral discussions on e-commerce should take place, and in this regard supports the reinvigoration of the Work Programme. Pakistan considers that to do so is also indispensable for the digital development and industrialization of developing countries.

47.8. The delegate of Norway indicated the following:

47.9. Norway sees e-commerce as an important part of coping with the pandemic. E-Commerce and trade facilitation have proven themselves to be extremely important in the toolbox that Members and consumers have used to cope with this pandemic. For this reason, Norway, together with nearly twenty other Members, has proposed a prolongation of the Work Programme, including the moratorium on electronic transmissions.

47.10. The Council took note of the statements made.

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

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

48.2. Such factual reports were adopted at the last meeting of each subsidiary body and submitted to the CTG for its consideration. In the case of the SPS Committee (G/L/1413/Rev.1), and the TBT Committee (G/L/1420), the corresponding factual reports would be submitted to the General Council directly.

48.3. The Chairperson proposed that the Council take note of the following factual annual reports: Committee on Anti-Dumping Practices (G/L/1415); Committee on Customs Valuation (G/L/1410); Committee on Import Licensing (G/L/1406); Committee on Market Access (G/L/1407); Committee on Rules of Origin (G/L/1405); Committee on Safeguards (G/L/1417); Committee on Subsidies and Countervailing Measures (G/L/1414); Committee on Trade Facilitation (G/L/1416); Committee on TRIMs (G/L/1404); Committee of Participants on the Expansion of Trade in Information Technology Products, ITA (G/L/1412); Working Party on State Trading Enterprises (G/L/1403); Preshipment Inspection (G/L/1411); and the Independent Entity (G/L/1409).

48.4. The Council so agreed.

49 ADOPTION OF THE ANNUAL REPORT OF THE COUNCIL FOR TRADE IN GOODS TO THE GENERAL COUNCIL (G/C/W/804)

49.1. The Chairperson drew Members' attention to the Draft Report of this Council to the General Council, circulated in document G/C/W/804. In accordance with the "Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO" (WT/L/105), it was agreed that "[T]he respective sectoral Councils should report in November each year to the General Council on the activities in the Council as well as in the subsidiary bodies" and that the reports of the sectoral Councils should be "factual in nature, containing an indication of actions and decisions taken, with cross-references to reports of subordinate bodies and could follow the model of the GATT 1947 Council reports to the CONTRACTING PARTIES".

49.2. He reminded delegations that all sections of the Draft Report currently before Members would be updated in light of the present meeting, and would also be circulated to Members for comments. In addition, he noted that the Secretariat had adjusted the way in which the information on trade concerns was presented, which would now be summarized in table format in the annexes.

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

49.4. The United States thanks the Secretariat for the Draft Report in document G/C/W/804 and welcomes the introduction of the annex tables, which is a sensible way of presenting this information. However, the United States would not be in a position to adopt the report today as it would first like to see a complete version. For this reason, it requests the Chairperson to follow a written procedure for its adoption.

49.5. The Chairperson proposed that the Secretariat circulate by email a revised version of the Annual Report, in tracked changes, by close of business on 3 November. If no objection was received by the Secretariat by Monday, 8 November, this revised draft would be considered to be approved and the Annual Report would subsequently be circulated under the G/L document series for presentation to the General Council.[6]

[6] The Annual Report of the Council for Trade in Goods was adopted by written procedures on 8 November 2021 and circulated as document G/L/1418, dated 10 November 2021.

49.6. The Council so agreed.

50 OTHER BUSINESS

50.1 Functioning of the CTG and its Subsidiary Bodies – Information from the Chair (RD/CTG/14)

50.1. The Chairperson drew Members' attention to documents RD/CTG/14 and RD/CTG/14/Corr.1, containing the most recent version of the Annual Plan of Meetings for the CTG and its subsidiary bodies for the year 2022. This document had been prepared in close coordination between the Secretary of the Goods Council and the Secretaries of the CTG's subsidiary bodies with the aim of ensuring an optimal scheduling of meetings, and in particular, avoiding overlaps. In this regard, he noted that certain meetings had already been rescheduled in light of Members' comments on this issue made at the Council's previous meeting. As previously noted, he had requested the Secretariat to prepare an update of this Annual Plan for each CTG meeting, which should facilitate an early identification of any potential issues and allow Members to plan accordingly. He had also continued to engage with the Chairpersons and Secretaries of the CTG's subsidiary bodies with a view to continuing to improve the coordination between the Council and the Committees, thus ensuring that Members' concerns were addressed in a satisfactory manner.

50.2. The delegate of Paraguay indicated the following:

50.3. Just as Paraguay had done in the past, when it took the floor to complain when there were problems, it now felt compelled to take the floor to thank and congratulate the Secretariat for this excellent annual plan of meetings. Paraguay sees that not only has the Secretariat tried to avoid overlaps in meetings, but also that they have tried to maintain the sequence of first having the meetings of the subsidiary bodies, then the meeting of the CTG, so that issues can then be raised to the General Council. The only overlap that seems to remain is between the Committee on Agriculture and the TBT Committee meetings in June 2022, but Paraguay imagines that this was unavoidable. Nevertheless, this calendar represents a significant improvement over past years and will allow all delegations to organize their work more efficiently, which is something that delegations had been requesting for a long time. Thanks again to the Secretariat and to the Chairperson for his leadership on this issue.

50.4. The delegate of Canada indicated the following:

50.5. Canada takes the floor to echo the comments made by Paraguay, and to thank the Chairperson and the Secretariat for steering the preparation of this calendar of meetings. It is a great contribution to organizing the work of the CTG subsidiary bodies, and for laying down this calendar and allowing for some planning. Canada would urge the Secretariat to continue with this effort, including advance planning so that these dates can be included in the WTO website's calendar of meetings, and doing so as far in advance as possible as many delegates used this as their main tool for planning and accessing meetings. Finally, Canada encourages delegates to use the e-Registration system to indicate the committees that they are covering, which is a simple procedure and assists all delegates and the Secretariat in identifying who their counterparts are in each of the bodies.

50.2 Date of Next Meeting

50.6. The Chairperson announced that the next CTG meeting had been tentatively scheduled for 21-22 April 2022. These dates would be confirmed in due course.